

STATE OF MAINE

v.

MATTHEW M. FLEURY

Submitted on Briefs June 30, 2008

Decided July 22, 2008

Panel: SAUFLEY, C.J., and CLIFFORD, ALEXANDER, SILVER, MEAD, and GORMAN, JJ.

MEMORANDUM OF DECISION

Matthew M. Fleury appeals from a judgment of conviction of the following counts entered in the Superior Court (Lincoln County, *Studstrup, J.*) following a jury trial: five counts of gross sexual assault (Class A), 17-A M.R.S.A. § 253(1)(B) (Supp. 2002); thirty-nine counts of gross sexual assault (Class B), 17-A M.R.S.A. § 253(2)(H) (2007 & Supp. 2001); one count of unlawful sexual contact (Class B), 17-A M.R.S.A. § 255(1)(C), (3) (Supp. 2001); one count of unlawful sexual contact (Class B), 17-A M.R.S.A. § 255(1)(G), (3) (Supp. 2001); three counts of sexual abuse of a minor (Class C), 17-A M.R.S.A. § 254(1)(A), (3)(A) (Supp. 2002); twenty-one counts of sexual abuse of a minor (Class C), 17-A M.R.S.A. § 254(1)(A-2) (2007); four counts of unlawful sexual contact (Class C), 17-A M.R.S.A. § 255(1)(C) (Supp. 2002); seven counts of unlawful sexual contact (Class C), 17-A M.R.S.A. § 255(1)(G) (Supp. 2002); and thirty-one counts of unlawful sexual contact (Class C), 17-A M.R.S.A. § 255-A(1)(M) (2007).¹

¹ Title 17-A M.R.S.A. § 253(1)(B) has since been amended. P.L. 2001, ch. 383, § 14 (effective Jan. 31, 2003); P.L. 2003, ch. 711, § B-2 (effective July 30, 2004) (codified at 17-A M.R.S.A. § 253(1)(B) (2007)). Title 17-A M.R.S.A. § 254(1)(A), (3)(A) was amended by P.L. 2001, ch. 383, §21 (effective Jan. 31, 2003) (codified at 17-A M.R.S.A. § 254 (2007)). Title 17-A M.R.S.A. § 255 was repealed and replaced by P.L. 2001, ch. 383, §§ 22-23 (effective Jan. 31, 2003) (codified at 17-A M.R.S.A. § 255-A (Supp. 2003)).

Contrary to Fleury's contentions, we conclude that: (1) Fleury's constitutional rights were not violated, and the court did not abuse its discretion, when it excluded evidence, pursuant to M.R. Evid. 412, of the victim's alleged past sexual conduct, *see State v. Drewry*, 2008 ME 76, ¶¶ 24-28, 946 A.2d 981, 989-90; *State v. Mills*, 2006 ME 134, ¶ 8, 910 A.2d 1053, 1056; *see also State v. Howe*, 2001 ME 181, ¶¶ 4, 11-13, 788 A.2d 161, 162-64; *Stephens v. Miller*, 13 F.3d 998, 1002-03 (7th Cir. 1994); (2) the court did not abuse its discretion when it allowed the State's primary investigator to remain in the courtroom during the trial, *see State v. Pickering*, 491 A.2d 560, 563 (Me. 1985); (3) the court did not err when it declined to revisit the motion court's prior denial of Fleury's request for the release of the victim's school records, *see Mills*, 2006 ME 134, ¶ 8, 910 A.2d at 1056; *State v. Watson*, 1999 ME 41, ¶ 5, 726 A.2d 214, 216; *see also State v. DeMotte*, 669 A.2d 1331, 1336 (Me. 1996); and (4) the court did not abuse its discretion when it denied Fleury's motion for a mistrial after it was learned that the victim interned with the police department, *see M.R. Crim. P. 16; State v. Bridges*, 2004 ME 102, ¶ 10, 854 A.2d 855, 858; *see also State v. Marques*, 2000 ME 43, ¶ 23, 747 A.2d 186, 192.

Additionally, we have reviewed the sentence imposed on Fleury at resentencing for potential illegality, and conclude that the sentence is not illegal. *See* 17-A M.R.S. § 1256(2) (2007); *Alexandre v. State*, 2007 ME 106, ¶ 14, 927 A.2d 1155, 1159.

The entry is:

Judgment affirmed.

Of the numerous counts for which Fleury was indicted under sections 254(1)(A-2) and 255-A (including one count under section 255-A(1)(G)), fifteen were for offenses that occurred before January 31, 2003, the date those sections went into effect. Though the indictment was flawed, the flaw is not fatal—Fleury did not object prior to trial (or on appeal) and there is no indication that Fleury was unfairly surprised or prejudiced. *See* M.R. Crim. P. 12(b)(2); *see also State v. Leavitt*, 625 A.2d 302, 307 (Me. 1993).

Attorney for Matthew Fleury:

Andrews Bruce Campbell, Esq.
Andrews Bruce Campbell, P.A.
919 Ridge Road
Bowdoinham, Maine 04008

Attorney for the State of Maine:

Geoffrey Rushlau, District Attorney
Prosecutorial District Six
Lincoln County Courthouse
PO Box 249
Wiscasset, Maine 04578