THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2006-0886, State of New Hampshire v. Christopher Fournier, the court on May 15, 2008, issued the following order:

The defendant, Christopher Fournier, appeals his conviction for second degree assault, see RSA 631:2 (2007). He argues that the trial court erred in barring him from cross-examining the victim about an incident allegedly concerning her character for untruthfulness, see N.H. R. Ev. 608(b). We affirm.

A trial court has broad discretion to determine the admissibility of evidence; absent an unsustainable exercise of discretion, we will affirm its ruling. State v. Miller, 155 N.H. 246, 249 (2007). To prevail on appeal, the defendant must demonstrate that the trial court's decision was clearly untenable or unreasonable to the prejudice of his case. Id.

In this case, even if we assume without deciding that the trial court erred, we conclude that any error was harmless. See State v. Connor, 156 N.H. 544, 549 (2007) (error harmless if State establishes beyond reasonable doubt that alternative evidence of defendant's guilt is of overwhelming nature, quantity or weight, and if inadmissible evidence is merely cumulative or inconsequential in relation to strength of State's evidence of guilt).

The evidence included testimony by: (1) the surgeon who treated the victim about the severity of her injury; (2) a witness who saw the defendant at the victim's home angrily arguing with her, and who became so concerned that she covered the victim's body with her own to protect her; (3) testimony by a witness who arrived at the home as the defendant was leaving, observed the victim holding her ribs and saying she was having a hard time breathing, and who stayed until the police arrived; and (4) statements made by the defendant during booking and while in jail, which included admitting that what he had done "was horribly wrong." The defendant also testified at trial; although he denied that he had punched her in the abdomen or head, he admitted that he had hit the victim.

Given all of the evidence presented, we conclude that any error the trial court may have made in denying the requested cross-examination was harmless.

Affirmed.

DALIANIS, DUGGAN and GALWAY, JJ., concurred.

Eileen Fox,
Clerk