

MAINE SUPREME JUDICIAL COURT

SITTING AS THE LAW COURT

Law Court Docket No. Fra-24-276

State of Maine

v.

Raymond Buck

On Appeal from the Unified Criminal Docket (Franklin County)

Brief of Appellee

State of Maine

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SUPPLEMENTAL STATEMENT OF FACTS

The State does not contest, and adopts, the Appellant's Statement of Facts with the following supplemental information:

The M[REDACTED] family visits to the defendant's farm in Chesterville, ME, between 2007 and 2011, were week-long or more stays. (I Tr. 33, L.3.) and the M[REDACTED] family spent overnights in the defendant's residence during these visits. (I Tr. 125.)

The mother of the named victim testified that A[REDACTED], reported the sexual abuse to her parents about a year and a half after the last visit to defendant's farm in 2011. (I Tr. 48.). But that she and her husband chose not to report it to authorities. (I Tr. 49.).

A[REDACTED] suffered long-term mental trauma from the defendant's sexual abuse, culminating in a suicide attempt in October 2021, after which she reported the abuse to authorities in early 2022. (I Tr. 151-153.)

Buck attacked the criminal investigation during opening remarks (I Tr. 20-24) and on cross examination of the detective (I Tr. 109-119), suggesting that the investigation was incomplete and should have involved additional witnesses.

Buck argued extensively in closing remarks that the police investigation was deficient, and suggested that additional witnesses should have appeared at trial. (II Tr. 77)

Buck suggested in his closing argument that additional witnesses should have been called, generally (II Tr. 81), including other M[REDACTED] family members and Canadian investigators (II Tr. 78 – 80) and medical providers from Canada (II TR 82).

Buck repeatedly argued at closing that the unverified accusation or statement of a single witness could not be trusted or could not meet the standard of beyond a reasonable doubt. (II Tr. 86), (II Tr.72), (II Tr.71).

The jury deliberated for only one hour before rendering a guilty verdict. (II TR 102)

Defendant was granted a stay of execution pending appeal.

ISSUES PRESENTED FOR REVIEW

1. Whether the “Missing Witness” Instruction Was Appropriately Provided by the Trial court.
2. Whether the court was obligated, or authorized, to provide the “Inadequacy of Police Investigation” instruction under Maine law. *State v Russell* is dispositive of this issue.

STANDARD OF REVIEW

The State does not contest the Standard of Review and the assignation of the burden of proof set out in the Appellant’s Brief.

SUMMARY OF ARGUMENT

The potential effect of defendant’s opening remarks, cross-examination of the police witness, and closing arguments all required that a “missing witness” instruction, in some form, necessarily be provided to the jury. The fact that the Trial Court did not specifically deem those arguments and the questioning as “improper” is immaterial.

The Trial Court had no obligation, or authority, under Maine law to provide the so-called “inadequate police investigation” instruction to the jury at the defendant’s request. After the Court’s accommodation of his request, the defendant cannot now reasonably complain that the instruction was contrary to other standard jury instructions appropriately reflective of Maine law.

ARGUMENT

1. The “missing witness” instruction was appropriately provided to the jury by the Trial Court.

The entire tenor of the defense at trial in this case was that police investigation had not “verified” or found “corroboration” for the victim’s testimony regarding the sexual abuse, and that her testimony standing alone was insufficient for a conviction. All of this was framed in the context of witnesses not appearing at trial.

During opening remarks defense counsel admonished the jury as follows:

She says he did it. He says he didn't. Let's do some verification procedures, just like you would in anywhere. Let's look at therapy records from A [REDACTED] which we'll talk about that. Let's talk to her father. Let's talk to her brother. Let's look at Ray's background. Let's take a look at stuff. Let's do an investigation. Pretty serious case, right? (I. Tr. 24 emphasis added.)

You're not going to hear any corroboration about A [REDACTED]'s story coming from someone who's typical, if you will. (I Tr. 25 emphasis added.)

During cross-examination of the investigating officer, defense counsel focused on witnesses who were not contacted by the detective and subsequently did not appear for trial:

And then after that, you didn't do any other investigation, that was -- that was the end of the investigation, correct?

A

Yeah, yeah.

Q

Right. You didn't seek any counseling records from A[REDACTED] at all or her family?

A

No.

Q

Any psychiatric records or anything like that at all?

A

Correct.

