

STATE OF MAINE

v.

KIRK DePHILIPPO

Submitted on Briefs January 10, 2005

Decided January 31, 2005

Panel: CLIFFORD, RUDMAN, DANA, ALEXANDER, and LEVY, JJ.

MEMORANDUM OF DECISION

Kirk DePhilippo appeals from judgments of conviction entered in the Superior Court (Penobscot County, *Hjelm, J.*) for robbery (Class A), 17-A M.R.S.A. § 651(1)(C) (Supp. 2004), and aggravated assault (Class A), 17-A M.R.S.A. § 208(1)(A) (1983) and 17-A M.R.S.A. § 1252 (4-A) (Supp. 2004). Contrary to DePhilippo's contentions, the court acted within its discretion when it declined to exclude from evidence, as a sanction for a discovery violation pursuant to M.R. Crim. P. 16(d), the medical records of the victim's visit to the emergency room, and certified copies of DePhilippo's prior convictions, especially when there was no showing of real surprise or prejudice to DePhilippo, *see State v. Sargent*,

656 A.2d 1196, 1199 (Me. 1995); the court acted within its discretion when it denied DePhilippo's motion for a new trial based on grounds of newly discovered evidence, *see State v. Cookson*, 2003 ME 136, ¶ 28, 837 A.2d 101, 110; and the evidence, viewed in a light most favorable to the State, was sufficient to allow the fact-finder to find every element of the charges of robbery and aggravated assault beyond a reasonable doubt, *see State v. Sweeney*, 2004 ME 123, ¶ 15, 861 A.2d 43, 46.

The entry is:

Judgments affirmed.

Attorneys for State:

R. Christopher Almy, District Attorney
C. Daniel Wood, Asst. Dist. Attorney
97 Hammond Street
Bangor, ME 04401

Attorney for defendant:

Martha J. Harris, Esq.
Paine, Lynch & Harris, P.A.
P O Box 1451
Bangor, ME 04402-1451