

STATE OF MAINE

v.

SCOTT A. DINGWELL JR.

Argued June 24, 2020

Decided July 7, 2020

Panel: MEAD, GORMAN, JABAR, HUMPHREY, and CONNORS, JJ.

MEMORANDUM OF DECISION

Scott A. Dingwell Jr. appeals from judgments of conviction for aggravated assault (Class B), 17-A M.R.S. § 208(1)(C) (2018),¹ domestic violence assault (Class D), 17-A M.R.S. § 207-A(1)(A) (2020), and criminal mischief (Class D), 17-A M.R.S. § 806(1)(A) (2020), entered by the trial court (Cumberland County, *Horton, J.*) after a jury trial. Dingwell challenges the lack of a specific unanimity instruction and the process that the court employed in ruling on his claim of gender discrimination in jury selection.

Although the evidence showed that Dingwell had attacked the victim over a span of time with some brief pauses in the conduct, there was no evidence of “separate” incidents such that “the jury must unanimously find that one specific incident occurred.” *State v. Reynolds*, 2018 ME 124, ¶ 15, 193 A.3d 168 (quotation marks omitted). With respect to Dingwell’s allegation of gender discrimination in jury selection, the court did not err in declining to hold a hearing when Dingwell never directly challenged the sincerity of the State’s

¹ This statute was amended after the incident that gave rise to the aggravated assault charge here. See P.L. 2019, ch. 91, § 1 (effective Sept. 19, 2019) (codified at 17-A M.R.S. § 208(1)(C) (2020)).

proffered reasons for striking potential jurors. *See United States v. Arce*, 997 F.2d 1123, 1127 (5th Cir. 1993); *United States v. Rudas*, 905 F.2d 38, 41 (2d Cir. 1990). Dingwell was not deprived of due process because, although he did not take advantage of it, the court provided him with a reasonable opportunity to be heard, to seek to introduce evidence and present witnesses, and to respond to the prosecutor's claimed reasons for striking the jurors. *See State v. LeBlanc-Simpson*, 2018 ME 109, ¶ 19, 190 A.3d 1015.

The entry is:

Judgment affirmed.

Rory A. McNamara, Esq. (orally), Drake Law, LLC, Berwick, for appellant Scott A. Dingwell Jr.

Katie R. H. Dakers, Asst. Dist. Atty. (orally), District Attorney's Office, Portland, for appellee State of Maine