

SUPREME COURT OF NEW HAMPSHIRE

State of New Hampshire v. Armando Lisasuain

167 N.H. 719 (2015) · No. 2014-071 · Decided June 5, 2015

SUMMARY

The Supreme Court of New Hampshire affirmed Armando Lisasuain’s convictions, including two counts of aggravated felonious sexual assault. The court held that the victim’s nonparticipation and failure to respond, considered in the totality of the circumstances, constituted sufficient evidence that she indicated a lack of freely given consent under RSA 632-A:2, I(m). The court also upheld the trial court’s handling of in camera record review and exclusion of evidence concerning the defendant’s alleged lack of admissions during a police interview.

CASE DETAILS

COURT	Supreme Court of New Hampshire
WRITING FOR THE COURT	Conboy, J.; Dalianis, C.J.; Hicks, J.; Lynn, J.; Bassett, J.
JURISDICTION	New Hampshire
DECIDED	June 5, 2015
DOCKET	2014-071
DISPOSITION	affirmed
PROCEDURAL POSTURE	Following a jury trial and convictions in Superior Court, the defendant appealed, challenging the sufficiency of the evidence of lack of consent, the scope of in camera record disclosure, and the exclusion of proposed cross-examination evidence concerning his police interview.
STANDARD OF REVIEW	Sufficiency of the evidence is reviewed de novo, viewing the evidence and reasonable inferences in the light most favorable to the State and upholding the verdict unless no rational trier of fact could have found guilt beyond a reasonable doubt. Statutory interpretation is reviewed de novo. Decisions concerning withholding records after in camera review and the admissibility of evidence are reviewed for an unsustainable exercise of discretion.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Armando Lisasuain v. State of New Hampshire

TOPICS

statutory interpretation

criminal procedure

hearsay

evidence

plain meaning rule

PRACTICE AREAS

criminal law

criminal procedure

evidence

sexual assault

QUESTIONS PRESENTED

1. Whether the evidence was sufficient for a rational jury to find beyond a reasonable doubt that the victim indicated by conduct that she did not freely consent to the sexual acts under RSA 632-A:2, I(m).
2. Whether the trial court unsustainably exercised its discretion by withholding additional records after conducting an in camera review.
3. Whether the trial court erred by excluding evidence concerning the lack of admissions and the nature and duration of the defendant's police interview as inadmissible hearsay.

HOLDINGS

1. A victim's complete nonparticipation and failure to respond to sexual acts may constitute conduct indicating that consent was not freely given. Considering the totality of the circumstances, the evidence was sufficient for a rational trier of fact to find lack of consent beyond a reasonable doubt.
2. The trial court did not unsustainably exercise its discretion in determining that the withheld records should not be disclosed.
3. The trial court properly excluded evidence of the defendant's lack of admissions as inadmissible hearsay.

KEY QUOTATIONS

“After reviewing the record we hold that, taking into account the totality of the circumstances, the evidence was sufficient for a rational trier of fact to have found beyond a reasonable doubt that the victim’s conduct, in failing to respond in any way, indicated that she did not consent to the sexual assaults by the defendant.”

“Because the relevance of the evidence proffered by the defendant was dependent upon its truth – that the defendant’s nonverbal conduct was intended as an assertion by him that he did not commit the sexual assaults – we hold that the trial court did not err in excluding evidence of the lack of admissions as inadmissible hearsay.”

FACTUAL BACKGROUND

The defendant, a 46-year-old family friend, sexually assaulted a 14-year-old victim in her home by performing cunnilingus and digitally penetrating her. The victim did not verbally or physically participate, assist the defendant, or otherwise respond to the sexual acts. She later disclosed the assaults after being placed in a shelter, and the defendant was charged and convicted of aggravated felonious sexual assault.

PROCEDURAL HISTORY

The defendant was convicted of, among other offenses, two counts of aggravated felonious sexual assault under RSA 632-A:2, I(m). The Superior Court denied his motion to dismiss and later denied his motion for judgment

notwithstanding the verdict. It also withheld portions of records after in camera review and excluded evidence concerning the lack of admissions during the defendant's police interview. The Supreme Court of New Hampshire affirmed.

DISPOSITION

affirmed

CASES CITED

- State v. Kay, 162 N.H. 237, 243
- State v. Graham, 142 N.H. 357, 360
- State v. Thompson, 164 N.H. 447, 448
- State v. Alwardt, 164 N.H. 52, 58
- Desclos v. S. N.H. Med. Ctr., 153 N.H. 607, 610
- State v. King, 162 N.H. 629, 631
- State v. Munroe, 161 N.H. 618, 626

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