MAINE SUPREME JUDICIAL COURT

Reporter of Decisions
Decision No. Mem 19-7
Docket No. Cum-18-259

STATE OF MAINE

v.

PHUC VAN NGUYEN

Submitted on Briefs January 17, 2019
Decided January 24, 2019

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

MEMORANDUM OF DECISION

Phuc Van Nguyen appeals from a judgment of conviction of gross sexual assault (Class B), 17-A M.R.S. § 253(2)(D) (2017), entered in the trial court (Cumberland County, *J. French, J.*) after a jury trial. Nguyen contends that (1) the court abused its discretion by admitting the testimony of a Sexual Assault Nurse Examiner regarding the methods of the physical examination of the victim and (2) there was insufficient evidence to convict him of the charge.

Contrary to Nguyen's contentions, the court did not abuse its discretion in allowing the testimony of a Sexual Assault Nurse Examiner regarding the methods used in performing the examination.[1] *See* M.R. Evid. 401, 403; *State v. Hassan*, 2013 ME 98, ¶ 26, 82 A.3d 86 (holding that prejudicial evidence is

[1] Nguyen also contends that the State's attorney's use of the terms "embarrassing," "humiliating," and "invasive" to describe the examination during opening and closing argument were severely prejudicial. Because Nguyen did not object to these statements, this issue is unpreserved and we review for obvious error. M.R.U. Crim. P. 52(b); *State v. Daluz*, 2016 ME 102, ¶ 48, 143 A.3d 800. The State's attorney's statements were unnecessarily evocative, but we cannot say that the court's decision not to stop the statements made during the closing was obvious error.

evidence that "more than simply damage[s]" the opponent's case, and "that is likely to arouse the passion of the fact-finder").

The record reflects that there was sufficient evidence for the jury to find beyond a reasonable doubt that Nguyen committed a gross sexual assault. *See* 17-A M.R.S. § 253(2)(D); *State v. Medeiros*, 2010 ME 47, ¶ 16, 997 A.2d 95 ("[T]he fact-finder is permitted to draw all reasonable inferences from the evidence, and decide the weight to be given to the evidence and the credibility to be afforded to the witnesses."); *State v. Pelletier*, 534 A.2d 970, 972 (Me. 1987) ("The uncorroborated testimony of a victim, if not inherently improbable or incredible or failing the test of common sense, is sufficient to sustain a verdict of guilty of a sexual crime.").

The entry is:

Judgment affirmed.

Joshua Klein-Golden, Esq., Clifford & Golden, PA, Lisbon Falls, for appellant Phuc Van Nguyen

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

Cumberland County Unified Criminal Docket docket number CR-2017-2530
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