

SUPREME COURT OF NEW HAMPSHIRE

State v. Place

152 N.H. 225 (2005) · Decided May 20, 2005

SUMMARY

The New Hampshire Supreme Court affirmed Abbott M. Place’s conviction for simple assault. The court held that the evidence did not support a mutual-combat jury instruction because it showed no express or implied agreement between Place and the victim to fight.

CASE DETAILS

COURT	Supreme Court of New Hampshire
WRITING FOR THE COURT	Galway, J.; Broderick, C.J.; Nadeau, J.; Dalianis, J.; Duggan, J.
JURISDICTION	New Hampshire
DECIDED	May 20, 2005
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed his Superior Court conviction for simple assault, arguing that the trial court improperly refused to give a requested mutual-combat jury instruction.
STANDARD OF REVIEW	The denial of a requested jury instruction is reviewed in the context of the entire charge and all evidence to determine whether the trial court adequately stated the applicable law. The court will reverse only if the failure to give the instruction was an unsustainable exercise of discretion, meaning the ruling was clearly untenable or unreasonable to the prejudice of the defendant.
PRECEDENTIAL VALUE	Published precedential opinion
PARTIES	Abbott M. Place v. State

TOPICS

- jury instructions
- criminal procedure
- self defense

PRACTICE AREAS

- criminal law
- criminal procedure
- jury instructions

QUESTIONS PRESENTED

1. Whether the trial court erred by refusing to instruct the jury on mutual combat under RSA 631:2-a.
2. Whether the evidence that the parties argued, Sherrard slapped Place, and Place responded constituted some evidence that they had agreed, expressly or by implication, to fight.

HOLDINGS

1. A mutual-combat instruction is warranted only when there is some evidence that both parties agreed to participate in a fight, either expressly or by implication. The evidence here did not support a reasonable finding of such an agreement.
2. The court did not reach the constitutional claims because Place failed to establish the evidentiary predicate for a mutual-combat instruction.

KEY QUOTATIONS

“In light of these facts, we conclude that there was no evidence to show an agreement to fight between the defendant and Sherrard, either expressly or by implication.” (152 N.H. at 228)

“We hold, therefore, that the trial court properly declined the request to give an instruction on mutual combat.” (152 N.H. at 228)

FACTUAL BACKGROUND

Place and his wife, Barbara Sherrard, argued at home while Place was highly intoxicated. Sherrard slapped Place and then moved toward the living room to get away from him. As she was leaving, Place hit or shoved her from behind, causing her to fall and suffer bruises and rug burns.

PROCEDURAL HISTORY

A jury in the Superior Court found Place guilty of simple assault. Before the jury was sworn and again at the close of evidence, Place requested a mutual-combat instruction; the trial court gave a self-defense instruction but denied the mutual-combat request. The Supreme Court of New Hampshire affirmed.

DISPOSITION

affirmed

CASES CITED

- State v. Ramos, 149 N.H. 272, 274 (2003)
- State v. Haycock, 146 N.H. 5, 9 (2001)
- State v. DiNapoli, 149 N.H. 514, 520 (2003)
- State v. Lambert, 147 N.H. 295, 296 (2001)
- State v. Besk, 138 N.H. 412, 415 (1994)

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