

SUPREME COURT OF CONNECTICUT

State v. Devon D., 321 Conn. 656

138 A.3d 849 (2016) · No. SC 19379 · Decided June 14, 2016

SUMMARY

The Connecticut Supreme Court reviewed the reversal of Devon D.'s convictions for sexual assault and risk of injury to a child. The court held that the trial court properly denied severance of three cases because evidence of the alleged sexual misconduct involving each child was cross-admissible under Connecticut law. The opinion also addresses the admission of testimony involving a support dog, although the provided text does not include the complete discussion of that issue.

CASE DETAILS

COURT	Supreme Court of Connecticut
WRITING FOR THE COURT	Zarella, J.; Rogers, C. J.; Palmer, J.; Eveleigh, J.; McDonald, J.; Espinosa, J.; Robinson, J.
JURISDICTION	Connecticut
DECIDED	June 14, 2016
DOCKET	SC 19379
DISPOSITION	reversed
PROCEDURAL POSTURE	The state appealed, following certification, from the Appellate Court's judgment reversing the defendant's criminal convictions and ordering new trials. The Supreme Court considered whether the trial court abused its discretion by joining three prosecutions for trial and by permitting a comfort dog to sit near a child witness while she testified.
STANDARD OF REVIEW	A trial court's ruling on joinder is reviewed for abuse of discretion, with the defendant bearing the burden on appeal to show substantial prejudice that could not be cured by jury instructions. The trial court's decision to permit a comfort dog during testimony is also reviewed for abuse of discretion, while the legal standard and procedures governing that decision receive plenary review.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	State of Connecticut v. Devon D.

TOPICS

criminal procedure

evidence

appellate procedure

standard of review

harmless error

PRACTICE AREAS

criminal procedure

evidence

appellate procedure

sexual assault prosecution

QUESTIONS PRESENTED

1. Whether the trial court abused its discretion by denying the defendant's motion to sever three prosecutions involving different child victims when the evidence in each case was cross-admissible to show a propensity for aberrant and compulsive sexual behavior.
2. Whether the trial court abused its discretion by permitting a comfort dog to sit near child witness C1 during her testimony, and what standard governs that accommodation when the defendant's confrontation rights are not implicated.

HOLDINGS

1. The trial court properly denied severance because the evidence concerning each child was cross-admissible in the other cases to show the defendant's propensity to engage in aberrant and compulsive criminal sexual behavior, and the defendant failed to demonstrate substantial prejudice that could not be cured by instructions.
2. A trial court has inherent discretionary authority, apart from General Statutes § 54-86g, to permit a dog to provide comfort and support to a testifying witness. Before allowing the accommodation, the court must balance the extent to which it will help the witness testify truthfully, completely, and reliably against possible prejudice to the defendant's right to a fair trial.

KEY QUOTATIONS

“Before doing so, the court must balance the extent to which the accommodation will help the witness to testify reliably and completely against any possible prejudice to the defendant’s right to a fair trial.” (321 Conn. 721-22)

“We therefore reverse the judgment of the Appellate Court.” (321 Conn. 724)

FACTUAL BACKGROUND

Devon D. had several children with his former girlfriend, and the children visited him at his residence or his mother's home after the couple separated. The three children alleged that, during unsupervised visitation, he sexually abused them, including by using bathing and a rag as a pretext for digital penetration, touching their genitals, forcing them to watch pornography, and warning them not to disclose the conduct. One child, C1, was anxious about testifying, and a clinical social worker testified that a trained support dog helped her become less anxious, more verbal, and better able to engage and answer questions.

PROCEDURAL HISTORY

After a jury trial, Devon D. was convicted of four counts of first-degree sexual assault and seven counts of risk of injury to a child arising from allegations by three of his biological children. The trial court entered judgments on the guilty verdicts. The Appellate Court reversed and remanded for new trials, concluding that the trial court abused its discretion in joining the cases and allowing one child to testify with a dog nearby. The Supreme Court granted the state's petition for certification, reversed the Appellate Court, and directed it to affirm the trial court's judgments.

DISPOSITION

reversed

REMAND INSTRUCTIONS

The case was remanded to the Appellate Court with direction to render judgment affirming the judgments of the trial court.

CASES CITED

- State v. Devon D., 150 Conn. App. 514, 550, 90 A.3d 383 (2014)
- State v. DeJesus, 288 Conn. 418, 470-77, 953 A.2d 45 (2008)
- State v. LaFleur, 307 Conn. 115, 155-59, 51 A.3d 1048 (2012)
- State v. Payne, 303 Conn. 538, 544-50, 34 A.3d 370 (2012)
- State v. Boscarino, 204 Conn. 714, 722-24, 529 A.2d 1260 (1987)
- State v. Merriam, 264 Conn. 617, 659-61, 835 A.2d 895 (2003)
- State v. Romero, 269 Conn. 481, 497, 501, 849 A.2d 760 (2004)
- State v. Jacobson, 283 Conn. 618, 632-33, 637-38, 930 A.2d 628 (2007)
- State v. McKenzie-Adams, 281 Conn. 486, 530-33, 915 A.2d 822, cert. denied, 552 U.S. 888 (2007)
- State v. Gupta, 297 Conn. 211, 222-33, 224, 226, 228-29, 998 A.2d 1085 (2010)
- State v. Ellis, 270 Conn. 337, 344-49, 358, 852 A.2d 676 (2004)
- State v. James G., 268 Conn. 382, 395, 844 A.2d 810 (2004)
- State v. Smith, 275 Conn. 205, 218, 881 A.2d 160 (2005)
- State v. Jarzbek, 204 Conn. 683, 684, 704-07, 529 A.2d 1245 (1987), cert. denied, 484 U.S. 1061 (1988)
- In re Tayler F., 296 Conn. 524, 537, 995 A.2d 611 (2010)
- State v. Aponte, 249 Conn. 735, 744-45, 738 A.2d 117 (1999)
- State v. Torres, 60 Conn. App. 562, 569-70, 761 A.2d 766 (2000), cert. denied, 255 Conn. 925 (2001)
- State v. McPhee, 58 Conn. App. 501, 506-08, 755 A.2d 893 (2000), cert. denied, 254 Conn. 920 (2000)
- People v. Chenault, 227 Cal. App. 4th 1503, 1517, 1520, 175 Cal. Rptr. 3d 1 (2014), review denied (Cal. Oct. 15, 2014)
- People v. Spence, 212 Cal. App. 4th 478, 517, 151 Cal. Rptr. 3d 374 (2012), review denied (Cal. Apr. 10, 2013)
- People v. Tohom, 109 A.D.3d 253, 266-67, 969 N.Y.S.2d 123 (2013), appeal denied, 22 N.Y.3d 1203 (2014)

- State v. Jacobs, No. 27545 (Ohio Ct. App. Oct. 21, 2015), appeal denied, 145 Ohio St. 3d 1406 (2016)
- State v. Dye, 178 Wash. 2d 541, 553-55, 309 P.3d 1192 (2013)

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