

SUPREME COURT OF VERMONT

State v. Lamar Scales

2017 VT 6 (2017) · No. 2015-224 · Decided January 20, 2017

SUMMARY

The Vermont Supreme Court reversed Lamar Scales's convictions for three counts of lewd and lascivious conduct with a child. The court held that evidence of Scales's use of an alternate name when arrested in Pennsylvania lacked sufficient probative connection to the charged offenses and was improperly admitted as consciousness-of-guilt evidence. The court also held that the trial court should have given a limiting instruction and that the prosecutor improperly made a golden-rule appeal by asking jurors to place themselves in the complainant's position.

CASE DETAILS

COURT	Supreme Court of Vermont
WRITING FOR THE COURT	Skoglund, J.; Reiber, C.J.; Dooley, J.; Robinson, J.; Eaton, J.
JURISDICTION	Vermont
DECIDED	January 20, 2017
DOCKET	2015-224
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Defendant appealed his convictions for three felony counts of lewd and lascivious conduct with a child, challenging the admission of alleged consciousness-of-guilt evidence, the refusal to give a requested limiting instruction, and prosecutorial misconduct during closing argument.
STANDARD OF REVIEW	The State bore the burden of proving beyond a reasonable doubt that the evidentiary error was harmless. The Court considered whether the jury would have returned a guilty verdict absent the offending evidence, including the evidence's inculpatory nature, cumulative or duplicative character, and prominence at trial.
PRECEDENTIAL VALUE	published
PARTIES	Lamar Scales v. State of Vermont

TOPICS

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QUESTIONS PRESENTED

1. Whether defendant's use of the name Shahid Nur when confronted by a Pennsylvania trooper was admissible as consciousness-of-guilt evidence concerning the Vermont child-sexual-conduct charges.
2. Whether the trial court was required to give defendant's requested limiting instruction stating that consciousness-of-guilt evidence had little probative value and could not alone support a conviction.
3. Whether admission of the consciousness-of-guilt evidence and failure to give the limiting instruction were harmless beyond a reasonable doubt.
4. Whether the prosecutor's closing argument violated the rule against golden-rule arguments by asking jurors to place themselves in the position of the child complainant.

HOLDINGS

1. The trial court erred by admitting defendant's identification of himself as Shahid Nur as consciousness-of-guilt evidence because the conduct was highly ambiguous, remote from the charged offenses, and not shown to be connected to defendant's knowledge of or efforts to evade the Vermont charges.
2. When consciousness-of-guilt evidence is properly admitted, the jury must receive a limiting instruction explaining that the evidence has little probative value, cannot by itself support a conviction, and may be consistent with innocence.
3. The State failed to prove beyond a reasonable doubt that the admission of the consciousness-of-guilt evidence and refusal to give the requested limiting instruction were harmless.
4. The prosecutor's request that jurors put themselves in the position of the child complainant was improper and violated Vermont's rule requiring counsel to confine argument to the evidence and proper inferences rather than appeal to juror sympathy or personal bias.

KEY QUOTATIONS

“The State has the burden to show precisely how the proffered evidence is relevant to the theory advanced, how the issue to which it is addressed is related to the disputed elements in the case, and how the probative value of the evidence is not substantially outweighed by its prejudicial effect.” (¶ 10)

“A golden rule argument—which asks ‘jurors to place themselves in the position of a party’—is ‘universally condemned’ because it encourages the jury to depart from neutrality and to decide the case on the basis of personal interest and bias rather than on evidence.” (¶ 28)

FACTUAL BACKGROUND

K.S. disclosed that defendant, her mother's former boyfriend, had touched her on multiple occasions when she was between four and six years old. Years later, after defendant was charged in Vermont and arrested in

Pennsylvania, he initially identified himself to the arresting trooper as Shahid Nur, a name he had also used. The trial court admitted that identification as consciousness-of-guilt evidence, but the Supreme Court concluded that the conduct was ambiguous, remote from the charged offenses, and unsupported by evidence that defendant knew the Pennsylvania warrant concerned the Vermont charges. During closing argument, the prosecutor also asked jurors to place themselves in the position of the child complainant.

PROCEDURAL HISTORY

The State charged defendant with three counts of lewd and lascivious conduct with a child. After a jury trial in September 2014, defendant was convicted on all three counts. The Superior Court, Bennington Unit, Criminal Division, admitted evidence that defendant identified himself to a Pennsylvania trooper under an alternate name, declined to give the requested limiting instruction concerning that evidence, and allowed the case to proceed despite the prosecutor's closing argument. The Vermont Supreme Court reversed and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The convictions are reversed and the matter is remanded for further proceedings consistent with the opinion.

CASES CITED

- State v. Unwin, 139 Vt. 186, 424 A.2d 251 (1980)
- State v. Winter, 162 Vt. 388, 648 A.2d 624 (1994)
- State v. Giroux, 151 Vt. 361, 561 A.2d 403 (1989)
- State v. Perrillo, 162 Vt. 566, 649 A.2d 1031 (1994)
- State v. Lipka, 174 Vt. 377, 817 A.2d 27 (2002)
- State v. Covell, 146 Vt. 338, 503 A.2d 542 (1985)
- State v. Oscarson, 2004 VT 4, 176 Vt. 176, 845 A.2d 337
- State v. Mumley, 2009 VT 48, 186 Vt. 52, 978 A.2d 6
- State v. Francis, 151 Vt. 296, 561 A.2d 392 (1989)
- State v. Hughes, 158 Vt. 398, 610 A.2d 559 (1992)
- State v. Lapham, 135 Vt. 393, 377 A.2d 249 (1977)
- State v. Rehkop, 2006 VT 72, 180 Vt. 228, 908 A.2d 488 (2006)
- State v. Thompson, 832 A.2d 626 (Conn. 2003)
- State v. Bubar, 146 Vt. 398, 505 A.2d 1197 (1985)
- Duchaine v. Ray, 110 Vt. 313, 6 A.2d 28 (1939)
- State v. Madigan, 2015 VT 59, 199 Vt. 211, 122 A.3d 517
- United States v. Myers, 550 F.2d 1036 (5th Cir. 1977)
- United States v. Robinson, 475 F.2d 376 (D.C. Cir. 1973)

- United States v. Howze, 668 F.2d 322 (7th Cir. 1981)
- United States v. Harrison, 585 F.3d 1155 (9th Cir. 2009)
- Caudle v. District of Columbia, 707 F.3d 354 (D.C. Cir. 2013)

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