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THE SUPREME COURT OF NEW HAMPSHIRE

Merrimack
Case No. 2024-0035
Citation: State v. Sleeper, 2025 N.H. 52

THE STATE OF NEW HAMPSHIRE

v.

DILLON SLEEPER

Argued: September 16, 2025
Opinion Issued: December 5, 2025

John M. Formella, attorney general, and Anthony J. Galdieri, solicitor general (Audriana Mekula, assistant attorney general, on the brief and orally), for the State.

Christopher M. Johnson, chief appellate defender, of Concord, on the brief and orally, for the defendant.

COUNTWAY, J.

[¶1] The defendant, Dillon Sleeper, appeals his conviction on one count of reckless second degree murder following a jury trial in Superior Court (Tucker, J.). See RSA 630:1-b, I(b) (2016). On appeal, he argues that the trial court erred when it: (1) denied in part his motion to suppress, finding that he

voluntarily made post-Miranda statements to police, see Miranda v. Arizona, 384 U.S. 436 (1966); and (2) admitted into evidence at trial certain statements he made in recorded jail calls. Because we conclude that the trial court's voluntariness finding is not against the manifest weight of the evidence in the suppression record and that any error in the court's admission of the jail calls was harmless beyond a reasonable doubt, we affirm.

I. Admission of Post-Miranda Statements

[¶2] We first address the defendant's argument that the trial court erred when it denied in part his motion to suppress and determined that his statements to law enforcement at the police station after waiving his Miranda rights were voluntary despite a preceding roadside interrogation that was conducted in violation of his Miranda rights. We recite the following facts relevant to this issue, which either were found by the trial court or reflect procedural history supported by the record. See State v. Ruiz, 170 N.H. 553, 555 (2018) ("We accept the trial court's findings where supported by the record of the suppression hearing.").

[¶3] At approximately 12:18 a.m. on July 24, 2022, a Bow police officer received a report that there was a "male down" on Main Street in Hooksett and was instructed to be on the lookout for a vehicle with heavy front-end damage. The officer also received a description of another male who had fled the scene on foot. The officer was nearby and began looking for a damaged vehicle. The officer soon encountered a man, later identified as the defendant, who was walking along the road and who fit the description of the fleeing man. When the officer stopped his police cruiser behind the defendant, the defendant halted and put his hands in the air. The officer instructed the defendant to turn around, handcuffed him, and then directed him to sit on the bumper of the police cruiser. The officer did not notify the defendant of his Miranda rights. See Miranda, 384 U.S. at 478-79.

[¶4] The officer asked the defendant if he knew why the officer had stopped him, and the defendant answered "yes." Because the officer was under the impression that a vehicle collision had occurred, he first asked the defendant where his car was. The defendant replied that he had no car. The officer again asked where the vehicle was and asked what had happened. The defendant responded that "he was waiting for a ride and got into a fight where he punched and kicked someone." The defendant asked if the "other guy" was okay, and the officer replied that he did not know. The defendant was subsequently transported to the Hooksett police station. The Bow police officer later briefed members of the State Police major crimes unit on his discussion with the defendant.

[¶5] At approximately 4:29 a.m., a State Police detective sergeant and a State Police trooper spoke with the defendant in an interview room at the

Hooksett police station. The interview was audio and video recorded. The State Police investigators introduced themselves and reviewed a Miranda waiver form with the defendant, which he signed.

[¶6] The detective sergeant began questioning the defendant about what had happened. The defendant stated that he and another man, later identified as the victim, "were walking down the road; we had a little argument; I ended up running off; I don't know what happened to him. That's about it." The defendant explained that he and the victim met at a homeless shelter in Manchester and that they were walking to Concord together. He reiterated that "something happened" while they were walking: "he went forward, I went forward two or three steps; he ended up going to the ground and I ended up just leaving." The detective sergeant informed the defendant that the victim was injured and at the hospital and explained that she wanted to understand how the injuries had occurred. The defendant subsequently made additional inculpatory statements. Approximately forty minutes into the interview, the defendant invoked his right to remain silent and the investigators ended the interview.

[¶7] Several hours later, the investigators reinitiated contact with the defendant in the booking room, notified him that the victim had died, and accused him of stabbing the victim. The defendant then made several admissions. Later that day, the detective sergeant informed the defendant that he was under arrest. A grand jury subsequently indicted the defendant on two alternative counts of second degree murder — one count alleged that he recklessly caused the victim's death by stabbing him with a knife and the other count alleged that he engaged in the same conduct knowingly. See RSA 630:1-b, I (2016).

