

SUPREME JUDICIAL COURT OF MAINE

State v. Cook

984 A.2d 1272 (Me. 2009) · No. And-09-78 · Decided December 8, 2009

SUMMARY

The Supreme Judicial Court of Maine affirmed Christopher Michael Cook’s robbery conviction. It held that the trial court did not clearly err in finding the jury impartial after jurors expressed concern that the defendant’s girlfriend might have photographed them, and that no obvious error occurred regarding possible juror distraction from bad weather.

CASE DETAILS

COURT	Supreme Judicial Court of Maine
WRITING FOR THE COURT	Silver, J.; Saufley, C.J.; Alexander, J.; Levy, J.; Mead, J.; Gorman, J.; Jabar, J.
JURISDICTION	Maine
DECIDED	December 8, 2009
DOCKET	And-09-78
DISPOSITION	affirmed
PROCEDURAL POSTURE	Cook appealed from a Superior Court judgment entered after a jury trial convicting him of Class B robbery. He challenged the trial court's handling of possible juror distraction from bad weather and denied impartiality concerns arising from a perceived possibility that jurors had been photographed by Cook's girlfriend. The conviction was affirmed.
STANDARD OF REVIEW	The trial court’s finding that the jury remained impartial was reviewed for clear error. The denial of the motion for a mistrial was reviewed for abuse of discretion. Because Cook did not object or move for a mistrial concerning the effect of the weather on deliberations, that issue was reviewed for obvious error under Maine Rule of Criminal Procedure 52(b).
PRECEDENTIAL VALUE	Published opinion; precedential decision of the Supreme Judicial Court of Maine
PARTIES	Christopher Michael Cook v. State of Maine

TOPICS

criminal procedure

appellate procedure

standard of review

preservation of error

PRACTICE AREAS

criminal procedure

appellate procedure

QUESTIONS PRESENTED

1. Whether the trial court erred by proceeding with the trial and allowing deliberations after a storm and related power outages allegedly distracted the jurors.
2. Whether the trial court erred in denying Cook's motion for a mistrial after jurors expressed concern that Cook's girlfriend might have photographed them as they left the courthouse.

HOLDINGS

1. The trial court did not clearly err in finding that the jury remained impartial and did not abuse its discretion in denying Cook's motion for a mistrial.
2. The trial court did not commit obvious error in determining that the weather did not impair the jury's ability to deliberate.

KEY QUOTATIONS

“Some jurors are concerned about the defendant's girlfriend, who was using her cell phone while we were exiting the building, we are wondering if she could have photographed us because she was observing us during this time and had her phone in her hand.” (¶ 3)

FACTUAL BACKGROUND

A storm interrupted Cook's robbery trial, and the proceedings resumed later in the week. When the jury returned its verdict, seven jurors submitted a note expressing concern that Cook's girlfriend might have photographed them while using a cell phone as they exited the courthouse. The court officer checked the phone and found no photographs, and the court privately questioned each juror; none of the jurors who knew of the incident reported feeling threatened or that it affected the verdict. The jurors also had not expressed concern when the court asked whether bad weather had distracted them.

PROCEDURAL HISTORY

Following a jury trial in the Superior Court for Androscoggin County, Cook was convicted of robbery. The trial court separately found him guilty of violating a condition of release after Cook waived a jury trial on that charge; that conviction was not at issue on appeal. The trial court denied Cook's motion for a mistrial after individually questioning the jurors about the cell-phone incident, and Cook appealed.

DISPOSITION

affirmed

CASES CITED

- State v. Rollins, 2008 ME 189, ¶¶ 9, 11, 961 A.2d 546, 549
- State v. Merchant, 2003 ME 44, ¶ 17, 819 A.2d 1005, 1009
- State v. Schmidt, 2008 ME 151, ¶ 15, 957 A.2d 80, 85

OPINION

SILVER, J.

