

STATE OF MAINE

v.

RICHARD W. LEE

Argued May 14, 2013
Decided July 23, 2013

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

MEMORANDUM OF DECISION

Richard W. Lee appeals from a judgment of conviction on one count of domestic violence assault (Class D), 17-A M.R.S. § 207-A(1)(A) (2012), entered in the trial court (*Brennan, J.*) after a jury trial. Contrary to Lee's contention, the court did not err by denying his request to instruct the jury on the justification of self-defense. *See State v. Winchenbach*, 658 A.2d 1083, 1085 (Me. 1995) (affirming the trial court's refusal to grant a self-defense instruction where the instruction was not generated by the evidence). Further, the court did not err in applying the excited utterance exception to the hearsay rule to admit an out-of-court statement made by the victim. *See State v. Taylor*, 2011 ME 111, ¶¶ 20, 23-30, 32 A.3d 440; *State v. Robinson*, 2001 ME 83, ¶¶ 12, 16, 773 A.2d 445.

The entry is:

Judgment affirmed.

* Although not available at oral argument, Justice Alexander participated in the decision of this appeal. *See* M.R. App. 12(a) (stating that “[a] qualified justice may participate in a decision even though not present at oral argument”).

On the briefs:

Lauren Wille, Esq., DeGrinney Law Offices, Portland, for appellant Richard W. Lee

Stephanie Anderson, District Attorney, and Katherine Tierney, Asst. Dist. Atty., Prosecutorial District No. Two, Portland, for appellee State of Maine

At oral argument:

Lauren Wille, Esq., for appellant Richard W. Lee

Katherine Tierney, Asst. Dist. Atty., for appellee State of Maine