MAINE SUPREME JUDICIAL COURT

Reporter of Decisions
Decision No. Mem 09-105
Docket No. Han-07-667

STATE OF MAINE

v.

PETER MILLS

Submitted on Briefs June 4, 2009
Decided June 11, 2009

Panel: SAUFLEY, C.J., and ALEXANDER, LEVY, and GORMAN, JJ.

MEMORANDUM OF DECISION

Peter Mills appeals from a judgment of conviction entered in Superior Court (Penobscot County, *Brodrick, A.R.J.*) upon a jury finding him guilty of three counts of gross sexual assault (Class B), 17-A M.R.S. § 253(2)(A) (2008); three counts of gross sexual assault (Class B), 17-A M.R.S. § 253(2)(D); one count of unlawful sexual contact (Class C), 17-A M.R.S. § 255-A(1)(B) (2008); three counts of assault (Class D), 17-A M.R.S. § 207(1)(A) (2008); three counts of unlawful sexual touching (Class D), 17-A M.R.S. § 260(1)(A) (2008); two counts of furnishing liquor to a minor (Class D), 28-A M.R.S. § 2081(1)(A)(1) (2008); and two counts of allowing a minor to possess or consume liquor (Class D), 28-A M.R.S. § 2081(1)(B)(1).

Contrary to Mills's contention, the court did not abuse its discretion in ordering the joinder of charges stemming from allegations that took place on separate dates and with separate victims. *See State v. Pierce*, 2001 ME 14, ¶ 12, 770 A.2d 630, 634 ("The court has wide discretion in deciding [whether to order joinder and severance], and its decision is not grounds for new trial unless prejudice and abuse of discretion are shown."). Additionally, the court did not abuse its discretion in refusing to grant more than eight peremptory challenges for Mills and his co-defendant Stephanie Stark to share. *See State v. Rollins*, 2008 ME 189, ¶ 19, 961 A.2d 546, 551 (stating that we review the supervision of peremptory challenges for an abuse of discretion); *State v. Chattley*, 390 A.2d 472, 478 (Me.

1978) ("[W]hen more than one defendant are jointly indicted and tried, they are entitled *jointly and not severally* to the eight peremptory challenges.").

Furthermore, the admission of improper identity evidence in violation of the first complaint rule was harmless error because the evidence was later made admissible by Mills's suggestion during cross-examination that the victim had fabricated her story. *See State v. Dube*, 598 A.2d 742, 744-45 (Me. 1991) (finding that it was not obvious error when hearsay evidence was admitted in error initially, but later became admissible to rebut charge of recent fabrication). It was also not clear error for the court to exclude certain evidence proffered to impeach the credibility of one of the victims. *See State v. Dilley*, 2008 ME 5, ¶ 25, 938 A.2d 804, 809 (stating that we review a court's determination of relevance for clear error). Last, we do not review Mills's challenge to the illegality of his sentence because the sentence review panel had already denied his leave to appeal and the alleged illegality is not clear from the face of the record. *See State v. Winslow*, 2007 ME 124, ¶ 27, 930 A.2d 1080, 1087; 15 M.R.S. § 2152 (2008) ("If leave to appeal is denied, the decision of the [sentence review] panel shall be final and subject to no further review.").

The entry is:

Judgment affirmed.

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