

STATE OF MAINE

v.

JOSEF F. MESSER II

Submitted on Briefs April 24, 2019
Decided May 2, 2019

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

MEMORANDUM OF DECISION

Josef F. Messer II appeals from a judgment of the trial court (Hancock County, *R. Murray, J.*) convicting him of two counts of assault on an officer (Class C), 17-A M.R.S. § 752-A(1)(B) (2018). Messer contends that the court erred by not ordering a mistrial after a correctional officer testified about Messer's prior incarcerations and his prior behavior. Further, Messer contends that there was insufficient evidence that he caused bodily injury or offensive physical contact.

Messer did not move for a mistrial following the correctional officer's testimony about Messer's prior incarcerations and prior behavior; instead, Messer requested a curative instruction—which the court issued without objection from the State. Contrary to Messer's assertions, the court did not err by not declaring a mistrial *sua sponte*. Rather, the court acted well within its discretion by striking the testimony and giving a curative instruction to the jury. *State v. Bridges*, 2004 ME 102, ¶¶ 11-12, 854 A.2d 855. Further, the record contains sufficient evidence to support the jury's verdict that Messer caused bodily injury and offensive physical contact to two correctional officers. *See*

State v. Troy, 2014 ME 9, ¶¶ 12-13, 86 A.3d 591; *see also State v. Judkins*, 440 A.2d 355, 359 (Me. 1982) (“Determining the cause of the injury [is] a factual issue for resolution by the jury.”).

The entry is:

Judgment affirmed.

Jacob L. Ferm, Esq., Law Office of William N. Ferm, Ellsworth, for appellant Josef F. Messer II

Toff Toffolon, Dep. Dist. Atty., Ellsworth, for appellee State of Maine

Hancock County Unified Criminal Docket docket number CR-2018-743
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