

IN THE
MAINE SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

Law Court Docket No. SOM-23-326

STATE OF MAINE,

Appellee

v.

STEVEN EDWARDS,

Appellant

ON APPEAL FROM THE UNIFIED CRIMINAL DOCKET OF THE
COUNTY OF SOMERSET AND STATE OF MAINE

REPLY BRIEF FOR APPELLANT

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I. INTRODUCTION

A. Summary of Appellant's Initial Argument

This reply brief is intended solely to respond to Appellee's contentions that require further discussion for proper determination of the issues raised on appeal. This brief does not respond to issues that Mr. Edwards believes were adequately discussed in the opening brief, and Appellant intends no waiver of these issues by not expressly reiterating them herein.

In his opening brief, Mr. Edwards argued four errors in the trial court's disposition of the case. Appellant Brief 1. First, Mr. Edwards argued that the trial court erred in denying his motion to suppress when it determined the information contained in the cybertips forming the basis of the warrant issued was not stale despite there being 160 days from the date of the last cybertip to the warrant request.

Second, Mr. Edwards argued that the trial court erred when it denied his motion for judgment of acquittal based on the State's failure to prove beyond a reasonable doubt that he possessed or accessed with intent to view, sexually explicit material of a minor. Appellant Brief 19-23.

Third, Mr. Edwards argued that the trial court erred when it denied his motions for mistrial and new trial in which he asserted prejudice to his substantive

trial rights due to the Prosecutor's reference to uncharged images during the State's rebuttal closing statements at trial. Appellant Brief 23-30.

Finally, Mr. Edwards argued that the trial court erred in its instructions to the jury when it failed to instruct that, to be found guilty on all eighteen counts, it must have been proven beyond a reasonable doubt that each separate image was accessed with intent to view. Appellant Brief 30-33.

Appellee addressed Appellant's opening brief arguments as follows; (1) denial of Mr. Edwards' motion to suppress was proper (Appellee Brief 10); (2) not only was Appellant's motion to acquit properly denied by the trial court, but also that Appellant's opening brief did not include Appellant's alternative argument initially raised in his motion to acquit that the State failed to prove beyond a reasonable doubt that Appellant possessed the explicit material and therefore that argument is either conceded or waived (Appellee Brief 12); (3) the trial court's curative instruction was satisfactory to cure any misstatements made by the prosecutor at trial (Appellee Brief 16); and (4) the trial court's jury instructions were proper. Appellee Brief 19.

B. Summary of Appellant's Reply Brief Argument

In this reply brief, Mr. Edwards responds as follows. First, that the State's second argument inaccurately contends that Mr. Edwards waived the alternative argument made in his motion for judgment of acquittal that the State failed to

prove beyond a reasonable doubt that he, Mr. Edwards, not only did not access with intent to view the explicit material, but also that he did not possess the explicit material. Appellant’s reply seeks to clarify the full scope of his argument initially raised in his motion and in his opening brief which addressed both the possession and access with intent to view components of 17-A M.R.S. § 284(1)(C).

Second, the State’s characterization of the prosecutorial error in their brief does not accurately portray the context in which the statement was made.

Third and finally, while Mr. Edwards concedes that no alternative jury instructions were provided in his initial brief, he maintains his assertion that the trial court failed to specifically instruct the jury as to whether Mr. Edwards accessed sexually explicit material on eighteen separate occasions and clarifies in this reply that an alternative instruction was proposed.

II. APPELLANT’S OPENING BRIEF DID NOT WAIVE OR CONCEED THE ARGUMENT INITIALLY RAISED IN HIS MOTION FOR ACQUITTAL THAT THE STATE FAILED TO PROVE BEYOND A REASONABLE DOUBT THAT APPELLANT POSSESSED SEXUALLY EXPLICIT MATERIAL.

Appellee’s brief claims Appellant “faile[d] to include in his appeal the alternative argument in his motion [for judgment of acquittal] that the State failed to prove that he possessed the computer file or material.”. Appellee Brief 13.

Appellee points to page 19 of Appellant’s brief as only mentioning that “[t]he State failed to present sufficient evidence that Mr. Edwards accessed with intent to view

child sexual exploitative material on eighteen separate occasions” to justify this claim of waiver or concession of the argument that the State failed to prove possession beyond a reasonable doubt.

