

STATE OF MAINE

v.

PATRICK G. DAPOLITO

Submitted on Briefs June 26, 2013
Decided July 2, 2013

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

MEMORANDUM OF DECISION

Patrick G. Dapolito appeals from the judgment of conviction of knowing and intentional murder, 17-A M.R.S. § 201(1)(A) (2012), entered after a jury trial by the trial court (*O'Neil, J.*). On appeal, Dapolito challenges the court's decision to exclude expert testimony from a former DEA agent regarding the likelihood and ability of a drug organization to be responsible for the murder in this case. Despite the State's contentions, the agent's opinion does not inappropriately address the ultimate issue of fact. *See State v. Cormier*, 2003 ME 154, ¶ 13, 838 A.2d 356 (permitting testimony regarding a critical issue in the case because it did not take the determination of the ultimate issue away from the jury). However, the evidence is not relevant and even if relevant the court did not abuse its discretion by determining that the testimony would not assist the trier of fact because the information presented through the testimony is within the common knowledge of the trier of fact. *State v. Ericson*, 2011 ME 28, ¶ 12, 13 A.3d 777 (applying an abuse of discretion standard of review for admission of expert testimony); *State v. Shortsleeves*, 580 A.2d 145, 148 (Me. 1990) (finding that expert opinion must be outside the common knowledge of the trier of fact).

The entry is:

Judgment affirmed.

On the briefs:

Walter F. McKee, Esq., McKee Law, P.A., Augusta, for appellant Patrick Dapolito

Janet T. Mills, Attorney General and Donald W. Macomber, Asst. Atty. Gen., Augusta, for appellee State of Maine