

STATE OF MAINE

v.

RANDOLPH W. GARLAND

Submitted on Briefs October 10, 2012

Decided October 25, 2012

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

MEMORANDUM OF DECISION

Randolph W. Garland appeals from a judgment of conviction of six counts of burglary (Class B), 17-A M.R.S. § 401(1)(B)(4) (2011); one count of burglary (Class C), 17-A M.R.S. § 401(1)(A) (2011); one count of theft by unauthorized taking or transfer (Class C), 17-A M.R.S. § 353(1)(B)(4) (2011); and seven counts of theft by unauthorized taking or transfer (Class E), 17-A M.R.S. § 353(1)(A) (2011), entered in the trial court (*R. Murray, J.*) after a jury trial.<sup>1</sup>

Considering the evidence and reasonable inferences that may be drawn therefrom in the light most favorable to the jury's verdict, the evidence was sufficient to support the jury's finding as to all counts of the conviction that Garland was in "exclusive possession," either actually or constructively, of property that had "recently been taken," thus permitting the jury to apply the inference at 17-A M.R.S. § 361-A(1) (2011). *See State v. DePhilippo*, 628 A.2d 1057, 1060-61 (Me. 1993) (applying the precursor to § 361-A(1), 17-A M.R.S.A. § 361(2) (1983)); *State v. Sapiel*, 432 A.2d 1262, 1268-69 (Me. 1981) (holding that whether property was "recently" taken, an issue for the fact-finder, is not dependent on an absolute time frame but on the totality of the circumstances, applying the statutory precursor to § 361-A(1)); *State v. Mower*, 407 A.2d 729,

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<sup>1</sup> As to one of the counts for theft, the jury found Garland guilty of theft by receipt of stolen property. *See* 17-A M.R.S. § 351 (2011).

732-33 (Me. 1979) (analyzing “exclusive possession” in a 17-A M.R.S.A. § 361(2) case); *see also State v. Skarbinski*, 2011 ME 65, ¶ 6, 21 A.3d 86 (stating the standard of review); *State v. Allen*, 2006 ME 20, ¶ 26, 892 A.2d 447 (same); *State v. Austin*, 518 A.2d 1042, 1045 (Me. 1986) (indicating that the jury properly considered other circumstances indicative of guilt together with the inference arising from possession of recently stolen property). The evidence was sufficient to support Garland’s convictions of the multiple counts of burglary and theft.

Additionally, contrary to Garland’s contentions, the court did not err, much less commit obvious error affecting substantial rights, by not defining “exclusive” in its instructions to the jury. Given the applicable meaning of “exclusive,” it appears that Garland was given more favorable instructions than he might otherwise have received, which would have eliminated the possible inference that “exclusive” possession requires demonstration of “sole” possession. *See Alexander, Maine Jury Instruction Manual* § 6-44 at 6-64 (4th ed. 2012); *DePhilippo*, 628 A.2d at 1060.

The entry is:

Judgment affirmed.

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**On the briefs:**

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Randolph Garland

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Ellsworth, for appellee State of Maine