

SUPREME COURT OF CONNECTICUT

State v. MARK R., 300 Conn. 590

17 A.3d 1 (2011) · No. No. 18593 · Decided April 19, 2011

SUMMARY

The Connecticut Supreme Court affirmed Mark R.'s convictions for risk of injury to a child and fourth-degree sexual assault. The court held that statements made to a pastor during an ad hoc confrontation were not protected by the clergy-penitent privilege and that a professional counselor's disclosure of suspected child abuse permitted subsequent testimony in the criminal prosecution. The court also rejected the defendant's claims concerning limits on cross-examination, disclosure of the victim's records, and the reasonable-doubt instruction.

CASE DETAILS

COURT	Supreme Court of Connecticut
WRITING FOR THE COURT	Rogers, C.J.; Norcott, J.; Palmer, J.; Zarella, J.; McLachlan, J.; Vertefeuille, J.
JURISDICTION	Connecticut
DECIDED	April 19, 2011
DOCKET	No. 18593
DISPOSITION	affirmed
PROCEDURAL POSTURE	The defendant appealed from a judgment entered after a jury convicted him of risk of injury to a child and fourth-degree sexual assault. The appeal was transferred from the Appellate Court to the Supreme Court of Connecticut.
STANDARD OF REVIEW	The scope of an evidentiary privilege is reviewed de novo; application of the privilege is a mixed question of law and fact, with factual findings reviewed for clear error and legal conclusions reviewed plenary. Statutory interpretation is reviewed de novo. Restrictions on cross-examination are reviewed under a case- and fact-specific balancing approach, subject to the trial court's broad discretion. Review of confidential records after in camera inspection is for abuse of discretion. Constitutional instructional claims are reviewed in the context of the entire charge.
PRECEDENTIAL VALUE	Published Connecticut Supreme Court opinion; precedential

TOPICS

privilege

sixth amendment

reasonable doubt

evidence

statutory interpretation

PRACTICE AREAS

criminal law

criminal procedure

evidence

constitutional law

statutory interpretation

QUESTIONS PRESENTED

1. Whether the defendant's inculpatory statements to a pastor during an ad hoc confrontation were protected by the clergy-penitent privilege.
2. Whether the professional counselor privilege barred disclosure of the defendant's counseling communications and the counselor's testimony in a subsequent child-abuse prosecution after the counselor made a mandatory report.
3. Whether the trial court's restrictions on cross-examination of the victim and her mother violated the defendant's Sixth Amendment rights to confrontation and to present a defense.
4. Whether the trial court abused its discretion by denying the defendant access to the victim's counseling and educational records after an in camera review.
5. Whether the jury instructions defining reasonable doubt improperly diluted the state's burden of proof.

HOLDINGS

1. The defendant's statements to the pastor were not protected by the clergy-penitent privilege because he lacked a reasonable expectation that the statements would remain confidential.
2. The child-abuse exception to Connecticut's professional counselor privilege permits disclosure of the client's communications and related testimony in a subsequent criminal prosecution; it is not limited to the initial mandatory report to child-protection authorities.
3. The trial court did not violate the defendant's Sixth Amendment rights by restricting particular lines of cross-examination because the defense had an adequate opportunity to expose the victim's and her mother's alleged motives to fabricate.
4. The trial court did not abuse its discretion by denying the defendant access to the victim's counseling and educational records after an in camera review found no exculpatory, impeachment, or truthfulness-related material.
5. The reasonable-doubt instruction did not dilute the state's burden of proof or violate due process because, considered in the context of the entire charge, it correctly conveyed the beyond-a-reasonable-doubt standard.

KEY QUOTATIONS

“We therefore conclude that the trial court properly determined that, because the defendant lacked a reasonable expectation that his inculpatory statements would be held in confidence, he failed to establish that the clergy-penitent privilege protected those statements from disclosure.” (300 Conn. 607-08)

“Taken together, these provisions demonstrate a clear legislative intent that any mandatory report of child sexual abuse be channeled simultaneously into: (1) a child protection investigation, spearheaded by the department, to prevent future abuse; and (2) a criminal investigation, spearheaded by local law enforcement, to address past abuse.” (300 Conn. 613-14)

FACTUAL BACKGROUND

The defendant lived with his wife, the victim, and the victim's two adopted sisters. While watching a movie with the fourteen-year-old victim, the defendant touched her breasts and genital area and made sexual comments. The victim later reported the incident to her mother, and during a meeting arranged with the family's pastor, the defendant admitted that he had touched the victim inappropriately. The defendant subsequently disclosed to a professional counselor that he had placed his hand on the victim's breast; the counselor reported suspected child abuse to the Department of Children and Families.

