

SUPREME JUDICIAL COURT OF MAINE

State of Maine v. Steven E. Clarke

2015 ME 70 (2015) · No. Kno-14-237 · Decided June 9, 2015

SUMMARY

The Maine Supreme Judicial Court affirmed Steven E. Clarke’s convictions for tampering with a witness and violating a condition of release. The court held that evidence of Clarke’s statements suggesting that a witness miss court or remain silent was sufficient to support the witness-tampering conviction, and it declined to consider Clarke’s unpreserved challenge to the indictment.

CASE DETAILS

COURT	Supreme Judicial Court of Maine
WRITING FOR THE COURT	Gorman, J.; Saufley, C.J.; Alexander, J.; Mead, J.; Jabar, J.
JURISDICTION	Maine
DECIDED	June 9, 2015
DOCKET	Kno-14-237
DISPOSITION	affirmed
PROCEDURAL POSTURE	Clarke appealed from a judgment of conviction entered after a jury trial for tampering with a witness and violating a condition of release.
STANDARD OF REVIEW	The court viewed the trial evidence and all reasonable inferences in the light most favorable to the State and considered whether the evidence would permit a rational fact-finder to find each element of the offense beyond a reasonable doubt. The indictment challenge was unpreserved because Clarke did not raise it before trial or seek a bill of particulars.
PRECEDENTIAL VALUE	Published opinion; precedential
PARTIES	Steven E. Clarke v. State of Maine

TOPICS

criminal procedure

evidence

burden of proof

preservation of error

appellate procedure

PRACTICE AREAS

Criminal law

Criminal procedure

Evidence

Appellate procedure

QUESTIONS PRESENTED

1. Whether the evidence was sufficient to support Clarke's conviction for tampering with a witness under 17-A M.R.S. § 454(1)(A)(2).
2. Whether Clarke's challenge to the sufficiency of the indictment could be considered when he failed to raise it before trial or seek a bill of particulars.

HOLDINGS

1. The evidence was sufficient for reasonable jurors to find beyond a reasonable doubt that Clarke attempted to induce a witness to withhold testimony, information, or evidence.
2. A conviction for witness tampering under section 454(1)(A)(2) does not require proof that the defendant expressly threatened the witness, that the witness felt threatened, or that the defendant successfully affected the witness's testimony.
3. The court declined to address Clarke's challenge to the indictment because he neither challenged the indictment before trial nor sought a bill of particulars.

KEY QUOTATIONS

“The statute does not require the State to prove that Clarke threatened the witness in any way, or that Clarke was successful in affecting the witness’s testimony.” (¶ 7)

“This testimony, including all reasonable inferences regarding Clarke’s intent, constitutes a sufficient basis on which reasonable jurors could find, beyond a reasonable doubt, that Clarke committed each element of tampering with a witness.” (¶ 6)

FACTUAL BACKGROUND

Clarke was charged with driving to endanger, and a man who observed the underlying conduct was subpoenaed as a witness. Before trial, Clarke went to the witness's workplace, discussed the pending case and possible penalties, suggested that the witness could miss the court date, and told him to remain quiet and say nothing. The witness reported the incident to the District Attorney's office.

PROCEDURAL HISTORY

Clarke was indicted in Knox County Superior Court and pleaded not guilty. After a jury trial, he was convicted of tampering with a witness; based on that conviction, the court found him guilty of violating a condition of release. The court sentenced him to twelve months in prison for tampering and four concurrent months for violating the release condition. The Maine Supreme Judicial Court affirmed.

DISPOSITION

affirmed

CASES CITED

- State v. Wyman, 2015 ME 2, ¶ 15, 107 A.3d 1134

- State v. Shea, 588 A.2d 1195, 1195 (Me. 1991)
- State v. Perkins, 2014 ME 159, ¶ 13, 107 A.3d 636
- State v. Seymour, 461 A.2d 1060, 1062 (Me. 1983)
- State v. Reardon, 486 A.2d 112, 118-119 (Me. 1984)

OPINION

GORMAN, J.

MAINE SUPREME JUDICIAL COURT Reporter of Decisions Decision: 2015 ME 70 Docket: Kno-14-237 Argued: May 13, 2015 Decided: June 9, 2015 Panel: SAUFLEY, C.J., and ALEXANDER, MEAD, GORMAN, and JABAR, JJ. STATE OF MAINE v. STEVEN E. CLARKE GORMAN, J. [¶1] Steven E. Clarke appeals from a judgment of conviction for tampering with a witness (Class C), 17-A M.R.S. § 454(1)(A)(2) (2014), and violating a condition of release (Class E), 15 M.R.S. § 1092(1)(A) (2014), entered by the court (Hjelm, J.) after a jury trial.

Clarke challenges the sufficiency of the indictment to inform him of the tampering charge and the sufficiency of the evidence supporting his conviction on that charge. We affirm the judgment. I. BACKGROUND [¶2] We view the facts established at trial, including all reasonable inferences from the evidence, in the light most favorable to the State. See State v. Wyman, 2015 ME 2, ¶ 15, 107 A.3d 1134.

