MAINE SUPREME JUDICIAL COURT

Reporter of Decisions
Decision No. Mem 08-53
Docket No. Yor-07-29

STATE OF MAINE

v.

THOMAS McCLURE

Submitted on Briefs February 28, 2008
Decided March 20, 2008

Panel: CLIFFORD, ALEXANDER, LEVY, SILVER, MEAD, and GORMAN, JJ.

MEMORANDUM OF DECISION

Thomas McClure appeals from a judgment of conviction of one count of aggravated assault (Class B), 17-A M.R.S. § 208(1)(B) (2007); three counts of criminal threatening (Class C), 17-A M.R.S. § 209(1) (2007);[1] and one count of assault (Class D), 17-A M.R.S. § 207(1)(A) (2007), entered in the Superior Court (York County, *Brennan, J.*) upon a jury verdict of guilty. Contrary to McClure's contentions:[2] (1) the court did not commit obvious error by prohibiting cross-examination of the victim regarding specific instances of dishonesty, *see*

[1] In this case, although criminal threatening is generally a Class D offense, pursuant to 17-A M.R.S.A. § 1252(4) (Supp. 2005) the use of a dangerous weapon elevated the offense to Class C. Title 17-A M.R.S.A. § 1252(4) has since been amended. P.L. 2005, ch. 527, § 17 (effective Aug. 23, 2006) (codified at 17-A M.R.S. § 1252(4) (2007)).

[2] We decline to reach McClure's additional argument, finding it is without merit.

State v. Mills, 2006 ME 134, ¶ 9, 910 A.2d 1053, 1057 (stating both that the extent of impeachment evidence is left to the court's discretion and that the Sixth Amendment does not give a defendant free rein to present testimony); *State v. Barnes*, 2004 ME 105, ¶ 5, 854 A.2d 208, 209-10 (stating that we review an unpreserved alleged error for obvious error only); and (2) statements of the prosecutor did not deprive him of a fair trial, *see State v. Lockhart*, 2003 ME 108, ¶ 48, 830 A.2d 433, 449 (stating that a lawyer may argue based on facts in evidence); *State v. Pelletier*, 673 A.2d 1327, 1330 (Me. 1996) (stating that we will vacate a judgment for an error objected to at trial only if it is not harmless error and that, when no objection to a prosecutor's statement is raised at trial, we "determine on appeal whether the statement was improper and, if so, whether such improper conduct is obvious error"); *State v. Craney*, 662 A.2d 899, 904 (Me. 1995) (a prosecutor may use wit, satire, invective and illustration in argument).

The entry is:

Judgment affirmed.

Attorney for Thomas McClure:

John Paul DeGrinney, Esq.
Degrinney Law Offices
1266 Congress Street
Portland, Maine 04102

Attorney for the State of Maine:

Mark W. Lawrence, District Attorney
York County Courthouse
Alfred, Maine 04002