

SUPREME COURT OF RHODE ISLAND

State v. Coningford

901 A.2d 623 (R.I. 2006) · No. No. 2005-168-C.A. · Decided July 3, 2006

SUMMARY

The Rhode Island Supreme Court affirmed James Coningford's conviction for second-degree child molestation sexual assault. The court held that testimony concerning two prior incidents of sexual misconduct was admissible under Rhode Island Rule of Evidence 404(b) to show a common scheme or plan, and that the trial justice properly instructed the jury on the limited purpose of that evidence. The court also held that the defendant was not entitled to a lesser-included instruction on simple assault or battery because the evidence did not create an actual and adequate dispute regarding the sexual-gratification element.

CASE DETAILS

COURT	Supreme Court of Rhode Island
WRITING FOR THE COURT	Justice Suttell; Chief Justice Williams; Justice Goldberg; Justice Flaherty; Justice Robinson
JURISDICTION	Rhode Island
DECIDED	July 3, 2006
DOCKET	No. 2005-168-C.A.
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed from a judgment of conviction in the Superior Court for second-degree child molestation sexual assault, challenging the admission of prior-sexual-misconduct evidence under Rule 404(b) and the refusal to instruct the jury on simple assault or battery as a lesser-included offense.
STANDARD OF REVIEW	Admission of Rule 404(b) evidence is reviewed for abuse of discretion. Refusal to instruct on a lesser-included offense is reviewed de novo. The defendant is entitled to the instruction only when the evidence presents an actual and adequate dispute concerning the element distinguishing the greater and lesser offenses.
PRECEDENTIAL VALUE	Published Rhode Island Supreme Court opinion
PARTIES	James Coningford v. State of Rhode Island

TOPICS

evidence

criminal procedure

standard of review

preservation of error

appellate procedure

PRACTICE AREAS

criminal law

evidence

criminal procedure

appellate practice

QUESTIONS PRESENTED

1. Whether the trial justice abused his discretion by admitting testimony concerning Coningford's prior sexual misconduct involving Joseph and Roger under Rhode Island Rule of Evidence 404(b).
2. Whether the trial justice erred by refusing to instruct the jury on simple assault or battery as a lesser-included offense of second-degree child molestation sexual assault.
3. Whether the trial justice could refuse the lesser-included-offense instruction solely because the defense had not submitted a written requested instruction.

HOLDINGS

1. The trial justice did not abuse his discretion by admitting Joseph's and Roger's testimony because the prior incidents were sufficiently similar and nonremote, relevant and reasonably necessary to prove the sexual-purpose element, and accompanied by limiting instructions restricting the jury's use of the evidence to a proper Rule 404(b) purpose rather than propensity.
2. The trial justice could not refuse a lesser-included-offense instruction solely because the defendant failed to submit a written request; Rule 30 makes written requests permissive except for affirmative defenses, and a timely objection preserves the issue for appeal.
3. Coningford was not entitled to an instruction on simple assault or battery because, although some evidence could have supported the lesser offense, there was no actual and adequate dispute over the distinguishing element: whether the touching was intended for sexual gratification or arousal.

KEY QUOTATIONS

"When prior sexual misconduct evidence is offered concerning the defendant and someone other than the complainant under Rule 404(b), this Court has indicated that those prior instances must be "nonremote" and "similar" to the charged offense to be admissible." (901 A.2d at 627)

"A defendant is entitled to an instruction on a lesser-included offense when such an instruction is justified by the evidence presented at trial." (901 A.2d at 630)

"However, the trial justice is not required to instruct the jury on a lesser-included offense when there is no dispute as to the essential element that distinguishes the lesser and greater offenses." (901 A.2d at 630)

FACTUAL BACKGROUND

The State alleged that Coningford sexually touched Robert, a seven-year-old boy, in Coningford's bedroom after carrying him downstairs and closing the door. The State also presented testimony from Joseph and Roger

concerning earlier incidents in which Coningford allegedly sought to photograph or sexually touch them when they were boys. Coningford did not testify or present witnesses, and the defense maintained that no touching occurred rather than offering evidence that any touching was innocent or nonsexual.

PROCEDURAL HISTORY

The State charged Coningford by criminal information on July 29, 2003. Following a jury trial in June 2004, he was convicted of second-degree child molestation sexual assault and sentenced to thirty years at the Adult Correctional Institutions, with twenty years to serve and ten years suspended with probation. The Superior Court denied his motions for judgment of acquittal and a new trial. The Supreme Court affirmed the judgment and remanded the papers to the Superior Court.

DISPOSITION

affirmed

REMAND INSTRUCTIONS

The judgment is affirmed, and the papers in the case are remanded to the Superior Court.

CASES CITED

- State v. Garcia, 743 A.2d 1038, 1050 (R.I. 2000)
- State v. Mohapatra, 880 A.2d 802, 805-808 (R.I. 2005)
- State v. Quattrocchi, 681 A.2d 879, 886 (R.I. 1996)
- State v. Jalette, 119 R.I. 614, 627, 382 A.2d 526, 533 (1978)
- State v. Brigham, 638 A.2d 1043, 1045 (R.I. 1994)
- State v. Grayhurst, 852 A.2d 491, 504 (R.I. 2004)
- State v. Hopkins, 698 A.2d 183, 185-186 (R.I. 1997)
- State v. Davis, 670 A.2d 786, 789 (R.I. 1996)
- State v. Hallenbeck, 878 A.2d 992, 1007 (R.I. 2005)
- State v. Motyka, 893 A.2d 267, 281, 284-285 (R.I. 2006)
- State v. McGuy, 841 A.2d 1109, 1112 (R.I. 2003)
- State v. Pope, 414 A.2d 781, 788 (R.I. 1980)
- State v. Baker, 20 R.I. 275, 277, 38 A. 653, 654 (1897)
- State v. Messa, 594 A.2d 882, 884-885 (R.I. 1991)
- Proffitt v. Ricci, 463 A.2d 514, 517 (R.I. 1983)
- State v. Haigh, 666 A.2d 803, 804 (R.I. 1995)