MAINE SUPREME JUDICIAL COURT

Reporter of Decisions
Decision No. Mem 20-2
Docket No. Pen-19-211

STATE OF MAINE

v.

MARK SMITH

Argued January 9, 2020
Decided January 21, 2020

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

MEMORANDUM OF DECISION

Mark Smith appeals from a judgment of conviction for one count of harassment by telephone (Class E), 17-A M.R.S. § 506(1)(D) (2018), and one count of violating a condition of release (Class E), 15 M.R.S. § 1092(1)(A) (2018), entered by the court (Penobscot County, *Campbell, J.*) following a one day bench trial. Smith contends, in part, that the court abused its discretion in denying his motion for a bill of particulars, *see* M.R.U. Crim. P. 16(d)(1), and that there was not sufficient evidence for the court to find beyond a reasonable doubt that Smith intended to harass any person when making phone calls to the Town of Veazie Police Department.[1]

[1] We are not persuaded by Smith's other argument, that his comments to a police officer during the phone calls were protected speech pursuant to the First Amendment. *See Childs v. Ballou*, 2016 ME 142, ¶ 17 & n.6, 148 A.3d 291 (stating that "conduct amounting to criminal harassment [is not] protected by the First Amendment") (citation omitted); *State v. Cropley*, 544 A.2d 302, 304-05 (Me. 1988) (holding that "the conduct proscribed by the harassment statute [17-A M.R.S. § 506-A] fits within the area of unprotected speech").

Contrary to Smith's contentions, the court did not abuse its discretion in denying his motion for a bill of particulars when Smith was charged by complaint and provided adequate discovery by the State prior to his trial. *See* M.R.U. Crim. P. 3(a), 16(a)-(b), (d)(1); *State v. Flynn*, 2015 ME 149, ¶¶ 27-29, 127 A.3d 1239; *State v. Ardolino*, 1997 ME 141, ¶¶ 5-7, 697 A.2d 73.

Additionally, when a criminal defendant contends on appeal that the evidence was not sufficient to support his conviction, "we view the evidence in the light most favorable to the State in determining whether the fact-finder could rationally have found each element of the offense beyond a reasonable doubt." *State v. Jones*, 2012 ME 88, ¶ 7, 46 A.3d 1125. In a bench trial, the court is "permitted to draw all reasonable inferences from the evidence and is free to selectively accept or reject testimony presented based on the credibility of the witness or the internal cogency of the content." *State v. True*, 2017 ME 2, ¶ 19, 153 A.3d 106 (quotation marks omitted). Contrary to Smith's contentions, there was sufficient evidence in the record demonstrating that Smith made repeated telephone calls to the Veazie Police Department, intended to harass any person who answered, and engaged in conversation during each of the calls. Therefore, the court could rationally have found that Smith committed each of the required elements of the two crimes beyond a reasonable doubt. *See* 17-A M.R.S. § 506(1)(D); 15 M.R.S. § 1092(1)(A); *Jones*, 2012 ME 88, ¶ 7, 46 A.3d 1125; *State v. LeBlanc-Simpson*, 2018 ME 109, ¶¶ 17-18, 22, 190 A.3d 1015.

The entry is:

Judgment affirmed.

Timothy C. Woodcock, Esq. (orally), Eaton Peabody, Bangor, for appellant Mark Smith

Marianne Lynch, District Attorney, and Mark A. Rucci, Asst. Dist. Atty. (orally), Prosecutorial District V, Bangor, for appellee State of Maine