

STATE OF MAINE

v.

DELBERT C. DAIGLE

Submitted on Briefs July 19, 2012

Decided July 24, 2012

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

MEMORANDUM OF DECISION

Delbert C. Daigle appeals from his conviction by the Superior Court (Aroostook County, *Hunter, J.*) of unlawful sexual touching (Class D), 17-A M.R.S. § 260(1)(C) (2011), following a jury trial. Assuming without deciding that Daigle did not waive the issue, the court did not err in permitting Daigle to initiate a line of questioning of a caseworker with the Department of Health and Human Services concerning the victim’s reputation for veracity, nor did it err in sustaining the State’s objection when Daigle subsequently challenged the foundation for the caseworker’s opinion. *See State v. Gould*, 2012 ME 60, ¶ 16, 43 A.3d 952 (stating the standard of review for obvious error); *State v. Tucker*, 2009 ME 38, ¶¶ 17-18, 968 A.2d 543 (stating that reputation evidence “must embody the collective judgment of the community and must be derived from a group whose size constitutes an indicium of inherent reliability”) (quotation marks omitted); *State v. Rega*, 2005 ME 5, ¶ 17, 863 A.2d 917 (stating that “[w]e do not review alleged errors that resulted from a party’s trial strategy”).

Furthermore, the court did not err concerning the State’s closing argument because it was fairly based on the facts in evidence, *see Gould*, 2012 ME 60, ¶¶ 16-17, 43 A.3d 952 (stating the standard of review and noting that the main issue is “whether the prosecutor’s comment is fairly based on the facts in evidence”) (quotation marks omitted), and the prosecutor did not improperly express personal opinion about the credibility of the witnesses, *see State v.*

Williams, 2012 ME 63, ¶ 46, --- A.3d --- (noting that at trial, attorneys, including prosecutors, are prohibited from expressing a personal opinion concerning the credibility of a witness); *State v. Schmidt*, 2008 ME 151, ¶ 17, 957 A.2d 80 (noting that a prosecutor “may attack credibility by analyzing the evidence and highlighting absurdities or discrepancies in a witness’s testimony” and may “appeal to the jury’s common sense and experience”) (quotation marks omitted).

The entry is:

Judgment affirmed.

On the briefs:

Alan F. Harding, Esq., Hardings Law Office, Presque Isle, for appellant
Delbert Daigle

Todd R. Collins, District Attorney, and April D. Hare, Asst. Dist. Atty.,
Caribou, for appellee State of Maine