

STATE OF MAINE

v.

EMIL DZABIEV

Argued July 18, 2018  
Decided July 26, 2018

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

MEMORANDUM OF DECISION

Emil Dzabiev appeals from a judgment of the Unified Criminal Docket (Cumberland County, *L. Walker, J.*) convicting him of violating a protection from harassment order (Class D), 5 M.R.S. § 4659(1) (2017); refusing to submit to arrest or detention (Class D), 17-A M.R.S. § 751-B(1)(B) (2017); and violating a condition of release (Class E), 15 M.R.S. § 1092(1)(A) (2017), following a jury trial.<sup>1</sup> We affirm the judgment.

Dzabiev first argues that text messages admitted in evidence against him lacked a proper foundation. A proponent of a piece of evidence “must produce evidence sufficient to support a finding that the item is what the proponent claims it is.” M.R. Evid. 901(a). “[A]ny alleged weakness of the foundation should go to the weight to be given the evidence by the jury; any deficiency therein [can be] exposed on cross-examination.” *Marois v. Paper Converting Machine Co.*, 539 A.2d 621, 625 (Me. 1988). Here, contrary to Dzabiev’s

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<sup>1</sup> Dzabiev’s brief challenges only evidentiary issues related to the conviction for violating the protection from harassment order, and as such, we address only those arguments here.

contention, the State presented evidence sufficient to support a finding that the text messages were what the State claimed them to be. *See* M.R. Evid. 901(a). We therefore discern no abuse of discretion in the court's admissibility determination. *See State v. Gurney*, 2012 ME 14, ¶ 36, 36 A.3d 893.

Dzabiev next argues, for the first time on appeal, that certain statements made by the State during its opening and certain statements made by the complaining witness upon direct examination should have been excluded as irrelevant, despite trial counsel's failure to object on any basis. Dzabiev has failed to meet the high bar of demonstrating that the court committed obvious error when it did not, of its own volition, exclude passing statements made by the prosecutor and noninflammatory statements made by the complaining witness on direct examination. *See* M.R.U. Crim. P. 52(b); *State v. Hall*, 2017 ME 210, ¶ 25, 172 A.3d 467.

The entry is:

Judgment affirmed.

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Stephanie Anderson, District Attorney, and Julia A. Sheridan, Asst. Dist. Atty. (orally), Office of the Cumberland County District Attorney, Portland, for appellee State of Maine