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THE SUPREME COURT OF NEW HAMPSHIRE

Strafford
Case No. 2024-0439
Citation: State v. Trueman, 2026 N.H. 35

THE STATE OF NEW HAMPSHIRE

v.

RICHARD TRUEMAN

Argued: April 7, 2026
Opinion Issued: September 24, 2026

John M. Formella, attorney general, and Anthony J. Galdieri, solicitor general (Robert L. Baldridge, assistant attorney general, on the brief and orally), for the State.

Pamela E. Phelan, senior assistant appellate defender, of Concord, on the brief and orally, for the defendant.

GOULD, J.

[¶1] The defendant, Richard Trueman, appeals his conviction, following a jury trial in Superior Court (Will, J.), of selling a controlled drug resulting in death, see RSA 318-B:26, IX (2025). We reverse and remand.

I. Statement of Facts

[¶2] The jury could have found the following facts. On September 29, 2020, the victim repeatedly attempted to communicate with the defendant through Facebook Messenger. The communications began at 10:55 a.m. when the victim attempted to call the defendant through Facebook Messenger. The defendant did not answer. The victim attempted four more calls to the defendant over the course of five minutes that went unanswered.

[¶3] Around 11:00 a.m., the victim asked his friend and co-worker (the driver) for a ride to conduct errands in Rochester before their work shifts. The victim offered twenty dollars to the driver for his help. The driver agreed, and the victim asked him “how quick can you get here?” The driver told the victim that he could leave right away.

[¶4] Between 11:00 and 11:02, the victim messaged “Yo,” “Times [sic] not on my side,” and “U in roch[ester]” to the defendant. In the next fifteen minutes, the victim attempted seven calls to the defendant that went unanswered. During that time, the victim also messaged the defendant “Duuuude” and “Dude your [sic] active, answer meeee.”

[¶5] Around 11:30, the driver picked up the victim in Dover. The victim then renewed his efforts to communicate with the defendant. Between 11:30 and 11:37, the victim attempted twenty-eight calls to the defendant. At 11:35, the victim messaged “Can u call me bud” to the defendant. At 11:39, the victim reached the defendant in a call that lasted 45 seconds. The driver overheard this call though he did not hear the substance of the conversation. At 11:42, the victim messaged the defendant, “Do u kno [sic] how long it will be?” and eight minutes later, “Just want to kno [sic] how long man.” The victim attempted another five calls to the defendant around this time. The driver and the victim arrived at a supermarket at around 11:45, and the victim entered the store.

[¶6] After ten to fifteen minutes in the supermarket, the victim returned, gave the driver twenty dollars, and directed the driver to drive him to a location on Winter Street in Rochester. The location was about one block away from the defendant’s home on Winter Street. At 11:57, the victim messaged the defendant, “At least tell me how long bro, I’ll give u 60 for a ticket bro.” At 12:00 p.m., the defendant messaged the victim, “I am ready.” At about the same time, the driver and the victim arrived at the location on Winter Street and the victim left the car. Two minutes later, the victim completed an eighty-eight second call to the defendant. At 12:08, the victim attempted another call to the defendant, and a minute and a half later the victim completed a sixty-four second call to the defendant. The victim returned to the car at around 12:20.

[¶7] The driver set off for work with the victim. A few minutes later, the driver heard the victim “snort” what the driver assumed to be heroin. The victim began slurring his words and slumping over. Once the driver and the victim arrived at work, the victim’s eyes began rolling back in his head. The victim became unresponsive and the driver sought emergency medical attention. The victim was transported to a hospital and died on October 1, 2020, from complications caused by fentanyl toxicity. Subsequent investigation by police revealed that the victim’s wallet contained a baggie filled with 0.425 grams of material containing fentanyl.

[¶8] On July 15, 2021, a Strafford County grand jury indicted the defendant for knowingly dispensing fentanyl to the victim who died as a result of inhaling that drug. The defendant was tried before a jury in April 2024. The jury found the defendant guilty, and the defendant now appeals.

