

STATE OF MAINE

v.

EUSEBE J. GALLANT

Submitted on Briefs July 8, 2009

Decided August 6, 2009

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

MEMORANDUM OF DECISION

Eusebe J. Gallant appeals from a judgment entered in the Superior Court (Kennebec County, *Mills, J.*) following a jury verdict of unlawful sexual conduct (Class C), 17-A M.R.S.A. § 255(1)(C) (Supp. 2002), and (Class C), 17-A M.R.S. § 255-A(1)(E) (2008).¹ Gallant argues that the court erroneously excluded, as hearsay, evidence that should have been admitted pursuant to the rule of completeness. Although the additional portions of Gallant's statement should not have been excluded pursuant to the rule of completeness, *see State v. Thibeault*, 621 A.2d 418, 422 (Me. 1993), we nevertheless affirm pursuant to M.R. Evid. 412. *See State v. Gorman*, 2004 ME 90, ¶ 41, 854 A.2d 1164, 1174. Contrary to Gallant's next contention that the court erroneously admitted hearsay evidence, the evidence was properly admitted for the limited purpose of impeaching the witness pursuant to M.R. Evid. 607. *See State v. Vigue*, 420 A.2d 242, 244 n.1 (Me. 1980). Gallant further contends that even if such evidence was properly admitted for the

¹ Gallant was convicted of five counts of unlawful sexual contact. Four of the counts occurred prior to 2003. For those counts, Gallant was charged pursuant to 17-A M.R.S.A. § 255(1)(C) (Supp. 2002). However, section 255 was subsequently repealed by the Legislature. P.L. 2001, ch. 383, § 22 (effective Jan. 31, 2003). Therefore, the fifth count, in which Gallant was convicted for unlawful sexual contact that occurred after January 2003, was brought pursuant to 17-A M.R.S. § 255-A(1)(E) (2008). *See* P.L. 2001, ch. 383, § 23 (effective Jan. 31, 2003).

limited purpose of impeachment, the State improperly used it as substantive proof. Gallant did not request a jury instruction to correct the misuse of the impeachment evidence as substantive proof in the State's closing argument. Accordingly, we review the use of the statement for obvious error and find none. *See State v. Tanguay*, 574 A.2d 1359, 1361 (Me. 1990); M.R. Crim. P. 52(b).

The entry is:

Judgment affirmed.

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