

STATE OF MAINE

v.

LEE D. MURPHY

Submitted on Briefs November 29, 2017
Decided December 12, 2017

Panel: SAUFLEY, C.J., and ALEXANDER, MEAD, JABAR, HJELM, and HUMPHREY, JJ.

MEMORANDUM OF DECISION

Leea D. Murphy appeals from a judgment entered in the Unified Criminal Docket (Androscoggin County, *Mulhern, J.*), following a jury trial, convicting her of unlawful furnishing of scheduled drugs (Class C), 17-A M.R.S. § 1106(1-A)(A) (2016), unlawful possession of scheduled drugs (Class D), 17-A M.R.S. § 1107-A(1)(C) (2016), illegal possession of hypodermic apparatuses (Class D), 17-A M.R.S. § 1111(1) (2016), disorderly conduct (Class E), 17-A M.R.S. § 501-A(1)(A)(1) (2016), and violation of condition of release (Class E), 15 M.R.S. § 1092(1)(A) (2016). We affirm the judgment.

Contrary to Murphy's argument, the trial court articulated a correct understanding of the purpose for which she offered evidence of a prosecution witness's 2001 conviction in South Carolina for felony drug "distribution." Further, the record does not demonstrate that the conviction was inconsistent with the witness's testimony, both because of the apparent nature of the conduct underlying the conviction and because of the dates involved. Consequently, the court did not commit clear error by determining that the evidence was not relevant, and the court did not abuse its discretion by

excluding that evidence. *See State v. Reynolds*, 2015 ME 55, ¶ 16, 115 A.3d 614; *Levesque v. Cent. Me. Med. Ctr.*, 2012 ME 109, ¶ 16, 52 A.3d 933.

Murphy also asserts error in the court's refusal to provide a "curative" instruction regarding brief testimony she gave during recross-examination about the termination of her parental rights to one of her children. We review for abuse of discretion a court's refusal to give a requested curative instruction if there is prosecutorial misconduct. *See State v. Pineau*, 463 A.2d 779, 781 (Me. 1983). Here, even if the prosecutor's brief examination on the issue was improper, and even if the court erred by not instructing the jury to disregard Murphy's testimony, any error was harmless. *See State v. Dolloff*, 2012 ME 130, ¶¶ 32-34, 58 A.3d 1032; *Pineau*, 463 A.2d at 781. Murphy herself raised the issue of her parental rights by testifying that, as a result of her drug abuse, she lost custody of her children and that her criminal exposure would significantly affect the prospect of reunifying with them. Given this context and the record as a whole, we are satisfied to a high probability that even if there was prosecutorial overreach that the court did not sufficiently address, it did not affect the jury's determination of guilt. *See Dolloff*, 2012 ME 130, ¶ 34, 58 A.3d 1032.

The entry is:

Judgment affirmed.

Jamesa J. Drake, Esq., Drake Law, LLC, Auburn, for appellant Leea D. Murphy

Janet T. Mills, Attorney General, and Johanna L. Gauvreau, Asst. Atty. Gen.,
Office of the Attorney General, Augusta, for appellee State of Maine