MAINE SUPREME JUDICIAL COURT

Reporter of Decisions
Decision No. Mem 17-36
Docket No. Lin-16-229

STATE OF MAINE

v.

BRANT W. PERKINS

Submitted on Briefs April 27, 2017
Decided May 4, 2017

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

MEMORANDUM OF DECISION

Brant W. Perkins appeals from a judgment of conviction for possession of sexually explicit material of a minor under the age of twelve (Class C), 17-A M.R.S. § 284(1)(C) (2016), entered by the court (Lincoln County, *Billings, J.*) after a conditional guilty plea.[1] We affirm the judgment.

Because Perkins did not request the transcript of the hearing on which the court based its ruling on his motion in limine, we "assume that sufficient evidence exists to support the trial court's factual findings." *State v. Milliken*, 2010 ME 1, ¶ 12, 985 A.2d 1152 ("[A]n appellant bears the burden of providing an adequate record upon which the reviewing court can consider the arguments on appeal." (quotation marks omitted)). Contrary to Perkins's contention, the court did not abuse its discretion in concluding that allegedly illegal sexually explicit photographs might be shown to the jury where those photographs were the chief evidence of the alleged crime. *See* M.R. Evid. 403;

[1] In his conditional guilty plea, Perkins expressly reserved the right to appeal the rulings he now challenges.

State v. Graves, 224 A.2d 57, 61 (Me. 1966) ("The admissibility of [pornographic or other inflammatory photographs as] an exhibit rests upon the exercise of sound judicial discretion . . . ." (quotation marks omitted)); *see also State v. Conner*, 434 A.2d 509, 512 (Me. 1981) ("[W]here the photograph has essential evidentiary value, then even a gruesome photograph may properly be admitted into evidence.").

Nor did the court err in denying Perkins's motion to suppress based on its finding that a State investigator did not "cross[] the line into misconduct, intimidation, or tampering." *See State v. Connor*, 2009 ME 91, ¶ 9, 977 A.2d 1003 ("[Where] there has been no motion for further findings, we will infer that the court found all the facts necessary to support its judgment if those inferred findings are supportable by evidence in the record."); *State v. Berry*, 1998 ME 113, ¶ 8, 711 A.2d 142 (concluding that a prosecutor's "mere suggestion that [a witness] might be prosecuted if he made incriminating statements falls far short of the intimidating conduct . . . that has been held to violate a defendant's right to present witnesses in his defense.").

The entry is:

Judgment affirmed.

Justin W. Andrus, Esq., AndrusLaw, LLC, Brunswick, for appellant Brant Perkins

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Lincoln County Superior Court docket number CR-2013-55
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