THE SUPREME COURT OF NEW HAMPSHIRE

Belknap
Case No. 2024-0294
Citation: State v. Hodgdon, 2026 N.H. 6

THE STATE OF NEW HAMPSHIRE

v.

DANIEL A. HODGDON

Argued: October 9, 2025
Opinion Issued: February 10, 2026

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

Wescott Law, P.A., of Laconia (Allison M. Ambrose on the brief and orally), for the defendant.

MACDONALD, C.J.

[¶1] The defendant, Daniel A. Hodgdon, appeals his convictions following a jury trial in Superior Court (Attorri, J.) on two counts of sexual assault, see RSA 632-A:4 (Supp. 2024), and one count of simple assault, see RSA 631:2-a (2016). On appeal, the defendant challenges the trial court's ruling

prohibiting him from cross-examining the victim about a false allegation of physical abuse against her father (Father). He also asserts that the court erred in its answer to a jury question and by admitting evidence of his alcohol consumption. We affirm.

I. Background

[¶2] The jury could have found the following facts, or they are supported by the record. In October 2021, on the date of the alleged offenses, the defendant took the victim with him to the store. The victim alleged that the defendant "touched her inappropriately" during the trip.

[¶3] Approximately two months later, the victim accused Father of physically abusing the victim's half-sister (Half-Sister) by breaking her leg. Around that time, Father's girlfriend (Girlfriend) had posted on social media that Father had done something "unforgivable." Half-Sister had recently injured her leg, and the victim — based upon her interpretation of Girlfriend's social media post — told her mother (Mother) that Father had broken Half-Sister's leg. The victim also told Mother that she had spoken with Girlfriend and that Girlfriend told her that Father broke Half-Sister's leg.

[¶4] On December 6, 2021, Mother was attending a counseling session with the victim. Mother relayed the victim's accusation about Father to the victim's counselor (Counselor). Counselor informed them that the allegation was serious, that he was required to report the allegation, and that Mother needed to report it as well. Mother then reported the allegation to the New Hampshire Division for Children, Youth and Families (DCYF). Girlfriend later learned of the report and told the parties that Father was not abusing Half-Sister and that Half-Sister's injury was caused by a dog. Mother then told Counselor at the next week's session that the victim's report had been false and that the victim had been angry toward Father due to his absence in her life. Counselor noted that Mother told him the report had been "false" and DCYF separately concluded that the report was "unfounded."

[¶5] The defendant was indicted on one count of attempted aggravated felonious sexual assault, five counts of sexual assault, and one count of simple assault. According to the indictments, some of the charged conduct was alleged to have occurred in Gilford and other charged conduct was alleged to have occurred in Laconia.

[¶6] Before trial, the defendant moved for permission to inquire on cross-examination into the accusation the victim had made about Father. See N.H. R. Ev. 608(b) (permitting parties to inquire into a witness's past conduct on cross-examination if it is probative of the witness's character for truthfulness or untruthfulness). The State did not object at the time, and the Trial Court (Leonard, J.) granted the motion. The State later moved to reconsider the

ruling, asserting that the victim had honestly believed that Father broke Half-Sister's leg, and that the report was therefore not probative of her character for untruthfulness. Defense counsel conceded at the pretrial hearing that the victim had honestly believed Father had broken Half-Sister's leg, but argued that the incident was still probative of her character for untruthfulness because she falsely claimed that Girlfriend told her about the abuse.

[¶7] The Trial Court (Attorri, J.) granted the State's motion, concluding that the incident is not probative of the victim's character for truthfulness or untruthfulness. The court further ruled that, to the extent that the incident has any such probative value, that probative value is substantially outweighed by the "danger of confusion and creating a trial [within] a trial." See N.H. R. Ev. 403 (providing that relevant evidence may be excluded if its probative value is substantially outweighed by the danger of, among other things, confusing the issues or misleading the jury).

[¶8] At trial, the State presented testimony from the victim and other witnesses, and a surveillance video showing the defendant and the victim together in a vehicle on the date of the alleged assaults. The defendant and the victim's grandmother (Grandmother) both testified. Grandmother testified that the defendant and two coworkers were outside of her home on the date in question "having a couple of beers." On cross-examination, over the defendant's objection, the State asked Grandmother a few questions about how much alcohol the defendant had consumed and whether he was intoxicated. Grandmother testified that the defendant did not become intoxicated and that she did not know how many beers he drank. The State then asked the defendant on cross-examination how many beers he had that day, and he testified: "Probably about four or five."

