

SUPREME COURT OF NEW HAMPSHIRE

State v. Brown, 159 N.H. 544

986 A.2d 547 (2009) · No. No. 2008-517 · Decided December 31, 2009

SUMMARY

The Supreme Court of New Hampshire affirmed Sean D. Brown’s convictions on four counts of selling a narcotic drug. The court held that the charges arising from separate controlled-buy episodes were logically and factually connected under Superior Court Rule 97-A and that joinder was not contrary to the best interests of justice. It also upheld the exclusion of prior-conviction evidence offered to impeach the cooperating witness under New Hampshire Rule of Evidence 609(a)(2).

CASE DETAILS

COURT	Supreme Court of New Hampshire
WRITING FOR THE COURT	Broderick, C.J.; Dalianis, J.; Duggan, J.
JURISDICTION	New Hampshire
DECIDED	December 31, 2009
DOCKET	No. 2008-517
DISPOSITION	affirmed
PROCEDURAL POSTURE	Brown appealed his convictions on four counts of selling a narcotic drug, challenging joinder of the charges and exclusion of a cooperating witness's prior conviction for impeachment.
STANDARD OF REVIEW	The joinder rulings and the evidentiary ruling were reviewed for an unsustainable exercise of discretion. The defendant had to show that the ruling was clearly untenable or unreasonable to the prejudice of his case.
PRECEDENTIAL VALUE	Published precedential opinion of the Supreme Court of New Hampshire
PARTIES	Sean D. Brown v. State of New Hampshire

TOPICS

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

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether four narcotics-sale charges arising from separate criminal episodes were related offenses subject to joinder under Superior Court Rule 97-A(I)(A)(iii).
2. Whether joinder was contrary to the best interests of justice under Superior Court Rule 97-A(I)(B) because it prejudiced Brown by permitting propensity reasoning or by allowing stronger evidence on some charges to bolster weaker charges.
3. Whether the trial court erred under New Hampshire Rule of Evidence 609(a)(2) by excluding the cooperating witness's Massachusetts conviction for witness intimidation when the defendant did not provide documentation identifying the applicable statute or the elements of the offense.

HOLDINGS

1. Offenses arising from separate criminal episodes are related when they are closely connected with respect to the charged conduct and the evidence used to prove the charges, in a manner that does not solely demonstrate the defendant's propensity to commit crime. Relevant factors include temporal and spatial relationship, common victims or participants, similarity of modus operandi, duplication of law regarding the crimes charged, and duplication of witnesses, testimony, and other evidence. The four narcotics-sale charges satisfied that standard.
2. Joinder of the four related offenses was not contrary to the best interests of justice. The defendant failed to show that the trial court's determination was clearly untenable or unreasonable to his prejudice.
3. The trial court properly excluded the cooperating witness's prior conviction because the defendant did not provide sufficient documentation from which the court could readily determine that the elements of the Massachusetts offense required proof or admission of dishonesty or false statement.

KEY QUOTATIONS

"We hold that whether offenses that occur during separate criminal episodes are "logically and factually connected in a manner that does not solely demonstrate that the accused has a propensity to engage in criminal conduct" is largely determined by the close relationship among the offenses with respect to both the underlying charged conduct and the evidence to be used to prove the charges." (553-554)

"We conclude that the document's generic reference to witness intimidation was insufficient for it to be "readily . . . determined that establishing the elements of the crime required proof or admission of an act of dishonesty or false statement by the witness" as required under Rule 609(a)(2)." (559)

FACTUAL BACKGROUND

Police arranged four controlled purchases of narcotics from Brown through the same cooperating individual on January 21, January 24, January 28, and February 9, 2005. The purchases occurred at locations within approximately one mile of one another, generally involved Brown's gray Mazda or Maxima with New York plates, and used the same cooperating individual and principally the same police officers. The first two

transactions were subject to video surveillance, while the cooperating individual wore a wire during the latter two; the evidence identifying Brown as the seller varied among the transactions.

PROCEDURAL HISTORY

The trial court originally joined the four charges and the defendant was convicted. The New Hampshire Supreme Court reversed the convictions for improper joinder and remanded. Before retrial, Superior Court Rule 97-A became effective; the trial court again joined the charges, excluded evidence of the cooperating witness's prior conviction under New Hampshire Rule of Evidence 609(a)(2), and the jury again convicted Brown on all four counts. The Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- State v. Brown, 156 N.H. 440, 938 A.2d 909 (2007)
- State v. Ramos, 149 N.H. 118, 818 A.2d 1228 (2003)
- State v. McIntyre, 151 N.H. 465, 861 A.2d 767 (2004)
- State v. Schonarth, 152 N.H. 560, 883 A.2d 305 (2005)
- Petition of State of N.H. (State v. San Giovanni), 154 N.H. 671, 919 A.2d 762 (2007)
- State v. Abram, 153 N.H. 619, 903 A.2d 1042 (2006)
- United States v. Hirschfeld, 964 F.2d 318, 323 (4th Cir. 1992)
- United States v. Ziegler, 2007 WL 2022179 (D.S.D. 2007)
- United States v. Edgar, 82 F.3d 499, 503 (1st Cir. 1996)
- State v. Lewis, 241 Neb. 334, 488 N.W.2d 518, 525 (1992)
- State v. Hall, 103 Wis. 2d 125, 307 N.W.2d 289, 295 (1981)
- Smithers v. State, 826 So. 2d 916, 924 (Fla. 2002)
- Ford v. State, 506 N.E.2d 835, 837 (Ind. Ct. App. 1987)
- State v. Nelson, 357 So. 2d 1100, 1102-03 (La. 1978)
- State v. Costello, 159 N.H. 113, 118, 977 A.2d 454 (2009)
- State v. Mason, 150 N.H. 53, 61-62, 834 A.2d 339 (2003)
- Alcala v. Superior Court, 43 Cal. 4th 1205, 78 Cal. Rptr. 3d 272, 185 P.3d 708, 720 (2008)
- State v. Hebert, 158 N.H. 306, 311, 965 A.2d 1059 (2009)
- State v. Bassett, 139 N.H. 493, 497, 659 A.2d 891 (1995)