

STATE OF MAINE

v.

RAYMOND TUCKER

Submitted on Briefs January 28, 2010

Decided February 4, 2010

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

MEMORANDUM OF DECISION

Raymond Tucker appeals from a judgment entered in the Superior Court (Waldo County, *Hjelm, J.*) convicting him of unlawful sexual contact (Class B), 17-A M.R.S. § 255-A(1)(E-1) (2009); gross sexual assault (Class A), 17-A M.R.S. § 253(1)(C) (2009); and visual sexual aggression against a child (Class C), 17-A M.R.S. § 256(1)(B) (2009). Contrary to Tucker's contentions, (1) the court did not commit obvious error when it entered a verdict of not guilty on a separate count in response to a jury foreman's report of a mistaken verdict of guilty as to that count only, but left the remaining convictions as the foreman originally reported them following a post-discharge polling of the jury as to those counts, because the error was not prejudicial to Tucker and did not deprive him of a fundamentally fair trial, *see State v. Whittier*, 21 Me. 341, 347 (1842) (holding that the court did not err when it limited the jury's guilty verdict to one of two counts because the defendant was not prejudiced); *State v. Schmidt*, 2008 ME 151, ¶ 15, 957 A.2d 80, 85 (discussing the obvious error standard of review); and (2) the court did not clearly err or abuse its discretion in admitting rebuttal testimony that the State had not previously disclosed, because the court found that the State could not reasonably have anticipated the testimony, *see State v. Kirk*, 2005 ME 60, ¶ 7, 873 A.2d 350, 352. Tucker's remaining argument, requesting that the Court

overrule *State v. Nichols*, 1997 ME 178, ¶¶ 4-5, 698 A.2d 521, 522, and permit claims of ineffective assistance of counsel on direct appeal, is without merit.

The entry is:

Judgment affirmed.

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