

# THE STATE OF NEW HAMPSHIRE

## SUPREME COURT

**In Case No. 2006-0556, State of New Hampshire v. Matthew Collanzo, the court on July 3, 2007, issued the following order:**

The defendant, Matthew Collanzo, appeals his convictions on several counts of aggravated felonious sexual assault by digital penetration and sexual intercourse, and for sexual assault based upon his touching the victim's breasts. On appeal, he argues that the trial court erred in admitting a police officer's statement regarding the typical behavior of a victim and in denying his motion to quash two of the charges alleging force. We affirm.

We review a trial court's decision on the admissibility of evidence under an unsustainable exercise of discretion standard. State v. Gonzales, 150 N.H. 74, 77 (2003). In this case, an investigating police officer testified that the victim was "Not willing to disclose information easily, which is common." The defendant argues that this testimony was expert testimony subject to disclosure and reliability rules.

Expert testimony addresses matters of scientific, mechanical, professional or other like nature which requires special study, experience, or observation not within the common knowledge of the general public; lay testimony is confined to personal observations that any lay person is capable of making. Id. Even if we assume without deciding that the admission of this testimony was error, we conclude that any error was harmless. See id. at 79 (State's burden to establish harmless error satisfied by proof beyond reasonable doubt that erroneously admitted evidence did not affect verdict). In this case, several witnesses testified that the victim was upset, nervous and tearful when she reported the assault. She told the emergency room nurse that the defendant had raped her. The nurse testified, without objection, that the victim was "Upset, nervous, tearful. What I would expect" and that she "did not speak openly unless I specifically asked questions, which again is what I would expect given what she had said had happened." The other evidence included the visible abrasion on the victim's neck, the DNA test that revealed the defendant's sperm in her underwear and the defendant's conflicting statements to the police.

The defendant also contests the sufficiency of the charging documents that alleged sexual assault by force. An indictment is sufficient if it provides a defendant with enough information to prepare his case. State v. MacElman, 154 N.H. 304, 313 (2006). Once a crime is identified with factual specificity, there is no additional requirement that the acts by which the defendant may have committed the offense be identified. Id. The question is not whether the

indictment could have been more sufficient but whether it contains the elements of the offense and enough facts to warn the defendant of the specific charges against him. Id.

Both challenged charging documents alleged that the defendant overcame the victim by physical force or superior physical strength to commit the assaults. He argues that this language was insufficient to provide adequate notice because “most if not all forms of consensual sexual contact do involve the employment of ‘physical force,’” and that the element of force is what distinguishes the crime from lawful conduct. We disagree. The charged offenses required that the State prove that the defendant engaged in the sexual acts by overcoming the victim “through the actual application of physical force, physical violence or superior physical strength.” RSA 632-A:2, I (a); see RSA 632-A:4, I. Therefore the State was required to prove that the acts were nonconsensual. The charging documents also contained the place and date and the elements of the offenses. We note also that the defendant was provided with extensive pretrial discovery and did not request a bill of particulars. Based upon the record before us, we find no error in the trial court’s ruling.

Affirmed.

DALIANIS, GALWAY and HICKS, JJ., concurred.

**Eileen Fox,  
Clerk**