MAINE SUPREME JUDICIAL COURT

Reporter of Decisions
Decision No. Mem 11-22
Docket No. Cum-10-95

STATE OF MAINE

v.

BRANDON S. BROWN

Argued January 13, 2011
Decided February 10, 2011

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

MEMORANDUM OF DECISION

Brandon S. Brown appeals from a judgment of conviction of elevated aggravated assault (Class A), 17-A M.R.S. § 208-B(1)(A) (2010), and attempted murder (Class A), 17-A M.R.S. § 152(1)(A) (2010), entered in the Superior Court (Cumberland County, *Warren, J.*) following a jury trial. The court did not abuse its discretion in admitting a finding of contempt against Brown, for a material misrepresentation he made to the court in a prior criminal misdemeanor case against him, as evidence of Brown's character for untruthfulness, pursuant to M.R. Evid. 608(b)(1). *See State v. Almurshidy*, 1999 ME 97, ¶ 30, 732 A.2d 280, 288. The contempt finding was highly probative and reliable, and Brown was an important witness for his claim that he acted in self-defense. *See id.* The court also did not abuse its discretion when it determined, pursuant to M.R. Evid. 403, that the probative value of the contempt finding was not substantially outweighed by the danger of unfair prejudice. *See State v. Millay*, 2001 ME 177, ¶ 11, 787 A.2d 129, 131-32; Field & Murray, *Maine Evidence* § 403.1 at 107 (6th ed. 2007).

The court did not commit any error, let alone obvious error, when it admitted photographs showing and testimony describing the low-hanging manner in which Brown wore his pants and Brown's testimony on cross-examination describing the tattoos visible in the photographs. *See State v. Roberts*, 2008 ME 112, ¶ 21, 951 A.2d 803, 810-11 (noting standard of review); *State v. Miller*, 2005 ME 84,

¶ 11, 875 A.2d 694, 696 (noting that obvious error analysis is unnecessary if there was no error at all). The evidence about Brown's pants was relevant, pursuant to M.R. Evid. 401, to Brown's testimony that the victim dealt forcibly with him on two occasions when he wore his pants low, and the photographs were relevant because Brown testified that the victim injured him. The probative value of the evidence was not substantially outweighed by the danger of unfair prejudice, pursuant to M.R. Evid. 403. *Millay*, 2001 ME 177, ¶ 11, 787 A.2d at 131-32. Given Brown's answer to the State's general question asking him what his tattoos were, counsel understandably did not object to the question and the court did not err in admitting Brown's response describing his tattoos. *Miller*, 2005 ME 84, ¶ 11, 875 A.2d at 696.

The entry is:

Judgment affirmed.

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