That evidence establishes that in 2013, the State charged Clarke with driving to endanger (Class E), 29-A M.R.S. 2 § 2413(1) (2014). One of the State’s witnesses in that matter was a man who observed Clarke’s acts that gave rise to the driving to endanger charge. [¶3] On September 18, 2013, before the trial on the charge of driving to endanger, Clarke went to the auto repair shop where the witness worked.

Clarke began discussing the case and the upcoming hearing date, and told the witness and others that he could go to jail and lose his license if he were convicted. He suggested that “maybe [the witness] could miss [his] court date” and that the witness “should be quiet and not say anything, [he] didn’t know anything.” The witness reported the incident to the District Attorney’s office. [¶4] Clarke was indicted for tampering with a witness (Class C), 17-A M.R.S. § 454(1)(A)(2), and violating a condition of release (Class E), 15 M.R.S. § 1092(1)(A), to which he pleaded not guilty.

After a trial, the jury found Clarke guilty of tampering with a witness, and on that basis, the court found that Clarke had violated a condition of release by committing new criminal conduct.¹ The court sentenced Clarke to twelve months in prison for tampering with a witness and four concurrent months for violating a condition of release. Clarke appeals. ¹ After being charged with driving to endanger, Clarke had been placed on bail.

One of the conditions of that bail was that he commit no new criminal conduct. Because Clarke's conviction for violating a condition of release is wholly dependent on his conviction for tampering with a witness, we do not address that count separately. 3 II. DISCUSSION [¶5] Clarke argues that the evidence presented at trial is insufficient to support his conviction for tampering with a witness.² A person commits tampering with a witness pursuant to section 454(1)(A)(2) when the person, "believing that an official proceeding... or an official criminal investigation is pending or will be instituted,... [i]nduces or otherwise causes, or attempts to induce or cause, a witness or informant... [t]o withhold testimony, information or evidence."³ 17-A M.R.S. § 454(1)(A)(2). "[A]ttempt" occurs when, "acting with the kind of culpability required for the commission of the crime, and with the intent to complete the commission of the crime, the person engages in conduct that in fact constitutes a substantial step toward its commission." 17-A M.R.S. § 152(1) (2014). [¶6] Clarke stipulated that he understood that a criminal charge was pending against him, and the witness testified that he had been subpoenaed as a witness in that pending matter.

The witness also testified that Clarke suggested he should "be 2 Clarke also challenges the sufficiency of the indictment to adequately inform him of the charge of tampering with a witness. Because Clarke neither challenged the indictment before the trial court nor sought a bill of particulars, we decline to address this argument. See M.R. Crim. P. 12(b)(2), 16(c)(1); State v. Shea, 588 A.2d 1195, 1195 (Me.

1991); see also M.R.U. Crim. P. 12(b)(2), 16(d)(1). 3 "Official proceeding" is defined as "any proceeding before a legislative, judicial, administrative or other governmental body or official authorized by law to take evidence under oath or affirmation including a notary or other person taking evidence in connection with any such proceeding." 17-A M.R.S. § 451(5)(A) (2014).

4 quiet and not say anything" or that he "could miss [the] court date." This testimony, including all reasonable inferences regarding Clarke's intent, constitutes a sufficient basis on which reasonable jurors could find, beyond a reasonable doubt, that Clarke committed each element of tampering with a witness. See State v. Perkins, 2014 ME 159, ¶ 13, 107 A.3d 636; State v. Seymour, 461 A.2d 1060, 1062 (Me.

1983) (holding that "the jury could have reasonably inferred the requisite intent to induce [the witness] to lie or testify falsely" from the defendant's statements to the witness). [¶7] Contrary to Clarke's suggestion, that he did not expressly threaten the witness or that the witness did not feel threatened by Clarke is of no moment because the statute allows a conviction for tampering with a witness based only on Clarke's attempt to induce the witness not to testify against him.

See 17-A M.R.S. § 454(1)(A). The statute does not require the State to prove that Clarke threatened the witness in any way, or that Clarke was successful in affecting the witness's testimony. See 17-A M.R.S. § 454(1)(A)(2).

The remainder of Clarke's arguments—primarily regarding the witness's credibility—are not persuasive. See Perkins, 2014 ME 159, ¶ 13, 107 A.3d 636; State v. Reardon, 486 A.2d 112, 118-19 (Me. 1984). The entry is: Judgment affirmed. 5 On the briefs: Jeremy Pratt, Esq., and Ellen Simmons, Esq., Camden, for appellant Steven Clarke Geoffrey Rushlau, District Attorney, and Jeffrey Baroody, Asst.

Dist. Atty., Prosecutorial District VI, Rockland, for appellee State of Maine At oral argument: Jeremy Pratt, Esq., for appellant Steven Clarke Jeffrey Baroody, Asst. Dist. Atty., for appellee State of Maine Knox County Superior Court docket number CR-2013-250 FOR CLERK REFERENCE ONLY