II. Analysis

[¶9] On appeal, the defendant argues that: (1) the trial court erred in admitting otherwise inadmissible evidence pursuant to the opening the door specific contradiction doctrine and (2) there was insufficient evidence to support his conviction. The State argues that the trial court did not err in its evidentiary ruling, but if there were any error it was harmless beyond a reasonable doubt. It also argues that the evidence was sufficient to convict the defendant. We address each issue in turn.

A. 404(b) Evidence

[¶10] Rule 404(b)(1) provides:

Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that the person acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

N.H. R. Ev. 404(b)(1). The purpose of Rule 404(b) “is to ensure that the defendant is tried on the merits of the crime as charged and to prevent a conviction based upon evidence of other crimes or wrongs.” State v. Rouleau, 176 N.H. 400, 407 (2024), 2024 N.H. 2, ¶19 (quotation omitted).

[¶11] Before trial, the defendant moved, pursuant to New Hampshire Rule of Evidence 404(b), to, among other things, exclude Facebook account communications suggesting that the defendant sold drugs to third parties other than the victim. Following a hearing, the trial court granted the defendant’s motion over the State’s objection. The court thereafter denied the

State's motion to reconsider. In its order denying reconsideration, the trial court concluded that the probative value of the third-party drug transactions was low "and the unfair prejudice of evidence tending to show that the defendant deals drugs is extremely high, through the very significant risk that the jury would convict the defendant based on propensity or their belief that he is guilty of any number of other crimes." The court's ruling excluding the evidence is not at issue on appeal.

[¶12] On the first day of trial, the driver, a witness for the State, acknowledged on cross-examination that on the day the victim overdosed, the police did not search his car and did not ask for his fingerprints. Later, a Dover Police Department officer testified on cross-examination that he did not ask the driver for consent to search his car and did not attempt to obtain a warrant to search the car. The officer also acknowledged that he did not request that the baggie found in the victim's wallet be tested for fingerprints or DNA. Finally, the officer confirmed that he did not take any pictures of the driver's car or the victim's wallet. The cross-examinations of the driver and the officer supported the defendant's opening statement which forecast that the evidence would show that the police did not thoroughly search the driver's car or home and that the police did not properly collect evidence for fingerprint or DNA testing.

[¶13] On the second day of trial, the State moved to admit some of the evidence previously excluded by the trial court, arguing that the defendant had opened the door to the introduction of testimony regarding the defendant's drug-sales-related Facebook communications with third parties. In particular, the State argued that defense counsel's cross-examination of the driver and the officer created a misleading impression that the police investigation was not thorough. The State also observed that "there were references in Defense counsel's opening statement that would have opened the door" because the opening statement "already brought into view the sufficiency of the investigation into [the driver]."

[¶14] The State asked the trial court to admit testimony that the police viewed the defendant's Facebook communications with third parties regarding drug sales, without admitting the communications themselves, to "rebut the implied charge of an insufficient police investigation." The State observed that on September 30, 2020, the police obtained access to the victim's phone which included his communications with the defendant from the previous day. These communications caused the police to obtain search warrants to obtain the defendant's Facebook account records that showed the defendant's involvement with other drug sales. The police did not receive these records until December 14, 2020, however, more than two months after the victim's death.

[¶15] The trial court ruled that this evidence was “admissible pursuant to the specific contradiction theory” because it “is pertinent to rebutting at least one strand of the defense, which is that the investigation was not thorough.” The court observed that a defense theme had emerged that there was a poor investigation into the driver despite the existence of reasons why “the investigation didn’t focus on [the driver] after September 29th.” The court did not admit the communications themselves, but permitted the State to elicit testimony from a detective summarizing their substance.

[¶16] The detective testified:

I focused on the communications of September 29th, 2020 . . . [a]nd looking at those communications, I could see communications that were exchanges of controlled drugs, discussion about the sale of controlled — sorry — discussions about the — the price of controlled drugs, discussions about the types of controlled drugs . . . between Mr. Trueman and other people.

