

STATE OF MAINE

v.

BERT BERRY

Submitted on Briefs January 27, 2011

Decided February 8, 2011

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

MEMORANDUM OF DECISION

Bert Berry appeals from his conviction of one count of unlawful sexual contact (Class B), 17-A M.R.S. § 255-A(1)(E-1) (2010), following a jury trial. Contrary to Berry's contentions, the Superior Court (Kennebec County, *Mills, J.*) did not err in denying his motion for a judgment of acquittal because any determination about the credibility of the victim was properly left to the jury. *See State v. Call*, 322 A.2d 64, 66 (Me. 1974). Further, the court did not abuse its discretion by allowing the State to ask leading questions of the victim and to repeatedly question the victim. *See State v. Cochran*, 2004 ME 138, ¶ 1 n.2, 863 A.2d 263, 264; *State v. Roman*, 622 A.2d 96, 101 (Me. 1993). Similarly, it was not an abuse of discretion for the court to prevent the defense from asking leading questions during Berry's and another defense witness's testimony, because there were other means through which the testimony could have been developed. Lastly, the court did not err or abuse its discretion in denying Berry's motion for a new trial based on newly discovered evidence. *See State v. Cookson*, 2003 ME 136, ¶ 29, 837 A.2d 101, 110 (defendant seeking a new trial based on newly discovered evidence must establish several elements by clear and convincing evidence, including that the evidence could not have been discovered before trial by the exercise of due diligence).

The entry is:

Judgment affirmed.

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Kennebec County Superior Court docket number CR-2008-338
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