

THE SUPREME JUDICIAL COURT OF THE STATE OF MAINE
SITTING AS THE LAW COURT

LAW COURT DOCKET: SOM-23-328

STATE OF MAINE,

Appellee

v.

GARRETT J. COTE, JR.,

Appellant

ON APPEAL of Criminal Conviction from the Somerset Unified Criminal Docket

BRIEF OF APPELLEE

Maeghan Maloney, DA
Francis Griffin Jr., DDA
Office of the District Attorney
41 Court Street
Skowhegan, Maine 04976
fgriffin@kennebecda.com
Attorneys for Appellee – State of Maine

TABLE OF CONTENTS

TABLE OF AUTHORITIES.....2

I. PROCEDURAL HISTORY.....3

II. STATEMENT OF FACTS.....4 - 6

III. ISSUES PRESENTED FOR REVIEW7

A. The trial court did not err in failing to declare a mistrial.

B. The trial court correctly instructed the jury.

C. There was sufficient evidence for the jury to find Cote guilty based on the evidence presented at trial

IV. ARGUMENT 8 - 13

V. CONCLUSION..... 13

CERTIFICATE OF SERVICE 14

TABLE OF AUTHORITIES

Cases

<i>State v. Asante</i> , 2020 ME 90, 236 A.3d 464	11
<i>State v. Clark</i> , 2008 ME 136, 954 A.2d 1066.....	9
<i>State v. Cote</i> , 462 A.2d 487 (Me. 1983)	11
<i>State v. Dolloff</i> , 2012 ME 130, 119 A.3d 727	9, 10
<i>State v. Graham</i> , 2015 ME 35, 113 A.3d 1102	12
<i>State v. LaJoie</i> , 2017 ME 8, 58 A.3d 1032	9, 10
<i>State v. Roussel</i> , 2000 ME 185, 760 A.2d 1062	12
<i>State v. True</i> , 438 A.2d 460, 468 (Me. 1981)	9

Statutes

17-A M.R.S. § 108 (1)(A), (B)	6, 10
17-A M.R.S. §108 (1)(C)	6
17-A M.R.S. §209(1), 1604(5)(A)	3
Maine Rule of Evidence 404 (b)	8
Maine Rule of Evidence 403	8

I. PROCEDURAL HISTORY

Mr. Cote was charged by way of complaint with Criminal Threatening with a Dangerous Weapon 17-A M.R.S. §209(1), 1604(5)(A). Cote made his Initial Appearance on July 13, 2022. He was indicted by the Somerset County Grand Jury on the same charge on October 13, 2022. (Ap. 23). Cote pleaded Not Guilty at arraignment on November 8, 2022. (Ap. 17). A single day jury trial began on June 21, 2023, with the jury returning a verdict of Guilty on the same date. (Ap. 18). The matter was continued for sentencing, which was conducted on August 21, 2023. (Ap. 20). After argument, the Court imposed a three-year straight sentence. (Ap. 20 - 21). Cote filed a timely notice of appeal on August 25, 2023.

II. STATEMENT OF FACTS

On May 8, 2023, Stephen Richardson and his son were on their way to work by way of Route 213 in Canaan. (Tr. 18). Around 8:30 AM, Mr. Richardson noticed that the vehicle he was following was swerving all over the road, swerving into the oncoming lane several times. (Tr. 18). Mr. Richardson testified that he could see into the vehicle and could see the operator was texting with a cell phone. (Tr. 18, 24 - 25). Richardson honked his horn which resulted in the vehicle crossing over into the oncoming lane into the dirt shoulder. (Tr. 19, 25). The vehicle corrected itself and pulled off the road on the proper side approximately a half mile up the road. (Tr. 19).

Mr. Richardson saw an individual get out of the car with a black mask and as they drove by, the individual was opening the back door as if to reach in for something. (Tr. 19 – 20, 26 - 27). Mr. Richardson said that he first saw what he believed to be a firearm when he looked behind and saw the vehicle following with the gun sticking out of the window. (Tr. 21, 28). Mr. Richardson expressed concern over the weapon and called 911. (Tr. 21). While he was talking to 911, Mr. Richardson reported that the vehicle had turned off and was no longer following him. (Tr. 21 - 22).

Deputy Andrew Bowman of the Somerset Sheriff's Department testified that he responded to Cote's residence to investigate a shots fired complaint. (Tr. 33). Dep. Bowman spoke with Cote who said that another vehicle had tried to run him off the road on Route 23 in Canaan. (Tr. 33 – 34). Cote admitted to Dep. Bowman that he showed the air javelin to the other vehicle on two occasions. (Tr. 34). Cote told Dep. Bowman that the other vehicle came up behind him, blaring its horn, and Cote thought that it was going to ram him. (Tr. 35). Cote said that he then stopped his vehicle. (Tr. 36). After the incident, the Cote told Dep. Bowman that he continued to go home. (Tr. 36).

