

STATE OF MAINE

v.

MARCUS J. HICKS

Submitted on Briefs June 22, 2022
Decided July 12, 2022

Panel: STANFILL, C.J., and MEAD, JABAR, HORTON, and LAWRENCE, JJ.

MEMORANDUM OF DECISION

Marcus J. Hicks appeals from a judgment of conviction of domestic violence assault (Class D), 17-A M.R.S. § 207-A(1)(A) (2022), entered by the trial court (Aroostook County, *Nelson, J.*) after a jury trial. Hicks contends that the court committed obvious error by not instructing the jury to only consider the victim's out-of-court statements for impeachment purposes, and he argues that the State violated his due process rights by failing to identify that the victim's statements could not be used as substantive evidence. Because the court admitted the victim's statements pursuant to the excited utterance exception to the hearsay rule, *see* M.R. Evid. 803(2), the statements were admissible as substantive evidence and so the court did not err in instructing the jury, *see State v. Robinson*, 2001 ME 83, ¶¶ 6, 9-10, 12-14, 16, 773 A.2d 445; *State v. Lajoie*, 2017 ME 8, ¶¶ 13-15, 154 A.3d 132; *cf. State v. Nason*, 383 A.2d 35, 36-39 (Me. 1978), nor were Hicks's due process rights violated, *see State v. Jones*, 2012 ME 126, ¶ 35, 55 A.3d 432; *State v. Ahmed*, 2006 ME 133, ¶¶ 12, 15 & n.2, 909 A.2d 1011; *cf. State v. Snow*, 2007 ME 26, ¶¶ 9, 13, 916 A.2d 957.

Further, contrary to Hicks's arguments, there was sufficient evidence to support the jury's finding beyond a reasonable doubt that Hicks committed

domestic violence assault. *See, e.g., Ahmed*, 2006 ME 133, ¶ 21, 909 A.2d 1011; *Robinson*, 2001 ME 83, ¶¶ 19-21, 773 A.2d 445; 17-A M.R.S. § 207-A(1)(A); *see also* 17-A M.R.S. § 207(1)(A) (2022); 19-A M.R.S. § 4002(4) (2022).

The entry is:

Judgment affirmed.

Jeremy Pratt, Esq., and Ellen Simmons, Esq., Camden, for appellant Marcus J. Hicks

Todd R. Collins, District Attorney, 8th Prosecutorial District, Caribou, for appellee State of Maine