

STATE OF MAINE

v.

ROBERT G. WAINWRIGHT

Submitted on Briefs March 1, 2012

Decided March 13, 2012

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

MEMORANDUM OF DECISION

Robert G. Wainwright appeals from a judgment of conviction of two counts of gross sexual assault (Class A), 17-A M.R.S. § 253(1)(B) (2011); one count of unlawful sexual contact (Class B), 17-A M.R.S. § 255-A(1)(E-1) (2011); and one count of unlawful sexual contact (Class C), 17-A M.R.S. § 255-A(1)(E) (2011), entered in the Superior Court (Franklin County, *Murphy, J.*) after a jury trial. Contrary to Wainwright's contentions, the court did not clearly err or abuse its discretion in sustaining the State's objection to reputation evidence when the evidence did not relate to the period covered by the events on which the charges were based. *See Jacob v. Kippax*, 2011 ME 1, ¶ 14, 10 A.3d 1159 (noting that the standard of review of evidentiary rulings is clear error as to relevance and abuse of discretion as to prejudicial effect); *State v. Albanes*, 109 Me. 199, 206, 83 A. 548 (1912) (noting that we review for abuse of discretion "whether the evidence, offered to show a person's reputation, is irrelevant because too remote in time").

The court also did not clearly err or abuse its discretion in sustaining the State's objection to Wainwright's cross-examination of the victim concerning an entry on Facebook by the victim, pursuant to M.R. Evid. 412. *See State v. Drewry*, 2008 ME 76, ¶ 25, 946 A.2d 981 (discussing the limited exceptions to the prohibition on the admission of evidence pursuant to M.R. Evid. 412).

Finally, we review for obvious error the series of questions the prosecutor posed to Wainwright concerning the veracity of other witnesses and the prosecutor's statements in closing argument based on those questions, and we conclude that these did not constitute prosecutorial misconduct. *See State v. Weisbrode*, 653 A.2d 411, 415-16 (Me. 1995) (noting the standard of review and holding that after the defendant took the stand and directly contradicted the victim's testimony, it was not improper for the prosecutor to advise the jury that it could conclude that the victim was telling the truth).

The entry is:

Judgment affirmed.

On the briefs:

Timothy E. Zerillo, Esq., and John M. Burke, Esq., Zerillo Law, LLC,
Portland, for appellant Robert Wainwright

James A. Andrews, Asst. Dist. Atty., Franklin County DA's Office,
Farmington, for appellee State of Maine