

STATE OF MAINE

v.

JAMES M. MANLEY

Submitted on Briefs April 26, 2012

Decided May 15, 2012

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

MEMORANDUM OF DECISION

James M. Manley appeals from the judgment of the Superior Court (Sagadahoc County, *Horton, J.*) convicting him of elevated aggravated assault (Class A), 17-A M.R.S. § 208-B(1)(A) (2011) following a jury trial, and convicting him of violation of condition of release (Class E), 15 M.R.S. § 1092(1)(A) (2011), following a plea. Contrary to Manley's contentions, the evidence, viewed in the light most favorable to the State, was sufficient for a jury to rationally find beyond a reasonable doubt all of the elements of the crime of elevated aggravated assault. *See* 17-A M.R.S. § 208-B(1)(A); *State v. Fortune*, 2011 ME 125, ¶ 37, 34 A.3d 1115 (noting that "the fact-finder is permitted to draw all reasonable inferences from the evidence" and "is free to selectively accept or reject testimony based on witness credibility or the internal cogency of the content") (quotation marks omitted); *State v. Severy*, 2010 ME 126, ¶ 8, 8 A.3d 715 (stating the standard of review).

Furthermore, the trial court did not exceed its discretion in admitting and then providing the jury limiting instructions concerning an audiotape of a recorded telephone conversation in which Manley tacitly admitted the accusations of the person with whom he spoke, because the other person's statements were not

admitted for their truth, *see* M.R. Evid. 801, and Manley's response was sufficiently probative of his guilt to outweigh any danger of unfair prejudice, notwithstanding that both the automated operator's voice and the person with whom Manley spoke indicated that Manley was in jail at the time of the phone conversation, *see* M.R. Evid. 403; *State v. Lipham*, 2006 ME 137, ¶ 10, 910 A.2d 388. The court instructed the jury that in considering the audiotape, (1) the jury must not consider the statements by the person with whom Manley spoke for the truth of those statements, and (2) the references to the fact that Manley was in jail have no bearing on whether the State proved guilt beyond a reasonable doubt. *See State v. Allen*, 2006 ME 20, ¶ 20, 892 A.2d 447 (noting that limiting instructions may alleviate prejudice).

The entry is:

Judgment affirmed.

On the briefs:

David Paris, Esq., Bath, for appellant James Manley

Geoffrey A. Rushlau, District Attorney, and Patricia A. Mador, Asst. Dist. Atty., Bath, for appellee State of Maine