[¶9] During its closing argument, the State argued that "[t]his case boils down to one very basic question; do you believe [the victim]?" The State also noted that there was evidence "the Defendant had been drinking that day" and "people who consume alcohol often are not thinking clearly about the ramifications of their actions."

[¶10] During its deliberations, the jury sent a question to the court asking: "May we have the exact location of each of the seven charges?" Defense counsel requested that copies of the indictments be provided to the jury in response to its question. The court declined to provide the jury with the indictments and told counsel it would answer the jury's question by explaining that it is the jury's role to recall the evidence, to act as the factfinder, and to determine whether the State has proven each element of the charged crime beyond a reasonable doubt. The defendant was convicted on two counts of sexual assault and one count of simple assault. This appeal followed.

II. Analysis

[¶11] On appeal, the defendant argues that the trial court erred by: (1) precluding him from cross-examining the victim about her December 2021 accusation against Father; (2) not providing copies of the indictments to the jury; and (3) allowing the State to introduce evidence of his alcohol consumption. We address these arguments in turn.

A. Rule 608(b) Evidence

[¶12] We first address the defendant's argument that the trial court erred when it precluded him from cross-examining the victim about the accusation she had made against Father. A trial court has broad discretion to determine the scope of cross-examination or the admissibility of evidence, and we will not upset its ruling absent an unsustainable exercise of discretion. State v. Kornbrekke, 156 N.H. 821, 823-24 (2008). To prevail under this standard, the defendant must demonstrate that the trial court's decision was clearly untenable or unreasonable to the prejudice of his case. Id. at 824. Because the trial court ruled on the admissibility of the challenged evidence before trial, we consider only the arguments and evidence presented at the pretrial hearing. State v. Warren, 177 N.H. 196, 207 (2025), 2025 N.H. 5, ¶35.

[¶13] New Hampshire Rule of Evidence 608(b) provides in relevant part:

> Except for a criminal conviction under Rule 609, extrinsic evidence is not admissible to prove specific instances of a witness's conduct in order to attack or support the witness's character for truthfulness. But the court may, on cross examination, allow them to be inquired into if they are probative of the character for truthfulness or untruthfulness of:
>
> (1) the witness . . . .

Under this Rule, the defendant need not prove that an accusation was demonstrably false in order to cross-examine the witness about it; rather, the trial court must assess whether the accusation is probative of truthfulness or untruthfulness and otherwise admissible. Kornbrekke, 156 N.H. at 824.

[¶14] In reaching its decision whether to allow the inquiry, a trial court must also weigh the probative value of the evidence against the factors enumerated in New Hampshire Rule of Evidence 403. Rule 403 limits the discretion granted in Rule 608(b) by excluding relevant evidence "if its probative value is substantially outweighed by a danger of . . . unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence." N.H. R. Ev. 403.

[¶15] Accordingly, we first "consider whether the trial court accurately gauged the probative value of the defendant's proposed line of cross-examination." State v. Aldrich, 169 N.H. 345, 348 (2016). In State v. Miller, we set forth several factors relating to the degree of probative value of specific-instances evidence offered under Rule 608(b), including:

> (1) whether the testimony of the witness is crucial or unimportant; (2) the extent to which the evidence is probative of truthfulness or untruthfulness; (3) the extent to which the evidence is also probative of other relevant matters; (4) the extent to which the act of untruthfulness is connected to the case; (5) the extent to which the circumstances surrounding the specific instances of conduct are similar to the circumstances surrounding the giving of the witness's testimony; (6) the nearness or remoteness in time of the specific instances to trial; (7) the likelihood that the alleged specific-instances conduct in fact occurred; (8) the extent to which specific-instances evidence is cumulative or unnecessary in light of other evidence already received on credibility; and (9) whether specific-instances evidence is needed to rebut other evidence concerning credibility.

State v. Miller, 155 N.H. 246, 252-53 (2007) (quotations and ellipses omitted).

[¶16] Here, the trial court found that the victim's false allegation against Father was not probative of her character for truthfulness or untruthfulness. We will review the trial court's decision to determine whether its ruling reflects an analysis of the Miller factors and whether the court acted within its discretion. See State v. Oakes, 161 N.H. 270, 282 (2010).

