

SUPREME COURT OF NEW HAMPSHIRE

State v. Souksamrane

164 N.H. 425 (2012) · Decided December 21, 2012

SUMMARY

The New Hampshire Supreme Court affirmed Thavone Souksamrane’s convictions for criminal threatening and felon in possession of a dangerous weapon. The court held that the prosecutor’s repeated questions asking whether other witnesses had lied were improper, but concluded that the errors were harmless or did not constitute plain error because the evidence of guilt was overwhelming.

CASE DETAILS

COURT	Supreme Court of New Hampshire
WRITING FOR THE COURT	Dalianis, C.J.; Hicks, J.; Conboy, J.; Lynn, J.; Bassett, J.
JURISDICTION	New Hampshire
DECIDED	December 21, 2012
DISPOSITION	affirmed
PROCEDURAL POSTURE	The defendant appealed jury-trial convictions for criminal threatening and felon in possession of a dangerous weapon, arguing that the prosecutor improperly required him to characterize other witnesses as liars.
STANDARD OF REVIEW	For the preserved error concerning questioning about the defendant's wife's testimony, harmless error beyond a reasonable doubt applied. For the unpreserved questioning concerning police officers' testimony, plain-error review applied.
PRECEDENTIAL VALUE	Published, precedential opinion of the Supreme Court of New Hampshire
PARTIES	Thavone Souksamrane v. State of New Hampshire

TOPICS

- prosecutorial misconduct
- impeachment
- evidence
- harmless error
- preservation of error

PRACTICE AREAS

- criminal procedure
- criminal evidence
- appellate procedure

QUESTIONS PRESENTED

1. Whether the prosecutor improperly asked the defendant to characterize other witnesses' testimony as lies.
2. Whether the preserved error concerning the prosecutor's question about the defendant's wife's testimony required reversal.
3. Whether the unpreserved questioning concerning police officers' testimony constituted plain error requiring reversal.

HOLDINGS

1. Cross-examination that requires a defendant to state whether police officers or other witnesses lied is improper because it invades the jury's credibility-determination function, asks the witness to testify beyond personal knowledge, distorts the State's burden of proof, creates a no-win situation, and is argumentative.
2. The preserved error was harmless beyond a reasonable doubt and did not require reversal because the evidence of guilt was overwhelming and the improper questioning was cumulative.
3. The unpreserved questioning did not constitute reversible plain error because, although the first two plain-error elements were satisfied, the error did not affect the defendant's substantial rights.

KEY QUOTATIONS

"Accordingly, today we use this opportunity "to condemn, as forcefully as possible, prosecutorial cross-examination that compels a defendant to state that the police or other witnesses lied in their testimony."" (428)

"We direct trial court judges to do so in the future." (428)

"To establish that an error was harmless, the State must prove beyond a reasonable doubt that the error did not affect the verdict." (429)

FACTUAL BACKGROUND

The victim reported that the defendant had pointed a gun at him, threatened to kill him, and attempted to remove his clothing. Police obtained a warrant and found clothing, swords, and a locked case containing a handgun matching the victim's description; a key recovered from the defendant opened the case. At trial, the defendant represented himself, denied being Thavone Souksamrane, offered an alternative account of the encounter, and testified inconsistently with police evidence and his wife's testimony. During cross-examination, the prosecutor repeatedly asked whether police officers and the defendant's wife had lied to the jury.

PROCEDURAL HISTORY

Following a jury trial in Superior Court, the defendant was convicted of criminal threatening and felon in possession of a dangerous weapon. The defendant appealed to the Supreme Court of New Hampshire. The State conceded that the questioning was improper, but the Supreme Court affirmed because the errors were harmless or did not affect substantial rights.

DISPOSITION

affirmed

CASES CITED

- State v. Lopez, 156 N.H. 416, 423-424 (2007)
- Liggett v. People, 135 P.3d 725, 729 (Colo. 2006)
- State v. Graves, 668 N.W.2d 860, 873 (Iowa 2003)
- People v. Montgomery, 481 N.Y.S.2d 532, 532 (App. Div. 1984)
- State v. Glidden, 122 N.H. 41, 47-48 (1982)
- State v. Peters, 162 N.H. 30, 36 (2011)
- State v. Pandelena, 161 N.H. 326, 329 (2010)
- State v. Charest, 164 N.H. 252, 256 (2012)
- State v. Ortiz, 162 N.H. 585, 594 (2011)

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