

STATE OF MAINE

v.

STEVEN M. RICCI

Submitted on Briefs September 27, 2012  
Decided October 25, 2012

Panel: SAUFLEY, C.J., and ALEXANDER, LEVY, SILVER, and MEAD, JJ.

MEMORANDUM OF DECISION

Steven M. Ricci appeals from a judgment of conviction of indecent conduct (Class D), 17-A M.R.S. § 854(1)(A)(4) (2011), entered by the court (*Kelly, J.*) after a nonjury trial. Contrary to Ricci's contentions (1) the court did not err by admitting evidence related to the victim's out-of-court identification of Ricci because Ricci failed to prove by a preponderance of the evidence that the identification procedures utilized by police were suggestive,<sup>1</sup> *see Simmons v. United States*, 390 U.S. 377, 384 (1968); *State v. Nigro*, 2011 ME 81, ¶ 21, 24 A.3d 1283; *State v. Kelly*, 2000 ME 107, ¶ 19, 752 A.2d 188; *State v. True*, 464 A.2d 946, 949-950 (Me. 1983); *State v. Doughty*, 408 A.2d 683, 686 (Me. 1979); and (2) the court did not commit clear error by initially admitting evidence of Ricci's prior statements concerning past similar conduct because the statements were probative of Ricci's motive, intent, and knowledge, *see* M.R. Evid. 404(b) & Advisers' Note; *State v. Lemay*, 2012 ME 86, ¶ 26, 46 A.3d 1113; *see also* 17-A M.R.S. § 854(1)(A)(2); 17-A M.R.S. § 854(1)(A)(4). Moreover, following the bench trial, the court carefully indicated that it did not rely on Ricci's prior statements in finding him guilty, *see* M.R. Evid. 403; *cf. United States v. Foley*, 871 F.2d 235, 240 (1st Cir. 1989).

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<sup>1</sup> Because the identification procedures adhered to constitutional standards, the victim's out-of-court identification did not taint her later in-court identification of Ricci. *See State v. Levesque*, 281 A.2d 570, 576 (Me. 1971).

The entry is:

Judgment affirmed.

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**On the briefs:**

John Paul DeGrinney, Esq., and Lauren Wille, Esq., DeGrinney Law Offices, Portland, for appellant Steven M. Ricci

Stephanie Anderson, District Attorney, and Megan Elam, Asst. Dist. Atty., Prosecutorial District No. Two, Portland, for appellee State of Maine