

STATE OF MAINE

v.

MYSTERIOUS DELLAROSA

Submitted on Briefs February 20, 2018
Decided February 28, 2019

Panel: ALEXANDER, MEAD, GORMAN, JABAR, and HJELM, JJ.

MEMORANDUM OF DECISION

Mysterious Dellarosa appeals from a judgment of conviction for one count of unlawful sexual touching (Class D), 17-A M.R.S. § 260(1)(A) (2018), entered by the trial court (Cumberland County, *Cole, C.J.*) after a bench trial. Dellarosa contends that the evidence was not sufficient for the court to find beyond a reasonable doubt that the victim did not impliedly acquiesce to the touching. We affirm the judgment.

“When a criminal defendant claims on appeal that the evidence was insufficient to support [her] conviction, we view the evidence in the light most favorable to the State in determining whether the fact-finder could rationally have found each element of the offense beyond a reasonable doubt.” *State v. Jones*, 2012 ME 88, ¶ 7, 46 A.3d 1125; *see also State v. True*, 2017 ME 2, ¶ 19, 153 A.3d 106 (“[The fact-finder] is permitted to draw all reasonable inferences from the evidence and is free to selectively accept or reject inferences from the evidence or reject testimony presented based on the credibility of the witness . . .”). The question of consent is one of fact, not law, and its resolution depends upon the fact-finder’s weighing of the evidence. *Cf. State v. Rosa*, 575 A.2d 727, 728-29 (Me. 1990) (rejecting a defendant’s argument that there

was insufficient evidence to permit the fact-finder to conclude that the victim was compelled to have sexual intercourse with him). Contrary to Dellarosa's contention, there is ample evidence in the record that—when viewed in the light most favorable to the State—rationally supports the court's finding beyond a reasonable doubt each of the required elements of the offense, including that the victim did not impliedly acquiesce to the touching.

The entry is:

Judgment affirmed.

Tina Heather Nadeau, Esq., The Law Office of Tina Heather Nadeau, PLLC,
Portland, for appellant Mysterious Dellarosa

Stephanie Anderson, District Attorney, and Deborah A. Chmielewski, Asst. Dist.
Atty., Prosecutorial District No. 2, Portland, for appellee State of Maine