

SUPREME COURT OF NEW HAMPSHIRE

State v. Ainsworth

151 N.H. 691 (2005) · Decided February 4, 2005

SUMMARY

The New Hampshire Supreme Court affirmed Douglas Ainsworth’s convictions for attempted murder, reckless conduct, and attempted first-degree assault. The court held that the self-defense jury-instruction issue was unpreserved, the defendant failed to establish probable cause for in camera review of police personnel files, the 9-1-1 tape was properly admitted, and the prosecutor’s closing argument did not warrant a mistrial.

CASE DETAILS

COURT	Supreme Court of New Hampshire
WRITING FOR THE COURT	Galway, J.; Broderick, C.J.; Nadeau, J.; Dalianis, J.; Duggan, J.
JURISDICTION	New Hampshire
DECIDED	February 4, 2005
DISPOSITION	affirmed
PROCEDURAL POSTURE	A criminal defendant appealed jury convictions for two counts of attempted murder, reckless conduct, and attempted first-degree assault, challenging the jury instructions, denial of access to police personnel files, admission of a 9-1-1 recording, and denial of a mistrial.
STANDARD OF REVIEW	Jury-instruction issues must be preserved by contemporaneous objection. Discovery-management decisions, evidentiary rulings under New Hampshire Rule of Evidence 403, and rulings on motions for mistrial are reviewed for an unsustainable exercise of discretion; reversal requires a showing that the ruling was clearly untenable or unreasonable and prejudicial.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Douglas Ainsworth v. State of New Hampshire

TOPICS

- criminal procedure
- jury instructions
- self defense
- evidence
- curative instructions

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the trial court was required to give a self-defense jury instruction when the defendant did not contemporaneously object to the instructions and affirmatively indicated that they were satisfactory.
2. Whether the trial court erred in denying access to police officers' personnel files where the defendant made only a general assertion that the files might bear on his self-defense claim.
3. Whether the trial court abused its discretion under New Hampshire Rule of Evidence 403 by admitting the victim's 9-1-1 recording.
4. Whether the prosecutor's closing argument referring to "three terrified children" required a curative instruction or mistrial.

HOLDINGS

1. A jury-instruction issue is not preserved for appellate review when the defendant fails to contemporaneously object and instead indicates satisfaction with the instructions.
2. A defendant seeking in-camera review of police personnel files under RSA 105:13-b must establish a reasonable probability, or realistic and substantial likelihood, that the files contain material and relevant evidence helpful to the defense; a general assertion that the files might bear on the defense is insufficient.
3. The 9-1-1 recording was admissible because its probative value, including its support for an inference that the defendant acted purposely, was not substantially outweighed by the danger of unfair prejudice.
4. The prosecutor's reference to "three terrified children" was a permissible response to defense counsel's closing argument because it was supported by trial testimony and did not require a curative instruction or mistrial.

KEY QUOTATIONS

"A contemporaneous objection is necessary to preserve a jury instruction issue for appellate review." (151 N.H. at 694)

"In order to trigger in camera review of the officers' personnel files, the defendant must establish a reasonable probability that the files contain information that is material and relevant to his defense." (151 N.H. at 695)

"The prosecution, with its burden of establishing guilt beyond a reasonable doubt, has the right to prove every essential element of the crime by the most convincing evidence it is able to produce." (151 N.H. at 697)

FACTUAL BACKGROUND

In September 2002, Douglas Ainsworth went to the home of his former wife, Kerrell Betourne, and fired a shotgun through a window. He then went to his mother's home and fired at Officers Jeff Buskey and William Wright. Ainsworth claimed he might rely on self-defense, sought review of the officers' personnel files,

challenged admission of Betourne's 9-1-1 call, and moved for a mistrial after the prosecutor referred in closing argument to "three terrified children."

PROCEDURAL HISTORY

Ainsworth was tried and convicted in the New Hampshire Superior Court. Before trial, the court denied his request for police personnel files after finding no probable cause for production. At trial, the court gave no self-defense instruction, admitted the 9-1-1 recording over objection, and denied a requested curative instruction and mistrial based on the State's closing argument. The Supreme Court of New Hampshire affirmed.

DISPOSITION

affirmed

CASES CITED

- Transmedia Restaurant Co. v. Devereaux, 149 N.H. 454, 457 (2003)
- State v. Amirault, 149 N.H. 541, 543-544 (2003)
- State v. Gagne, 136 N.H. 101, 105 (1992)
- State v. Gaffney, 147 N.H. 550, 556-557 (2002)
- State v. Graf, 143 N.H. 294, 296 (1999)
- State v. Jordan, 148 N.H. 115, 117-118 (2002)
- State v. Cochran, 132 N.H. 670, 673 (1990)
- State v. Morrill, 151 N.H. 331, 333 (2004)
- State v. Wood, 150 N.H. 233, 235 (2003)
- State v. Kerwin, 144 N.H. 357, 359 (1999)
- State v. Pandolfi, 145 N.H. 508, 512 (2000)
- State v. Ellsworth, 151 N.H. 152, 158 (2004)
- Walton v. City of Manchester, 140 N.H. 403, 408 (1995)
- State v. Laurent, 144 N.H. 517, 520 (1999)
- State v. Smith, 149 N.H. 693, 697 (2003)
- State v. Hall, 148 N.H. 671, 675 (2002)
- Lambert, 147 N.H. at 296