Q

You were aware that those -- that those existed, but you didn't reach out to A[REDACTED] or her parents to get those records to -- to find out what was getting counseled, correct? (I Tr. 109, emphasis added)

Or how about the brothers that were there at the same time that A[REDACTED] said that she was sexually abused, did you ever interview them?

A *No.*

Q *Did you ever interview A[REDACTED]'s Dad? (I Tr. 110, emphasis added)*

And during closing arguments defense counsel continued to pursue this line of attack:

*And when you think about that -- that **example in a she-said or he-said** case, all you can come back to is that **that's kind of the definition of what reasonable doubt is. Because you have to have some verification.** There has to be something more than that. Otherwise, anybody in the free world could be accused of something, and if somebody -- somebody says it didn't happen, well, tough luck. Right? That's not the way it works in a bank, and it sure as heck shouldn't work here in this case with these serious charges and allegations. (II Tr. 72 Emphasis added)*

*“...well, in this circumstance, there was no effort to talk to anyone other than Natalie, who said she didn't see anything. **The brothers were there at the time. These are older brothers now -- brothers that had been***

there at that time. The older step-daughter was there. Or even the father. So it's not about whether you've brought them here to trial. It's just there was no effort to even ask them, canvas the neighborhood, you know, do whatever you do." Emphasis added.

"We all know that because sometimes, the way people present themselves and say things doesn't mean that they're telling the truth. One way of testing the truth is to get some records, get some other testimony, get some other information other than A alone, the she-said part of it, to test that theory, to get the records. There was nothing like that at all." (I Tr. 81 emphasis added.)

This case presented an unusual pre-trial situation. The delayed disclosure of the sexual abuse, along with the physical location of the now-adult victim and potential witnesses in the nation of Canada – all of this hindered the police investigation, frustrated the usual defense discovery procedures via MR Crim P 17(d), and impacted the ability to subpoena witnesses to trial.

Whether defense counsel's trial tactics (under these circumstances) "improperly" invited speculation¹ about what other witnesses might have testified to is immaterial to this analysis.² The potential for speculation, was clearly before

¹ The dicta Buck quotes from Justice Alexander's treatise (Appellant's Brief, p. 11) on this point is unconvincing. The same treatise also notes in its introduction: "Following are representative criminal jury instructions. The representative instructions suggest a way to address specific issues that arise in instructing juries. They are not meant to suggest that there may not be other, better ways to address the same issue." Alexander, Maine Jury Instruction Manual, 2014 ed. §6-1, p.6-5)

² *State v. Brewer*, 5050 A.2d 774, (Me. 1985); see also *State v. Whitman*, 429 A.2d 203 (Me. 1981).

the court³, and the proper response for the Trial Court was to ensure that the jury was focused upon the evidence before it. The jury instruction provided by the court directly addressed that danger of jury speculation and was an accurate and specific recitation of Maine law. The instruction according to Maine law was not prejudicial to the Appellant.

2. The Trial Court had no obligation, or authority, under Maine law to provide the so-called “inadequate police investigation” instruction to the jury at the defendant’s request. *State v. Russell*, 2023 ME 64, 303 A.3d 640 is dispositive.

Defense counsel delivered his request for the “inadequate police investigation” instruction (hereinafter “*Russell* instruction”) by email, to the Trial Court and counsel for the State at 4:03 AM on February 16, 2024, the same morning scheduled for closing arguments and final instruction.⁴ Defense counsel cited no Maine caselaw in regard to his request for the

³Defense counsel seemed to acknowledge that the issue of absent witnesses was before the court during in-chambers argument regarding instructions:

THE COURT: So it's interesting. It's not a -- a traditional missing witness case, but there certainly has been record as to the fact --
MR. MCKEE: Right.

THE COURT: -- that Dad and the brothers aren't here and --
MR. MCKEE: Right.

(II Tr.15)

instruction, only a reference to a 2021 Connecticut decision.⁵ In-chamber discussions regarding final instructions to the jury began four and a half hours later.

