

STATE OF MAINE

v.

DAMON N. HOWZE

Submitted on Briefs November 4, 2008

Decided November 13, 2008

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

MEMORANDUM OF DECISION

Damon Howze appeals from a judgment entered in Superior Court (Androscoggin County, *Delahanty, J.*) following a jury verdict of guilty on the charge of gross sexual assault (Class A), 17-A M.R.S. § 253(1)(A) (2007). On appeal, Howze contends that there was insufficient evidence to prove that he used physical force, the threat of physical force, or any combination thereof, to (1) make the victim unable to repel him, or (2) produce a reasonable fear in the victim of death, serious bodily injury, or kidnapping. Howze also argues that 17-A M.R.S. § 253(1)(A) and 17-A M.R.S. § 251(1)(E) (2007) are unconstitutionally vague and violate principles of due process.

A review of the record in the light most favorable to the State demonstrates that the evidence, including circumstantial evidence, is sufficient for a reasonable jury to find beyond a reasonable doubt that the offense of gross sexual assault by compulsion was committed. *See State v. Erskine*, 2006 ME 5, ¶ 9, 889 A.2d 312, 315-16; *State v. Whitten*, 667 A.2d 849, 851 (Me. 1995).

We also conclude that Howze has not met his burden of establishing any constitutional infirmity in 17-A M.R.S. § 253(1)(A) or 17-A M.R.S. § 251(1)(E). See *Kenny v. Dep't of Human Servs.*, 1999 ME 158, ¶ 7, 740 A.2d 560, 563.

The entry is:

Judgment affirmed.

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