

STATE OF MAINE

v.

AVERY S. MILLER

Submitted on Briefs May 23, 2023  
Decided June 6, 2023

Panel: JABAR, HORTON, CONNORS, LAWRENCE, and DOUGLAS, JJ.

MEMORANDUM OF DECISION

Avery S. Miller appeals from a judgment of conviction for six counts of unlawful sexual contact (Class B), 17-A M.R.S. § 255-A(1)(E-1) (2023), following a jury trial. Contrary to Miller's contentions, there was sufficient circumstantial evidence, when viewed in the light most favorable to the State, for the jury to have rationally found beyond a reasonable doubt that Miller was not the spouse of the child victims. *See State v. Joel H.*, 2000 ME 139, ¶¶ 13, 15-16, 755 A.2d 520; 17-A M.R.S. § 255-A(1)(E-1). Nor did the trial court (Androscoggin County, *Stewart, J.*) err in denying Miller's motion for judgment of acquittal.<sup>1</sup> *See State v. Adams*, 2015 ME 30, ¶¶ 19-20, 113 A.3d 583.<sup>2</sup>

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<sup>1</sup> We reject the State's arguments that Miller failed to preserve these issues. *See State v. Van Sickle*, 434 A.2d 31, 34-35 & nn.4-5 (Me. 1981); M.R.U. Crim. P. 29(a).

<sup>2</sup> Separately, Miller waived his argument that the court erred in admitting parts of recorded interviews of the children as prior consistent statements, *see* M.R. Evid. 801(d)(1)(B), and we thus do not review this alleged error, *see State v. Scott*, 2019 ME 105, ¶¶ 18-20, 211 A.3d 205; *State v. Rega*, 2005 ME 5, ¶¶ 16-17, 863 A.2d 917; Alexander, *Maine Appellate Practice* § 403(a) at 241 (6th ed. 2022).

The entry is:

Judgment affirmed.

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Neil J. Prendergast, Esq., Fort Kent, for appellant Avery S. Miller

Neil E. McLean Jr., District Attorney, and Katherine E. Bozeman, Dept. Dist. Atty.,  
Prosecutorial District III, Lewiston, for appellee State of Maine

Androscoggin County Unified Criminal Docket docket number CR-2019-1764  
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