[¶8] Before trial, the defendant moved to suppress all statements he made to law enforcement on July 24, 2022. Following a hearing, the trial court partially granted and partially denied his motion. The court suppressed the statements he made to the Bow police officer on the roadside in Hooksett (unwarned roadside statements), ruling that the officer subjected the defendant to a custodial interrogation without providing him Miranda warnings. The court also suppressed all statements the defendant made after invoking his right to remain silent.

[¶9] The trial court, however, denied the defendant's request to suppress statements he made during the 4:29 a.m. interrogation in the interview room at the police station (interview room statements). It determined that, despite the prior roadside Miranda violation, the State had proved beyond a reasonable doubt that the defendant made the interview room statements voluntarily. The trial court's ruling was based on the following factors: the limited nature of the Bow police officer's roadside questioning and the lack of detail in the defendant's answers; the four-hour time lapse, change in location, and change

in interviewers between the roadside questioning and the interview room interrogation; the defendant's waiver of his Miranda rights at the start of the interview room interrogation; the non-accusatory and uncoercive nature of questioning during the interview room interrogation; and the absence of any reference to or reliance upon the defendant's unwarned roadside statements by investigators during the interview room questioning.

[¶10] During the subsequent eight-day jury trial, the State introduced the defendant's interview room statements into evidence. The jury convicted the defendant of reckless second degree murder and acquitted him of knowing second degree murder. This appeal followed.

[¶11] The defendant argues that the trial court erred to the extent it denied his motion to suppress. He asserts that, given the prior unwarned roadside statements, his interview room statements were involuntary and that their admission at trial therefore violated his due process rights under the State and Federal Constitutions. We first address the defendant's claim under the State Constitution and rely upon federal law only to aid our analysis. State v. Ball, 124 N.H. 226, 231-33 (1983).

[¶12] Part I, Article 15 of the State Constitution provides that "[n]o subject shall . . . be compelled to accuse or furnish evidence against himself" and guarantees every citizen due process of law. N.H. CONST. pt. I, art. 15; see also State v. Hinkley, 174 N.H. 414, 418 (2021). Under this constitutional provision, the State must prove beyond a reasonable doubt that a defendant's confession was voluntary before it can be admitted at trial. See Hinkley, 174 N.H. at 418. To be voluntary, a confession must be the product of an essentially free and unconstrained choice and not be extracted by threats, violence, direct or implied promises of any sort, or by the exertion of any improper influence or coercion. Ruiz, 170 N.H. at 560. Whether a confession is voluntary is a question of fact for the trial court to determine. See id. We will not reverse the trial court's determination as to voluntariness "unless it is contrary to the manifest weight of the evidence," id. (quotation omitted), as viewed in the light most favorable to the party that prevailed in the trial court — here, the State, see State v. Carrier, 173 N.H. 189, 205 & n.4 (2020).

[¶13] When, as here, a defendant's post-Miranda admission is preceded by an earlier admission that was obtained in violation of his Miranda rights, we have articulated five factors to guide the analysis under Part I, Article 15 as to whether the second admission was voluntary in light of the Miranda violation: (1) the time lapse between the initial confession and the subsequent statements; (2) the defendant's contacts, if any, with friends or family members during that period of time; (3) the degree of police influence exerted over the defendant; (4) whether the defendant was advised that his prior admission could not be used against him; and (5) whether the defendant was advised that

his prior admission could be used against him. Id. at 206. No single factor is dispositive. Id.

[¶14] The trial court is not, however, limited to considering only the above factors. See id. at 207-09. It may consider other factors that we have identified as relevant to the voluntariness analysis, such as whether the police made promises, threats, or engaged in displays of force, whether the police complied with Miranda in obtaining the second admission, and whether and how the police utilized the defendant's prior unwarned admissions in obtaining the second confession. See id. at 208-10. Ultimately, as with any voluntariness inquiry, the trial court must analyze the totality of the circumstances. Id. at 208.

