

STATE OF MAINE

v.

LEWIS E. SIMMONS JR.

Submitted On Briefs November 23, 2009

Decided December 1, 2009

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

MEMORANDUM OF DECISION

Lewis E. Simmons Jr. appeals from a judgment of conviction entered by the Superior Court (Sagadahoc County, *Horton, J.*) on a jury verdict finding him guilty of one count of gross sexual assault (Class A), 17-A M.R.S. § 253(1)(C) (2008). Contrary to Simmons’s contention, the court did not clearly err or abuse its discretion in ruling that evidence that the victim had been sexually abused by another person some five years earlier was not admissible under the “tender years” exception to M.R. Evid. 412, and in otherwise excluding the evidence pursuant to M.R. Evid. 402 and 403. *See State v. Warren*, 1998 ME 136, ¶¶ 12, 14 n.7, 711 A.2d 851, 856-57 (stating that “past sexual behavior, if dissimilar from the defendant’s alleged conduct . . . is of no probative value”; also stating that the trial court “retains broad discretion” to reasonably limit cross-examination under M.R. Evid. 403 and 611); *State v. Robinson*, 2002 ME 136, ¶ 15, 803 A.2d 452, 457-58 (stating that, notwithstanding a defendant’s Sixth Amendment right to effective cross-examination, “[t]rial judges retain wide latitude to limit reasonably a criminal defendant’s right to cross-examine a witness” (quotation marks omitted)). We also find no obvious error in the court’s admission of the victim’s first report, to which Simmons did not object. *See* M.R. Crim. P. 52(b).

The entry is:

Judgment affirmed.

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