[¶17] Applying the Miller factors, we hold that the trial court did not unsustainably exercise its discretion when it prohibited the defendant from inquiring into the victim's false accusation against Father. We turn initially to factor seven because it presents a threshold question: whether the specific-instances conduct in fact occurred. See Kornbrekke, 156 N.H. at 826. We have stated that "[t]he likelihood that the alleged conduct occurred, i.e., whether the victim in fact made a prior false accusation, is a critical factor to the probative value analysis . . . ." Id.; see Aldrich, 169 N.H. at 349. This is so because "[i]f a prior allegation were not in fact false, then cross-examination about it would not be probative of the [victim's] character for truthfulness or untruthfulness." Aldrich, 169 N.H. at 349 (quotation and brackets omitted). Thus, a trial court must assess the evidence of the accusation's factual falsity when deciding whether to permit the defendant to ask the victim about it. See id. Here, both the State and the defendant agree that the report was made and that it was factually false, i.e., Father did not break Half-Sister's leg.

[¶18] The State argues that, nonetheless, the accusation has diminished probative value for proving the victim's character for untruthfulness because, despite the fact that it was factually false, the victim believed it was true at the time that she made it. See Miller, 155 N.H. at 252 (the second Miller factor is "'the extent to which the evidence is probative of truthfulness or untruthfulness'"). In other words, the State argues that the report has limited probative value for proving the victim has a character for untruthfulness because it was not a knowingly false accusation. Under the circumstances of this case, we agree.

[¶19] Rule 608(b) permits the defendant to cross-examine a witness about specific instances of conduct which "are probative of the witness's character for truthfulness or untruthfulness." Rule 608 is not intended to allow inquiry into every specific instance of conduct when a witness uttered a factually untrue claim. Rather, the Rule's purpose is to develop the exception to the general prohibition on evidence of a person's character trait at trial that allows "character evidence of a witness as bearing on the credibility of the witness." N.H. R. Ev. 608 Reporter's Notes; see N.H. R. Ev. 404(a)(3). "In accordance with the bulk of judicial authority, the inquiry is strictly limited to character for veracity." N.H. R. Ev. 608 Reporter's Notes. Although the accusation need not always be knowingly false to be admissible under Rule 608(b), see Kornbrekke, 156 N.H. at 826-27, specific-instances evidence of a false allegation based upon an honest mistake will generally have limited probative value for proving a person's credibility or veracity as a witness. Accordingly, such evidence will rarely be admissible under Rule 608(b).

[¶20] Here, defense counsel conceded at the pretrial hearing that the victim "believed [Father] had abused [Half-Sister]" and was simply reporting "what she believe[d] to be true about her dad." Thus, the victim did not make a knowingly false report. The only remaining fact which might have probative value is the defendant's assertion that the victim gave an inconsistent account of how she formed her mistaken belief that Father abused Half-Sister — i.e., the victim originally said that Girlfriend told her about the abuse but later said that she formed her belief from her interpretation of Girlfriend's social media post. This inconsistency has little, if any, probative value for proving that the victim has a character for untruthfulness.

[¶21] Given the evidence's limited probative value, we agree with the State that the trial court sustainably exercised its discretion when it ruled that, to the extent the evidence has any probative value, that probative value is substantially outweighed by the factors enumerated in Rule 403. Here, the court considered the facts and circumstances of the false allegation against Father and found that the danger of confusing the jury and creating a trial within a trial substantially outweighed the evidence's probative value. As the trial court explained, given "the number of different witnesses," and the involvement of Mother, DCYF, and the social media post, "if [the victim's

accusation against Father] does have any probative value" then "it is greatly outweighed by the possibility for confusion." Accordingly, we conclude that the trial court did not unsustainably exercise its discretion when it precluded the defendant from cross-examining the victim about her December 2021 accusation against Father.

B. Jury Question

[¶22] We next address the defendant's argument that the trial court failed to sufficiently answer a jury question because it did not provide the jury with copies of the indictments. The response to a jury question is left to the sound discretion of the trial court. State v. Boudreau, 176 N.H. 1, 6 (2023). We review the court's response under the unsustainable exercise of discretion standard. Id. at 6-7. We review the trial court's answer to a jury inquiry in the context of the court's entire charge to determine whether the answer accurately conveys the law on the question and whether the charge as a whole fairly covered the issues and law in the case. Id. at 7.

