

SUPREME JUDICIAL COURT OF MAINE

State of Maine v. Gregory Nisbet

2018 ME 113 (2018) · No. Cum-17-297 · Decided August 9, 2018

SUMMARY

The Maine Supreme Judicial Court affirmed Gregory Nisbet’s conviction for violating a public safety fire rule incorporated from the 2009 National Fire Protection Association Life Safety Code. The court held that the Code’s requirements concerning a window’s “clear opening” and operation without “special effort” were not unconstitutionally vague. It also held that the State’s failure to disclose an enforcement memorandum did not constitute a material Brady violation because the evidence could not have established compliance with the applicable window-size requirements.

CASE DETAILS

COURT	Supreme Judicial Court of Maine
WRITING FOR THE COURT	Jabar, J.; Alexander, J.; Gorman, J.; Hjelm, J.; Humphrey, J.
JURISDICTION	Maine
DECIDED	August 9, 2018
DOCKET	Cum-17-297
DISPOSITION	affirmed
PROCEDURAL POSTURE	Nisbet appealed from a judgment of conviction entered after a bench trial for violating a public safety fire rule, challenging the constitutionality of the applicable Life Safety Code provision, the denial of a new trial based on an alleged Brady violation, and the sufficiency of the evidence.
STANDARD OF REVIEW	The constitutionality of a Maine statute is ordinarily reviewed de novo, but an unpreserved constitutional challenge is reviewed for obvious error. The denial of a motion for a new trial based on an alleged Brady violation is reviewed for abuse of discretion. Factual findings on the motion are reviewed for clear error. Sufficiency of the evidence is reviewed in the light most favorable to the State to determine whether the fact-finder could have found every element beyond a reasonable doubt.
PRECEDENTIAL VALUE	Published Maine Supreme Judicial Court opinion; precedential.
PARTIES	Gregory Nisbet v. State of Maine

TOPICS

criminal procedure

due process

void for vagueness

suppression of evidence

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PRACTICE AREAS

criminal law

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QUESTIONS PRESENTED

1. Whether Life Safety Code section 24.2.2.3.3 is unconstitutionally vague because it uses the terms "clear opening" and "special effort" and because Nisbet allegedly lacked notice of the requirements.
2. Whether the State's failure to disclose a 2013 Fire Marshal memorandum violated Brady v. Maryland and required a new trial.
3. Whether the evidence was sufficient to sustain Nisbet's conviction, including whether the State had to prove that the building was constructed after 1976 and whether the contractor's testimony established that Nisbet knowingly violated the Life Safety Code.

HOLDINGS

1. Life Safety Code section 24.2.2.3.3 is not unconstitutionally vague. The terms "clear opening" and "special effort," construed according to their ordinary meanings and in context, provide ordinary people with sufficient notice of the prohibited conduct and do not invite arbitrary enforcement.
2. Nisbet's lack-of-notice argument does not establish a due process violation because the Life Safety Code provision was not vague and citizens are generally charged with knowledge of the law.
3. The nondisclosure did not require a new trial because, although the memorandum was favorable to Nisbet and had been suppressed, it was not material under Brady.
4. The evidence was sufficient to support Nisbet's conviction. Any error in applying the ordinary Life Safety Code standard rather than the memorandum's more lenient standard was harmless, and the contractor's testimony supported the finding that Nisbet knowingly violated the regulation.

KEY QUOTATIONS

"A Brady violation has three elements: (1) the evidence must be favorable to the defendant because it was exculpatory or impeaching; (2) the evidence must have been suppressed by the State, either willfully or inadvertently; and (3) prejudice must have ensued." (¶ 29)

"Accordingly, the 2013 Memorandum was not material within the meaning of Brady because there is no reasonable probability that the State's production of the 2013 Memorandum and its admission in evidence would have produced a different result for Nisbet in the sense that confidence in the outcome of his trial has been undermined." (¶ 31)

FACTUAL BACKGROUND

Gregory Nisbet owned and managed an apartment building in Portland where a November 1, 2014 fire caused six deaths. The fire began on the front porch and rapidly traveled up the primary stairway; the back stairway was

blocked, and the third-floor windows were too small to serve as an effective secondary means of escape. Before the fire, a contractor had told Nisbet that the third-floor windows were not large enough to be legal secondary exits. The windows did not satisfy either the ordinary Life Safety Code measurements or the more lenient measurements in a 2013 Fire Marshal memorandum.

PROCEDURAL HISTORY

Nisbet was indicted on six manslaughter counts and four public-fire-safety-rule counts, and was later charged by information with an additional Life Safety Code violation. After waiving a jury trial, he was acquitted of the manslaughter and originally charged fire-code counts but convicted of the later-charged violation. The trial court imposed ninety days' imprisonment and a \$1,000 fine, denied Nisbet's motion for a new trial based on the State's nondisclosure of a 2013 Fire Marshal memorandum, and the Supreme Judicial Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Estate of Smith v. Salvesen, 2016 ME 100, ¶ 7 n.2, 143 A.3d 780
- State v. Jeskey, 2016 ME 134, ¶ 2, 146 A.3d 127
- State v. McLaughlin, 2002 ME 55, ¶ 5, 794 A.2d 69
- State v. Greenleaf, 2004 ME 149, ¶ 34, 863 A.2d 877
- State v. Witham, 2005 ME 79, ¶ 7, 876 A.2d 40
- Union Mutual Life Insurance Co. v. Emerson, 345 A.2d 504, 507 (Me. 1975)
- Stewart Title Guaranty Co. v. State Tax Assessor, 2009 ME 8, ¶¶ 40-41, 963 A.2d 169
- State v. Falcone, 2006 ME 90, ¶¶ 6, 10, 23, 902 A.2d 141
- Shapiro Bros. Shoe Co. v. Lewiston-Auburn Shoeworkers Protective Ass'n, 320 A.2d 247, 253-54 (Me. 1974)
- A. B. Small Co. v. American Sugar Refining Co., 267 U.S. 233, 239 (1925)
- Brady v. Maryland, 373 U.S. 83, 87 (1963)
- State v. Twardus, 2013 ME 74, ¶¶ 29, 32, 34-50, 72 A.3d 523
- United States v. Connolly, 504 F.3d 206, 211-12, 219 (1st Cir. 2007)
- Strickler v. Greene, 527 U.S. 263, 281-82 (1999)
- Smith v. Cain, 565 U.S. 73, 75-77 (2012)
- United States v. Bagley, 473 U.S. 667, 682-84 (1985)
- Kyles v. Whitley, 514 U.S. 419, 434-35, 441-54 (1995)
- State v. Silva, 2012 ME 120, ¶ 10, 56 A.3d 1230
- State v. Harnish, 560 A.2d 5, 7 (Me. 1989)
- State v. Tayman, 2008 ME 177, ¶ 4, 960 A.2d 1151
- State v. Larsen, 2013 ME 38, ¶ 23, 65 A.3d 1203
- State v. Cotton, 673 A.2d 1317, 1321 (Me. 1996)

- Laqualia v. Laqualia, 2011 ME 114, ¶ 16 n.6, 30 A.3d 838
- Teel v. Colson, 396 A.2d 529, 534 (Me. 1979)
- Nichols v. Marsden, 483 A.2d 341, 343 (Me. 1984)
- State v. Jobin, 510 A.2d 527, 529-30 (Me. 1986)
- United States v. Shields, 789 F.3d 733, 747 (7th Cir. 2015)
- Matthews v. Ishee, 486 F.3d 883, 891 (6th Cir. 2007)