

SUPREME COURT OF NEW HAMPSHIRE

State v. Owen Labrie, 171 N.H. 475

198 A.3d 263 (2018) · No. Merrimack No. 2015-0687 · Decided November 6, 2018

SUMMARY

The Supreme Court of New Hampshire affirmed Owen Labrie's convictions for sexual assault, endangering the welfare of a child, and using computer services for a prohibited purpose. The court held that sufficient evidence supported the computer-services conviction under RSA 649-B:4, I(a), including evidence of the defendant's intent derived from communications and surrounding conduct. The court also concluded that the defendant waived his confrontation claim by failing to renew his request to recall a witness for cross-examination.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
|-----------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of New Hampshire                                                                                                                                                                                                                                                                                                                                                                                                                         |
| WRITING FOR THE COURT | Lynn, C.J.; Hantz Marconi, J.; Tucker, J., superior court justice, specially assigned                                                                                                                                                                                                                                                                                                                                                                  |
| JURISDICTION          | New Hampshire                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| DECIDED               | November 6, 2018                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| DOCKET                | Merrimack No. 2015-0687                                                                                                                                                                                                                                                                                                                                                                                                                                |
| DISPOSITION           | affirmed                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| PROCEDURAL POSTURE    | Defendant appealed jury-trial convictions in the Merrimack County Superior Court for three counts of sexual assault, one count of endangering the welfare of a child, and one count of using computer services for a prohibited purpose.                                                                                                                                                                                                               |
| STANDARD OF REVIEW    | Sufficiency of the evidence and statutory interpretation were reviewed de novo. The sufficiency challenge was evaluated by viewing the evidence and reasonable inferences in the light most favorable to the State and asking whether any rational trier of fact could have found guilt beyond a reasonable doubt. The unpreserved challenge to the closing argument was reviewed for plain error. The cross-examination issue was resolved as waived. |
| PRECEDENTIAL VALUE    | Published New Hampshire Supreme Court opinion; precedential.                                                                                                                                                                                                                                                                                                                                                                                           |
| PARTIES               | Owen Labrie v. The State of New Hampshire                                                                                                                                                                                                                                                                                                                                                                                                              |

## TOPICS

criminal procedure

statutory interpretation

sixth amendment

evidence

burden of proof

## PRACTICE AREAS

criminal law

criminal procedure

statutory interpretation

evidence

constitutional law

## QUESTIONS PRESENTED

1. Whether the evidence was sufficient to prove that the defendant knowingly used a computer service to seduce, solicit, lure, or entice a person believed to be under sixteen to commit an offense under New Hampshire's sexual-assault statute.
2. Whether the defendant preserved a confrontation-rights challenge to the exclusion of proposed cross-examination concerning a State witness's alleged motive or bias.
3. Whether the trial court plainly erred by failing to sua sponte correct alleged prosecutorial misstatements concerning semen, sperm, and DNA evidence during closing argument.

## HOLDINGS

1. The evidence was sufficient to support the conviction because RSA 649-B:4, I(a) does not require the defendant's computer communications to contain explicit sexual content, an explicit request for sexual contact, or deception. The defendant's intent could be inferred from the totality of his communications and conduct before, during, and after the encounter.
2. The defendant waived his confrontation-rights challenge by failing to supplement his offer of proof or request that the State's witness be recalled after the trial court reconsidered its initial ruling and offered him an opportunity to conduct sanitized cross-examination.
3. The trial court did not commit plain error by failing to interrupt or correct the prosecutor's alleged misstatements about the location and significance of semen, sperm, and DNA evidence. The statements were not sufficiently egregious to require sua sponte intervention, and the jury instructions that attorney argument is not evidence were adequate to cure any imprecision.

## KEY QUOTATIONS

*"Nowhere in the plain and ordinary meaning of the statute do we discern any requirement that the defendant must send explicit sexual content to the victim or affirmatively ask the victim to engage in sexual penetration."* (at 481)

*"Regardless of whether we analyze each pre-encounter communication individually, or consider them collectively, however, the result is the same."* (at 483)

*"The defendant's subsequent failure to supplement his offer of proof or seek to recall the State's witness amounted to an abandonment of his right to confrontation."* (at 485)

*"Although the misstatements at issue here are not 'nonsensical' as were those at issue in Drown, they also were not so egregious as to impose upon the trial court an obligation to intervene."* (at 488)

## FACTUAL BACKGROUND

Owen Labrie, an eighteen-year-old senior and dormitory prefect at St. Paul's School, pursued a fifteen-year-old freshman through the school's sexually oriented senior-salute tradition. He sent and received computer communications indicating a desire to have sexual contact with the victim, persuaded her to meet him, and arranged a meeting in a secluded school building. The encounter resulted in oral sex, digital penetration, and sexual intercourse, despite the victim's expressed physical boundaries. Afterward, Labrie made statements to the victim and others acknowledging the sexual encounter.

## PROCEDURAL HISTORY

Following a jury trial in the Superior Court, the defendant was convicted of five criminal offenses. He appealed, challenging the sufficiency of the evidence supporting the computer-services conviction, restrictions on cross-examination of a State witness, and the trial court's failure to correct alleged prosecutorial misstatements during closing argument. The Supreme Court of New Hampshire affirmed.

## DISPOSITION

affirmed

## CASES CITED

- State v. Houghton, 168 N.H. 269, 271 (2015)
- State v. Kay, 162 N.H. 237, 243 (2011)
- State v. Lisasuain, 167 N.H. 719, 722 (2015)
- State v. Kelley, 159 N.H. 449, 455 (2009)
- State v. Boutin, 168 N.H. 623, 627 (2016)
- State v. Serpa, 170 N.H. 781, 784 (2018)
- State v. Farrington, 161 N.H. 440, 445-47 (2011)
- State v. Jennings, 159 N.H. 1, 2-4 (2009)
- State v. Brooks, 164 N.H. 272, 292 (2012)
- Melendez-Diaz v. Massachusetts, 557 U.S. 305, 314 n.3 (2009)
- United States v. Soto, 799 F.3d 68, 96 (1st Cir. 2015)
- Brookhart v. Janis, 384 U.S. 1, 4 (1966)
- New York v. Hill, 528 U.S. 110, 114-15 (2000)
- United States v. Casey, 825 F.3d 1, 26 (1st Cir. 2016)
- State v. Lovejoy, 161 N.H. 483, 490 (2011)
- State v. Drown, 170 N.H. 788, 792, 801-02 (2018)
- State v. Noucas, 165 N.H. 146, 161 (2013)
- State v. King, 146 N.H. 717, 722 (2001)
- State v. Littlefield, 152 N.H. 331, 348 (2005)

