

STATE OF MAINE

v.

MARK DIMASTRANTONIO

Submitted on Briefs October 10, 2012
Decided October 11, 2012

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

MEMORANDUM OF DECISION

Mark Dimastrantonio appeals from a judgment of conviction of assault (Class D), 17-A M.R.S. § 207(1)(A) (2011), and criminal mischief (Class D), 17-A M.R.S. § 806(1)(A) (2011), entered by the court (*Lawrence, J.*) after a jury trial. Contrary to Dimastrantonio's contentions, the prosecutor's comment during rebuttal was not improper and did not affect his substantial rights, *see* M.R. Crim. P. 52(a); *State v. Clark*, 2008 ME 136, ¶ 7, 954 A.2d 1066, because (1) the prosecutor's statement, commenting on what the jury could observe in the courtroom, came in response to defense counsel's theory of the case, *see United State v. Young*, 470 U.S. 1, 12-13 (1985), (2) the court properly instructed the jury as to its role and the evidence that could be considered, *United States v. Gentles*, 619 F.3d 75, 82 (1st Cir. 2010), and (3) substantial evidence supported the verdict, *see Clark*, 2008 ME 136, ¶ 13, 954 A.2d 1066.

The entry is:

Judgment affirmed.

On the briefs:

Rubin G. Segal, Esq., Portland, for appellant Mark Dimastrantonio

Stephanie Anderson, District Attorney, Whitney Hayre, Student Intern, and William Barry, Asst. Dist. Atty., Prosecutorial District No. 2, Portland, for appellee State of Maine

Cumberland County Unified Criminal Docket docket number CR-2011-8014
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