

SUPREME COURT OF NEW HAMPSHIRE

State v. Lisa A. Tagalakis Fedor

168 N.H. 346 (2015) · No. 2014-0607 · Decided November 10, 2015

SUMMARY

The Supreme Court of New Hampshire affirmed Lisa A. Tagalakis Fedor's conviction for knowingly keeping or maintaining a common nuisance under RSA 318-B:16. The court held that a residence may be used for the illegal selling of controlled drugs even when physical sales occur outside the dwelling, if the residence is used to facilitate the sales. The court also upheld the denial of motions for judgment notwithstanding the verdict and to set aside the verdict.

CASE DETAILS

COURT	Supreme Court of New Hampshire
WRITING FOR THE COURT	Dalianis, C.J.; Conboy, J.; Lynn, J.; Bassett, J.
JURISDICTION	New Hampshire
DECIDED	November 10, 2015
DOCKET	2014-0607
DISPOSITION	affirmed
PROCEDURAL POSTURE	The defendant appealed her jury conviction for knowingly keeping or maintaining a common nuisance under RSA 318-B:16. She challenged the trial court's denial of her motion for judgment notwithstanding the verdict and, alternatively, her motion to set aside the verdict.
STANDARD OF REVIEW	The sufficiency-of-the-evidence issue is reviewed de novo, viewing the evidence and reasonable inferences in the light most favorable to the State and asking whether any rational trier of fact could have found guilt beyond a reasonable doubt. The denial of a motion to set aside a verdict based on the weight of the evidence is reviewed for an unsustainable exercise of discretion.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Lisa A. Tagalakis Fedor v. State of New Hampshire

TOPICS

- criminal procedure
- appellate procedure
- standard of review
- statutory interpretation
- evidence

PRACTICE AREAS

criminal law

appellate procedure

statutory interpretation

evidence

QUESTIONS PRESENTED

1. Whether the evidence was sufficient to prove that the defendant's residence was used for the illegal selling of heroin under RSA 318-B:16 even though the physical exchanges occurred outside the house.
2. Whether the evidence was sufficient to prove that the defendant knowingly kept or maintained a common nuisance without proof that she possessed or controlled the heroin in Doane's locked bedroom.
3. Whether the trial court erred in denying the defendant's motion to set aside the verdict because the verdict was against the weight of the evidence.
4. Whether the defendant's acquittal on conspiracy rendered her common-nuisance conviction inconsistent or against the weight of the evidence.

HOLDINGS

1. No. A dwellinghouse may be a common nuisance when it is used to accomplish the illegal selling of controlled drugs; RSA 318-B:16 does not require that the physical sale occur inside the dwellinghouse.
2. No. RSA 318-B:16 requires knowing maintenance of the place deemed a common nuisance, not actual or constructive possession or control of the drugs.
3. Yes. Viewing the evidence in the light most favorable to the State, a rational trier of fact could find beyond a reasonable doubt that the residence was used for selling heroin and that the defendant knowingly maintained the common nuisance.
4. No. The trial court's denial of the motion to set aside the verdict was supported by the evidence and was not an unsustainable exercise of discretion.
5. No. The acquittal on conspiracy was not inconsistent with the common-nuisance conviction because conspiracy required purposeful conduct, while common nuisance required knowing conduct, and knowingly is a lesser mental state than purposely.

KEY QUOTATIONS

“Under the plain language, the statute does not require that a “sale” take place inside the particular “dwellinghouse” in order for it to be deemed a common nuisance.” (at 349)

“The statute does not require the defendant to have had possession, actual or constructive, of controlled drugs.” (at 350)

““Knowingly” is a lesser mental state than “purposely.”” (at 352)

FACTUAL BACKGROUND

Lisa A. Tagalakis Fedor allowed Robert Doane, an acquaintance of her boyfriend who sold heroin, to move into a spare bedroom in her Manchester home for \$100 per week. She knew Doane sold drugs and permitted him to continue selling after moving in, although she asked him not to sell inside the house. Doane conducted heroin

transactions outside the residence, packaged heroin in his locked bedroom, and kept a stolen handgun inside the home.

PROCEDURAL HISTORY

The defendant was charged with conspiracy to commit the sale of a controlled drug and knowingly keeping or maintaining a common nuisance. After a four-day jury trial, she was convicted of maintaining a common nuisance and acquitted of conspiracy. The Superior Court denied her post-verdict motions, and the New Hampshire Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- State v. Spinale, 156 N.H. 456, 463 (2007)
- State v. Spinale, 156 N.H. 456, 465-66 (2007)
- State v. Lisasuain, 167 N.H. ___, ___, 117 A.3d 1154, 1158 (2015)
- State v. Thompson, 164 N.H. 447, 448 (2012)
- State v. Maxfield, 167 N.H. ___, ___, 117 A.3d 704, 706 (2015)
- State v. Berger, 125 N.H. 83, 87 (1984)
- State v. Hull, 149 N.H. 706, 713 (2003)
- State v. Morabito, 153 N.H. 302, 306 (2006)