

STATE OF MAINE

v.

ASHER C. GIFFORD

Submitted on Briefs January 17, 2019  
Decided January 29, 2019

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

#### MEMORANDUM OF DECISION

Asher C. Gifford appeals from a judgment of conviction entered in the Unified Criminal Docket (Kennebec County, *Mullen, J.*) for nine counts of possession of sexually explicit material of a minor under age twelve (Class C), 17-A M.R.S. § 284(1)(C) (2017), after a jury found him guilty of those offenses. Gifford contends that the court (*Billings, J.*) erred by denying his motion to suppress digital evidence seized by police after they searched a camper located on his premises pursuant to a search warrant, and evidence of statements he subsequently made to police.

Gifford contends that the search warrant did not authorize the officers to search the camper where they found evidence of criminal conduct. Reviewing the motion court's factual findings for clear error and its legal conclusions de novo, *see State v. Winchester*, 2018 ME 142, ¶ 13, 195 A.3d 506, we conclude that the camper was within the scope of the search warrant and that the officers acted within the authority created by the warrant when they searched it, *see United States v. Fagan*, 577 F.3d 10, 13 (1st Cir. 2009); *see also State v. Peakes*, 440 A.2d 350, 353 (Me. 1982) (“[A] search warrant and its supporting affidavit

may be read together to supply a particular description of the place to be searched.”).

Gifford also contends that the court erred by determining that his interrogation, during which the interrogating officer did not inform Gifford of his *Miranda* rights, did not become custodial until midway through it, and that, to that extent, the court therefore erred by denying his motion to suppress evidence of all of his statements. *See Miranda v. Arizona*, 384 U.S. 436, 478-79 (1966). The determination of whether a person was in custody for Fifth Amendment purposes is a mixed question of law and fact. *State v. Perry*, 2017 ME 74, ¶ 14, 159 A.3d 840. *Miranda* warnings are required only when a defendant is both “in custody” and “subject to interrogation.” *Perry*, 2017 ME 74, ¶ 14, 159 A.3d 840; *see also State v. Ames*, 2017 ME 27, ¶ 12, 155 A.3d 881 (“[A]n interrogation is custodial if a reasonable person standing in the shoes of the defendant would have felt he or she was not at liberty to terminate the interrogation and leave.” (alteration and quotation marks omitted)). Here, the court properly considered the factors that bear on the question of Fifth Amendment custody, *see State v. Lowe*, 2013 ME 92, ¶ 16, 81 A.3d 360, and did not err in its determination of when the interrogation became custodial.

The entry is:

Judgment affirmed.

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Elizabeth S. Gray, Esq., The Law Office of Elizabeth S. Gray, Augusta, for appellant Asher C. Gifford

Maeghan Maloney, District Attorney, and Michael H. Madigan, Asst. Dist. Atty., Prosecutorial District No. Four, Augusta, for appellee State of Maine