

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2006-0726, State of New Hampshire v. Richard P. Dooley, the court on November 8, 2007, issued the following order:

The defendant, Richard P. Dooley, appeals three convictions for felony criminal threatening with a deadly weapon. He contends that the trial court erred when it allowed the State to argue that a knife is a *per se* deadly weapon and when it did not allow him to introduce evidence that two of the victims were allegedly impaired by cocaine at the time of the offenses about which they testified. We affirm.

We review a trial court's decision on whether to give a jury instruction under an unsustainable exercise of discretion standard. *State v. Sanchez*, 152 N.H. 625, 628 (2005). To establish that the decision was unsustainable, the defendant must demonstrate that it was clearly untenable or unreasonable to the prejudice of his case. *Id.*

We will assume without deciding that the State's assertion in its closing argument that a knife is a *per se* deadly weapon under RSA 625:11, V was a misstatement of the law. Even with that assumption, the defendant has failed to establish that the jury was misled and that he was prejudiced. In its instructions, the trial court advised the jury that it was to follow the law as stated by the court; the court then restated the language of RSA 625:11, V. Moreover, the jury acquitted the defendant on the criminal threatening with a deadly weapon charge that was directly relevant to the parties' debate as to whether a knife was a *per se* deadly weapon. Finally, we note the essentially uncontroverted evidence that the defendant had knives in his hands when he threatened the three victims, that he used the knives to inflict serious injury on himself and that he continued his threatening behavior when others tried to intervene. See *State v. Wall*, 154 N.H. 237, 244-45 (2006) (error may be harmless beyond reasonable doubt if alternative evidence of defendant's guilt is of overwhelming nature, quantity, or weight).

The defendant also argues that the trial court erred when it did not allow him to present evidence that two of the victims were allegedly impaired by cocaine during the time the defendant committed the offenses about which they testified. We review a trial court's ruling on the admissibility of evidence under our sustainable exercise of discretion standard and reverse only when a defendant establishes that the ruling is clearly untenable or unreasonable to the prejudice of his case. *State v. Hammell*, 155 N.H. 47, 48 (2007).

“Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.” N.H. R. Ev. 403. We will assume without deciding that the contested evidence was relevant. To the extent that the defendant argues that the alleged drug use was relevant to the victims’ ability “to accurately perceive the pertinent events,” we note that he had already presented evidence of their alcohol use. Based upon the record before us, we conclude that the trial court did not err in excluding the evidence. See State v. Abram, 153 N.H. 619, 633 (2006) (sustaining trial court’s decision to exclude evidence that would produce significant confusion of issues, likely resulting in trial within trial and potentially causing substantial delay).

Affirmed.

DUGGAN, GALWAY and HICKS, JJ., concurred.

**Eileen Fox,
Clerk**