[¶15] After reviewing the transcript of the suppression hearing and the video of the interview room interrogation and considering the relevant circumstances in the light most favorable to the State, we conclude that the trial court's voluntariness finding is not against the manifest weight of the evidence. The record supports the trial court's characterization of the initial unwarned roadside questioning as non-accusatory and open-ended. The officer was under the impression that he was investigating a vehicle collision, not a stabbing. Consequently, his inquiries were limited to discovering what had transpired, whether the defendant needed medical attention, and his identity. The officer was not aware of the status of the victim and did not press the defendant for further details when he mentioned that he had been in a fight. Cf. id. at 196, 209-10 (affirming involuntariness finding when police repeatedly accused defendant of sexual assault during first unwarned interview).

[¶16] There was then a four-hour break between the unwarned roadside questioning and the interview room interrogation, which was conducted in a different location by different law enforcement personnel. Despite the early-morning hour and the fact that the defendant remained in police custody, this temporal break and change in circumstances provided the defendant an "opportunity to be free from the pressure of continuous interrogation and to reflect on the seriousness of [his] situation," State v. Fleetwood, 149 N.H. 396, 407 (2003), and alerted him to the fact that his interaction with law enforcement had "taken a new turn," Missouri v. Seibert, 542 U.S. 600, 622 (2004) (Kennedy, J., concurring); cf. id. at 615 (plurality opinion) (observing that a reasonable person could view police station questioning as a "new and distinct experience" from tainted questioning at defendant's home). This "new turn" in his encounter with law enforcement was further evidenced by the fact that the investigators notified the defendant that their conversation would be recorded and by their provision of Miranda warnings.

[¶17] Critically, the investigators did not begin the interview room questioning by referencing the defendant's unwarned roadside statements.

Instead, after providing Miranda warnings and securing a waiver, the investigators began the interview with the open-ended request that the defendant tell them the background of "why we are here and what's going on." Cf. Carrier, 173 N.H. at 209-10 (affirming finding of involuntariness when, less than twenty seconds after providing Miranda warnings, the officer referenced the defendant's prior unwarned admissions). In response, the defendant admitted that he had been walking with another person and an argument ensued. The investigators then sought additional details about the incident over the course of the interview.

[¶18] The investigators neither confronted the defendant with nor mentioned any of his unwarned roadside statements, including the admission that he had gotten "into a fight and he punched and kicked" someone. Compare State v. Aubuchont, 141 N.H. 206, 209-10 (1996) (affirming voluntariness finding even though second interview was scheduled to "go over" the defendant's prior statement), with Carrier, 173 N.H. at 195-96, 209-10 (affirming involuntariness finding when both interviews were conducted by the same detective and detective referenced prior unwarned statement repeatedly during the second interview). Further, the record supports the trial court's finding that the investigators made no threats or promises and that the nature of the questioning was polite and not accusatory, coercive, or overbearing. See Ruiz, 170 N.H. at 560-62. Finally, although the trial court did not directly address the fact that investigators failed to advise the defendant that his prior unwarned roadside statements could not be used against him, that fact does not meaningfully alter the totality of the circumstances considered by the trial court. See id. at 561-62.

[¶19] In sum, based on our review of the suppression record considered in the light most favorable to the State, we conclude that the trial court's voluntariness finding is not against the manifest weight of the evidence and hold that the court did not err in refusing to suppress the interview room statements. See id. at 560. Because the Federal Constitution offers the defendant no greater protection than does the State Constitution under these circumstances, see Hinkley, 174 N.H. at 418, we reach the same result under the Federal Constitution as we do under the State Constitution.

II. Admission of Jail Calls at Trial

[¶20] The defendant next argues that the trial court erred when it admitted into evidence at trial excerpts of his recorded jail calls. While incarcerated pending trial, the defendant had recorded conversations with family and other individuals in which he made statements about his conduct on the night of the victim's death and the charges and evidence against him. For example, he discussed the evidence of blood on his belongings, saying that if none of the four blood spots was "a hit" he would be "scotch free." He concedes that the portions of the jail calls that contain his statements about

"the underlying events" and "statements from which a factfinder could legitimately infer consciousness of guilt" were properly admitted. He contests, however, the admission of other portions of the calls that he identifies as containing "musings about his legal predicament or about various defense-strategy options," arguing that such statements were irrelevant and therefore inadmissible. See N.H. R. Ev. 401, 402. The State counters that the contested portions were relevant to "both the defendant's mens rea . . . and his consciousness of guilt." Alternatively, the State asserts that, even if the trial court erred in admitting some or all of the challenged evidence, that error was harmless beyond a reasonable doubt. We need not decide whether the trial court's admission of the disputed portions of the jail calls was error because we agree with the State that any error was harmless. See State v. Papillon, 173 N.H. 13, 28 (2020).

