MAINE SUPREME JUDICIAL COURT

Reporter of Decisions
Decision No. Mem 00-86
Docket No. Pen-99-216

STATE OF MAINE

v.

DOUGLAS H. BURR and CHARLES E. JONES, Jr.

Argued June 12, 2000
Decided June 27, 2000

Panel: WATHEN, C.J., and CLIFFORD, RUDMAN, and DANA, JJ.

MEMORANDUM OF DECISION

Douglas Burr and Charles Jones appeal from the judgments of conviction entered in the Superior Court (Penobscot County, *Atwood, J.*) following a jury verdict finding Burr and Jones guilty of seven counts of burglary of a dwelling place while armed with a firearm, Jones guilty of four counts of theft by unauthorized taking, and Burr and Jones guilty of one count of intentional or knowing murder. With respect to their principal contention on appeal, we do not agree that the court erred in denying Burr's motion to suppress evidence gained though the many search warrants issued in this case, but instead we commend the court for its exhaustive analysis of the issues before it. We agree with the court that the search warrants in this case did establish probable cause, *see State v. Crowley*, 1998 ME 187, ¶ 3, 714 A.2d 834, 836; that the descriptions of items to be seized were not unconstitutionally general or overbroad, *see State v. Lehman*, 1999 ME 124,

¶ 9, 736 A.2d 256, 260; that the warehousing of goods in the apartment would allow "a reasonable person to believe that the items in plain view may be contraband or evidence of a crime," *State v. Dignoti*, 682 A.2d 666, 672 (Me. 1996); that even if Burr and Jones were able to show that the officers acted with reckless disregard for the truth in preparing the supporting affidavit, the facts allegedly omitted from that affidavit were not material to the finding of probable cause, *see Franks v. Delaware*, 438 U.S. 154, 155-56 (1978); and, that even if Detective Higgins performed an illegal search, suppression would be unjustified because the results of that search were unnecessary to establish probable cause for a warrant the police were already seeking and therefore the illegal search could not be "the 'but for' cause of the discovery of the evidence." *Segura v. United States*, 468 U.S. 796, 815 (1984). Turning to the defendants' trial, we cannot conclude that the court committed obvious error in admitting evidence of the defendants' drug use, *see State v. Betts*, 491 A.2d 1169, 1170 n.1 (Me. 1985); or in refusing to sever the joint trial of the two defendants. *See State v. Chesnel*, 1999 ME 120, ¶ 12, 734 A.2d 1131, 1135 (citing *Zafiro v. United States*, 506 U.S. 534, 538-40 (1993)); *State v. Profenno*, 516 A.2d 201, 202-03 (Me. 1986). Nor do we agree that the court abused its discretion when it denied Burr's motion for a mistrial; the court's curative instruction effectively cured whatever prejudice arose from the isolated reference at trial to Burr's alleged gang involvement. *See State v. Thornton*, 414 A.2d 229, 235 (Me. 1980). Finally, the evidence was sufficient to allow a "rational trier of fact

[to find] the essential elements of the crime[s] beyond a reasonable doubt." *State v. Van Sickle*, 434 A.2d 31, 34 (Me. 1981).

The entry is:

Judgment affirmed.

---

Attorneys for State:

Andrew Ketterer, Attorney General
Nancy Torresen, Asst. Attorney General (orally)
William R. Stokes, Asst. Attorney General
6 State House Station
Augusta, ME 04333-0006

Attorneys for defendants:

Arthur A. Stilphen, Esq., (orally)
64 Alfred Street
Bangor, ME 04005

Dale F. Thistle, Esq.
P O Box 160
Newport, ME 04953