

SUPREME COURT OF NEW HAMPSHIRE

State v. Berry

148 N.H. 88 (2002) · Decided July 23, 2002

SUMMARY

The New Hampshire Supreme Court affirmed Paul Berry’s convictions for aggravated felonious sexual assault and misdemeanor sexual assault. The court held that evidence of Berry’s prior physical abuse of the victim was admissible under New Hampshire Rule of Evidence 404(b) to explain her delayed reporting and assess credibility. The court also upheld the exclusion of defense witnesses’ reputation testimony because the witnesses lacked a sufficiently reliable foundation.

CASE DETAILS

COURT	Supreme Court of New Hampshire
WRITING FOR THE COURT	Nadeau, J.; Brock, C.J.; Duggan, J.
JURISDICTION	New Hampshire
DECIDED	July 23, 2002
DISPOSITION	affirmed
PROCEDURAL POSTURE	After a jury trial in the Superior Court, the defendant was convicted of seventeen counts of aggravated felonious sexual assault and four counts of misdemeanor sexual assault. He appealed, challenging the admission of prior physical-abuse evidence and the exclusion of two defense witnesses offering reputation testimony concerning the victim's truthfulness.
STANDARD OF REVIEW	The court reviewed the admission of the other-bad-acts evidence for legal correctness under Rule 404(b), and reviewed the exclusion of reputation evidence under the unsustainable exercise of discretion standard.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Paul Berry v. State

TOPICS

- character evidence
- impeachment
- evidence
- standard of review
- appellate procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether evidence that the defendant physically abused and threatened the victim was admissible under New Hampshire Rule of Evidence 404(b), even though the trial court analyzed it under Rules 401, 402, and 403 rather than expressly applying Rule 404(b).
2. Whether the trial court properly excluded two witnesses' reputation testimony concerning the victim's truthfulness because the defendant failed to establish a reliable foundation under New Hampshire Rule of Evidence 608(a).

HOLDINGS

1. Evidence of the defendant's physical abuse and threats toward the victim was admissible under New Hampshire Rule of Evidence 404(b) for the non-propensity purpose of explaining the victim's fear and delay in reporting the alleged sexual assaults.
2. The trial court properly excluded the two witnesses' testimony about the victim's reputation for truthfulness because the defendant failed to lay a reliable foundation under New Hampshire Rule of Evidence 608(a).

KEY QUOTATIONS

“Evidence of other bad acts is admissible when: (1) it is relevant for a purpose other than to prove the defendant’s character or disposition; (2) there is clear proof that the defendant committed the acts; and (3) the prejudice to the defendant does not substantially outweigh the probative value of the evidence.” (91)

“The party seeking to introduce such evidence must establish “that the reputation witness possesses a sufficient basis of knowledge such that the reputation evidence may be considered to be reliable.”” (93)

FACTUAL BACKGROUND

The defendant adopted Holly, his wife's daughter, and allegedly sexually assaulted her repeatedly from 1983 to 1989. The assaults ended when Holly was ten and the defendant moved out; Holly reported them to police approximately seven years later. The State introduced evidence that the defendant physically abused and threatened Holly during the period of the sexual assaults to explain her fear, lack of resistance, and delay in reporting. The defendant also sought to call two witnesses regarding Holly's reputation for untruthfulness, but their knowledge was based on a small group of children and parents and dated from when Holly was a child.

PROCEDURAL HISTORY

The Superior Court admitted evidence that the defendant had physically abused the victim under New Hampshire Rules of Evidence 401, 402, and 403, gave limiting instructions, and barred two witnesses from testifying about the victim's reputation for truthfulness because their foundation was unreliable. The Supreme Court of New Hampshire affirmed the convictions, holding that the physical-abuse evidence was admissible under Rule 404(b) despite the trial court's failure to expressly conduct a Rule 404(b) analysis and that exclusion of the reputation evidence was within the trial court's discretion.

DISPOSITION

affirmed

CASES CITED

- State v. Cote, 143 N.H. 368, 378 (1999)
- State v. Dukette, 145 N.H. 226, 229 (2000)
- State v. Bassett, 139 N.H. 493, 496 (1995)
- United States v. Powers, 59 F.3d 1460, 1465 (4th Cir. 1995), cert. denied, 516 U.S. 1077 (1996)
- Merzbacher v. State, 697 A.2d 432, 441-42 (Md. 1997)
- State v. Bynum, 433 S.E.2d 778, 780-81 (N.C. App. 1993)
- State v. Wilson, 808 P.2d 754, 757 (Wash. App. 1991)
- State v. Melcher, 140 N.H. 823, 830 (1996)
- State v. Lesnick, 141 N.H. 121, 126 (1996)
- State v. Gordon, 146 N.H. 258, 262 (2001)
- State v. Haley, 141 N.H. 541, 547 (1997)
- State v. Porter, 144 N.H. 96, 98 (1999)
- State v. Lambert, 147 N.H. 295, 296 (2001)
- State v. Vachon, 139 N.H. 540, 543 (1995)
- State v. Mountjoy, 142 N.H. 648, 652 (1998)