

SUPREME COURT OF NORTH CAROLINA

State v. Moore, 366 N.C. 100

726 S.E.2d 168 (2012) · No. No. 524PA11 · Decided June 14, 2012

SUMMARY

The Supreme Court of North Carolina held that admitting testimony concerning the defendant's post-Miranda exercise of his right to remain silent was error. However, because the testimony was brief and not emphasized by the prosecutor, and the evidence of guilt was substantial, the error did not constitute plain error. The court also held that testimony concerning the defendant's pre-arrest failure to elaborate during a voluntary interview was not an impermissible reference to silence, and it affirmed the Court of Appeals.

CASE DETAILS

COURT	Supreme Court of North Carolina
WRITING FOR THE COURT	Parker, Chief Justice
JURISDICTION	North Carolina
DECIDED	June 14, 2012
DOCKET	No. 524PA11
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed his misdemeanor sexual-battery conviction and sentence. The Court of Appeals found no reversible error affecting guilt, vacated the sex-offender-registration order, and remanded for resentencing. The Supreme Court of North Carolina reviewed the claimed plain error arising from testimony about defendant's post-Miranda silence and affirmed the Court of Appeals' decision.
STANDARD OF REVIEW	Because defendant did not object at trial, the evidentiary issue was reviewed for plain error under N.C. R. App. P. 10(a)(4). The defendant bore the burden of showing that the error had a probable impact on the jury's finding of guilt.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Rodney Lee Moore v. State of North Carolina

TOPICS

miranda rights

fifth amendment

criminal procedure

appellate procedure

harmless error

PRACTICE AREAS

criminal procedure

constitutional criminal procedure

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evidence

QUESTIONS PRESENTED

1. Whether admission of a police officer's testimony that defendant exercised his post-Miranda right to remain silent was constitutional error.
2. Whether the unpreserved admission of that testimony constituted plain error requiring a new trial.
3. Whether the officer's testimony concerning defendant's failure to elaborate during a pre-arrest voluntary conversation referred to pre-arrest silence and was erroneously admitted.

HOLDINGS

1. Admission of testimony referring to defendant's post-Miranda exercise of his right to remain silent was error. The State generally may not introduce evidence that a defendant exercised his Fifth Amendment right to remain silent.
2. Although admission of the testimony was error, it was not plain error and did not entitle Moore to a new trial.
3. The testimony concerning Moore's failure to say anything else or elaborate during the pre-arrest conversation was not error because it described the scope of a voluntary conversation, not a refusal to speak from which an adverse inference could arise.

KEY QUOTATIONS

"We agree that admission of the post-Miranda testimony was error, but we disagree that this error amounted to plain error." (726 S.E.2d at 172)

"In sum, the erroneous admission of Officer Murphy's testimony was not plain error." (726 S.E.2d at 175)

FACTUAL BACKGROUND

The State alleged that Moore sexually battered sixteen-year-old T.B. in a bedroom at a relative's home. Moore denied the allegation and claimed that he entered the bedroom only to respond to T.B.'s request for money to buy marijuana. After Moore voluntarily spoke with police before his arrest, Officer Murphy arrested him, administered Miranda warnings, and testified at trial that Moore then refused to discuss the case.

PROCEDURAL HISTORY

Moore was convicted in district court and appealed to superior court, where a jury found him guilty. The Court of Appeals concluded that admission of testimony concerning his post-Miranda silence was not plain error, while vacating the thirty-year sex-offender-registration order and remanding for a new sentencing hearing. The Supreme Court affirmed the Court of Appeals.

DISPOSITION

affirmed

CASES CITED

- State v. Ward, 354 N.C. 231, 250, 555 S.E.2d 251, 264 (2001)
- Doyle v. Ohio, 426 U.S. 610, 619, 96 S. Ct. 2240, 2245, 49 L. Ed. 2d 91, 98 (1976)
- State v. Mendoza, 206 N.C. App. 391, 698 S.E.2d 170 (2010)
- State v. Ladd, 308 N.C. 272, 283, 302 S.E.2d 164, 171 (1983)
- State v. McCall, 286 N.C. 472, 484, 212 S.E.2d 132, 139 (1975)
- State v. Castor, 285 N.C. 286, 204 S.E.2d 848 (1974)
- State v. Lane, 301 N.C. 382, 384, 271 S.E.2d 273, 275 (1980)
- United States v. Patterson, 819 F.2d 1495, 1506 (9th Cir. 1987)
- Payne v. State, 355 S.C. 642, 645, 586 S.E.2d 857, 859 (2003)
- Hoffman v. United States, 341 U.S. 479, 486, 71 S. Ct. 814, 818, 95 L. Ed. 1118, 1124 (1951)
- Grunewald v. United States, 353 U.S. 391, 425, 77 S. Ct. 963, 984-85, 1 L. Ed. 2d 931, 955 (1957)
- Counselman v. Hitchcock, 142 U.S. 547, 562, 12 S. Ct. 195, 197-98, 35 L. Ed. 1110, 1114 (1892)
- Kastigar v. United States, 406 U.S. 441, 92 S. Ct. 1653 (1972)
- Arndstein v. McCarthy, 254 U.S. 71, 72-73, 41 S. Ct. 26, 26-27, 65 L. Ed. 138, 142 (1920)
- State v. Lawrence, 723 S.E.2d 326, 333-34 (N.C. 2012)
- State v. Melvin, 364 N.C. 589, 593-94, 707 S.E.2d 629, 632-33 (2010)
- United States v. McCaskill, 676 F.2d 995, 1002 (4th Cir. 1982)
- State v. Freeland, 316 N.C. 13, 19-20, 340 S.E.2d 35, 38-39 (1986)
- State v. Elmore, 337 N.C. 789, 792-93, 448 S.E.2d 501, 502-03 (1994)
- State v. Alexander, 337 N.C. 182, 196, 446 S.E.2d 83, 91 (1994)
- State v. Black, 308 N.C. 736, 741, 303 S.E.2d 804, 807 (1983)
- Koury v. Follo, 272 N.C. 366, 372-73, 158 S.E.2d 548, 554 (1968)
- Brown v. Brown, 264 N.C. 485, 488, 141 S.E.2d 875, 877 (1965)