

STATE OF MAINE

v.

TAYLOR L. WEBSTER

Submitted on Briefs January 31, 2013

Decided February 5, 2013

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

MEMORANDUM OF DECISION

Taylor L. Webster appeals from a judgment of conviction of aggravated assault (Class B), 17-A M.R.S. § 208(1)(B) (2012), entered by the trial court (*Mulhern, J.*) after a jury trial. On appeal, Webster argues that the trial court erred in admitting in evidence a dozen color photographs of the victim's injuries over Webster's objection pursuant to M.R. Evid. 403.

Contrary to Webster's contention, the trial court did not abuse its discretion in concluding that any danger of unfair prejudice the photographs presented did not substantially outweigh their probative value. *See State v. Dwyer*, 2009 ME 127, ¶ 23, 985 A.2d 469; *State v. Lipham*, 2006 ME 137, ¶ 9, 910 A.2d 388. Even if we were to accept Webster's argument that the probative value of the photographs was relatively low in light of the other evidence presented at trial and Webster's theory of defense, the photographs were simply not so gruesome or shocking as to overwhelm their probative value and render the trial court's ruling an abuse of discretion. *See Dwyer*, 2009 ME 127, ¶¶ 22-25, 985 A.2d 469 (holding that photograph of murder victim's toes protruding from the ground where the killer buried her, although "disturbing," was "not gruesome, abhorrent, or shocking"); *State v. Allen*, 2006 ME 21, ¶¶ 2-4, 15-18, 892 A.2d 456 (concluding that admission of full-body photograph of child abuse victim, including head bandage

and medical apparatus unrelated to the injuries inflicted by the defendant, was not error because the photograph was not “particularly shocking”); *State v. Joy*, 452 A.2d 408, 409-10, 412-13 (Me. 1982) (upholding admission of photograph of murder-arson victim that “had only minimal probative value . . . [but] was not gruesome and its potential for prejudicially inflaming jurors was slight”).

The entry is:

Judgment affirmed.

On the briefs:

Lauren Wille, Esq., DeGrinney Law Offices, Portland, for appellant Taylor Webster

Stephanie Anderson, District Attorney, and Robert L. Ellis, Jr., Asst. Dist. Atty., Prosecutorial District No. Two, Portland, for appellee State of Maine