

STATE OF MAINE

v.

COLEN McNALLY

Submitted on Briefs January 22, 2009

Decided February 3, 2009

Panel: CLIFFORD, ALEXANDER, LEVY, SILVER, MEAD, and GORMAN, JJ.

MEMORANDUM OF DECISION

Colen McNally appeals from a judgment of conviction of operating after revocation (Class D), 29-A M.R.S. § 2557-A(2)(A) (2008), entered in the District Court (Millinocket, *Stitham, J.*) upon a finding of guilty by the court. Contrary to McNally's argument, the court, as fact-finder, rationally could have found beyond a reasonable doubt every element of the charged offense. *See State v. Clark*, 2008 ME 136, ¶ 18, 954 A.2d 1066, 1072. In Maine, "[a] person commits operating after habitual offender revocation if that person . . . [o]perates a motor vehicle on a public way . . . when that person's license to operate a motor vehicle has been revoked . . . ." 29-A M.R.S. § 2557-A(1)(A) (2008). An all-terrain vehicle, when operated on a public way, is a motor vehicle for purposes of the statutes governing the crimes of operating after suspension and operating after revocation. *See State v. Moran*, 598 A.2d 1189, 1190 n.2 (Me. 1991). Additionally, the court did not abuse its discretion in denying McNally's motion to reopen the case given that McNally offered no information about the evidence that he had hoped to introduce. *See State v. White*, 460 A.2d 1017, 1023 (Me. 1993) (listing the factors a court should consider when deciding whether to reopen a case to allow a party to introduce additional evidence). Reading in context McNally's request for a new trial, we assume that McNally sought to introduce evidence that his all-terrain vehicle was registered pursuant to 29-A M.R.S. § 501(8)(E) (2008), which permits limited authorization to an unlicensed driver to operate an all-terrain vehicle on a

highway, but only for agricultural purposes. Therefore, even if the court had abused its discretion in not allowing this evidence to be introduced, the error would be harmless given our interpretation of the applicable statutes. *See State v. Dyer*, 2007 ME 118, ¶ 28, 930 A.2d 1040, 1046 (stating that an error is harmless and must be disregarded if it is highly probable that it did not affect the verdict).

The entry is:

Judgment affirmed.

---

**Attorney for Colen McNalley:**

Todd C. Pomerleau, Esq.  
One Center Plaza, Suite 230  
Boston, Massachusetts 02108

**Attorneys for the State of Maine:**

R. Christopher Almy, District Attorney  
Susan J. Pope, Asst. Dist. Atty.  
Prosecutorial District V  
97 Hammond Street  
Bangor, Maine 04401