

STATE OF MAINE

v.

TROY A. FOSTER

Submitted on Briefs May 29, 2014

Decided June 3, 2014

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

MEMORANDUM OF DECISION

Troy A. Foster appeals from a judgment of conviction of burglary (Class C), 17-A M.R.S. § 401(1)(A) (2013), and theft by unauthorized taking or transfer (Class E), 17-A M.R.S. § 353(1)(A) (2013) entered in the the trial court (*Hunter, J.*). Foster argues that the court erred or abused its discretion in denying without hearing his pretrial motion for dismissal of the charges against him as *de minimis* infractions pursuant to 17-A M.R.S. § 12 (2013).

Contrary to Foster’s contentions on appeal, the court was not required to hold a separate hearing on Foster’s motion. *See* M.R. Crim. P. 1(c) (“When no procedure is specifically prescribed the court shall proceed in any lawful manner not inconsistent with the Constitution of the United States or of the State of Maine, these rules or any applicable statutes.”) The court also did not err or abuse its discretion in concluding that dismissal pursuant to section 12 was inappropriate. *See State v. Kargar*, 679 A.2d 81, 83 (Me. 1996) (“[T]rial courts should be given broad discretion in determining the propriety of a *de minimis* motion.”) Foster’s motion presented a jury question on the elements of the crimes alleged, *see* 17-A M.R.S. §§ 353(1)(A), 401(1)(A), not a proper basis for dismissal pursuant to section 12, *see City of Rockland v. Doud*, 1998 ME 238, ¶ 6, 721 A.2d 981 (noting

that section 12 is patterned on a Model Penal Code provision designed to give courts “power to discharge without conviction, persons who have committed acts which, *though amounting in law to crimes*, do not under the circumstances involve moral turpitude” (quotation marks omitted); *see also Kargar*, 679 A.2d at 84 (setting forth factors courts should consider in determining whether an infraction is *de minimis*).

The entry is:

Judgment affirmed.

On the briefs:

Richard L. Rhoda, Esq., Houlton, for appellant Troy A. Foster

Todd R. Collins, District Attorney, and Kurt A. Kafferlin, Asst. Dist. Atty.,
Office of District Attorney, Houlton, for appellee State of Maine