

STATE OF MAINE

v.

ROBERT C. PETERS

Submitted on briefs September 27, 2000
Decided October 6, 2000

Panel: WATHEN, C.J., and CLIFFORD, RUDMAN, DANA, SAUFLEY,
ALEXANDER, and CALKINS, JJ.

MEMORANDUM OF DECISION

Defendant Robert C. Peters appeals from a judgment of the Superior Court (Hancock County, *Hjelm, J.*) on a jury verdict finding him guilty of reckless conduct with use of a dangerous weapon (Class C), 17-A M.R.S.A. § 211 (1983); criminal threatening with use of a dangerous weapon (Class C), 17-A M.R.S.A. § 209 (1983); terrorizing with use of a dangerous weapon (Class C), 17-A M.R.S.A. § 210 (1983 & Supp. 1999); aggravated assault (Class B), 17-A M.R.S.A. § 208(1)(A) (1983); assault (Class D), 17-A M.R.S.A. § 207(1) (1983 & Supp. 1999); three counts of terrorizing (Class D), 17-A M.R.S.A. § 210 (1983 & Supp. 1999); criminal restraint (Class D), 17-A M.R.S.A. § 302(B) (1983 & Supp. 1999); criminal threatening (Class D), 17-A M.R.S.A. § 209 (1983); and four counts of violation of condition of release-preconviction bail (Class C), 15 M.R.S.A. § 1092 (Supp. 1999). Contrary to defendant's contention, the court did not abuse its discretion in excluding

evidence referring to the Department of Human Services and a letter from it concerning custody of the victim's child. *See State v. Shuman*, 622 A.2d 716, 718 (Me. 1993). Further, there was no obvious error in the court's jury instructions describing the elements of reckless conduct with the use of a dangerous weapon and criminal threatening with the use of a dangerous weapon. *See State v. Pomerleau*, 363 A.2d 692, 698 (Me. 1976). Although the instruction may have blurred the distinction defendant was trying to make because it failed to emphasize the element "against a person" separate from the element that it be "with the use of a firearm," it did include both elements. Moreover, the jury found defendant not guilty on the offense of reckless conduct with a dangerous weapon, namely a firearm, and instead found him guilty of the lesser included offense of reckless conduct with a dangerous weapon other than a firearm, which does not include the requirement that it be "against a person."

The entry is:

Judgment affirmed.

Attorney for the State:

Michael Povich, D.A.
Hancock County Courthouse
60 State St.
Ellsworth, Maine 04605

Attorney for the defendant:

Jeffrey Toothaker, Esq.
277 High St.
Ellsworth, Maine 04605