

SUPREME COURT OF THE STATE OF DELAWARE

Kent v. State

No. 287, 2020 · No. No. 287, 2020 · Decided September 24, 2021

SUMMARY

The Delaware Supreme Court affirmed Donovan Kent’s convictions for attempted rape, unlawful sexual contact, and continuous sexual abuse of a child. The court rejected his claims concerning the sufficiency of the evidence supporting the three-month element of continuous sexual abuse, jury instructions, amendment of the indictment, and the charged time frames. The court reviewed the unpreserved claims for plain error and found none.

CASE DETAILS

COURT	Supreme Court of the State of Delaware
WRITING FOR THE COURT	James T. Vaughn, Jr.; Chief Justice Seitz; Justice Valihura; Justice Vaughn
JURISDICTION	Delaware
DECIDED	September 24, 2021
DOCKET	No. 287, 2020
DISPOSITION	affirmed
PROCEDURAL POSTURE	Kent appealed jury convictions in the Superior Court of Delaware, challenging five of six convictions on sufficiency-of-the-evidence, jury-instruction, and indictment-amendment grounds.
STANDARD OF REVIEW	Unpreserved sufficiency-of-the-evidence and jury-instruction claims were reviewed for plain error. The decision to amend an indictment was reviewed for abuse of discretion, and constitutional claims were reviewed de novo.
PRECEDENTIAL VALUE	published
PARTIES	Donovan Kent v. State of Delaware

TOPICS

- criminal procedure
- appellate procedure
- jury instructions
- statutory interpretation
- standard of review

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the Superior Court committed plain error by failing sua sponte to enter a judgment of acquittal on the continuous-sexual-abuse conviction because the evidence did not establish three or more acts over a period of at least three months.
2. Whether the jury instructions on the three-month element of continuous sexual abuse were confusing or inconsistent with the indictment.
3. Whether the Superior Court abused its discretion or violated due process or double-jeopardy principles by permitting the State to amend one rape count after the close of evidence to change the charged location from S.A.'s aunt's residence to S.A.'s residence.
4. Whether the Superior Court committed plain error by failing sua sponte to enter judgments of acquittal on the offenses charged at the aunt's residence because the evidence did not establish that the conduct occurred within the indictment's charged date range.

HOLDINGS

1. The Superior Court did not commit plain error by declining to enter a sua sponte judgment of acquittal on the continuous-sexual-abuse count because the evidence could permit a jury to infer that qualifying acts occurred over a period of at least three months.
2. The jury instructions did not constitute plain error because they accurately and clearly instructed the jury that the acts of sexual conduct had to occur over a period of not less than three months.
3. The Superior Court did not abuse its discretion by permitting the State to remove the word "Aunt's" from one rape count and identify that count as occurring at S.A.'s residence.
4. The Superior Court did not commit plain error by failing sua sponte to enter judgments of acquittal on Counts I, II, and III because a rational jury could infer that the conduct at the aunt's residence occurred within the charged period.

KEY QUOTATIONS

"Under the Continuous Sexual Abuse of a Child statute: A person is guilty of continuous sexual abuse of a child when, either residing in the same home with the minor child or having recurring access to the child, the person intentionally engages in 3 or more acts of sexual conduct with a child under the age of 18 years of age over a period of time, not less than 3 months in duration." (7)

"The trial judge's instruction on Continuous Sexual Abuse of a Child mirrored the statutory language. The instruction clearly, expressly and without confusion instructed the jury that in order to find the defendant guilty Continuous Sexual Abuse of a Child it must find that the acts of sexual conduct "occurred over a period of time of not less than three months."" (10)

FACTUAL BACKGROUND

Six-year-old S.A. reported that Kent had sexually abused her while he was living with her family and that the abuse occurred both at her aunt's residence and at her family's residence. The State presented testimony from S.A., her mother, a forensic interviewer, and a forensic nurse examiner, as well as evidence that an examination detected an injury consistent with sexual assault and male DNA on a swab, although the DNA could not be attributed to Kent. Kent was charged with offenses occurring between July 1 and October 11, 2017, and the evidence indicated that Kent lived at the aunt's residence from May through July and later moved into S.A.'s home.

PROCEDURAL HISTORY

Kent was indicted on two counts of second-degree rape, three counts of first-degree unlawful sexual contact, and one count of continuous sexual abuse of a child. After a jury trial, he was convicted on all six counts. The Superior Court denied his motions for judgment of acquittal, permitted the State to amend one rape count to remove the word "Aunt's" from the charged location, and denied the State's request to expand the charged date range. The Delaware Supreme Court found no reversible error and affirmed.

DISPOSITION

affirmed

CASES CITED

- Williamson v. State, 113 A.3d 155, 157 (Del. 2015)
- Williams v. State, 98 A.3d 917, 920 (Del. 2014)
- Monroe v. State, 652 A.2d 560, 563, 568 (Del. 1995)
- Wainwright v. State, 504 A.2d 1096, 1100 (Del. 1986) (en banc)
- Mills v. State, 201 A.3d 1163, 1179 (Del. 2019)
- Cuffee v. State, 2014 WL 5254614, at *2 (Del. Oct. 14, 2014)
- Zebroski v. State, 12 A.3d 1115, 1119 (Del. 2010) (en banc)
- Hall v. State, 788 A.2d 118, 123 (Del. 2001)
- Mitchell v. State, 2014 WL 1202953, at *3 (Del. Mar. 21, 2014)
- O'Neal v. State, 691 A.2d 50, 55 (Del. 1997)