

SUPREME COURT OF NEW HAMPSHIRE

State of New Hampshire v. Roger Dana

Dana · No. Coos No. 2019-0628 · Decided March 10, 2022

SUMMARY

The Supreme Court of New Hampshire affirmed Roger Dana’s conviction for first degree murder and sentence of life without parole. The court held that admitting the grandmother’s statements as excited utterances was erroneous but harmless beyond a reasonable doubt, and that any error in admitting an investigator’s testimony was also harmless. The court further held that the trial court acted within its discretion by declining to give a false-exculpatory-statement instruction concerning other witnesses.

CASE DETAILS

COURT	Supreme Court of New Hampshire
WRITING FOR THE COURT	BASSETT, J.; HICKS, J.; HANTZ MARCONI, J.; DONOVAN, J.
JURISDICTION	New Hampshire
DECIDED	March 10, 2022
DOCKET	Coos No. 2019-0628
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed his jury conviction in the Superior Court for first degree murder, challenging the admission of two categories of hearsay evidence and the trial court’s refusal to give his proposed expanded false-exculpatory-statement jury instruction.
STANDARD OF REVIEW	Evidentiary rulings are reviewed for an unsustainable exercise of discretion; the defendant must show that the ruling was clearly untenable or unreasonable to his prejudice. The denial of a requested jury instruction is reviewed in the context of the entire charge and evidence, and is reversed only when the instructions fail to adequately state the relevant law. Whether to instruct on a party’s theory of the case is within the trial court’s sound discretion. The State bears the burden of proving evidentiary error harmless beyond a reasonable doubt.
PRECEDENTIAL VALUE	published
PARTIES	Roger Dana v. The State of New Hampshire

TOPICS

hearsay

evidence

jury instructions

consciousness of guilt instructions

criminal procedure

PRACTICE AREAS

criminal law

criminal procedure

evidence

QUESTIONS PRESENTED

1. Whether the trial court abused its discretion by admitting the grandmother's statements as excited utterances despite the twenty-four-hour delay and intervening activities.
2. Whether the admission of the lead investigator's testimony that other individuals had been interviewed to account for their whereabouts constituted reversible hearsay error.
3. Whether the trial court erred by refusing to expand the false-exculpatory-statement jury instruction to statements allegedly made by witnesses other than the defendant.

HOLDINGS

1. The trial court unsustainably exercised its discretion by admitting the grandmother's statements as excited utterances because the twenty-four-hour delay and intervening activities provided too much time for reflective thought and showed that the effect of the startling event had subsided.
2. The error in admitting the grandmother's statements was harmless beyond a reasonable doubt and did not require reversal.
3. The court did not decide whether the investigator's testimony was hearsay because any possible error was harmless beyond a reasonable doubt.
4. The trial court acted within its discretion by declining to instruct the jury that it could consider false exculpatory statements allegedly made by witnesses other than the defendant.

KEY QUOTATIONS

"Therefore, we hold it was an unsustainable exercise of discretion for the trial court to admit the grandmother's statements as excited utterances." (5)

"Given this evidence, the grandmother's statements were merely cumulative and inconsequential." (7)

"Therefore, viewing the jury instructions as a whole, we cannot conclude that the jury was incapable of evaluating the defendant's theory of the case absent a false-exculpatory-statement instruction that pertained to individuals other than him." (9)

"For the foregoing reasons, we affirm the defendant's conviction for first degree murder." (10)

FACTUAL BACKGROUND

The victim, the defendant's two-and-a-half-year-old daughter, was healthy and uninjured when the victim's mother left the apartment, and the defendant was thereafter alone with the victim. The victim was later found severely beaten and unresponsive, and medical evidence established that her injuries were inconsistent with a

fall from a bunk bed and that she died from blunt-impact injuries to the head and abdomen. The defendant gave inconsistent accounts of whether the victim fell from the top or bottom bunk, and physical evidence linked the victim's blood to items in the apartment. The defendant's grandmother testified that the defendant had murdered and beaten the victim during a phone call approximately twenty-four hours after the death.

PROCEDURAL HISTORY

Following the victim's death, the defendant was arrested and indicted for first degree murder under RSA 630:1-a, I(b)(1). After a jury trial in the Superior Court, the defendant was convicted and sentenced to life without the possibility of parole. The Supreme Court of New Hampshire affirmed the conviction.

DISPOSITION

affirmed

CASES CITED

- State v. Letendre, 161 N.H. 370, 372-73 (2011)
- State v. Bonalumi, 127 N.H. 485, 487-88 (1985)
- State v. Woods, 130 N.H. 721, 723-27 (1988)
- State v. Pennock, 168 N.H. 294, 302-03 (2015)
- State v. Plummer, 117 N.H. 320, 325 (1977)
- State v. Fischer, 165 N.H. 706, 711 (2013)
- State v. Edic, 169 N.H. 580, 588-92 (2017)
- State v. Evans, 150 N.H. 416, 420, 422-24 (2003)
- State v. Peters, 162 N.H. 30, 38 (2011)
- State v. Bruneau, 131 N.H. 104, 116-18 (1988)
- State v. Aubert, 120 N.H. 634, 635 (1980)
- State v. Scott, 167 N.H. 634, 643 (2015)