

STATE OF MAINE

v.

ANDREW J. LEGASSIE

Argued February 6, 2019
Decided March 21, 2019

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

MEMORANDUM OF DECISION

Andrew J. Legassie appeals from a judgment of the Superior Court (Aroostook County, *Hunter J.*) convicting him of Count 27, Sexual exploitation of a minor (Class B) 17-A M.R.S. § 282(1)(A)¹ (2014). The conviction followed reconsideration of Count 27 on remand pursuant to our decision in *State v. Legassie*, 2017 ME 202, 171 A.3d 589.

As described in our 2017 *Legassie* opinion, Legassie was originally charged with twenty-nine counts involving eight victims. Following a jury-waived trial, the court acquitted Legassie on nineteen counts and convicted Legassie on ten counts involving five victims. On Legassie's appeal,

¹ This statute was amended in 2016 to lower the age at which a target of the exploitation ceases to be a "minor" for purposes of the statute from eighteen to sixteen. See P.L. 2015, ch. 394, § 1 (effective July 29, 2016) (codified at 17-A M.R.S. § 282(1)(A) (2016)). The criminal conduct here occurred before the effective date of the amendment, and thus the prior version, 17-A M.R.S. § 282(1)(A) (2014), which referenced the definition of "minor" in 17-A M.R.S. § 281(2) as a person under eighteen, applies.

we affirmed the convictions on three counts, Counts 1, 2, and 8. We vacated the convictions and ordered entry of a judgment of acquittal on six counts. On Count 27, the Class B sexual exploitation of a minor charge, we vacated the conviction and ordered the court, on remand, to determine and make findings based on the trial record, as to whether M.R. Evid. 1004 exceptions to the best evidence rule, M.R. Evid. 1002, should have allowed the Count 27 victim to testify orally regarding communications between her and Legassie that she had been unable to locate on her cell phone or computer. On remand, the court made findings on that issue and again found Legassie guilty of Count 27.

On his second appeal, Legassie contends that on remand the court erred by finding that the State had made a sufficient search for the evidence—messages sent between Legassie and the victim via Facebook—and by allowing the State to use the Count 27 victim’s testimony as secondary evidence to prove the content of those messages. He argues that the court should have required the State to demonstrate that a search was undertaken of “all of the possible locations” where the Facebook messages between him and the victim might be found.

When the adequacy of evidence to support a conviction or a ruling on procedure or evidence is challenged, we review the evidence in the record for clear error, *see State v. Robinson*, 2015 ME 77, ¶ 21, 118 A.3d 242, considering all reasonable inferences that may be drawn from that evidence, in the light most favorable to the trial court’s findings or judgment, to determine if the evidence supports the findings at issue on appeal to the required standard of proof, *see State v. Cummings*, 2017 ME 143, ¶ 12, 166 A.3d 996; *State v. Murphy*, 2016 ME 5, ¶ 5, 130 A.3d 401. Contrary to Legassie’s contention, the court did not err in its finding that a sufficient search was made. This finding is supported by the record, which reflects that approximately two or three months after the messages were created, the victim, assisted by law enforcement, made a reasonable and credible effort to find them, and that law enforcement reasonably believed that further searching would have been fruitless because the messages were likely permanently lost after being overwritten. *See* M.R. Evid. 1004(a).

The entry is:

Judgment affirmed.

Alan F. Harding, Esq. (orally), Hardings Law Office, Presque Isle, for appellant
Andrew J. Legassie

Todd Collins, District Attorney, James Mitchell, Asst. Dist. Atty., John M. Pluto,
Asst. Dist. Atty. (orally), Prosecutorial District No. 8, Caribou, for appellee State of
Maine

Aroostook County Superior Court docket number CR-2014-190
FOR CLERK REFERENCE ONLY