

SUPREME COURT OF NORTH DAKOTA

State of North Dakota v. Willie Demar Midell

State v. Midell, 2011 ND 114 · No. 20100286 · Decided June 21, 2011

SUMMARY

The North Dakota Supreme Court reversed the dismissal of a gross sexual imposition charge against Willie Demar Midell and remanded for further proceedings. The court held that, at a preliminary hearing, the victim’s testimony was not implausible or incredible as a matter of law, and that conflicts concerning her awareness and the defendant’s knowledge presented questions for the jury. The court concluded the State had established probable cause under N.D.C.C. § 12.1-20-03(1)(c).

CASE DETAILS

COURT	Supreme Court of North Dakota
WRITING FOR THE COURT	Gerald W. VandeWalle, Chief Justice; Dale V. Sandstrom; Daniel J. Crothers; Mary Muehlen Maring; Carol Ronning Kapsner
JURISDICTION	North Dakota
DECIDED	June 21, 2011
DOCKET	20100286
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The State appealed from a district court order dismissing with prejudice a charge of gross sexual imposition after the court concluded the State had not established probable cause.
STANDARD OF REVIEW	Whether facts found by a district court establish probable cause is a question of law fully reviewable on appeal. Findings of fact in preliminary criminal proceedings are generally upheld when, resolving evidentiary conflicts in favor of affirmance, sufficient competent evidence supports them and the decision is not contrary to the manifest weight of the evidence. At a preliminary hearing, credibility may be assessed only when testimony is implausible or incredible as a matter of law.
PRECEDENTIAL VALUE	Published opinion; precedential under North Dakota law.
PARTIES	State of North Dakota v. Willie Demar Midell

TOPICS

preliminary hearing

probable cause

criminal procedure

appellate procedure

standard of review

PRACTICE AREAS

criminal law

criminal procedure

appellate law

QUESTIONS PRESENTED

1. Whether the State presented sufficient evidence at the preliminary hearing to establish probable cause that Midell committed gross sexual imposition.
2. Whether the district court improperly assessed the victim's credibility by finding her testimony implausible and incredible as a matter of law.
3. Whether the statute required proof that the victim was actually unaware of the sexual act, rather than probable cause that Midell knew or had reasonable cause to believe she was unaware.

HOLDINGS

1. The victim's testimony was not implausible or incredible as a matter of law; any conflict between her testimony and other testimony presented a question of fact for the jury.
2. The State met its minimal burden of establishing probable cause that Midell committed gross sexual imposition.
3. The statute did not require the State to establish that the victim was actually unaware of the sexual act; the relevant probable-cause question was whether Midell knew or had reasonable cause to believe she was unaware.

KEY QUOTATIONS

“The State is not required to prove with absolute certainty or beyond a reasonable doubt that a crime occurred, but rather need only produce sufficient evidence to satisfy the court that a crime has been committed and that the accused is probably guilty.” (¶ 11)

“It is not the purpose of the preliminary hearing to determine the defendant’s guilt or innocence.” (¶ 11)

“S.D.W.’s lack of response indicates Midell had reasonable cause to know she was unaware of the sexual act.” (¶ 17)

“Whether S.D.W. was asleep as it relates to Midell’s knowledge of her awareness is a classic question of fact for the jury that rests almost completely on the credibility of witnesses.” (¶ 18)

FACTUAL BACKGROUND

Willie Demar Midell was charged with gross sexual imposition after S.D.W. testified that she fell asleep on a couch and awoke to Midell having sexual intercourse with her. Midell admitted having sex with S.D.W., although he characterized it as consensual. Evidence also included S.D.W.'s written statement, a sexual assault examination, and forensic evidence detecting Midell's DNA. The district court dismissed the charge after finding

S.D.W.'s testimony that she was unaware intercourse was occurring implausible and incredible as a matter of law.

PROCEDURAL HISTORY

Midell was charged by information with gross sexual imposition. Following a preliminary hearing, the District Court of Cass County dismissed the charge with prejudice, finding the victim's testimony implausible and incredible as a matter of law and insufficient to establish probable cause. The North Dakota Supreme Court reversed and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remanded for further proceedings consistent with the opinion.

CASES CITED

- State v. Smith, 2010 ND 89, ¶ 6, 781 N.W.2d 650
- State v. Blunt, 2008 ND 135, ¶¶ 14-17, 751 N.W.2d 692
- Hunter v. District Court, 543 P.2d 1265, 1268 (Colo. 1975)