

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2004-0350, State of New Hampshire v. Paula Reichey, the court on June 29, 2006, issued the following order:

Following a jury trial, the defendant, Paula Reichey, was convicted of second degree murder. See RSA 630:1-b (1996). On appeal, she contends that the trial court erred in excluding evidence of the victim's prior bad acts and by allowing the State to introduce a redacted audio recording of her post-arrest interview. We affirm.

We review the trial court's decision concerning the admission of evidence under an unsustainable exercise of discretion standard. See State v. Lavoie, 152 N.H. 542, 544 (2005). To establish that the trial court's decision is not sustainable, the defendant must demonstrate that the ruling was clearly untenable or unreasonable to the prejudice of her case. Id.

In this case, the defendant argues that the trial court erred in excluding evidence that the victim had previously threatened her with a gun (gun incident) and choked her with a telephone cord (cord incident). In reaching its decision, the trial court analyzed both incidents under New Hampshire Rule of Evidence 404(b). To introduce the prior bad acts of another to impugn the State's case, a defendant must demonstrate that such evidence of other bad acts is relevant for a purpose other than to prove the victim's character or disposition. See State v. Douthart, 146 N.H. 445, 447 (2001). To meet the Rule 404(b) relevancy requirement, there must be a clear connection between the particular evidentiary purpose and the bad acts. Id. There must also be clear proof that the person committed the act, and its probative value must not be substantially outweighed by the danger of its prejudice. See State v. Michaud, 135 N.H. 723, 727 (1992); State v. Trainor, 130 N.H. 371, 375 (1988) (Rule 403 equation appropriate analysis for third prong of Rule 404(b) test).

The defendant argues that because she pled self-defense, her state of mind was at issue and the excluded acts were relevant to prove that she reasonably believed that the victim would use deadly force against her at the time of the offense. The trial court found that the gun incident did not closely parallel the circumstances of the night of the murder and that the defendant failed to establish clear proof that the incident had occurred. See State v. Michaud, 135 N.H. at 727 (clear proof standard met where evidence established that defendant had committed prior bad act). In reaching its conclusion, the trial court found that the defendant was the aggressor during the gun incident in that she came

to the victim's home after obtaining a restraining order against him and that the threat of a gun was not present on the night of the murder.

As the defendant correctly notes in her brief, we have previously held that the clear proof standard has been met by testimony of a victim "in connection with some other corroborating factor." At oral argument, defense counsel cited State v. Haley, 141 N.H. 541 (1997), and argued that the absence of corroborating evidence should not have been dispositive in determining whether the defendant had met her burden. In this case, the only evidence presented of the alleged incident was the defendant's statement to police after the murder; she admitted at that time that she had not previously disclosed the incident to anyone. Having reviewed the record before us, we find no error in the trial court's ruling that the defendant failed to satisfy her burden of establishing clear proof that the gun incident had occurred.

The defendant also argues that the trial court erred in excluding evidence of the cord incident. In that incident, the victim was intoxicated and began to make sexual advances toward the babysitter who ignored him. The victim became enraged and told the babysitter to leave. The defendant intervened and told the victim he could not order the babysitter to leave as it was not his house. The victim then grabbed a telephone cord and attempted to strangle the defendant. The trial court found that while the proffered evidence might demonstrate that when the victim was intoxicated, amorous and rebuffed, he could become violent, these were not the circumstances on the night of the murder and that the parties were not the same.

The record contains no evidence that the victim possessed a deadly weapon at the time of the attack. Moreover, the trial court admitted extensive alternative evidence concerning other assaults by the victim upon the defendant, including another choking incident. Given this other evidence, we conclude that the defendant has failed to demonstrate that she was prejudiced by this ruling. See State v. Lambert, 147 N.H. 295, 296 (2001) (defining unsustainable exercise of discretion standard). Accordingly, we find no error in the trial court's ruling.

Citing the doctrine of verbal completeness, the defendant also argues that the trial court erred by allowing the State to redact portions of the audio-recording of her post-arrest police interview. See State v. Ellsworth, 151 N.H. 152, 159 (2004) (explaining doctrine). Even if we assume that the limited redaction was error, we conclude that any error was harmless. See State v. Fox, 150 N.H. 623, 624 (2004) (error is not harmless unless State proves beyond reasonable doubt that error did not affect verdict). Even in its redacted form, the interview contained many references by the defendant to previous incidents of abuse that she suffered at the hands of the victim. Other trial evidence included the victim's previous attempt to choke her as she drove.

The record also contained extensive evidence that the defendant did not act in self-defense, including her statements that they had not fought on the night of the murder, that when asked what happened she said, “I had a knife and stabbed him,” and that she got angry after her daughter, at the victim’s request, read a newspaper advertisement for an apartment and that the defendant then stabbed him. Given the strength of the State’s evidence presented at trial and the cumulative nature of the excluded evidence, we conclude that to the extent the trial court erred in admitting the redacted interview, any error was harmless. See id.

Affirmed.

DUGGAN, GALWAY and HICKS, JJ., concurred.

**Eileen Fox,
Clerk**