Appellee’s claim that Mr. Edwards’ brief waived or conceded the argument that the State lacked sufficient evidence to prove beyond a reasonable doubt that he possessed explicit material is simply wrong. To the contrary, Mr. Edwards’ opening brief did include the alternative argument initially raised in his motion for judgment of acquittal that the State failed to prove beyond a reasonable doubt that he either possessed or in the alternative, accessed with intent to view, child sexually exploitative material pursuant to 17-A M.R.S. § 284(1)(C). While Appellee’s observation regarding the introductory sentence of Appellant’s Section II argument is correct in that the sentence only alleges a sufficiency of the evidence argument for access with intent to view further reading of the section makes it clear that the entirety of the original motion’s argument is addressed. Moreover, as an initial matter, Appellant’s header for Section II asserts that the trial court erred when it denied Mr. Edwards’ Motion for Judgment of Acquittal. This header indicates that the entire motion will be addressed, not a single aspect or argument of it, otherwise the section header would have specified such.

Notwithstanding a section header which indicates the complete scope of the subsequent argument, Mr. Edwards in fact begins his argument under this section

by first addressing possession. First, page 20 of Appellant’s brief begins with citation to 17-A M.R.S. § 284(1)(C) including both means of conviction under the statute. Next, Appellant acknowledges that the statute’s definition of possession is consistent with the term’s plain meaning pursuant to *State v. Wilson*, 2015, ME 149, 127 A.3d 1234. Appellant Brief Page 21. Then, immediately following this statute reference, Mr. Edwards begins his argument by “[a]ddressing possession first”. Brief of Appellant Page 21.

In conclusion, Mr. Edwards’ initial brief *does* address the possession argument he originally raised in his motion for judgment of acquittal. Because this argument is addressed in his brief, Mr. Edwards has neither waived nor conceded this argument on appeal and reasserts his position that, at trial, the State failed to prove beyond a reasonable doubt that he either possessed or accessed with intent to view, illegal imagery.

III. APPELLEE’S COMPARISON OF THE PROSECUTORIAL ERROR WHICH OCCURRED IN THE INSTANT CASE AT TRIAL TO THE ERROR IN *STATE v. TRIPP* IS INACCURATE AS THE ERROR WHICH OCCURRED IN THE INSTANT CASE WAS MORE SEVERE.

In his initial brief, Mr. Edwards’ detailed how a violation of his substantive trial rights occurred because of the Prosecutor’s reference to uncharged images during the State’s rebuttal closing argument. Appellant Brief 23-30. Specifically, Mr. Edwards highlighted three exacerbating factors which, taken together, elevated

the severity of the statement to such a degree that it warranted a new trial (in particular, Mr. Edwards highlighted the timing of the statement as a primary. *Id.* In response, Appellees' brief asserts that this was simply a "single misstatement" which was "an unfortunate mistake" made "during the course of a three-day trial". Appellee Brief 18. Appellee further cites the trial court's ruling on the motion for mistrial and request for new trial, where the court found that the curative instruction it issued was adequate. Appendix 58-59. In addition, Appellee argues that the prosecutorial error and subsequent curative instruction issued was more akin to the scenario in *State v. Tripp*, 2024, ME ¶ 12, than to Appellant's primary cited case of *State v. White*, 2022 ME ¶ 54, 285 A.3d 262. Appellant disagrees with this association to the findings in *Tripp* for the following reasons.

First, at trial, unlike Defendant Tripp, who did not object to the State's closing arguments (which associated Tripp's silence as evidence of a consciousness of guilt), Mr. Edwards, through counsel, immediately objected to the prosecutor's reference to uncharged images. *Tripp*, 2022 ME ¶ 54, 20. As such the standard of review for evaluating the harmfulness of the prosecutor's error in *Tripp* is different than in the present case. Further still, the court held that because Tripp "did not invoke his right to remain silent, he has not established any error, let alone obvious error." This is readily distinguishable from the present case as Mr. Edwards

preserved his objection for appeal and the trial court found that indeed there was an error (even if it ultimately determined a curative instruction suitable to remedy it).

Second, in *Tripp* the court also determined that certain prosecutorial statements were made in error because “those comments were not supported by evidence presented at trial.” *Tripp*, 2024, ME ¶ 54, 20. While this conclusion is similar to the prosecutorial error in this matter (in that the State made reference to uncharged images at trial, without supporting evidence presented to substantiate that assertion) the effect of the error in *Tripp* is significantly different. This is because the court in *Tripp* concluded that:

This plain error did not affect Tripp’s substantial rights because the jury acquitted Tripp ... [t]hus the jury apparently did not give any weight to the State’s comments and the prosecutorial error could not have been sufficiently prejudicial to have affected the outcome of the proceeding.

