

STATE OF MAINE

v.

GLEN A. WITHAM

Submitted on Briefs February 25, 2010

Decided March 16, 2010

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

MEMORANDUM OF DECISION

Glen A. Witham appeals from a judgment of conviction of theft by unauthorized taking or transfer (Class C), 17-A M.R.S. § 353(1)(B)(4) (2009), entered in the Superior Court (Androscoggin County, *Delahanty, J.*) upon his conditional guilty plea. Contrary to Witham's arguments on appeal, the court did not err in denying, in part, his motion to suppress.

First, the court did not commit clear error or err as a matter of law in finding that Witham and his minor son were not in custody when the officers initiated the on-the-scene questioning. *See State v. Grant*, 2008 ME 14, ¶ 24, 939 A.2d 93, 100-01; *State v. Swett*, 1998 ME 76, ¶ 4, 709 A.2d 729, 730. Second, because Witham's minor son was never placed under arrest, the court could properly conclude that the police did not need to obtain Witham's permission before questioning the minor. *See* 15 M.R.S. § 3203-A(2-A) (2009). Finally, the court did not err in determining that Witham knowingly, intelligently, and voluntarily waived his *Miranda* rights at the jail. *See State v. Lockhart*, 2003 ME 108, ¶¶ 21-22, 830 A.2d 433, 442-43; *State v. Cyr*, 611 A.2d 64, 66 (Me. 1992). We are unpersuaded by and do not address Witham's additional claims of error.

The entry is:

Judgment affirmed.

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Androscoggin County Superior Court docket number CR-2008-962
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