

STATE OF MAINE

v.

SIDNEY DUNTON JR.

Submitted on Briefs December 12, 2003
Decided January 13, 2004

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

MEMORANDUM OF DECISION

Sidney Dunton Jr. appeals from judgments of conviction of five counts of burglary of a motor vehicle (Class C), 17-A M.R.S.A. § 405(1) (Supp. 2003), and four counts of theft (Class E), 17-A M.R.S.A. § 353(1)(A) (Supp. 2003), following a jury trial in the Superior Court (Penobscot County, *Hjelm, J.*). Contrary to Dunton's contentions, the Superior Court's failure to declare a mistrial sua sponte, based on the court's reasoned conclusion that the jurors had not noticed that Dunton was in shackles and Dunton's deliberate choice in proceeding without a curative instruction, was not obvious error, *see State v. White*, 456 A.2d 13, 15-16 (Me. 1983); the court acted within its discretion and pursuant to M.R. Evid. 403

when it allowed the introduction of limited evidence of Dunton's involvement in a shooting because it was probative of his identity, *State v. Turner*, 2001 ME 44, ¶ 5, 766 A.2d 1025, 1027, and any prejudice came from testimony introduced by the defense; the court acted within its discretion and pursuant to M.R. Evid. 609 when it allowed Dunton to be impeached with his prior convictions of mail fraud and making false entries in the records of a financial institution because the convictions were probative of Dunton's credibility, *State v. Gray*, 2000 ME 145, ¶ 24, 755 A.2d 540, 545. Nor did the court commit obvious error by failing to declare a mistrial when the jury foreperson disclosed that she was familiar with Dunton, and some of the facts of the case, because Dunton failed to prove that the juror communicated any of this information to the other jurors before the juror was excused, *State v. Parsons*, 626 A.2d 348, 350 (Me. 1993), and there was no error when the court denied Dunton's motion for a directed verdict based upon insufficiency of the evidence because the jury rationally could have found beyond a reasonable doubt every element of the offense charged, *State v. Ardolino*, 1997 ME 141, ¶ 20, 697 A.2d 73, 80.

The entry is:

Judgments affirmed.

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