

STATE OF MAINE

v.

RICHARD WESCOTT

Argued January 6, 2000
Decided January 18, 2000

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

MEMORANDUM OF DECISION

Richard Wescott appeals from a judgment of conviction for gross sexual assault entered in the Superior Court (Aroostook County, *Pierson, J.*). Contrary to Wescott's assertions, the court did not exceed the bounds of its discretion when it allowed the admission of several videotapes into evidence, *see State v. Rizzo*, 1997 ME 215, ¶ 17, 704 A.2d 339, 344, or when it declined to give an additional jury instruction on witness credibility, *see State v. Ashley*, 666 A.2d 103, 107 (Me. 1995); *State v. Wright*, 662 A.2d 198, 202 (Me. 1995). Further, the court did not err in denying Wescott's motion for a new trial on the basis of prosecutorial misconduct because the arguments of the prosecutor did not ask the jury to draw an inference adverse to Wescott as a result of a missing witness, *see State v. Brewer*, 505

A.2d 774, 777 (Me. 1985), and did not otherwise constitute misconduct, *see State v. Weisbrode*, 653 A.2d 411, 416 (Me. 1995).

Finally, we find no error in the court's treatment of a witness's testimony reciting Wescott's out-of-court invocation of his right to remain silent. The court immediately sustained Wescott's objection (on other grounds) and ordered the jury to disregard the statement. Moreover, Wescott testified at trial, made no objection to the witness's testimony based on his constitutional right to remain silent, and sought no other relief from the court. *See State v. Gordius*, 544 A.2d 309, 311 (Me. 1988) (holding defendant is taken to have acquiesced in corrective measures adopted by the court in absence of request for other relief); *State v. Christianson*, 404 A.2d 999, 1005 n.1 (Me. 1979) ("None of [what happened below] can fairly be said to have raised for the presiding Justice's consideration the issue of the constitutional right . . . now being asserted on appeal."); *State v. Eastman*, 1997 ME 39, ¶ 14, 691 A.2d 179, 183 (noting that "[e]ven constitutional errors must be preserved for appellate review"). If any error existed, it was neither obvious nor "so highly prejudicial it virtually deprive[d] the defendant of a fundamentally fair trial." *State v. Corrieri*, 654 A.2d 419, 422 (Me. 1995).

The entry is:

Judgment affirmed.

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