

SUPREME COURT OF PENNSYLVANIA

Commonwealth v. Kelley

569 Pa. 179 (2002) (Pa. 2002) · Decided July 19, 2002

SUMMARY

The Supreme Court of Pennsylvania held that digital penetration of a victim's vagina cannot support a charge of sexual assault under 18 Pa.C.S. § 3124.1 because it does not constitute sexual intercourse or deviate sexual intercourse as those terms are defined in the Crimes Code. The court reversed the Superior Court's reinstatement of the sexual-assault counts based on digital penetration and remanded for further proceedings.

CASE DETAILS

COURT	Supreme Court of Pennsylvania
WRITING FOR THE COURT	Justice Newman; Chief Justice Zappala; Justice Cappy; Justice Castille; Justice Nigro; Justice Saylor; Justice Eakin
JURISDICTION	Pennsylvania
DECIDED	July 19, 2002
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Kelley appealed the Superior Court's order reversing the trial court's dismissal of sexual-assault charges and remanding for trial. The Supreme Court of Pennsylvania granted review limited to whether evidence of digital penetration could sustain a charge of sexual assault under 18 Pa.C.S. § 3124.1.
STANDARD OF REVIEW	Plenary review because the appeal presented a question of law.
PRECEDENTIAL VALUE	Published precedential opinion of the Supreme Court of Pennsylvania
PARTIES	Bernard Dale Kelley v. Commonwealth of Pennsylvania

TOPICS

- statutory interpretation
- plain meaning rule
- rule of lenity
- criminal procedure
- appellate procedure

PRACTICE AREAS

- Pennsylvania criminal law
- criminal procedure
- statutory interpretation
- sexual offenses
- appellate procedure

QUESTIONS PRESENTED

1. Whether digital penetration of a complainant's vagina constitutes sexual intercourse or deviate sexual intercourse under 18 Pa.C.S. § 3101.
2. Whether evidence of digital penetration can sustain a charge of sexual assault under 18 Pa.C.S. § 3124.1.

HOLDINGS

1. Digital penetration of the vagina is not sexual intercourse or deviate sexual intercourse as those terms are defined in 18 Pa.C.S. § 3101.
2. Digital penetration may not be the basis for a charge of sexual assault under 18 Pa.C.S. § 3124.1.

KEY QUOTATIONS

“Therefore, we hold that digital penetration may not be the basis for a charge of sexual assault.” (555)

“The definitions of sexual intercourse and deviate sexual intercourse include vaginal intercourse, anal intercourse, oral intercourse, and penetration by a foreign object, but not digital penetration of the vagina.” (555)

FACTUAL BACKGROUND

The Commonwealth alleged that Kelley repeatedly sexually abused his stepdaughter over approximately four years. At the habeas corpus hearing, the victim testified that Kelley touched her breasts and vaginal area and, on more than one occasion, inserted his fingers into her vagina. The Supreme Court addressed only whether the alleged digital penetration could support a charge of sexual assault.

PROCEDURAL HISTORY

The Commonwealth charged Kelley with multiple offenses arising from alleged abuse of his stepdaughter. After a habeas corpus hearing, the Court of Common Pleas of Susquehanna County dismissed the sexual-assault counts based on digital penetration, among other dismissed charges. The Commonwealth appealed, and a divided Superior Court reversed and remanded for trial. The Pennsylvania Supreme Court reversed the Superior Court as to the forty-one sexual-assault counts based on digital penetration and remanded for further proceedings.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The case was remanded to the Superior Court for further proceedings consistent with the opinion. The Superior Court's order was reversed insofar as it reinstated the forty-one sexual-assault counts based on digital penetration.

CASES CITED

- Phillips v. A-Best Products Co., 542 Pa. 124, 665 A.2d 1167, 1170 (1995)
- Commonwealth v. Harner, 533 Pa. 14, 617 A.2d 702, 705-06 (1992)
- Commonwealth v. Hagan, 539 Pa. 609, 654 A.2d 541, 544-45 (1995)
- Commonwealth v. Booth, 564 Pa. 228, 766 A.2d 843, 846 (2001)
- Commonwealth v. Besch, 544 Pa. 1, 674 A.2d 655, 660 n. 7 (1996)
- Commonwealth v. Brown, 551 Pa. 465, 711 A.2d 444, 450 (1998)
- Commonwealth v. Brachbill, 520 Pa. 533, 555 A.2d 82, 86 (1989)
- Commonwealth v. Hitchcock, 523 Pa. 248, 565 A.2d 1159 (1989)
- Commonwealth v. Lee, 432 Pa. Super. 414, 638 A.2d 1006, appeal denied, 538 Pa. 643, 647 A.2d 898 (1994)
- Commonwealth v. Westcott, 362 Pa. Super. 176, 523 A.2d 1140, appeal denied, 516 Pa. 640, 533 A.2d 712 (1987)
- Commonwealth v. Rhodes, 510 Pa. 537, 510 A.2d 1217, 1221, 1223 (1986)
- Commonwealth v. Bishop, 742 A.2d 178 (Pa. Super. 1999), appeal denied, 563 Pa. 638, 758 A.2d 1194 (2000)
- Commonwealth v. Berkowitz, 537 Pa. 143, 641 A.2d 1161 (1994)