

SUPREME COURT OF NEW HAMPSHIRE

State v. Fortier

146 N.H. 784 (2001) · Decided September 25, 2001

SUMMARY

The New Hampshire Supreme Court affirmed Roger A. Fortier’s convictions for aggravated felonious sexual assault involving two minor victims. The court held that the pattern-of-sexual-assault statute did not require jury unanimity as to the particular predicate acts, that the convictions did not violate double jeopardy, and that sufficient evidence supported findings that Fortier used his position as a priest to coerce the victims.

CASE DETAILS

COURT	Supreme Court of New Hampshire
WRITING FOR THE COURT	Broderick, J.; Dalianis, J.; Groff, J.; Nadeau, J.
JURISDICTION	New Hampshire
DECIDED	September 25, 2001
DISPOSITION	affirmed
PROCEDURAL POSTURE	The defendant appealed convictions for aggravated felonious sexual assault, challenging the pattern indictments on duplicity, jury-unanimity, and double-jeopardy grounds and challenging the sufficiency of the evidence supporting coercion-based aggravated felonious sexual assault convictions.
STANDARD OF REVIEW	The court reviewed preserved legal and constitutional issues de novo. For sufficiency of the evidence, it viewed the evidence and all reasonable inferences in the light most favorable to the State and asked whether any rational trier of fact could have found guilt beyond a reasonable doubt.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Roger A. Fortier v. State of New Hampshire

TOPICS

- criminal procedure
- jury instructions
- jury selection
- double jeopardy
- statutory interpretation

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the pattern aggravated-felonious-sexual-assault indictments violated the defendant's right to a unanimous jury verdict by failing to identify the particular predicate assaults comprising the pattern.
2. Whether the pattern indictments and the individual felonious-sexual-assault indictments subjected the defendant to multiple punishments for the same offense in violation of the New Hampshire Constitution's double-jeopardy protection.
3. Whether sufficient evidence established that Fortier was in a position of authority over the victims and used that authority to coerce them to submit to sexual penetration under RSA 632-A:2, I(k).

HOLDINGS

1. A conviction under RSA 632-A:2, III requires jury unanimity that the defendant engaged in the statutory pattern of sexual assault, but does not require unanimity as to each particular predicate assault comprising the pattern, provided the jury unanimously finds that the requisite number of assaults occurred within the statutory period.
2. The defendant was not subjected to multiple punishments for the same offense because the jury was instructed not to use any individual assaults charged in the felonious-sexual-assault indictments to establish the pattern offenses, and the defendant identified no inadequacy in that instruction.
3. The evidence was sufficient for a rational jury to find beyond a reasonable doubt that Fortier occupied a position of authority over the victims and used that authority to coerce them to submit to sexual assaults under RSA 632-A:2, I(k).

KEY QUOTATIONS

“The focus of the pattern statute is to criminalize a continuing course of sexual assaults, not isolated instances.” (791)

“The jury must unanimously agree that a defendant engaged in more than one act of sexual assault as described in RSA 632-A:2 and :3, but need not agree on the particular acts, provided that they find the requisite number of acts occurred during the statutory time period.” (792)

“We conclude that the evidence supports a finding that the defendant used his respected position of authority to employ a tactic of manipulation and exertion of subtle pressure to succeed in sexually assaulting each boy.” (796)

FACTUAL BACKGROUND

Fortier was a Roman Catholic priest who met the two minor victims through church activities, supervised them as altar servers, and developed close relationships with their families. He provided the boys with gifts, money, recreational activities, and access to the rectory, where he repeatedly subjected them to sexual assaults over periods lasting months or years. The victims remained involved in church activities and assisted Fortier at Mass and with church duties during the relevant periods.

PROCEDURAL HISTORY

Fortier was indicted on sixteen sexual-assault counts, including two pattern aggravated-felonious-sexual-assault counts, six coercion-based aggravated-felonious-sexual-assault counts, and eight felonious-sexual-assault counts. After a five-day trial, the jury returned guilty verdicts on the pattern counts, the six coercion counts, and two additional felonious-sexual-assault counts; six other felonious-sexual-assault convictions were entered by stipulation. The Supreme Court declined to review the felonious-sexual-assault convictions because the issues were not preserved below or included in the notice of appeal, and affirmed the challenged convictions.

DISPOSITION

affirmed

CASES CITED

- In re Estate of Cass, 143 N.H. 57 (1998)
- State v. Blair, 143 N.H. 669 (1999)
- State v. McAdams, 134 N.H. 445 (1991)
- State v. Greene, 137 N.H. 126 (1993)
- People v. Whitham, 45 Cal. Rptr. 2d 571 (Ct. App. 1995)
- Richardson v. United States, 526 U.S. 813 (1999)
- People v. Higgins, 11 Cal. Rptr. 2d 694 (Ct. App. 1992)
- People v. Avina, 18 Cal. Rptr. 2d 511 (Ct. App. 1993)
- People v. Longoria, 862 P.2d 266 (Colo. 1993)
- People v. Calloway, 672 N.Y.S.2d 638 (Co. Ct. 1998)
- State v. Johnson, 627 N.W.2d 455 (Wis. 2001)
- State v. Colbert, 139 N.H. 367 (1995)
- State v. Laurent, 144 N.H. 517 (1999)
- State v. Nickles, 144 N.H. 673 (2000)
- State v. Ellard, 95 N.H. 217 (1948), cert. denied, 335 U.S. 904 (1949)
- State v. Carter, 140 N.H. 114 (1995)
- State v. Collins, 129 N.H. 488 (1987)