

STATE OF MAINE

v.

MICHAEL D. MANNING

Argued January 13, 2010
Decided February 25, 2010

Panel: SAUFLEY, C.J. and, LEVY, SILVER, MEAD, and JABAR, JJ.

MEMORANDUM OF DECISION

Michael D. Manning appeals from a judgment of conviction for unlawful sexual contact (Class B), 17-A M.R.S. § 255-A(1)(E-1) (2009), entered in the Superior Court (Hancock County, *Marden, J.*) upon a finding of guilty by a jury.

Contrary to Manning's assertion, the trial court did not err in denying his motion to suppress statements he made to a detective without Miranda warnings because Manning was not in custody. *See State v. Higgins*, 2002 ME 77, ¶ 12, 796 A.2d 50, 54 (“[A] *Miranda* warning is necessary only if a defendant is: (1) in custody; and (2) subject to interrogation.” (quotation marks omitted)).

In addition, the trial court did not commit obvious error with regard to the prosecutor's closing argument. *See* M.R. Crim. P. 52(b); *see also State v. Cannell*, 2007 ME 30, ¶ 6, 916 A.2d 231, 233-34 (stating that an unpreserved error is deemed obvious when it is “so highly prejudicial and so taints the proceedings as to virtually deprive the defendant of a fair trial” (quotation marks omitted)). Nor did the trial court commit obvious error in its jury instructions or by admitting in evidence an audio recording containing inculpatory statements made by Manning. *See* M.R. Crim. P. 52(b); *see also* M.R. Crim. P. 30(b) (“The court, at its election, may instruct the jury before or after argument, or both.”); *State v. Hurd*, 360 A.2d 525, 527 n.5 (Me. 1976) (cautioning that prejudice should not be conflated with the presentation of highly relevant evidence that undermines a defendant's case); *State*

v. Chad B., 1998 ME 150, ¶ 5, 715 A.2d 144, 146 (describing the two-prong evidentiary burden the State must satisfy in order to use a defendant's confession as evidence).

The entry is:

Judgment affirmed.

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