

STATE OF MAINE

v.

MICAH T. BOLAND

Submitted on Briefs February 26, 2009  
Decided March 3, 2009

Panel: CLIFFORD, ALEXANDER, LEVY, SILVER, MEAD, and GORMAN, JJ.

MEMORANDUM OF DECISION

Micah T. Boland appeals from a judgment of conviction entered by the Superior Court (Waldo County, *Hjelm, J.*) on one count of gross sexual assault (Class A), 17-A M.R.S. § 253(1)(C) (2008). Contrary to Boland's contention, the court did not err in denying his motion to suppress statements he made during two police interviews, because the record supports the court's determination that (1) he was not in custody when questioned without *Miranda* warnings being administered, and (2) he made the statements at issue voluntarily. *See State v. Bridges*, 2003 ME 103, ¶ 26, 829 A.2d 247, 254-55 (setting out factors to be considered in making custody determination); *State v. Dion*, 2007 ME 87, ¶ 33, 928 A.2d 746, 752 (stating that a statement is voluntary if "it is the result of [a] defendant's exercise of his own free will and rational intellect" (quotation marks omitted)). Because Boland was not in custody when questioned, his Fifth Amendment right to counsel did not attach. *State v. Nielsen*, 2008 ME 77, ¶ 15, 946 A.2d 382, 386 (stating that "pursuant to the Fifth Amendment, a suspect subject to *custodial interrogation* has the right to consult with an attorney and to have an attorney present during questioning" (emphasis added)).

Also contrary to Boland's assertions, the trial court did not clearly err in finding the five-year-old victim to be a competent witness pursuant to M.R. Evid. 601, *see State v. Mazerolle*, 614 A.2d 68, 71 (Me. 1992) (stating that decision regarding a child's competency to testify is a factual one reviewed for clear error); nor did it err in considering the victim's age as an aggravating factor at sentencing, notwithstanding the existence of a statutorily-required twenty-year minimum basic sentence because the victim was less than twelve years old. 17-A M.R.S. §§ 1151(8)(A), 1252(4-E) (2008). The remainder of Boland's arguments are without merit.

The entry is:

Judgment affirmed.

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