

SUPREME COURT OF VERMONT

State v. Hemond

178 Vt. 470 (2005) · Decided February 2, 2005

SUMMARY

The Vermont Supreme Court affirmed a defendant’s conviction for grossly negligent operation of a motor vehicle resulting in serious injury. The court held that the rule of completeness did not require admission of the defendant’s separate written statement because the State had introduced testimony about oral statements rather than any portion of a writing, and the exclusion did not prejudice the defense. The court also rejected challenges to the prosecutor’s closing arguments concerning a related civil case and alleged expressions of personal opinion, finding no reversible prejudice or plain error.

CASE DETAILS

COURT	Supreme Court of Vermont
JURISDICTION	Vermont
DECIDED	February 2, 2005
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed a district court judgment entered after a jury convicted him of operating a motor vehicle in a grossly negligent manner with serious injury resulting.
STANDARD OF REVIEW	Evidentiary rulings are reviewed for abuse of discretion. Claims based on an unobjected-to prosecutorial statement are reviewed for plain error, which requires an error striking at the heart of constitutional rights or resulting in a miscarriage of justice; in the closing-argument context, the argument must be manifestly and egregiously improper. A conviction will not be reversed for improper argument unless the defendant shows that the argument impaired the right to a fair trial.
PRECEDENTIAL VALUE	Published precedential opinion
PARTIES	Hemond v. State of Vermont

TOPICS

- evidence
- hearsay
- criminal procedure
- appellate procedure
- harmless error

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the rule of completeness or the right to present a defense required admission of defendant's written statement after the State introduced testimony about defendant's oral statements to police.
2. Whether the prosecutor's rebuttal remark that the criminal verdict would not affect complainant's pending civil case was sufficiently prejudicial to require a new trial.
3. Whether the prosecutor's use of expressions such as "I think" during closing argument constituted plain error.

HOLDINGS

1. The rule of completeness did not require admission of defendant's separate written statement because the State introduced testimony concerning oral statements, not any part of a writing or recorded statement. The exclusion was within the trial court's discretion and did not violate defendant's right to present evidence.
2. Even assuming the prosecutor's statement about the criminal verdict's effect on the civil case was legally incorrect, defendant failed to show that the isolated remark impaired his right to a fair trial; therefore, denial of the motion for a new trial was proper.
3. The prosecutor's sporadic use of expressions such as "I think" did not constitute plain error because the remarks expressed what the prosecutor believed the jury would find, rather than the prosecutor's personal view of defendant's guilt, and were not manifestly and egregiously improper.

KEY QUOTATIONS

"Because the State did not offer any part of a written statement, defendant could not properly invoke the rule to introduce the statement as an "other part" or "other writing" related to a writing or recorded statement introduced by the State." (178 Vt. at 472)

"Assuming arguendo that the prosecutor's remark was an incorrect statement of the law concerning the impact of a criminal verdict on a civil case, we nonetheless hold that defendant did not show that the remark impaired his right to a fair trial." (178 Vt. at 473)

"In the context of a challenge to a prosecutor's closing argument, we have found plain error "only if the argument is manifestly and egregiously improper." (178 Vt. at 474)

FACTUAL BACKGROUND

Defendant drove a car on Route 7 in Georgia, Vermont, while complainant followed on a motorcycle. According to complainant, defendant repeatedly moved into the passing lane to prevent the motorcycle from passing and then braked abruptly near a concrete median, causing the motorcycle to collide with the car and complainant to suffer serious injuries. Defendant gave oral statements to police and a separate written statement describing concern that the motorcycle would pass and encounter the median; the district court admitted testimony about the oral statements but excluded the written statement as hearsay.

PROCEDURAL HISTORY

The district court convicted defendant after a jury trial under 23 V.S.A. § 1091(b). The court excluded defendant's written statement, denied his motion for a new trial based on the prosecutor's closing argument concerning a related civil case, and entered judgment. The Supreme Court of Vermont affirmed.

DISPOSITION

affirmed

CASES CITED

- State v. Gemler, 2004 VT 3, ¶ 11, 176 Vt. 257, 844 A.2d 757
- United States v. Ramirez-Perez, 166 F.3d 1106, 1113-14 (11th Cir. 1999)
- State v. Hemingway, 148 Vt. 90, 91, 528 A.2d 746, 748 (1987)
- State v. Gates, 141 Vt. 562, 566-67, 451 A.2d 1084, 1086 (1982)
- State v. Francis, 151 Vt. 296, 299, 561 A.2d 392, 394 (1989)
- State v. Martel, 164 Vt. 501, 506-07, 670 A.2d 845, 849 (1995)
- State v. Ayers, 148 Vt. 421, 425-26, 535 A.2d 330, 333-34 (1987)
- State v. Messier, 146 Vt. 145, 159-60, 499 A.2d 32, 43 (1985)
- State v. Lawton, 164 Vt. 179, 184, 667 A.2d 50, 55 (1995)