[¶21] To establish harmless error, the State must prove beyond a reasonable doubt that the error did not affect the verdict. State v. Boudreau, 176 N.H. 1, 11 (2023). This standard applies to both the erroneous admission and exclusion of evidence. Id. To determine whether the State has met its burden, we must evaluate the totality of the circumstances at trial. Id. at 11-12. In doing so, we consider the other evidence admitted at trial as well as the character of the erroneously admitted evidence itself. Id. at 11.

[¶22] The factors that we have considered in assessing whether an error did not affect the verdict include, but are not limited to: (1) the strength of the State's case; (2) whether the admitted or excluded evidence is cumulative or inconsequential in relation to the strength of the State's case; (3) the frequency of the error; (4) the presence or absence of evidence corroborating or contradicting the erroneously admitted or excluded evidence; (5) the nature of the defense; (6) the circumstances in which the evidence was introduced at trial; (7) whether the court took any curative steps; (8) whether the evidence is of an inflammatory nature; and (9) whether the other evidence of the defendant's guilt is of an overwhelming nature. Id. at 12. No one factor is dispositive. Id. We may consider factors not listed above and not all factors may be implicated in a given case. Id.

[¶23] To convict the defendant of second degree murder as charged in the indictment, the State had to prove beyond a reasonable doubt that the defendant caused the victim's death "recklessly under circumstances manifesting an extreme indifference to the value of human life" by stabbing the victim with a knife. RSA 630:1-b, I(b). "A person acts recklessly with respect to a material element of an offense when he is aware of and consciously disregards a substantial and unjustifiable risk that the material element exists or will result from his conduct." RSA 626:2, II(c) (2016). To prove that a person acts recklessly under "[c]ircumstances manifesting an extreme indifference to the value of human life," however, the State must show something more than that the defendant was merely "aware of and consciously

disregard[ed] a substantial and unjustifiable risk." State v. Schultz, 141 N.H. 101, 105 (1996) (quotation omitted). It must prove that the defendant acted with "a blatant disregard of an unjustifiable risk of death." Id. (quotation omitted).

[¶24] Here, there was overwhelming other evidence of the defendant's guilt. The defendant admitted to State Police investigators that, on the night in question, he had been walking with the victim from Manchester to Concord, the two men got into an argument, "something happen[ed]," the victim fell to the ground, and the defendant walked away. The defendant later made admissions about the "something" that happened: He wrote in a letter to his mother that he "stabbed [the victim's] neck" and that the victim "bleed [sic] inside out." Similarly, in unchallenged portions of recorded jail calls, the defendant admitted to causing the victim's death by stabbing, saying "I stabbed a dude to death" and "I just murdered somebody." In other unchallenged parts of jail calls, he described the large amount of blood he observed at the scene. These recorded admissions were particularly strong evidence given that they allowed the jury to hear and evaluate the language and tone the defendant used in speaking about his own conduct. See State v. Colbath, 171 N.H. 626, 638 (2019).

[¶25] These admissions were corroborated by other evidence, including expert testimony. Both the State's and the defendant's DNA analysis experts concluded with a high degree of statistical probability that the victim was a "possible contributor" to a blood sample found on the defendant's jeans. And the State's chief medical examiner testified that the victim's death was a homicide caused by a stab wound in his neck.

[¶26] The jury also heard substantial evidence of the defendant's consciousness of guilt. A jury can reasonably infer the defendant's consciousness of guilt from, among other things, evidence of flight, false exculpatory statements, or efforts to avoid suspicion. See State v. Fernandez, 152 N.H. 233, 243 (2005); State v. Evans, 150 N.H. 416, 421 (2003). In this case, three witnesses observed a man fleeing the location where the victim was found, and provided consistent descriptions of the man that matched the defendant's appearance when he was stopped by the police. This evidence corroborated the defendant's admission that he "ran off" after his argument with the victim. Similarly, the defendant acknowledged in an unchallenged portion of a jail call that it would have been "better" if he had called the police instead of taking off. Conversely, in another call, he falsely claimed that he did not flee but waited for the police to arrive. The jury also heard testimony about the considerable but unsuccessful efforts of law enforcement to locate the murder weapon and testimony from the defendant's father that the defendant did not tell him specifically where the knife was but that the defendant "said it wasn't in the river." This evidence strongly supported a reasonable inference of the defendant's consciousness of guilt.

