

STATE OF MAINE

v.

JOHN J. TURNER

Submitted On Briefs September 30, 2009
Decided October 8, 2009

Panel: SAUFLEY, C.J., and ALEXANDER, LEVY, GORMAN, and JABAR, JJ.

MEMORANDUM OF DECISION

John J. Turner appeals from a judgment of conviction for the murder of Tad Howard, 17-A M.R.S. § 201(1)(A) (2008), entered in the Superior Court (Hancock County, *Cuddy, J.*) following a jury trial. Turner contends that the court erred in instructing the jury as to accomplice liability and the lesser included offense of manslaughter because the evidence generated neither instruction. We disagree.

A finding of accomplice liability is supported by evidence that Turner engaged in any conduct, however slight, to promote or facilitate the commission of the crime. *See* 17-A M.R.S. § 57(3)(A), (6) (2008); *State v. Perry*, 2006 ME 76, ¶ 16, 899 A.2d 806, 813. The evidence admitted at Turner's trial could support a finding that Turner was present during the murder and assisted in the murder, but that he did not kill Howard himself.

The jury also could have reasonably inferred from the evidence that Turner intended to intimidate and rob Howard, and that Turner's acts resulted in Howard's death by recklessness or criminal negligence. *See* 17-A M.R.S. § 203(1)(A) (2008). These inferences could support a finding of manslaughter as a lesser included offense of murder. *See* 17-A M.R.S. §§ 13-A(2), 201(1)(A), 203(1)(A) (2008) (defining a lesser included offense, and stating the elements of murder and manslaughter). In any event, because the jury found Turner guilty of murder rather than manslaughter, we discern no prejudice to Turner even if the manslaughter

instruction was given in error. *See* M.R. Crim. P. 52(a) (defining “harmless error”). The court did not err in instructing the jury as to both accomplice liability and manslaughter.

Finally, contrary to Turner’s additional contention, viewing the facts in the light most favorable to the State, the record contains sufficient evidence to support the jury’s finding, beyond a reasonable doubt, that Turner murdered Howard. *See* 17-A M.R.S. § 201(1)(A); *State v. Clark*, 2008 ME 136, ¶ 18, 954 A.2d 1066, 1072; *State v. Gauthier*, 2007 ME 156, ¶ 19, 939 A.2d 77, 82.

The entry is:

Judgment affirmed.

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