PROCEDURAL HISTORY

A jury found the defendant guilty of one count of risk of injury to a child and one count of sexual assault in the fourth degree. The trial court imposed a total effective sentence of twenty years incarceration, execution suspended after seven years, followed by fifteen years of probation. The defendant challenged evidentiary privilege rulings, limits on cross-examination, denial of access to the victim's records after in camera review, and the reasonable-doubt instruction. The Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Hutchinson v. Farm Family Casualty Ins. Co., 273 Conn. 33, 38, 867 A.2d 1 (2005)
- State v. Ross, 269 Conn. 213, 291, 849 A.2d 648 (2004)
- State v. Christian, 267 Conn. 710, 732-33, 738, 841 A.2d 1158 (2004)
- Cox v. Miller, 296 F.3d 89, 102 (2d Cir. 2002)
- State v. Rizzo, 266 Conn. 171, 283, 833 A.2d 363 (2003)
- Webster Bank v. Oakley, 265 Conn. 539, 554 n.14, 830 A.2d 139 (2003), cert. denied, 541 U.S. 903, 124 S. Ct. 1603, 158 L. Ed. 2d 244 (2004)
- PSE Consulting, Inc. v. Frank Mercede & Sons, Inc., 267 Conn. 279, 330, 838 A.2d 135 (2004)
- State v. Hanna, 150 Conn. 457, 466, 191 A.2d 124 (1963)
- Olson v. Accessory Controls & Equipment Corp., 254 Conn. 145, 157, 757 A.2d 14 (2000)
- State v. Orr, 291 Conn. 642, 648-57, 969 A.2d 750 (2009)

- State v. Erickson, 297 Conn. 164, 188-89, 997 A.2d 480 (2010)
- Delaware v. Van Arsdall, 475 U.S. 673, 679-80, 106 S. Ct. 1431, 89 L. Ed. 2d 674 (1986)
- Davis v. Alaska, 415 U.S. 308, 316, 318, 94 S. Ct. 1105, 39 L. Ed. 2d 674 (1974)
- Redmond v. Kingston, 240 F.3d 590, 592 (7th Cir. 2001)
- State v. Colton, 227 Conn. 231, 250, 630 A.2d 577 (1993)
- State v. Corley, 177 Conn. 243, 247, 413 A.2d 826 (1979)
- Olden v. Kentucky, 488 U.S. 227, 232, 109 S. Ct. 480, 102 L. Ed. 2d 100 (1988)
- Barresi v. Maloney, 273 F. Supp. 2d 144, 152-54 (D. Mass. 2003)
- State v. Provost, 251 Conn. 252, 256-57, 741 A.2d 295 (1999), cert. denied, 531 U.S. 822, 121 S. Ct. 65, 148 L. Ed. 2d 30 (2000)
- State v. Barnes, 232 Conn. 740, 749-50, 657 A.2d 611 (1995)
- State v. Bova, 240 Conn. 210, 226, 690 A.2d 1370 (1997)
- State v. Williams, 81 Conn. App. 1, 22-25, 838 A.2d 214 (2004), cert. denied, 268 Conn. 904, 845 A.2d 409 (2004)
- United States v. Derr, 990 F.2d 1330, 1334 (D.C. Cir. 1993), overruled in part on other grounds by United States v. Bailey, 36 F.3d 106, 118 (D.C. Cir. 1994)
- State v. Slimskey, 257 Conn. 842, 845-46, 779 A.2d 723 (2001)
- State v. King, 216 Conn. 585, 599-600, 583 A.2d 896 (1990)
- State v. Pratt, 235 Conn. 595, 608, 669 A.2d 562 (1995)
- State v. Bowman, 289 Conn. 809, 811 n.2, 960 A.2d 1027 (2008)
- United States v. Moss, 63 M.J. 233, 237 (C.A.A.F. 2006)
- State v. Baker, 390 S.C. 56, 65-66, 700 S.E.2d 440 (Ct. App. 2010), rehearing denied

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