

STATE OF MAINE

v.

TOMMY P. TUCKER

Submitted on Briefs February 25, 2010
Decided March 2, 2010

Panel: ALEXANDER, LEVY, SILVER, MEAD, GORMAN, and JABAR, JJ.

MEMORANDUM OF DECISION

Tommy P. Tucker appeals from a judgment of conviction entered in the Superior Court (Waldo County, *Hjelm, J.*) for operating after habitual offender revocation (Class C), 29-A M.R.S. § 2557-A(2)(C) (2009), following a jury trial in which Tucker stipulated to all but one element of the offense; the only issue before the jury was whether Tucker was in fact driving the vehicle. Contrary to his contention, the court did not err in denying his motion for acquittal because, viewed in the light most favorable to the State, there was ample circumstantial evidence to support the jury's finding that Tucker had been driving the vehicle. *See State v. Cunningham*, 1997 ME 60, ¶ 8, 691 A.2d 1219, 1223.

Further, the court did not err by failing to, *sua sponte*, declare a mistrial or give a curative instruction based on alleged prosecutorial misconduct in the State's opening statement because: (1) the prosecutor's description of reasonable doubt was appropriate, *see* M.R. Crim. P. 52(a); *State v. Estes*, 418 A.2d 1108, 1116 (Me. 1980); and (2) the prosecutor's improper reference to evidence of an admission that was not presented at trial was not "so highly prejudicial that it taint[ed] the proceedings and virtually deprive[d Tucker] of a fair trial," *State v. Comer*, 644 A.2d 7, 9 (Me. 1994); *see* M.R. Crim. P. 52(b); *State v. Bernier*, 486 A.2d 147, 149 (Me. 1985).

The entry is:

Judgment affirmed.

Attorney for Tommy P. Tucker:

Jeremy Pratt, Esq.
PO Box 335
Camden, Maine 04843

Attorney for the State of Maine:

Neil J. Prendergast, Asst. Dist. Atty.
Waldo County Courthouse
137 Church Street
Belfast, Maine 04915