MAINE SUPREME JUDICIAL COURT Reporter of Decisions
Decision: 2010 ME 13
Docket: Ken-08-439
Argued: January 13, 2010
Decided: February 18, 2010

Panel: SAUFLEY, C.J., and ALEXANDER, LEVY, SILVER, and MEAD, JJ.

STATE OF MAINE

v.

JACOB McINNIS SR.

PER CURIAM

[¶1] Jacob McInnis Sr. appeals from judgments of conviction of one count each of kidnapping (Class A), 17-A M.R.S. § 301(1)(A)(5) (2009); robbery (Class A), 17-A M.R.S. § 651 (2009); conspiracy to commit robbery (Class B), 17-A M.R.S. § 151 (2009); burglary (Class B), 17-A M.R.S. § 401(1)(B)(4) (2009); and theft by unauthorized taking (Class C), 17-A M.R.S. § 353(1)(B)(4) (2009), entered in the Superior Court (Kennebec County, *Marden, J.*) following a jury trial.

[¶2] Contrary to McInnis's contentions: (1) the prosecutor did not engage in misconduct by arranging, over McInnis's objection, to have incarcerated State's witnesses testify wearing civilian clothing rather than orange jail uniforms, *see State v. Boylan*, 665 A.2d 1016, 1019 (Me. 1995) (stating the standard of review);

(2) the suppression court (*Mills, J.*) did not commit an error of law, nor were its findings of fact clearly erroneous, when it determined that the procedure used during the out-of-court identification was not unduly suggestive in violation of McInnis's due process rights, *see State v. DiPietro*, 2009 ME 12, ¶ 13, 964 A.2d 636, 640 (stating the standard of review); *State v. Kelly*, 2000 ME 107, ¶ 19, 752 A.2d 188, 192 (discussing the test applied to determine whether an out-of-court identification should be admitted into evidence); *State v. Prentiss*, 557 A.2d 619, 620 (Me. 1989) (discussing due process rights with respect to unduly suggestive out-of-court identification procedures); and (3) the suppression court (*Jabar, J.*) did not err in denying McInnis's request to hold a *Franks* hearing, *see Franks v. Delaware*, 438 U.S. 154, 155-56 (1978); *State v. Bilynsky*, 2007 ME 107, ¶¶ 37-38, 932 A.2d 1169, 1176-77.[1]

[¶3] At trial, the court did not abuse its discretion in determining that the testimony elicited by the State that McInnis's shoes potentially matched shoeprints observed at the crime scene did not require expert testimony, *see* M.R. Evid. 701, 702; *Mitchell v. Kieliszek*, 2006 ME 70, ¶¶ 11, 13-14, 900 A.2d 719, 722-23 (discussing when expert testimony required); nor did the court commit obvious error in admitting police officers' lay testimony concerning the shoeprints, *see*

[1] We decline to reach the issue of what standard of review, clear error or de novo, applies to the denial of a *Franks* hearing because we uphold the court's decision under either standard. *See State v. Bilynsky*, 2007 ME 107, ¶ 37, 932 A.2d 1169, 1176.

M.R. Evid. 403, 701; *State v. Roberts*, 2008 ME 112, ¶ 21, 951 A.2d 803, 810-11 (stating standard of review). Further, the challenged statements made by the prosecutor during closing and rebuttal arguments did not constitute misconduct. *See State v. Clark*, 2008 ME 136, ¶ 7, 954 A.2d 1066, 1068-69 (stating standard of review).[2]

[¶4] We do not review on direct appeal the post-judgment denial of public funds to pay McInnis's expert for appearance at trial; this issue does not arise from the judgment of conviction or assert errors in the determination of guilt. *See* 15 M.R.S. § 2115 (2009); *see generally State v. Huntley*, 676 A.2d 501, 503 (Me. 1996).

The entry is:

Judgment affirmed.

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[2] To the extent McInnis alludes in his brief to other arguments concerning prosecutorial misconduct, they are undeveloped and are deemed waived. *See Mehlhorn v. Derby*, 2006 ME 110, ¶ 11, 905 A.2d 290, 293.

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