

SUPREME COURT OF VERMONT

State v. Haner

182 Vt. 7 (2007) · No. 2005-272 · Decided June 1, 2007

SUMMARY

The Vermont Supreme Court affirmed the denial of Harold Haner, Sr.'s motion for a new trial based on his brother's purported confessions to the sexual assault underlying Haner's conviction. The court held that judicially granted use immunity was unwarranted and that the brother's statements were inadmissible hearsay because corroborating circumstances did not clearly establish their trustworthiness. The court also concluded that denial of the motion did not violate Haner's due process rights.

CASE DETAILS

COURT	Supreme Court of Vermont
WRITING FOR THE COURT	Johnson, J.; Reiber, C.J.; Dooley, J.; Skoglund, J.; Davenport, Supr. J., specially assigned
JURISDICTION	Vermont
DECIDED	June 1, 2007
DOCKET	2005-272
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed the Vermont District Court's denial of his motion for a new trial based on newly discovered evidence.
STANDARD OF REVIEW	The denial of a Rule 33 motion for a new trial based on newly discovered evidence is reviewed for abuse of discretion. Evidentiary rulings under V.R.E. 804 are reviewed for abuse of discretion resulting in prejudice.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Harold Haner, Sr. v. State of Vermont

TOPICS

- post-conviction relief
- criminal procedure
- hearsay
- right to counsel
- due process

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the trial court had authority or was required to grant judicial use immunity to Haner's brother so that he could testify in support of Haner's motion for a new trial.
2. Whether the brother's confessions were admissible under the statement-against-penal-interest exception in V.R.E. 804(b)(3).
3. Whether exclusion of the confessions and denial of the motion for a new trial violated Haner's due process rights.

HOLDINGS

1. The trial court did not err in refusing to grant judicial use immunity to Haner's brother. Under Vermont law, authority to grant witness immunity rests exclusively within the prosecutor's discretion, subject only to narrow exceptions, and Haner failed even to satisfy the proposed Smith standard because he did not make a convincing showing that the brother's testimony was clearly exculpatory.
2. The trial court properly excluded the brother's confessions as inadmissible hearsay because Haner failed to establish corroborating circumstances clearly indicating their trustworthiness.
3. The trial court did not violate Haner's due process rights by denying the motion for a new trial after refusing immunity and excluding the unreliable confessions.

KEY QUOTATIONS

"In Vermont, the power to grant witness immunity lies exclusively within the discretion of the prosecutor, and the State is under no constitutional obligation to confer such immunity." (¶ 7)

"Where a statement tends to inculcate the declarant, and thereby exculpate the defendant, it is inadmissible unless corroborating circumstances clearly indicate the trustworthiness of the statement." (¶ 15)

FACTUAL BACKGROUND

Haner was convicted of sexually assaulting his daughter, A.H., in 1999. Approximately three years after the alleged offense and after Haner's conviction and appeal, Haner's seventeen-year-old brother confessed to the assault to police and later wrote numerous letters expressing guilt. The brother initially testified at a new-trial hearing but then invoked the Fifth Amendment when asked for details and whether he had committed the offense. The trial court found the confessions unreliable because of inconsistencies with the trial evidence, the delay in reporting, the brother's potential motive and opportunity, his familial relationship with Haner, and other suspicious circumstances.

PROCEDURAL HISTORY

Haner was convicted of aggravated sexual assault in October 2000, and the Vermont Supreme Court affirmed the conviction in November 2001. After Haner's brother confessed to the offense in 2002 and provided related statements, Haner moved for a new trial. Following evidentiary hearings, the trial court denied a request for

judicial use immunity for the brother and excluded the brother's confessions as inadmissible hearsay under V.R.E. 804(b)(3). The Supreme Court of Vermont affirmed.

DISPOSITION

affirmed

CASES CITED

- State v. Palmer, 169 Vt. 639, 640, 740 A.2d 356, 359 (1999) (mem.)
- Irving v. Agency of Transp., 172 Vt. 527, 528, 768 A.2d 1286, 1289 (2001) (mem.)
- State v. Roberts, 154 Vt. 59, 67, 574 A.2d 1248, 1251 (1990)
- Government of the Virgin Islands v. Smith, 615 F.2d 964, 969, 971-72, 974 (3d Cir. 1980)
- United States v. Herman, 589 F.2d 1191, 1204 (3d Cir. 1978), cert. denied, 441 U.S. 913 (1979)
- State v. Begins, 147 Vt. 295, 297-99, 514 A.2d 719, 721-23 (1986)
- State v. Cate, 165 Vt. 404, 414-15, 683 A.2d 1010, 1018 (1996)
- State v. Loveland, 165 Vt. 418, 427, 684 A.2d 272, 278 (1996)
- State v. Drake, 150 Vt. 235, 237, 552 A.2d 780, 781 (1988)
- State v. Gorbea, 169 Vt. 57, 61-62, 726 A.2d 68, 71 (1999)
- United States v. Mackey, 117 F.3d 24, 28 (1st Cir. 1997)
- United States v. Herrera-Medina, 853 F.2d 564, 568 (7th Cir. 1988)
- United States v. Turkish, 623 F.2d 769, 778-79 (2d Cir. 1980), cert. denied, 449 U.S. 1077 (1981)
- United States v. Sampson, 661 F. Supp. 514, 519-21 (3d Cir. 1987)
- State v. Corliss, 168 Vt. 333, 336, 721 A.2d 438, 441 (1998)
- State v. Fisher, 167 Vt. 36, 39, 702 A.2d 41, 43 (1997)
- United States v. Bobo, 994 F.2d 524, 528 (8th Cir. 1993)
- State v. Gallagher, 150 Vt. 341, 347-48, 554 A.2d 221, 225 (1988)
- State v. Haner, No. 2000-577 (Vt. Nov. 21, 2001) (unreported mem.)