

SUPREME COURT OF NEW HAMPSHIRE

State v. Nowlin

149 N.H. 221 (2003) · Decided March 6, 2003

SUMMARY

The New Hampshire Supreme Court affirmed Richard Nowlin’s convictions for three counts of aggravated felonious sexual assault. The court held that the trial court properly barred the defendant from arguing that the victim’s manner of dress implied consent under New Hampshire’s rape shield statute, because the victim’s contemporaneous conduct indicated a lack of consent and the dress was not probative on that issue.

CASE DETAILS

COURT	Supreme Court of New Hampshire
WRITING FOR THE COURT	Duggan, J.; Brock, C.J.; Broderick, J.; Dalianis, J.; Nadeau, J.
JURISDICTION	New Hampshire
DECIDED	March 6, 2003
DISPOSITION	affirmed
PROCEDURAL POSTURE	The defendant appealed his convictions for three counts of aggravated felonious sexual assault after the Superior Court denied his request to argue that the victim's manner of dress supported an inference of consent.
STANDARD OF REVIEW	The Supreme Court reviewed whether the superior court's exercise of discretion was unsustainable because it was clearly untenable or unreasonable to the prejudice of the defendant.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Richard Nowlin v. State

TOPICS

- evidence
- relevance
- criminal procedure
- due process

PRACTICE AREAS

- criminal law
- evidence
- sexual assault
- constitutional law

QUESTIONS PRESENTED

1. Whether the Superior Court erred by denying the defendant the opportunity to argue an inference of consent from the victim's manner of dress.
2. Whether due process required allowing the defendant to use the victim's manner of dress on the issue of consent under the circumstances of this case.

HOLDINGS

1. RSA 632-A:6, III-a generally bars admission of a victim's manner of dress to infer consent in a sexual-assault prosecution, because the evidence has no demonstrated probative value on consent.
2. Due process did not require permitting the defendant to argue an inference of consent from the victim's manner of dress because he failed to show that the dress was so interrelated with contemporaneous conduct that it constituted evidence helpful to the defense.

KEY QUOTATIONS

“The ‘rape shield statute’ provides that ‘(t)he victim’s manner of dress at the time of the sexual assault shall not be admitted as evidence in any prosecution under this chapter to infer consent.’” (149 N.H. at 223)

“Aside from kissing the defendant on the cheek once, the victim’s contemporaneous conduct clearly indicated a lack of consent.” (149 N.H. at 224)

FACTUAL BACKGROUND

The defendant and the victim had previously dated and had consensual sexual encounters. During the incident at issue, the victim wore a night-shirt without underwear, but repeatedly pushed the defendant away and told him to stop while he continued sexual conduct and intercourse. The defendant later admitted to his fiancée and to police that the victim protested and said no, yet he continued.

PROCEDURAL HISTORY

Before trial, the defendant moved in limine to admit evidence of the victim's manner of dress and to argue an inference of consent from that evidence. The Superior Court allowed admission of the evidence for the limited purpose of showing how the defendant was able to undress the victim, but denied its use to argue consent, subject to reconsideration if the trial testimony made exclusion fundamentally unfair. The defendant was convicted on three counts and appealed; the Supreme Court of New Hampshire affirmed.

DISPOSITION

affirmed

CASES CITED

- Opinion of the Justices (Certain Evidence in Sexual Assault Cases), 140 N.H. 22, 26-27 (1995)
- State v. MacRae, 141 N.H. 106, 111 (1996)
- State v. Spaulding, 147 N.H. 583, 589 (2002)

- Brown v. State, 581 S.W.2d 549 (Ark. 1979)
- Opinion of the Justices (Prior Sexual Assault Evidence), 141 N.H. 562, 573-74 (1997)
- State v. Howard, 121 N.H. 53, 58-59 (1981)

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