Tripp, 2024, ME ¶ 54, 21-22. This outcome is fundamentally different than what occurred at trial in the instant case. In this matter, the jury did convict Mr. Edwards of conduct identical to that referenced by the prosecutor but which was left uncharged. Notwithstanding an immediate curative instruction issued by the judge which Appellee indicates went above and beyond that issued in *Tripp* because the judge elicited confirmation from the jury as a whole that this curative instruction could be followed, it is impossible to determine whether that was actually the case given the jury’s verdict and the timing of the statement. Again, the prosecutorial error in this matter occurred immediately preceding jury deliberation. No curative

instruction can silence the bell completely once it has been rung in the minds of the jury. Furthermore, the judge, in the hearing on Mr. Edwards' post-judgment motions, acknowledged that "if I had to do it all over again, I think I would have certainly considered individually voir diring each juror." Appendix 22. This acknowledgment undercuts Appellee's claim that the judge went above and beyond when he received confirmation from the jury that the curative instruction could be followed. This is because the confirmation the judge received regarding the clarity of his curative instruction was, in the judge's hindsight, perhaps not as concrete as it could have been.

In conclusion, Mr. Edwards reasserts his argument initially made at trial, renewed in post judgment motions and in his initial brief: that the State's reference to uncharged images harmed his substantial rights.

IV. APPELLANT'S LACK OF ALTERNATIVE INSTRUCTIONS IN HIS INITIAL BRIEF IS NOT FATAL TO HIS ARGUMENT THAT THE TRIAL COURT FAILED TO ADEQUATELY INSTRUCT THE JURY WITH REGARD TO ACCESS WITH INTENT TO VIEW ON EIGHTEEN SEPARATE OCCASSIONS.

At trial, Mr. Edwards objected on two occasions to the jury instructions. Appendix 139. These objections preserved the issue for appeal, notwithstanding Appellants lack of proposed alternative instructions in his initial brief. Concerning Appellee's argument that "any argument that the court failed to instruct the jury on the need to consider each element of each count individually is simply wrong."

Appellee Brief 21. Appellant respectfully disagrees with this characterization of his initial argument.

Specifically, Appellant argued in his initial brief that the primary issue with respect to the instructions provided at the conclusion of the trial was not that they did not instruct jurors to consider each element of each count individually. Rather, it was that the instructions did not clearly inform the jury that, with respect to the claim that Mr. Edwards accessed with intent to view eighteen separate images of child sexually exploitive material, the jury must find that he did indeed, beyond a reasonable doubt, access with intent to view eighteen distinct times.

Appellee also asserts that in this appeal, Appellant has not presented an alternative jury instruction and that “no alternative instructions [are] suggested in [Appellant’s] Brief. Appellee Brief 19. To clarify, in the initial brief, Appellant argued that the jury instructions were not specific enough regarding access with intent to view. Appellant provided an alternative that in addition to instructing the jury to consider each charge “independently” the jury should have been instructed that, specifically regarding the access with intent to view the jury must determine whether Mr. Edwards “independently accessed and independently viewed on each occasion, child sexually exploitive materials.”. Appellant Brief 32.

In conclusion, Mr. Edwards maintains his argument that the failure to adequately and accurately instruct the jury regarding the access with intent to view

alternative to possession worked to prejudice him, resulting in a conviction despite the State's failure to prove beyond a reasonable doubt, eighteen separate acts of access by Mr. Edwards.

CONCLUSION

For the reasons set forth above and in Appellant's initial brief, the Appellant prays that this Honorable Court vacate the trial court's judgment of conviction and remand for a new trial.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Peter J. Cyr, attorney for Appellant Steven Edwards, hereby certify that on this date, March 22, 2024, I have caused ten (10) copies of this Brief to be served via in hand delivery to the Office of the Clerk of the Supreme Judicial Court of Maine. I further certify that I caused two (2) copies of this Brief to be served on opposing counsel at the address listed on the Briefing Schedule.

DATED at Portland, Maine, this 22nd day of March, 2024.

Respectfully submitted,

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