

SUPREME COURT OF CONNECTICUT

State v. Elmer G.

SC 20031 (Conn. Sept. 17, 2019) · No. SC 20031 · Decided September 17, 2019

SUMMARY

The Connecticut Supreme Court affirmed the defendant’s convictions for sexual assault, risk of injury to a child, and criminal violation of a restraining order. The court held that sufficient evidence established the defendant’s knowledge of the restraining order’s terms and that the prosecutor’s challenged questioning and closing arguments did not deprive him of a fair trial.

CASE DETAILS

COURT	Supreme Court of Connecticut
WRITING FOR THE COURT	D’Auria, J.; Robinson, C. J.; McDonald, J.; Mullins, J.; Ecker, J.
JURISDICTION	Connecticut
DECIDED	September 17, 2019
DOCKET	SC 20031
DISPOSITION	affirmed
PROCEDURAL POSTURE	The defendant appealed from convictions for sexual assault in the second degree, risk of injury to a child, and criminal violation of a restraining order. The Appellate Court affirmed, and the Connecticut Supreme Court granted certification limited to the sufficiency of the evidence supporting the restraining-order convictions and alleged prosecutorial impropriety.
STANDARD OF REVIEW	For insufficiency of the evidence, the court construes the evidence in the light most favorable to sustaining the verdict and determines whether the jury reasonably could have found guilt beyond a reasonable doubt. Claims of prosecutorial impropriety are reviewed in two steps: whether impropriety occurred and, if so, whether it deprived the defendant of a fair trial under the applicable due-process factors.
PRECEDENTIAL VALUE	Published Connecticut Supreme Court opinion; precedential.
PARTIES	Elmer G. v. State of Connecticut

TOPICS

criminal procedure

evidence

prosecutorial misconduct

burden of proof

PRACTICE AREAS

criminal law

criminal procedure

evidence

appellate practice

QUESTIONS PRESENTED

1. Whether the evidence was sufficient to prove that the defendant knowingly contacted the victim in violation of the temporary restraining order.
2. Whether prosecutorial questioning and closing argument regarding witness credibility, the victim's circumstances, and the absence of a motive to fabricate deprived the defendant of a fair trial.

HOLDINGS

1. The evidence was sufficient for a reasonable jury to find that the defendant knowingly violated the temporary restraining order by contacting the victim through two text messages and a letter outside the permitted weekly, supervised visits.
2. The prosecutor's questions concerning the witnesses' truthfulness and the challenged closing arguments did not constitute prosecutorial impropriety and did not deprive the defendant of a fair trial.

KEY QUOTATIONS

"We conclude that the state presented sufficient evidence that the defendant had "knowledge of the terms of the order" prohibiting him from having unsupervised contact with his children via text message or letter."
(Part I)

"Because the evidentiary rule against preemptive bolstering of a witness' testimony has its roots in efficiency, rather than fairness, we will not in the present case rely on it as a basis on which to adjudicate a claim of prosecutorial impropriety." (Part II A)

"The judgment of the Appellate Court is affirmed." (Conclusion)

FACTUAL BACKGROUND

The defendant sexually abused his minor daughter and physically and verbally abused his former wife and their children. After the former wife obtained an ex parte restraining order, the court issued a temporary restraining order protecting her and the children while allowing only weekly, supervised visitation. The defendant received explanations of the order through counsel, the court, a victim advocate, and Spanish-language interpretation, but later sent the victim two text messages and a letter outside the authorized visitation. At trial, the prosecutor questioned the victim and another witness about their truthfulness and argued that the victim's conduct and circumstances supported her credibility.

PROCEDURAL HISTORY

The state charged the defendant in consolidated cases with sexual assault, risk of injury to a child, and criminal violation of a restraining order. A jury convicted him of two counts each of sexual assault and risk of injury and

three counts of criminal violation of a restraining order; the trial court denied his posttrial motions and imposed an effective forty-year sentence, execution suspended after twenty-five years, followed by probation. The Appellate Court affirmed the judgments, and the Supreme Court granted certification on two issues before affirming.

DISPOSITION

affirmed

CASES CITED

- State v. Elmer G., 176 Conn. App. 343, 361, 375-377, 383, 170 A.3d 749 (2017)
- State v. Moreno-Hernandez, 317 Conn. 292, 298-299, 118 A.3d 26 (2015)
- State v. Simino, 200 Conn. 113, 119, 509 A.2d 1039 (1986)
- State v. Taupier, 330 Conn. 149, 187, 193 A.3d 1 (2018), cert. denied, 139 S. Ct. 1188 (2019)
- State v. Denya, 294 Conn. 516, 529, 986 A.2d 260 (2010)
- State v. Warholic, 278 Conn. 354, 361, 365-366, 376-378, 897 A.2d 569 (2006)
- State v. Williams, 204 Conn. 523, 540, 529 A.2d 653 (1987)
- State v. Felix R., 319 Conn. 1, 9-10, 124 A.3d 871 (2015)
- State v. Singh, 259 Conn. 693, 706-708, 793 A.2d 226 (2002)
- State v. Taft, 306 Conn. 749, 764-765, 51 A.3d 988 (2012)
- State v. Long, 293 Conn. 31, 48, 53-59, 975 A.2d 660 (2009)
- State v. Stephen J. R., 309 Conn. 586, 607, 72 A.3d 379 (2013)
- State v. Maguire, 310 Conn. 535, 562, 78 A.3d 828 (2013)
- State v. Vazquez, 79 Conn. App. 219, 231 n.10, 830 A.2d 261 (2003), cert. denied, 266 Conn. 918, 833 A.2d 468 (2003)
- State v. Campbell, 141 Conn. App. 55, 64-65, 60 A.3d 967 (2013), cert. denied, 308 Conn. 933, 64 A.3d 331 (2013)
- State v. Edwards, 99 Conn. App. 407, 412, 913 A.2d 1103 (2006), cert. denied, 281 Conn. 928, 918 A.2d 278 (2007)
- State v. Angel T., 292 Conn. 262, 274-275, 973 A.2d 1207 (2009)
- State v. Stevenson, 269 Conn. 563, 571, 849 A.2d 626 (2004)
- State v. Ruffin, 144 Conn. App. 387, 399, 71 A.3d 695 (2013), aff'd, 316 Conn. 20, 110 A.3d 1225 (2015)
- State v. Fauci, 282 Conn. 23, 26 n.1, 917 A.2d 978 (2007)