[¶23] Here, the defendant was tried on seven criminal charges based upon conduct that was alleged to have occurred when he took the victim with him to the store. The indictments alleged that some of the charged conduct occurred in Laconia and some of it occurred in Gilford. After some deliberation, the jury asked: "May we have the exact location of each of the seven charges?" Defense counsel proposed that the court answer the question by providing the jury with copies of the indictments and instructing the jury that it must find that the State proved each element of the charged offenses beyond a reasonable doubt to find the defendant guilty. The State proposed a similar answer, but opposed giving the jury the indictments because doing so might suggest that "the answer to [the] question lies . . . in the indictments."

[¶24] In response, the court explained that it would not "want to give [the jury] the indictments without telling them that the location is not an essential element" of the charged offenses. The trial court declined to provide the jury with copies of the indictments and told counsel it would answer the jury's question by explaining that: "[I]t's your role as jurors to determine the facts of the case and whether the State has proven each element of the charged crime beyond a reasonable doubt. . . . To the extent you are seeking to determine the location of any event, it is your . . . recollection of the evidence that governs."

[¶25] We are not persuaded that the trial court unsustainably exercised its discretion by declining to provide the indictments to the jury. As the trial court observed, the location of the charged conduct is not an element of the crimes for which the defendant was convicted. See RSA 632-A:4; RSA 631:2-a. Thus, the jury did not need to determine whether the conduct occurred in Laconia or Gilford to find the defendant guilty. Instead, the court gave a

response that accurately conveyed the law: It is the jury's role to act as the factfinder and to determine whether the State has proven each element of the charged offense beyond a reasonable doubt. Cf. State v. Bundy, 130 N.H. 382, 383-84 (1988) (holding that a trial court did not err in answering a jury question when its answer was "legally correct" and "did not usurp the jury's exclusive fact-finding authority"). Under these circumstances, we cannot conclude that the trial court unsustainably exercised its discretion.

C. Alcohol Consumption

[¶26] Finally, we address the defendant's argument that the trial court erred when it allowed the State to introduce evidence of his alcohol consumption on the date of the charged offenses. We need not decide if the trial court erred because, even if that were true, we agree with the State that any error was harmless.

[¶27] To establish harmless error, the State must prove beyond a reasonable doubt that the error did not affect the verdict. State v. Reed, 177 N.H. 496, 503 (2025), 2025 N.H. 34, ¶23. This standard applies to both the erroneous admission and exclusion of evidence. Id. We consider the alternative evidence presented at trial as well as the character of the erroneously admitted evidence itself. Id. To determine whether the State has proven beyond a reasonable doubt that an error did not affect the verdict, we must evaluate the totality of the circumstances at trial. Id.

[¶28] The factors that we consider 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., 2025 N.H. 34, ¶24. 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.

[¶29] Here, the State has demonstrated beyond a reasonable doubt that any error by the trial court did not affect the verdict. The defendant's alcohol consumption was initially elicited by the defense during Grandmother's direct

examination and was then inquired into by the State in a small number of questions on cross-examination. Grandmother testified that the defendant arrived home at approximately 3:00 p.m., that it was a Friday afternoon, and that he drank "a couple of beers" with coworkers between when he arrived home and when he left to go to the store with the victim at approximately 5:45 p.m. She testified that she did not know how many beers the defendant consumed, but that he did not become intoxicated on the date in question. The defendant similarly testified that he had "about four or five" beers that afternoon and that he did not leave to go to the store with the victim until 5:40 p.m. or so. After that testimony, the defendant's alcohol consumption was mentioned one time in a brief remark during the State's closing argument.

[¶30] Testimony that the defendant had "a couple of beers" or "about four or five" beers with his coworkers on a Friday afternoon sometime between approximately 3:00 p.m. and 5:45 p.m., but that he did not become intoxicated, is not of an "inflammatory nature." Id. Further, in the context of the two days of testimony presented at trial and the parties' closing arguments, this limited questioning was "inconsequential in relation to the strength of the State's case." Id. Indeed, the strength of the State's case depended upon the victim's credibility, not the defendant's alcohol consumption. Accordingly, on the facts of this case, we are persuaded beyond a reasonable doubt that the admission of evidence of the defendant's alcohol consumption did not affect the verdict, and was therefore harmless. See id., 2025 N.H. 34, ¶23.

Affirmed.

DONOVAN, COUNTWAY, and GOULD, JJ., concurred.