

STATE OF MAINE

v.

WILLIAM J. THUN

Submitted on Briefs November 29, 2005
Decided December 19, 2005

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

MEMORANDUM OF DECISION

William Thun appeals from a judgment of conviction of one count of unlawful sexual contact (Class B), 17-A M.R.S.A. § 255(1)(C), (3) (1983 & Supp. 1995), and seven counts of unlawful sexual contact (Class C), 17-A M.R.S.A. § 255(1)(C), entered after a jury trial in the Superior Court (Hancock County, *Mead, J.*).¹ Contrary to Thun's contentions, because the victim's counseling records did not contain exculpatory information, the court did not abuse its discretion or commit constitutional error in refusing discovery or declining to

¹ Title 17-A M.R.S.A. § 255 has been repealed effective January 31, 2003. The crime of unlawful sexual contact is now codified at 17-A M.R.S.A. § 255-A (Supp. 2004). At the time of the alleged offenses, unlawful sexual contact between a defendant, who was at least three years older than the victim, and the victim, who had not attained fourteen years of age, was a Class C offense. 17-A M.R.S.A. 255(1)(C) (1983 & Supp. 1995). The offense was elevated to Class B when that unlawful sexual contact included penetration. 17-A M.R.S.A. 255(3) (1983 & Supp. 1995).

admit the counselor's testimony. See *State v. Perry*, 552 A.2d 545, 547 (Me. 1989); *State v. Watson*, 1999 ME 41, ¶ 7, 726 A.2d 214, 216. Furthermore, because no formal sequestration order was in place during or following the trial, and Thun failed to demonstrate prejudice, the court did not commit obvious error when it allowed witnesses for the State, who prepared for trial by reading Thun's previous testimony, to testify. See *State v. Cloutier*, 302 A.2d 84, 90 (Me. 1973); *State v. Bennett*, 416 A.2d 720, 726-27 (Me. 1980); *State v. Eastman*, 1997 ME 39, ¶ 14, 691 A.2d 179, 184. Finally, contrary to Thun's contention, sufficient evidence, both direct and circumstantial, exists in the record to support his conviction. *State v. Turner*, 2001 ME 44, ¶ 6, 766 A.2d 1025, 1027; *State v. Murray*, 559 A.2d 361, 362 (Me. 1989).

The entry is:

Judgment affirmed.

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