

STATE OF MAINE

v.

JOHN FRANK

Submitted on Briefs January 30, 2012
Decided March 6, 2012

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

MEMORANDUM OF DECISION

John Frank appeals from a judgment of conviction of two counts of gross sexual assault (Class A), 17-A M.R.S. § 253(1)(A) (2011), entered in the Unified Criminal Docket (Cumberland County, *Moskowitz, J.*) following a jury trial. Contrary to Frank's arguments, the court did not abuse its discretion by excluding evidence of the victim's past sexual behavior offered pursuant to M.R. Evid. 412(b)(1) because the evidence was remote in time. *See State v. Robinson*, 2002 ME 136, ¶¶ 11-12, 803 A.2d 452; Field & Murray, *Maine Evidence* § 412.2 at 199 (6th ed. 2007). Nor did the court err or abuse its discretion by concluding that Frank failed to meet his burden of establishing a foundation for the admission of reputation evidence pursuant to M.R. Evid. 608(a), *see State v. Tucker*, 2009 ME 38, ¶¶ 15-18, 968 A.2d 543, or by excluding testimony that the victim had asked another witness to change her version of events with regard to a collateral issue, *see* M.R. Evid. 403; *Robinson*, 2002 ME 136, ¶ 11, 803 A.2d 452; *State v. Hoffstadt*, 652 A.2d 93, 96 (Me. 1995). Finally, the court did not abuse its discretion by excluding portions of a video of Frank's interview with police to avoid confusing the jury. *See* M.R. Evid. 106; M.R. Evid. 403; *State v. Woodward*, 617 A.2d 542, 544 (Me. 1992); *Hoffstadt*, 652 A.2d at 96 ("It is the court's duty to see that the jury is not distracted by collateral matters.").

The entry is:

Judgment affirmed.

On the briefs:

Luke Rioux, Esq., Fairfield and Associates, Portland, for appellant John Frank

Stephanie Anderson, District Attorney, and Jennifer F. Ackerman, Asst. Dist. Atty., Prosecutorial District No. Two, Portland, for appellee State of Maine

Cumberland County Unified Criminal Docket docket number CR-2009-4369
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