

STATE OF MAINE

v.

EDWARD L. HEWES

Submitted on Briefs October 13, 2016
Decided November 10, 2016

Panel: ALEXANDER, MEAD, GORMAN, JABAR, and HUMPHREY, JJ.

MEMORANDUM OF DECISION

Edward L. Hewes appeals from a judgment of conviction for aggravated assault (Class A), 17-A M.R.S. § 208(1)(A) (2014), and terrorizing (Class D), 17-A M.R.S. § 210(1)(A) (2015), entered by the trial court (Penobscot County, *A. Murray, J.*) after a jury trial. Contrary to Hewes's contentions, viewing the evidence in the light most favorable to the State, there was sufficient evidence on which the jury rationally could find, beyond a reasonable doubt, that Hewes committed each element of aggravated assault. See 17-A M.R.S. § 208(1)(A) (2014); *State v. Black*, 2016 ME 9, ¶ 15, 131 A.3d 371. Further, Hewes argues that the court, *sua sponte*, should have found that the victim was not competent to testify and instructed the jury to disregard the victim's testimony. Because Hewes did not raise the issues of witness competency or jury instructions to the trial court, our review is limited to obvious error. See *State v. Pabon*, 2011 ME 100, ¶¶ 18-29, 28 A.3d 1147. The record supports the conclusion that the victim was competent to testify, and the court's instruction to the jury on witness credibility was proper. See M.R. Evid. 601; *State v. Baker*, 2015 ME 39, ¶¶ 10-11, 114 A.3d 214; *State v. Caron*, 2011 ME 9, ¶ 11, 10 A.3d 739;

For the first time on appeal, Hewes argues that the court erred in admitting statements that Hewes made to police officers at the time of his arrest. Because Hewes did not raise these issues through a motion to suppress or during trial, we review for obvious error. *See Pabon*, 2011 ME 100, ¶¶ 18-29, 28 A.3d 1147. Upon review of the record, we discern no basis for suppression of the evidence that Hewes challenges. *See State v. Kennedy*, 2002 ME 5, ¶¶ 6-7, 788 A.2d 174.

Furthermore, contrary to Hewes's contention, the court did not abuse its discretion when it declined to sanction the State for alleged discovery violations, and Hewes was not deprived of the opportunity to prepare an adequate defense. *See M.R.U. Crim. P. 16(e); State v. Poulin*, 2016 ME 110, ¶¶ 25-28, 144 A.3d 574 ("Generally, when faced with a discovery violation, the trial judge has broad discretion in choosing the form of sanction to impose, if any at all.").

Hewes further contends that the court erred when it failed to forward an earlier notice of appeal to the Clerk of the Law Court because it was not signed by his attorney. Because Hewes filed a subsequent notice of appeal, which has been heard on the merits, we decline to address the issue. *See State v. Gleason*, 404 A.2d 573, 578 (Me. 1979) ("Firmly fixed is the rule that courts should decline to decide issues which by virtue of valid and recognizable supervening circumstances have lost their controversial vitality.").

Finally, Hewes argues that the trial court abused its discretion by denying his motion to dismiss the indictment based on his personal belief that the State could have obtained the indictment only through prosecutorial misconduct. Because Hewes's argument rests purely on speculation, the issue is deemed waived. *See M.R.U. Crim. P. 6; In re David H.*, 2009 ME 131, ¶ 31 n.6, 985 A.2d 490 ("[T]he issue is referred to in [his] brief in such a perfunctory manner that it is deemed waived.").

The entry is:

Judgment affirmed.

On the briefs:

Verne E. Paradie, Jr., Esq., Paradie, Sherman, Walker & Worden, Lewiston, and Edward L. Hewes personally, for appellant Edward Hewes

R. Christopher Almy, District Attorney, and Susan J. Pope, Asst. Dist. Atty., Prosecutorial District V, Bangor, for appellee State of Maine

Penobscot County Unified Criminal Docket docket number CR-2014-924
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