

STATE OF MAINE

v.

TOBY L. WILCOX

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

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

MEMORANDUM OF DECISION

Toby L. Wilcox appeals from a judgment of conviction for one count of unlawful trafficking in scheduled drugs (Class B), 17-A M.R.S. § 1103(1-A)(A) (2008), one count of unlawfully furnishing scheduled drugs (Class C), 17-A M.R.S. § 1106(1-A)(A) (2008), one count of unlawful possession of Oxycodone (Class C), 17-A M.R.S. § 1107-A(1)(B)(4) (2008), and one count of unlawful possession of Hydrocodone (Class C), 17-A M.R.S. § 1107-A(1)(B)(5) (2008), entered in the Superior Court (Washington County, *Cuddy, J.*) following a jury trial.

Contrary to Wilcox's contention, the court did not err by finding that probable cause existed to support the search of his home, and denying his motion to suppress. Based on the totality of the circumstances, and considering the supporting affidavit's averments together, the search warrant provided a substantial basis that there was a fair probability that contraband would be found at Wilcox's residence. *State v. Crowley*, 1998 ME 187, ¶ 3, 714 A.2d 834, 836; *State v. Knowlton*, 489 A.2d 529, 532 & n.1 (Me. 1985). The court did not err by denying Wilcox's request for a *Franks* hearing to challenge the veracity of the statements contained in the affidavit in support of the search warrant because Wilcox did not make "a substantial preliminary showing" that the affidavit contained false statements made knowingly and intentionally, or with reckless disregard for the

truth. *Franks v. Delaware*, 438 U.S. 154, 155-56 (1978); *State v. Dickinson*, 2005 ME 100, ¶ 8, 881 A.2d 651, 655; *State v. Hamel*, 634 A.2d 1272, 1273 (Me. 1993).

Moreover, the court neither erred nor abused its discretion by not excluding evidence and witness testimony that the State failed to timely disclose pursuant to the rules of discovery and court orders, and by not dismissing the charges as a result of these violations. The evidence that was not timely disclosed related exclusively to the chain of custody of the evidence, and Wilcox was not prejudiced by its late disclosure. *State v. Sargent*, 656 A.2d 1196, 1199 (Me. 1995); *see also State v. Allen*, 2006 ME 20, ¶ 12, 892 A.2d 447, 451. Finally, the court did not abuse its discretion by denying Wilcox's request for a clarifying instruction that lawful possession of a presumptive level of scheduled drugs does not give rise to a permissible inference of trafficking or furnishing because the court's instructions were substantially correct, and viewing them in their entirety, were not confusing. *State v. Gantnier*, 2008 ME 40, ¶ 13, 942 A.2d 1191, 1195; *State v. Dumond*, 2000 ME 95, ¶ 11, 751 A.2d 1014, 1017.

The entry is:

Judgment affirmed.

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