

STATE OF MAINE

v.

PHILIP G. SMITH

Submitted on Briefs December 8, 2004  
Decided December 22, 2004

Panel: SAUFLEY, C.J., and CLIFFORD, DANA, and CALKINS, JJ.

MEMORANDUM OF DECISION

After a jury trial in the Superior Court (Oxford County, *Delahanty, J.*), Philip G. Smith was convicted of aggravated assault (Class B), 17-A M.R.S.A. § 208 (1983); criminal threatening (Class D), 17-A M.R.S.A. § 209 (1983); and criminal mischief (Class D), 17-A M.R.S.A. § 806(1)(A) (Supp. 2004). At trial, Smith asserted the defenses of self-defense and defense of premises. On appeal, he contends that the trial court erred in instructing the jury not to consider his prior attempt to obtain a restraining order against the victim, arguing that it was relevant to whether he had a reasonable belief that the victim was about to use force on him.

Because Smith did not make a timely objection at trial, we review the instruction for obvious error. *State v. Knox*, 2003 ME 39, ¶ 5, 819 A.2d 1011, 1013. Reviewing the jury instructions “as a whole, taking into consideration the total effect created by all the instructions and the potential for juror misunderstanding[,]” *State v. Cormier*, 2003 ME 154, ¶ 21, 838 A.2d 356, 360, we find that the instruction regarding the restraining order did not affect Smith’s substantial rights, *see Knox*, 2003 ME 39, ¶ 5, 819 A.2d at 1013.

The entry is:

Judgment affirmed.

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