

STATE OF MAINE

v.

BERNARD D. HOPKINS

Argued February 8, 2011

Decided March 3, 2011

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

MEMORANDUM OF DECISION

Bernard D. Hopkins appeals from a judgment of conviction entered by the Superior Court (Oxford County, *Clifford, J.*) on two counts of gross sexual assault (Class A), 17-A M.R.S. § 253(1)(B) (2010), following a jury trial. Contrary to Hopkins's contentions (1) the challenged portion of the prosecutor's opening statement did not constitute prosecutorial misconduct; (2) although the challenged portion of the prosecutor's closing argument did amount to misconduct, there is no evidence of bad faith and on this record the statement was harmless given the court's curative instructions, *see State v. Clark*, 2008 ME 136, ¶ 7, 954 A.2d 1066, 1068-69; *State v. Dumas*, 2010 ME 57, ¶ 22, 997 A.2d 760, 766; (3) the court did not abuse its discretion in denying Hopkins's motion for a mistrial following the first instance of asserted misconduct, or in not declaring a mistrial *sua sponte* following the second, *see Dumas*, 2010 ME 57, ¶ 21, 997 A.2d at 766; and (4) the evidence was sufficient to support the jury's verdict, *see State v. Cook*, 2010 ME 81, ¶ 7, 2 A.3d 313, 315-16.

The entry is:

Judgment affirmed.

Attorney for Bernard D. Hopkins:

George A. Hess, Esq. (orally)
PO Box 423
Auburn, Maine 04212-0423

Attorneys for the State of Maine:

Norman R. Croteau, District Attorney
Joseph M. O'Connor, Asst. Dist. Atty. (orally)
Office of the District Attorney
2 Turner Street
Auburn, Maine 04210

Oxford County Superior Court docket number CR-2008-84
FOR CLERK REFERENCE ONLY