THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2005-0541, State of New Hampshire v. Frank Staples, the court on September 14, 2006, issued the following order:

The defendant, Frank Staples, appeals his conviction for being a felon in possession of a firearm. He argues that the trial court erred in limiting his cross-examination of "the State's chief witness." We affirm.

The constitutional right to cross-examine adverse witnesses is fundamental and includes the right to impeach a witness's credibility through cross-examination. State v. Flynn, 151 N.H. 378, 388 (2004). In determining the limits of cross-examination, a trial court must balance the prejudice, confusion, and delay of the proffered testimony against its probative value. Id. Once a defendant has been permitted a threshold level of inquiry, the constitutional standard is satisfied and the judge's limitation on cross-examination is thereafter measured against an unsustainable exercise of discretion standard. Id.

In this case, the defendant argues that the trial court erred in limiting his cross-examination of the witness's motive to lie. Specifically, he argues that the trial court erred in excluding questions designed to elicit that the witness avoided a mandatory minimum sentence as a result of his plea bargain in which he agreed to testify at the defendant's trial. He also argues that the trial court erred in excluding testimony that the witness was subject to bail revocation and imposition of a deferred sentence at the time of his testimony. In essence, the defendant contends that the pending charges provided additional motivation for him to lie to curry favor with the State. All of this evidence, however, was cumulative of the evidence previously presented on this issue. Unlike the witnesses in United States v. Alexius, 76 F.3d 642 (5th Cir. 1996), and Davis v. Alaska, 415 U.S. 308 (1974), the witness in this case had already testified as to his plea agreement. Based upon the record before us, we find no error in the limitations on cross-examination imposed in this case. See Brown v. Powell, 975 F.2d 1, 6 (1st Cir. 1992) (where defendant afforded opportunity at trial to explore in substantial manner inherent bias in testimony of an accomplice and evidence of defendant's guilt is overwhelming, no constitutional error committed when trial court prohibited jury from learning penalty avoided by accomplice in pleading guilty to lesser charge).

The defendant also contends that by testifying that he was "trying to change," the witness "opened the door" to evidence that the witness had a

pending probation violation and was incarcerated at the time of his testimony. The opening the door doctrine applies when one party introduces evidence that provides a justification beyond mere relevance for an opponent's introduction of evidence that may not otherwise be admissible. State v. Rogan, 151 N.H. 629, 631 (2005). Because the trial court is in the best position to gauge the prejudicial impact of particular testimony, we will sustain its ruling unless it is an unsustainable exercise of discretion. Id. at 631-32. Even if we assume that the witness's statement had any relevance to the issue before the jury, we conclude that the defendant's proposed remedial evidence was not related to whether the witness was "trying to change." Given the extensive testimony in the record addressing the witness's credibility, we find no error in the trial court's ruling.

Affirmed.

DALIANIS, DUGGAN and HICKS, JJ., concurred.

Eileen Fox,
Clerk