

STATE OF MAINE

v.

JACOB R. LABBE

Argued June 12, 2018

Decided July 3, 2018

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

MEMORANDUM OF DECISION

Jacob Labbe appeals from a judgment of conviction entered by the trial court (Androscoggin County, *Lawrence, J.*) after a jury found him guilty of five counts of violation of preconviction bail (Class C), 15 M.R.S. § 1092(1)(B) (2017). Labbe argues that the court (1) erred in admitting recorded phone conversations between him and his wife, discussing his underlying domestic violence assault charge (Class C), 17-A M.R.S. § 207-A(1)(B)(1) (2017), because that evidence was not relevant pursuant to M.R. Evid. 401; and (2) abused its discretion pursuant to M.R. Evid. 403 because the probative value of the recorded statements was substantially outweighed by the danger of unfair prejudice.<sup>1</sup>

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<sup>1</sup> Labbe also contends that introduction of the recorded statements made by his wife, who did not testify at trial, violated his Sixth Amendment right to confrontation. *See* U.S. Const. amend. VI. However, because Labbe did not object to the recorded statements on hearsay grounds, but rather on M.R. Evid. 403 grounds, we deem this argument waived. *See Teel v. Colson*, 396 A.2d 529, 534 (Me. 1979) (“It is a well settled universal rule of appellate procedure that a case will not be reviewed by an appellate court on a theory different from that on which it was tried in the court below.”).

Despite Labbe's contention otherwise, because the violation of bail charge required the State to prove, inter alia, that he violated a condition of preconviction bail by contacting the victim of an alleged crime, a witness of the alleged crime, or a family or household member, evidence of his underlying domestic violence assault charge was relevant because it had a tendency to make the existence of those facts more probable than it would be without the evidence. M.R. Evid. 401; *see In re M.S.*, 2014 ME 54, ¶ 10, 90 A.3d 433 ("This standard for relevance is a low one.").

Furthermore, even if the court abused its discretion under Rule 403 by admitting, in addition to relevant evidence indicating the relationship of the parties, inflammatory statements made by Labbe and the victim during their phone conversations, *see State v. Michaud*, 2017 ME 170, ¶ 8, 168 A.3d 802; *State v. Almurshidy*, 1999 ME 97, ¶ 17, 732 A.2d 280, the error, if any, was harmless because the State's evidence against Labbe was overwhelming. *See State v. Conner*, 434 A.2d 509, 512 (Me. 1981).

The entry is:

Judgment affirmed.

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Jesse James Ian Archer, Esq. (orally), Sherman & Worden, P.A., Auburn, for appellant Jacob Labbe

Andrew S. Robinson, District Attorney, and Michael B. Dumas, Asst. Dist. Atty. (orally), Prosecutorial District III, Lewiston, for appellee State of Maine