

STATE OF MAINE

v.

JONATHAN L. TARDIFF

Submitted on Briefs October 31, 2013

Decided January 9, 2014

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

MEMORANDUM OF DECISION

Jonathan L. Tardiff appeals from two judgments of conviction entered in the District Court (Ellsworth, *A. Murray, J.*) pursuant to 30-A M.R.S. § 3971 (2012). Regarding the first judgment of conviction, entered upon a jury verdict, Tardiff contends that the court erred in not granting his motion for judgment of acquittal. We view the evidence in the light most favorable to the State to determine whether a jury could rationally find every element of the criminal charge beyond a reasonable doubt. *See State v. Philbrick*, 551 A.2d 847, 852 (Me. 1988); M.R. Crim. P. 29(a). The State charged Tardiff with “fail[ing] to promptly make available for inspection at his principal place of business the records required to be kept pursuant to 30-A M.R.S.A. § 3971(1).” The testimony at trial established both that Tardiff was required to keep records for the money clips and wedding ring and that Tardiff failed to properly produce such records. The court’s denial of Tardiff’s motion for judgment of acquittal was not in error.

The court also did not err in admitting evidence that the money clips and wedding ring were stolen. This evidence was admissible for the limited purpose of establishing that Tardiff was required to create records of purchase for the items

pursuant to 30-A M.R.S. § 3971(1). Because this evidence “cast[] light upon the nature of the act for which the defendant [was] prosecuted,” it was not per se barred as evidence of “other crimes, wrongs, or acts” pursuant to M.R. Evid. 404(b). *State v. Wallace*, 431 A.2d 613, 616 (Me. 1981); *see also State v. Heald*, 393 A.2d 537, 542 (Me. 1978). Tardiff’s other arguments regarding this evidence were not preserved for appeal and any error does not constitute obvious error affecting substantial rights. *See State v. Whiting*, 538 A.2d 300, 302 (Me. 1988); M.R. Crim. P. 52(b).

With respect to the second judgment of conviction, entered upon a guilty plea, Tardiff cannot take a direct appeal from his guilty plea without first seeking relief from the trial court pursuant to M.R. Crim P. 32(d). *See State v. Smith*, 544 A.2d 301, 302 (Me. 1988). In any event, the complaint charging Tardiff with failing to create an adequate purchase record pursuant to 30-A M.R.S. § 3971(1) was not deficient. *See M.R. Crim P. 3(a)*; *see also State v. Charette*, 159 Me. 124, 126-27, 188 A.2d 898 (1963).

The entry is:

Judgment affirmed.

On the briefs:

Arthur J. Greif, Esq., Gilbert & Greif, P.A., Bangor, for appellant Jonathan Tardiff

Carletta M. Bassano, District Attorney, and Mary N. Kellett, Asst. Dist. Atty., Prosecutorial District No. VII, Ellsworth, for appellee State of Maine