

STATE OF MAINE

v.

BRIAN K. FLEMING

Submitted on Briefs November 25, 2024
Decided December 3, 2024

Panel: STANFILL, C.J., and HORTON, CONNORS, LAWRENCE, and DOUGLAS, JJ.

MEMORANDUM OF DECISION

Brian K. Fleming appeals from a judgment of conviction of two counts of aggravated assault (Class B), 17-A M.R.S. § 208(1)(B), (C) (2024), entered by the trial court (Androscoggin County, *Stewart, J.*) following a jury trial. Fleming moved in limine to exclude photographs of the victim and the scene, conceding they were relevant but arguing that their probative value was substantially outweighed by the danger of unfair prejudice. M.R. Evid. 403. Contrary to Fleming's argument, the court did not abuse its discretion in denying his motion in limine. *See State v. Allen*, 2006 ME 21, ¶ 9, 892 A.2d 456. Further, viewing the evidence in the light most favorable to the State, the record contains sufficient evidence for a jury to find beyond a reasonable doubt that Fleming committed aggravated assault both under circumstances manifesting an extreme indifference to the value of human life, *see* 17-A M.R.S. § 208(1)(C), and with the use of a dangerous weapon, *see id.* § 208(1)(B).¹ *See State v. Coleman*, 2019 ME 170, ¶ 30, 221 A.3d 932.

¹ The two counts were properly merged for the purposes of sentencing. *See State v. Black*, 2016 ME 9, ¶ 9, 131 A.3d 371.

The entry is:

Judgment affirmed.

Jeremy Pratt, Esq., and Ellen Simmons, Esq., Camden, for appellant Brian K. Fleming

Neil E. McLean Jr., District Attorney, and Katherine M. Hudson-MacRae, Asst. Dist. Atty., Prosecutorial District III, Lewiston, for appellee State of Maine

Androscoggin County Unified Criminal Docket docket number CR-2023-366
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