

STATE OF MAINE

v.

VLADEK FILLER

Argued June 14, 2012

Decided July 3, 2012

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

MEMORANDUM OF DECISION

Vladek Filler was initially tried on five counts of gross sexual assault (Class A), 17-A M.R.S. § 253(1)(A) (2011), and two counts of assault (Class D), 17-A M.R.S. § 207(1)(A) (2011). The jury acquitted him of all but three charges, after which the court (Hancock County, *Cuddy, J.*) granted his motion for a new trial. On appeal, we affirmed that ruling, *see State v. Filler*, 2010 ME 90, 3 A.3d 365, and Filler was then tried on the three remaining counts: one count of gross sexual assault and two counts of assault. He was acquitted on the gross sexual assault and one of the assault charges and was found guilty on a single charge of assault. Filler now appeals from the judgment of conviction of the single assault (Class D), 17-A M.R.S. § 207(1)(A), entered in the Superior Court (*R. Murray, J.*) upon the jury's verdict.

Contrary to Filler's contentions, the court did not, in its evidentiary rulings in this new trial, commit clear error or abuse its discretion. *See* M.R. Evid. 106, 401, 403, 607; *State v. Gurney*, 2012 ME 14, ¶ 36, 36 A.3d 893; *State v. Brockelbank*, 2011 ME 118, ¶ 14, 33 A.3d 925; *State v. Archer*, 2011 ME 80, ¶¶ 27-28, 25 A.3d 103; *State v. Maynard*, 2007 ME 79, ¶ 12, 926 A.2d 172; *State v. Snow*, 2007 ME 26, ¶ 12, 916 A.2d 957; *State v. Thongsavanh*, 2004 ME 126,

¶ 7, 861 A.2d 39. Nor did the court commit obvious error in allowing the State to refer to *Sophie's Choice* in its closing arguments. See *State v. Ashley*, 666 A.2d 103, 106 (Me. 1995); *State v. Hinds*, 485 A.2d 231, 237 (Me. 1984).

The entry is:

Judgment affirmed.

On the briefs:

Steven C. Smith, Esq., Bangor, for appellant Vladek Filler

Carletta Bassano, District Attorney, and Paul Cavanaugh II, First Asst. Dist. Atty., Prosecutorial District VII, Ellsworth and Calais, for appellee State of Maine

At oral argument:

Steven C. Smith, Esq., for appellant Vladek Filler

Paul Cavanaugh II, First Asst. Dist. Atty., for appellee State of Maine