Those in-chamber discussions never mentioned *State v. Russell*, 2023 ME 64, 303 A.3d 640, the only dispositive case, directly on point, in Maine. (II Tr. 3- 26) Four months earlier, in October of 2023, this Court had summarily rejected the so-called “inadequacy of the police investigation” instruction, sourced from Connecticut caselaw:

“A fundamental problem with Russell's proposed instruction on the quality of the police investigation is that it invites the jury to focus on something other than the sufficiency of the State's evidence in determining guilt. Our standard jury instructions quite properly call upon the jury to not speculate on what other evidence might have been presented and what other witnesses might have been called. *See Alexander, Maine Jury Instruction Manual* § 6-12 at 6-23 (2023 ed.). Russell's proposed instruction calls for exactly the opposite. Moreover, if we were to agree with Russell that the “quality” of the police investigation has special significance in weighing proof of guilt, that would necessarily mean that the jury should consider a high-quality police investigation as heightened proof of guilt. A jury's focus should be equally directed to all of the evidence presented.”

⁴ The State infers no suggestion of impropriety or unfair surprise here on the part of defense counsel. Trial counsel for both sides in this case have exchanged very early-morning emails during the heat of trial, on substantive issues, many times over the years.

⁵ See, Attachment, Copy of Email and attached “Defendant’s Proposed Jury Instruction #1”

In the midst of this mutual fog of misunderstanding regarding current Maine law, and after thoroughly researching the only foreign citation offered in support of the instruction (II Tr. 19), the Trial Court granted defense counsel's request for the instruction, after some minor modifications urged by the State.

Now the defendant is before the court arguing that he was prejudiced because the instruction he requested was "mutually exclusive" with standard jury instructions which reflect established Maine law. This is precisely the problem that this Court in *Russell* had identified in summarily rejecting the instruction requested by the defendant and mistakenly granted by the Trial Court here.

CONCLUSION

In short, the Trial Court's use of the *Russell* instruction here was an unearned run for the defense. Fortunately, it did not confuse the jury to the point where they speculated on what absent individuals might or might not have testified to. Instead, the jury followed the standard instructions which were appropriately provided by the Court, and returned a guilty verdict within an hour of being charged.

State v. Russell is dispositive of this argument.

The trial court's conviction of the Appellant Buck should be confirmed and the case remanded to the Franklin County Superior Court in order to have the Clerk of the Unified Criminal Docket arrange for termination of defendant's stay

of execution pending appeal, pursuant to Rule 36 of the ME Rules of Unified Criminal Procedure.

DATED: November 25, 2024

/s/ James A. Andrews
James A. Andrews
Assistant District Attorney
Maine Bar No. 3910

CERTIFICATE OF SERVICE

I, James A. Andrew, Assistant District Attorney, hereby certify that a paper copy of the within Brief of Appellee was mailed today to Appellant's Attorney address as follows:

Walter McKee, Esq.
113 State Street
Augusta, Maine 04330

The State has sent a .pdf file for submission to the court (at lawcourt.clerk@courts.maine.gov) and to Attorney McKee (at wmckee@mckeemorgan.com)

Dated: _____

/s/James A. Andrews
James A. Andrews
Assistant District Attorney
Maine Bar No. 3910

James Andrews

From: Walter McKee <WMcKee@McKeeMorgan.com>
Sent: Friday, February 16, 2024 4:03 AM
To: Archer, Jennifer
Cc: James Andrews; Star Thibodeau
Subject: State v. Buck, proposed additional jury instruction
Attachments: Proposed Jury Instruction.docx

Justice Archer,

I have attached an additional proposed jury instruction for your consideration. I understand that Justice McKeon approved the use of this same instruction in a recent case. I do not have the name of the case but I understand the trial was in 2022.

Walt McKee

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Defendant's Proposed Jury Instruction #1
(Police Investigation)

You have heard some testimony of witnesses regarding the police investigation in this case. This is a factor that you may consider in deciding whether the state has met its burden of proof in this case because the defendant may rely on relevant omissions in the police investigation to raise reasonable doubt. You may consider whether such actions would normally be taken under the circumstances, whether, if those actions were taken, they could reasonably have been expected to lead to significant evidence of the defendant's guilt or innocence, and whether there are reasonable explanations for the omission of those actions. If you find that any omissions in the investigation were significant and not reasonably explained, you may consider whether the omissions tend to affect the quality, reliability, or credibility of the evidence presented by the state to prove beyond a reasonable doubt that the defendant is guilty of the count with which he is charged.

As with any evidence it is up to you to decide the weight that you give to these considerations. The ultimate issue for you to decide, however, is whether the state, in light of all of the evidence before you, has proved beyond a reasonable doubt that the defendant is guilty of the crime with which he is charged."

State v. Gomes, 256 A.3d 131 (Conn. 2021).