Dep. Bowman seized the air javelin from the back seat of Cote's car. (Tr. 37). Cote told Dep. Bowman was the air javelin was and how it worked. (Tr. 37). When Dep. Bowman asked Cote if someone could confuse it for an AR-style rifle, Cote agreed that it could indeed be mistaken for a firearm. (Tr. 37 – 38).

Dep. Bowman also asked Cote why he didn't call 911. (Tr. 38). D responded by saying that he "wasn't one to call the police" and that it would take someone physically harming him to do so. (Tr. 38). On cross, defense counsel sought to clarify the 911 line of questioning. (Tr. 39). Dep. Bowman testified that Cote's reasoning was that Cote "wasn't a cop caller". (Tr. 39). Defense counsel pressed Dep. Bowman about anything else Cote said to explain why Cote did not call 911, to which Dep. Bowman responded that Cote told him that Cote had "previously done

time in prison and . . . the accusation goes around that he calls the police, it follows you.” (Tr. 39). Defense counsel also specifically asked if Cote told Dep. Bowman that he was in fear of getting hurt, to which Dep. Bowman responded “No.” (Tr. 40).

After the State rested and the Trial Court reviewed Cote’s decision to remain silent, the Trial Court conducted an on-the-record chambers conference with counsel to discuss proposed jury instructions. (Tr. 47 – 49). The Trial Court suggested using the self-defense using non-deadly force instructions as written in 17-A M.R.S. § 108 (1)(A), (B). (Tr. 49 – 51). Both the State and Trial Counsel agreed that 17-A M.R.S. § 108 (1)(C) need not be included as it would be unnecessarily confusing to the jury. (Tr. 50 – 51). During its instruction, the Trial Court instructed the jury using 17-A M.R.S. § 108 (1)(A), (B). (Tr. 79 – 80).

III. ISSUES PRESENTED FOR REVIEW

- A. *The Trial Court did not err in failing to declare a mistrial.*
- B. *The Trial Court correctly instructed the jury.*
- C. *There was sufficient evidence for the jury to find Cote guilty based on the evidence presented at trial.*

IV. ARGUMENT

A. *The Trial Court did not err in failing to declare a mistrial.*

Cote argues that his statement to Dep. Bowman referencing previously serving time in prison violates Maine Rule of Evidence 404 (b). The State agrees. In fact, the State would concede that the statement likely violates Maine Rule of Evidence 403, as it is more prejudicial than probative.

However, it is important to note the manner in which the statement came into evidence. During the State's direct examination of Dep. Bowman, he testified that Cote told him that he "wasn't one to call the police." (Tr. 38). There was a follow-up question about what it would take for Cote to call the police, but the State did not attempt to further clarify why Cote "wasn't one to call the police." (Tr. 38). On cross, trial counsel was attempting to elicit testimony from Dep. Bowman regarding Cote's original statement to the deputy that he was afraid of getting hurt. (Tr. 39 – 40). Trial counsel's questions did not prompt the expected responses from Dep. Bowman. Trial counsel did not object, ask for the statement to be stricken, nor ask for a curative instruction. Trial counsel did not move for a mistrial.

The State cannot anticipate essential elements of Cote's defense. The State certainly cannot craft questions for trial counsel based on trial counsel's understanding of the deputy's report. Trial counsel's decision to quickly move on

from the deputy's unexpected answer was likely tactical as to not call the jury's attention to the statement any further.

Cote cites several Maine cases that seem to support his position that exposure to potentially prejudicial evidence, even though trial counsel failed to object, will itself be a consideration in determining whether the error was obvious and highly prejudicial. *State v. True*, 438 A.2d 460, 468 (Me. 1981). The *True* Court held that unobjected to hearsay, specifically testimony from a doctor regarding a victim's statements made regarding a rape, was so highly prejudicial that the Court vacated the conviction as the count of rape.

Clark was a highly contentious trial full of allegations of prosecutorial misconduct, specifically multiple instances of the defendant's post-*Miranda* silence to attempt to impeach credibility, diminishing the credibility of defense counsel, expressing a personal opinion about the defendant's credibility, and finally a violation of the trial court's ruling on a motion in limine. *State v. Clark*, 2008 ME 136, 954 A.2d 1066. The comments by the prosecutor were largely not objected to by trial counsel and were reviewed under the *True* test and found to either not to have occurred or held that there was no error. *Id.* @ ¶ 7 – 16.

In a more recent case, this Court held that a defendant must demonstrate on appeal that there was an error, that it was plain, and it affected his substantial rights.

