

STATE OF MAINE

v.

SCOTT A. PENNEY

Argued September 20, 2004  
Decided November 30, 2004

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

MEMORANDUM OF DECISION

Scott A. Penney appeals from judgments of conviction on four counts of unlawful sexual contact (Class C), 17-A M.R.S.A. § 255(1)(C) (1983 & Supp. 1999);<sup>1</sup> two counts of gross sexual assault (Class A), 17-A M.R.S.A. § 253(1)(B) (1983 & Supp. 1999); and one count of gross sexual assault (Class B), 17-A M.R.S.A. § 253(2)(H) (Supp. 1999),<sup>2</sup> entered in the Superior Court (Kennebec

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<sup>1</sup> This statute was repealed by P.L. 2001, ch. 383, § 22 (effective Jan. 31, 2003), after Penney committed the charged crime, and 17-A M.R.S.A. § 255-A(1)(F) (Supp. 2003) was enacted in its place, P.L. 2001, ch. 383, § 23 (effective Jan. 31, 2003).

<sup>2</sup> Both subsection 253(1)(B) and subsection 253(2)(H) were amended by P.L. 2001, ch. 383, § 15 (effective Jan. 31, 2003), *codified at* 17-A M.R.S.A. § 253(1)(B), (2)(H) (Supp. 2003), after Penney committed the charged crime.

County, *Studstrup, J.*) after a jury trial. Because the statements Penney made in his hotel room prior to his arrest were made at a time when he was not in custody, *see State v. Holloway*, 2000 ME 172, 760 A.2d 223 (2000); 17-A M.R.S.A. § 253(2)(H) is not unconstitutionally vague, *see State v. Bachelder*, 565 A.2d 96, 97 (Me. 1989); and the evidence presented at trial was sufficient for the jury to rationally decide, beyond a reasonable doubt, that Penney had committed each element of the offenses for which he was convicted, *see State v. Ardolino*, 1997 ME 141, ¶ 21, 697 A.2d 73, 80; we affirm the judgments below.

The entry is:

Judgments affirmed.

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