[¶27] Given this overwhelming evidence, there was no real dispute that the defendant caused the victim's death by stabbing him. Indeed, in closing, defense counsel argued that the jury should acquit the defendant of second degree murder and instead find him guilty of the lesser-included offense of reckless manslaughter. Thus, the only contested issue was whether the State had proven the requisite intent. Compare RSA 630:1-b, I (defining knowing and reckless second degree murder variants), with RSA 630:2, I(b) (Supp. 2024) (defining reckless manslaughter). Because the jury ultimately acquitted the defendant of knowing second degree murder, we focus on the evidence of the defendant's intent to commit reckless second degree murder — that is, that he acted "recklessly under circumstances manifesting an extreme indifference to the value of human life." RSA 630:1-b, I(b); see also State v. Howland, 119 N.H. 413, 416 (1979) (comparing and contrasting reckless second degree murder and reckless manslaughter).

[¶28] On that issue, the evidence of guilt was equally compelling. The chief medical examiner testified that the victim was stabbed on the left side of his neck with a knife, that the stab wound was seven inches deep, and that, to create the wound, the knife cut through layers of skin, fatty tissue, muscle, and the common carotid artery and stopped just short of hitting the victim's spine. The location and depth of the stab wound provided strong evidence that the defendant acted with a blatant disregard of an unjustifiable risk of death to the victim. See Fernandez, 152 N.H. at 235, 241, 245 (concluding any error in admitting expert medical testimony was harmless when second degree murder conviction was supported by overwhelming other evidence, including that defendant stabbed the victim in the stomach, cutting his pancreas, and slashed his face deep enough to cut facial muscles).

[¶29] As compared to the strength of this evidence of the defendant's intent and the other evidence of the defendant's guilt, the challenged portions of the jail calls were inconsequential. See Boudreau, 176 N.H. at 12, 14. The defendant challenges on appeal the admission of portions of seven of the ten excerpts of recorded jail calls introduced at trial. The State offered the jail calls into evidence through the testimony of the wife of the defendant's father, who identified the defendant's voice in each call. The challenged excerpts were all short in duration: The shortest clip was 38 seconds and the longest was approximately three minutes. The wife's testimony, including the playing of the jail calls, lasted approximately 25 minutes. The State played each of the disputed jail calls only once during the witness's testimony. Against the overwhelming evidence discussed above — namely the defendant's admissions, the expert testimony, and the evidence of consciousness of guilt — the challenged portions of the jail calls were inconsequential. See Fernandez, 152 N.H. at 243-45.

[¶30] Moreover, as compared to evidence like the defendant's unchallenged admissions about stabbing the victim to death and his

description of the amount of the victim's blood at the scene, the disputed evidence was not inflammatory. Cf. State v. Richardson, 138 N.H. 162, 168-69 (1993) (concluding that admission of other bad act evidence — testimony describing "defendant's graphic boasting about killing a police officer" — was "so inflammatory" that error in admitting it was not harmless). Finally, to the extent the defendant argues that the disputed evidence was prejudicial because it revealed his pretrial incarceration, we note that the jury was instructed that it could not "draw any negative inference from the [d]efendant's incarceration status at the time of the recordings." See Colbath, 171 N.H. at 637 ("The jury is presumed to follow the trial court's instructions."). Further, given that other jail calls were admitted that are not challenged on appeal, the jury would have been aware of the defendant's pretrial incarceration even if the disputed evidence had been excluded. Based on our consideration of the totality of the circumstances at trial, we conclude that the State has proved beyond a reasonable doubt that any error in the trial court's admission of the contested jail calls did not affect the verdict. See Boudreau, 176 N.H. at 11-12.

III. Conclusion

[¶31] In sum, we conclude that the trial court's pretrial voluntariness finding was not against the manifest weight of the evidence and that any error it committed in admitting the challenged portions of the jail calls at trial was harmless beyond a reasonable doubt. We therefore affirm the defendant's reckless second degree murder conviction. Any issues the defendant raised in his notice of appeal but did not brief are deemed waived. See State v. Blackmer, 149 N.H. 47, 49 (2003).

Affirmed.

MACDONALD, C.J., and DONOVAN and GOULD, JJ., concurred.