

SUPREME COURT OF ALASKA

Michele K. Dague v. State of Alaska

81 P.3d 274 (Alaska 2003) · No. S-10385 · Decided December 5, 2003

SUMMARY

The Alaska Supreme Court held that the trial court improperly excluded proposed testimony from the State's expert regarding the dynamics of child abuse, the mental state of child abusers, and the defendant's possible lack of awareness during the incident. The court concluded that the exclusion was not harmless because the testimony could have bolstered the defense expert's testimony on the central issue of whether Dague acted knowingly, and it reversed and remanded for a new trial.

CASE DETAILS

COURT	Supreme Court of Alaska
WRITING FOR THE COURT	Matthews, Justice; Fabe, Chief Justice; Eastaugh, Justice; Bryner, Justice; Carpeneti, Justice
JURISDICTION	Alaska
DECIDED	December 5, 2003
DOCKET	S-10385
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Dague petitioned the Alaska Supreme Court for hearing after the court of appeals held that the trial court erred by excluding defense expert testimony but that the error was harmless beyond a reasonable doubt.
STANDARD OF REVIEW	The court reviewed the harmlessness of the exclusion of defense expert testimony. For nonconstitutional error, the question is whether the appellate court can fairly say that the error did not appreciably affect the jury's verdict; constitutional error must be harmless beyond a reasonable doubt.
PRECEDENTIAL VALUE	Published precedential opinion of the Alaska Supreme Court
PARTIES	Michele K. Dague v. State of Alaska

TOPICS

- expert testimony
- evidence
- harmless error
- criminal procedure
- appellate procedure

PRACTICE AREAS

criminal procedure

evidence

constitutional law

appellate procedure

QUESTIONS PRESENTED

1. Whether the trial court's exclusion of Dr. Krugman's proposed expert testimony concerning the dynamics of child abuse and the mental state of abusers was harmless error.
2. Whether the excluded testimony could have materially bolstered the defense expert's testimony and supported Dague's claim that she did not act knowingly.

HOLDINGS

1. The exclusion of Dr. Krugman's testimony was not harmless because the testimony could have appreciably affected the jury's determination of whether Dague acted knowingly, an element of the second-degree murder charge.
2. Regardless of whether the exclusion constituted constitutional or nonconstitutional error, the error was prejudicial because it was not harmless even under the less demanding nonconstitutional harmless-error standard.

KEY QUOTATIONS

"Both the State's expert and the defense expert would have been seen to agree on the causes of this type of child abuse and on the fact that at the time of the act of abuse the abuser is probably not acting knowingly." (284)

"Only by discounting the testimony of both experts could the jury have concluded beyond a reasonable doubt that the knowingly element of second-degree murder was present." (284)

"It follows that it was not harmless error to exclude Krugman's testimony." (284)

FACTUAL BACKGROUND

Michele Dague operated a licensed daycare in her home and was caring for ten-month-old K.T. when the child suffered fatal head injuries. Dague initially claimed that the child had fallen from a couch, later admitted that she had dropped or thrown the child, and testified that she acted reflexively while suffering from a severe headache and other stressors. The defense expert, Dr. Aaron Wolf, testified that Dague's act was reflexive and unknowing. The trial court excluded proposed testimony from the State's expert, Dr. Richard Krugman, concerning the dynamics of child abuse and whether abusers commonly act without awareness during a loss of control.

PROCEDURAL HISTORY

Dague was indicted and convicted in the superior court of second-degree extreme-indifference murder and sentenced to forty years with twenty years suspended. On appeal, the court of appeals initially remanded for a hearing concerning Dr. Richard Krugman's qualifications and proposed testimony. After the remand hearing, the court of appeals again concluded that exclusion of Krugman's testimony was harmless beyond a reasonable

doubt. The Alaska Supreme Court granted Dague's petition for hearing, reversed the court of appeals, and directed a new trial.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The court reversed the court of appeals and remanded with instructions to reverse the superior court's judgment and remand the case to the superior court for a new trial.

CASES CITED

- Dague v. State (Dague I), Mem. Op. & J. No. 4241 (Alaska App. July 5, 2000), 2000 WL 881393
- Dague v. State (Dague II), Mem. Op. No. 4468 (Alaska App. Oct. 10, 2001), 2001 WL 1205313
- Love v. State, 457 P.2d 622, 632-33 (Alaska 1969)
- Chapman v. California, 386 U.S. 18, 24 (1967)
- Smithart v. State, 988 P.2d 583, 589 & n. 30 (Alaska 1999)
- Colt Industries v. Frank W. Murphy Manufacturer, Inc., 822 P.2d 925, 932-33 (Alaska 1991)