

SUPREME COURT OF NEW HAMPSHIRE

State v. George J. Colbath

200 A.3d 1265 (N.H. 2019) · No. Belknap No. 2017-0712 · Decided January 8, 2019

SUMMARY

The Supreme Court of New Hampshire affirmed George J. Colbath’s convictions on 17 charges of aggravated felonious sexual assault. The court held that evidence of uncharged sexual conduct was admissible under New Hampshire Rule of Evidence 404(b) to establish the defendant’s knowing mental state and that its probative value was not substantially outweighed by unfair prejudice. The court further held that any error in admitting testimony about the defendant’s sexualized comments concerning the victim was harmless beyond a reasonable doubt.

CASE DETAILS

COURT	Supreme Court of New Hampshire
WRITING FOR THE COURT	Hicks, J.; Lynn, C.J.; Bassett, J.; Hantz Marconi, J.; Donovan, J.
JURISDICTION	New Hampshire
DECIDED	January 8, 2019
DOCKET	Belknap No. 2017-0712
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed convictions following a six-day jury trial on 17 charges of aggravated felonious sexual assault, challenging the admission of evidence under New Hampshire Rule of Evidence 404(b) and the admission of testimony about statements concerning the victim's appearance.
STANDARD OF REVIEW	Evidentiary rulings under New Hampshire Rule of Evidence 404(b) are reviewed under the unsustainable exercise of discretion standard. The defendant must show that the ruling was clearly untenable or unreasonable to the prejudice of his case. Claims of evidentiary error are also subject to harmless-error review, under which an error is harmless only if the verdict was not affected beyond a reasonable doubt.
PRECEDENTIAL VALUE	Published New Hampshire Supreme Court opinion; precedential.
PARTIES	George J. Colbath v. The State of New Hampshire

TOPICS

evidence

character evidence

mens rea

criminal procedure

standard of review

PRACTICE AREAS

criminal law

evidence

sexual assault

appellate procedure

QUESTIONS PRESENTED

1. Whether the Superior Court properly admitted evidence of the defendant's uncharged Nottingham sexual conduct under New Hampshire Rule of Evidence 404(b) to prove his knowing mental state and intent in the charged offenses.
2. Whether the Superior Court improperly admitted testimony about the defendant's sexualized comments concerning the victim's body, and, if so, whether any error was harmless beyond a reasonable doubt.

HOLDINGS

1. The Nottingham incidents were admissible under Rule 404(b) because they were relevant for a noncharacter purpose—showing that the defendant knowingly sexually penetrated the victim and knowingly used coercive threats—and their probative value was not substantially outweighed by unfair prejudice.
2. Any error in admitting the testimony about the defendant's sexualized comments to the victim's aunt and his son was harmless beyond a reasonable doubt.

KEY QUOTATIONS

“For the defendant to prevail under this standard, he must demonstrate that the trial court’s decision was clearly untenable or unreasonable to the prejudice of his case.” (slip op. at 5)

“To be relevant to intent, evidence of other bad acts must be able to support a reliable inference, not dependent on the defendant’s character or propensity, that the defendant had the same intent on the occasions of the charged and uncharged acts.” (slip op. at 7)

“An error is harmless only if it is determined, beyond a reasonable doubt, that the verdict was not affected by the error.” (slip op. at 9)

FACTUAL BACKGROUND

The victim was the defendant's stepdaughter and lived with him during the relevant period. Beginning when she was in eighth grade, the defendant engaged in repeated sexual acts with her, including digital, oral, vaginal, and anal penetration, and coerced her through threats and deprivation of privileges. The charged conduct occurred in Alton and Center Barnstead, while earlier uncharged incidents occurred in Nottingham. After the victim disclosed the abuse, the defendant fled, threatened suicide, and left a voicemail acknowledging that he could go to jail if she testified or pressed charges.

PROCEDURAL HISTORY

A Belknap County grand jury indicted Colbath on 17 aggravated-felonious-sexual-assault charges. Before trial, the Superior Court granted the State's motion in limine to admit evidence of uncharged conduct occurring in Nottingham. During trial, the court also admitted testimony from the victim's aunt and the defendant's adult son about sexualized comments the defendant made concerning the victim's body. The jury convicted the defendant on all 17 charges, and the Supreme Court of New Hampshire affirmed.

DISPOSITION

affirmed

CASES CITED

- State v. Letarte, 169 N.H. 455, 461 (2016)
- State v. Addison (Capital Murder), 165 N.H. 381, 463-67 (2013)
- State v. Thomas, 168 N.H. 589, 596, 600, 602 (2016)
- State v. Pepin, 156 N.H. 269, 277-79 (2007)
- State v. Howe, 159 N.H. 366, 376-77 (2009)
- State v. Richardson, 138 N.H. 162, 166 (1993)
- State v. Johnson, 130 N.H. 578, 582-84 (1988)
- State v. Dukette, 145 N.H. 226, 230 (2000)
- State v. Cassavaugh, 161 N.H. 90, 98 (2010)
- State v. Allen, 128 N.H. 390, 391, 397 (1986)
- State v. McGlew, 139 N.H. 505, 507 (1995)
- State v. Tabaldi, 165 N.H. 306, 322-23 (2013)
- State v. Towle, 167 N.H. 315, 324 (2015)
- State v. Palermo, 168 N.H. 387, 398 (2015)
- State v. Wells, 166 N.H. 73, 83-84 (2014)
- State v. Torrence, 134 N.H. 24, 27 (1991)
- State v. Brown, 128 N.H. 606, 616 (1986)