

SUPREME COURT OF VERMONT

State of Vermont v. David A. Goodrich, 151 Vt. 367

564 A.2d 1346 (1989) · No. No. 88-010 · Decided April 14, 1989

SUMMARY

The Vermont Supreme Court held that admitting the defendant's prior convictions to impeach his testimony was reversible error because the trial court failed to adequately apply the Gardner balancing factors, particularly the risk of prejudice from similar burglary convictions. The court also held that questioning the defendant's expert about the convictions was improper under Rules 402, 403, and 705. The conviction was reversed and the case remanded for a new trial.

CASE DETAILS

COURT	Supreme Court of Vermont
WRITING FOR THE COURT	Morse, Justice; Allen, C.J.; Peck, J.; Dooley, J.; Morse, J.; Barney, C.J. (Ret.), specially assigned
JURISDICTION	Vermont
DECIDED	April 14, 1989
DOCKET	No. 88-010
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Defendant appealed his jury conviction for burglary, challenging the admission of his prior convictions to impeach his testimony and to cross-examine his expert witness.
STANDARD OF REVIEW	Admission of prior convictions for impeachment and admission of evidence under Vermont Rules of Evidence 403 and 705 are reviewed for abuse of discretion. A discretionary ruling is reversible when based on clearly untenable reasons or exercised to a clearly unreasonable extent. Trial error is subject to harmless-error review, with the State bearing the burden to establish harmlessness beyond a reasonable doubt.
PRECEDENTIAL VALUE	Published precedential opinion
PARTIES	David A. Goodrich v. State of Vermont

TOPICS

impeachment

evidence

expert testimony

harmless error

appellate procedure

PRACTICE AREAS

Evidence

Criminal procedure

Appellate procedure

QUESTIONS PRESENTED

1. Whether the trial court abused its discretion under V.R.E. 609 and *State v. Gardner* by admitting Goodrich's prior convictions to impeach his testimony.
2. Whether V.R.E. 705 permitted the State to question Goodrich's expert about his prior convictions.
3. Whether the admission of the prior convictions through the expert's testimony was independently improper under V.R.E. 402 and V.R.E. 403.
4. Whether the evidentiary errors were harmless beyond a reasonable doubt.

HOLDINGS

1. Although convictions meeting the statutory time and moral-turpitude threshold may be admissible, the trial court must exercise discretion under V.R.E. 609 by weighing probative value against prejudicial effect and applying the *Gardner* factors. The trial court abused its discretion by admitting Goodrich's extensive and largely burglary-related convictions without adequately considering their similarity to the charged offense, their number and age, the importance of Goodrich's testimony, and the availability of other impeachment evidence.
2. V.R.E. 705 does not authorize questioning about a defendant's criminal record unless the evidence constitutes facts underlying the expert's opinion or tends to show the expert's unreliability, prejudice, or bias. Rule 705 cannot be used to circumvent the relevance requirement of V.R.E. 402, and relevant evidence remains subject to exclusion under V.R.E. 403.
3. The State failed to prove beyond a reasonable doubt that the jury would have returned the same verdict absent the erroneous admission of the prior convictions; the error was therefore prejudicial and required a new trial.

KEY QUOTATIONS

"Admissibility [of prior convictions for impeachment] shall depend upon a determination by the court that the probative value of this evidence outweighs its prejudicial effect." (564 A.2d at 1349)

"Rule 705 may not be used to circumvent Rule 402." (564 A.2d at 1351)

"The State must establish 'beyond a reasonable doubt that the jury would have returned a verdict regardless of the error.'" (564 A.2d at 1352)

FACTUAL BACKGROUND

In the early morning, David Goodrich was found inside David Hathaway's Burlington home holding jackets and shining a flashlight toward a stereo system. Goodrich was wearing Hathaway's jacket, which contained

Hathaway's wallet, and most of the other jackets belonged to Hathaway or his roommates. A blood-alcohol test about an hour later showed a blood alcohol level of .231; Goodrich testified that he had been drinking heavily, was depressed over his brother's death, and could not remember the events. His defense was that intoxication prevented him from forming the intent required for larceny, and Dr. William Farrell supported that theory.

PROCEDURAL HISTORY

Goodrich was convicted of burglary after a jury trial. Before and during trial, the trial court denied motions to exclude eight prior convictions and permitted the State to introduce them for impeachment and to question the defense expert about them. The Vermont Supreme Court reversed and remanded for a new trial.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remanded for a new trial; defendant's prior convictions should not be admitted into evidence for the purposes addressed in the opinion.

CASES CITED

- State v. LaPlante, 141 Vt. 405, 449 A.2d 955 (1982)
- State v. Gardner, 139 Vt. 456, 433 A.2d 249 (1981)
- State v. Foy, 144 Vt. 109, 475 A.2d 219 (1984)
- State v. Boucher, 144 Vt. 276, 478 A.2d 218 (1984)
- State v. Jarrett, 143 Vt. 191, 465 A.2d 238 (1983)
- State v. Bushey, 142 Vt. 507, 457 A.2d 279 (1983)
- State v. DeJoinville, 145 Vt. 603, 496 A.2d 173 (1985)
- State v. Savo, 141 Vt. 203, 446 A.2d 786 (1982)
- State v. Patnaude, 140 Vt. 361, 438 A.2d 402 (1981)
- State v. Smith, 140 Vt. 247, 437 A.2d 1093 (1981)
- State v. Mecier, 138 Vt. 149, 412 A.2d 291 (1980)
- In re Nash, 149 Vt. 63, 539 A.2d 989 (1987)
- State v. Percy, 149 Vt. 623, 548 A.2d 408 (1988)
- State v. Ryan, 135 Vt. 491, 380 A.2d 525 (1977)
- State v. Nash, 144 Vt. 427, 479 A.2d 757 (1984)
- State v. Catsam, 148 Vt. 366, 534 A.2d 184 (1987)
- State v. Hamlin, 146 Vt. 97, 499 A.2d 45 (1985)
- State v. Cameron, 126 Vt. 244, 227 A.2d 276 (1967)
- State v. Berard, 132 Vt. 138, 315 A.2d 501 (1974), cert. denied, 417 U.S. 950 (1974)
- Chapman v. California, 386 U.S. 18 (1967)

- State v. Manning, 136 Vt. 436, 392 A.2d 409 (1978)

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