

STATE OF MAINE

v.

BRENT G. MACEY

Submitted on Briefs January 11, 2018
Decided January 18, 2018

Panel: ALEXANDER, MEAD, GORMAN, JABAR, HJELM, and HUMPHREY, JJ.

MEMORANDUM OF DECISION

Brent G. Macey appeals from a judgment of conviction of operating under the influence (Class C), 29-A M.R.S. § 2411(1-A)(B)(2) (2017), entered by the trial court (York County, *Cashman, J.*) after a jury trial. Because Macey did not produce a transcript of the hearing on his motion to suppress, “we assume that sufficient evidence exists to support the [suppression] court’s factual findings,” *State v. Milliken*, 2010 ME 1, ¶ 12, 985 A.2d 1152, including the court’s finding that two Saco police officers were given permission to enter Macey’s residence and search for him by a person with sufficient authority, *see State v. Carton*, 2016 ME 119, ¶ 17, 145 A.3d 555. Accordingly, the court (*Driscoll, J.*) did not err in denying the motion insofar as it asserted an unconstitutional search. *See State v. McNaughton*, 2017 ME 173, ¶ 28, 168 A.3d 807.

We conclude that the trial court did not abuse its discretion in declining to order a mistrial when law enforcement officers twice testified to statements made by Macey that were inadmissible in evidence because the court gave an appropriate curative instruction when requested to do so, and neither statement was “exceptionally prejudicial” such that it deprived Macey

of a fair trial. *See State v. Tarbox*, 2017 ME 71, ¶ 18, 158 A.3d 957; *State v. Dumas*, 2010 ME 57, ¶ 21, 997 A.2d 760.

The entry is:

Judgment affirmed.

William H. Ashe, Esq., Fairfield & Associates, P.A., Lyman, for appellant Brent G. Macey

Katheryn M. Slattery, District Attorney, and Susan J. Pope, Asst. Dist. Atty.,
Prosecutorial District I, Alfred, for appellee State of Maine

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