984 A.2d 1272 (2009) 2009 ME 119 STATE of Maine v. Christopher Michael COOK. Docket: And-09-78 Supreme Judicial Court of Maine. Argued: October 30, 2009. Decided: December 8, 2009. Clifford B. Strike, Esq. (orally), Strike, Goodwin & O'Brien, Portland, ME, for Christopher M. Cook. Norman R. Croteau, District Attorney, Deborah Potter Cashman, Asst. Dist. Atty. (orally), Office of the District Attorney, Auburn, ME, for the State of Maine.

Panel: SAUFLEY, C.J., and ALEXANDER, LEVY, SILVER, MEAD, GORMAN, and JABAR, JJ. SILVER, J. [¶ 1] Christopher Michael Cook appeals from a judgment entered in the Superior Court (Androscoggin County, Delahanty, J.), following a jury trial, convicting him of robbery (Class B), 17-A M.R.S. § 651(1)(B)(2) (2008).

The court found Cook guilty on a charge of violating a condition of release (Class E), 15 M.R.S. § 1092(1)(A) (2008). Cook had waived a jury trial on that charge, and it is not at issue in this appeal. Cook argues that the court erred in proceeding with the trial when jurors may have been distracted due to bad weather. Cook also moved for a mistrial, arguing that the jury may not have been impartial given that some jurors expressed concern that they might have been photographed by a friend of Cook as they were leaving the courthouse.

The court denied the motion. We affirm the judgment. [¶ 2] The trial began with opening statements on Tuesday, December 9, 2008, and testimony from various witnesses was presented on December 9, 10, and 11. Due to a storm, the trial did not resume until late in the morning on Friday, December 12.

In chambers, Cook's counsel raised the issue that jurors might be preoccupied with the weather and power outages. Addressing the jury as a group in open court, the court asked whether any member of the jury felt distracted by concerns about the aftereffects of the bad weather.

The transcript reflects that none of the jurors expressed concern. After hearing closing arguments and instructions, the jury began deliberating that day at approximately 1:45 p.m., and, over the next two hours, the jury sent the court several requests to review video and testimony. [¶ 3] The next Monday, December 15, the jury reconvened at about 9:00 a.m., *1273 deliberated for less than one hour, and then notified the court that it had reached a verdict.

When the jurors returned to the courtroom to announce their verdict, they also brought a note for the court. After the jurors rendered the verdict and left the courtroom, the court informed counsel that seven of the jurors had signed a note describing an incident that had taken place late in the prior week.

The note stated: "Some jurors are concerned about the defendant's girlfriend, who was using her cell phone while we were exiting the building, we are wondering if she could have photographed us because she was observing us during this time and had her phone in her hand." [¶ 4] At the court's request, the court officer checked the cell phone and found that there were no photographs of jurors on it.

The court, with counsel present, conducted an in-chambers inquiry of each of the twelve jurors privately, informing them that the court officer checked the phone and there were no photographs of jurors found on it, and asking whether juror's concerns about being photographed had played any role in the decision.

After speaking to several jurors, the court, at counsel's request, also asked each of the remaining jurors an additional question as to whether he or she felt threatened; all who were aware of the incident prior to reaching the verdict responded that they did not feel threatened. None said that the incident had any effect on his or her decision. [¶ 5] We review for clear error the court's finding that the jury was impartial notwithstanding its expression of concern about the cell phone, see *State v. Rollins*, 2008 ME 189, ¶¶ 9, 11, 961 A.2d 546, 549, and we find no error.

The court conducted the appropriate individual interviews of each juror, see *State v. Merchant*, 2003 ME 44, ¶ 17, 819 A.2d 1005, 1009, and did not abuse its discretion in denying Cook's motion for a mistrial, see *Rollins*, 2008 ME 189, ¶ 9, 961 A.2d at 549. Cook failed to object to or move for a mistrial with respect to the court's determination that the jury's ability to deliberate was not affected by the weather.

We therefore review for obvious error, see M.R.Crim. P. 52(b); *State v. Schmidt*, 2008 ME 151, ¶ 15, 957 A.2d 80, 85, and find none. The entry is: Judgment affirmed.