State v. LaJoie, 2017 ME 8, ¶ 22, 58 A.3d 1032, citing *State v. Dolloff*, 2012 ME 130, ¶ 35, 119 A.3d 727. If those three conditions are all met, this Court will only set aside a jury’s verdict if the “error seriously affects the fairness and integrity or public reputation of judicial proceedings. *Id.* This Court affirmed the *LaJoie* trial court’s verdict as LaJoie failed to demonstrate that the error affected his substantial rights or the outcome of the trial. *Id.*

In the present case, the now objected to testimony was a single sentence elicited by defense counsel. There is no suggestion of any prosecutorial misconduct. The statement was never again mentioned by the Court, the State, or Cote. The statement in and of itself had no relevance to the case, other than potentially establishing Cote’s state of mind at the time of the incident. While the State concedes the statement should not have been admitted into evidence, Cote has failed to demonstrate that the single sentence affected his substantial rights or the outcome of the trial.

B. The Trial Court correctly instructed the jury.

The State agrees that brandishing a firearm, or here an air javelin, constitutes the use of non-deadly force. The State also agrees that the Court properly instructed the jury on the use of non-deadly force in the case at hand. The Trial Court did in fact use § 108 (1)(A) & (B) to craft its jury instructions, nearly verbatim. Cote does

not dispute this, but argues that the Trial Court was not explicit enough in crafting the instruction. The Trial Court said, “In the event that you conclude that the defendant was justified in using a reasonable degree of non-deadly force, you will consider that a defense unless the State negates the justification beyond a reasonable doubt.” (Tr. 80). If that wasn’t enough, the Trial Court clarified the instruction by saying, “In other words, if you believe that the defendant was justified in using a reasonable degree of non-deadly force, it is up to the State to disprove that beyond a reasonable doubt.” (Tr. 80).

The *Cote* line of cases have long held that “the charge must be reviewed as a whole, taking into consideration the total effect created by all the instructions and the potential for juror misunderstanding”. *State v. Cote*, 462 A.2d 487, 490 (Me. 1983). In *Cote*, the trial court misstated the law in saying that “the jury must find the defendant guilty if the state had not met its burden of proof”, which was exactly opposite of the correct law. *Id.* In a 2020 decision, this Court vacated a conviction in case due to the failure of the trial court to properly instruct the jury on the elements of robbery. *State v. Asante*, 2020 ME 90, ¶16, 236 A.3d 464. While this Court held that the self-defense instructions would have been correct if the robbery instruction had been correct, the combination of the incorrect robbery instruction and correct self-defense created the possibility of jury confusion. *Id.* @ ¶ 21.

Here, Cote agrees that the jury instructions were proper. Trial counsel agreed to the Trial Court's proposed instructions. The supposed failure of the Trial Court was that the clarification did not go far enough. The fact of the matter is that the Trial Court's instructions were correct and could not have confused the jury.

C. There was sufficient evidence for the jury to find Cote guilty based on the evidence presented at trial.

This Court has determined that when reviewing a conviction for insufficiency of the evidence, "the evidence is viewed in the light most favorable to the jury's verdict to determine whether a jury rationally could find beyond a reasonable doubt each element of the offense charged." *State v. Roussel*, 2000 ME 185, ¶ 8, 760 A.2d 1062. A conviction will only be vacated for insufficiency of the evidence if "the fact-finder could not rationally have been convinced of the defendant's guilt beyond a reasonable doubt." *State v. Graham*, 2015 ME 35, ¶ 27, 113 A.3d 1102.

Here the evidence clearly supports the jury's verdict. Cote argues that the evidence was insufficient to establish the victim's reasonable fear by relying on Trial Counsel's theory of the case in which Mr. Richardson was enraged and followed Cote. The jury heard from both witnesses. They were able to hear Richardson's 911 call as well as his agitated responses to cross examination.

The Court instructed the jury as to their duty as the sole evaluator of witness credibility and the way that they consider the evidence and testimony presented during trial. There is nothing in the record nor any evidence that the jury disregarded the Trial Court's instructions. Therefore, this Court must not make assumptions to the contrary. There is no question that the evidence is sufficient for a jury to be convinced beyond a reasonable doubt that Cote committed the crime as alleged.

V. CONCLUSION

In the present case, the Trial Court properly instructed the jury. The evidence presented at trial was sufficient for a jury to convict Cote beyond a reasonable doubt. Finally, Cote's statement to the deputy were not sufficient to require the Trial Court declare a mistrial.

Respectfully submitted,

Dated: February 8, 2024

Francis J. Griffin, Jr., Bar No.: 4345
Deputy District Attorney
Somerset County District Attorney's Office

CERTIFICATE OF SERVICE

I, Francis J. Griffin, Jr, Attorney for the Appellee, State of Maine, certify that I have this day caused two copies of the “Brief of the Appellee” to be served upon the Appellant in via US Mail, addressed to Erik T. Crocker, Esq., 61 Main Street, Suite 1, PO Box 738, Bangor, Maine, 044402-0738. I have also, on this day, delivered 8 copies of the “Brief of the Appellee” to the Clerk of the Court, as well as emailed the Clerk and opposing counsel a native .pdf version of this document.

Date: February 8, 2024

Francis J. Griffin, Jr.

Deputy District Attorney

Prosecutorial District IV

Somerset County District Attorney’s Office