The witness later testified that “[t]here were communications about exchanges of controlled drugs, prices, quantity, and slang between . . . the scottytrueman24 account, and . . . other parties.” As part of its closing argument, the State contended:

How do we know that [the detective] did a full and complete investigation in this case is that [sic] when he received the Facebook search warrant for the second account, he also observed conversations with third parties about controlled drugs — not marijuana, guys. Other controlled drugs. Quantities, prices, and exchanges. That’s how we know that the Dover Police Department did a thorough and complete investigation. That’s how they could rule out [the driver].

[¶17] The trial court issued the following jury instruction after closing arguments:

You heard testimony about messages law enforcement obtained through a search warrant from a Facebook account the State contends belongs to the Defendant. The testimony included general descriptions of messages in which the owner of the account and third parties had conversations that law enforcement officers interpreted as concerning drug transactions. I now instruct you that this testimony is admitted for the limited purpose of rebutting a claim that law enforcement did not conduct a thorough investigation in this case. As with all testimony, you are free to accept it or reject it. But if you accept any or all of it, you may

consider this evidence only for that limited purpose and may not consider it for any other purpose, such as, for example, as tending to prove that the Defendant engaged in drug transactions with third parties unrelated to the case.

[¶18] On appeal, the defendant argues that the trial court erred by admitting the otherwise inadmissible Rule 404(b) evidence under the specific contradiction doctrine. The defendant argues that his counsel did not create a misleading impression and that the evidence of other communications about the sale of controlled drugs did not counter any such impression. The State disagrees.

[¶19] We review a trial court's decision regarding the admissibility of evidence under the opening the door doctrine pursuant to the unsustainable exercise of discretion standard. State v. Roman, 176 N.H. 367, 370 (2023). To prevail, the defendant must show that the trial court's decision was clearly untenable or unreasonable to the prejudice of his case. Id. at 371.

[¶20] The opening the door doctrine comprises two variants. See id. The first, which we have described as the doctrine of "curative admissibility," arises when inadmissible prejudicial evidence has been erroneously admitted by one party, and the opposing party seeks to introduce otherwise inadmissible evidence to counter the prejudice. See id. The second, which we have described as the doctrine of "specific contradiction," applies more broadly to situations in which a party introduces admissible evidence that creates a misleading advantage for that party, and the opposing party is then permitted to introduce previously suppressed or otherwise inadmissible evidence to counter the misleading advantage. Id. With respect to both variants, the fact that the "door has been opened" does not permit all evidence to "pass through" because the doctrine is remedial and is intended to prevent unfair prejudice. See id. The doctrine is not to be subverted into a mechanism for the wholesale introduction of all prejudicial evidence on the subject as to which the door has been opened. See id.

[¶21] In this case, as reflected above, the trial court relied on the specific contradiction variant of the doctrine to admit the Rule 404(b) evidence. The court gave as its rationale that the evidence rebutted a "strand of the defense, which is that the investigation was not thorough." We disagree that the opening statement and the testimony created a misleading advantage and that the evidence was probative of whether the investigation was thorough. The existence of a misleading advantage is a prerequisite to admitting evidence under the specific contradiction doctrine. Here, the opening statement and cross-examination of the driver established that the police did not conduct certain investigative steps to eliminate the driver as the source of the fentanyl. There was nothing misleading about the opening statement and evidence; indeed, they were accurate.

[¶22] The trial court’s ruling admitting the evidence of third party, drug-related communications under the specific contradiction doctrine was error for three reasons. First, as discussed above, there was no misleading advantage to counteract. Second, the police did not obtain the Facebook communications with the other parties until December 14, 2020, which means the communications could not have informed the police’s decision to focus exclusively on the defendant early in the investigation. Third, the State made a proffer to the trial court that on September 30 police received the Facebook communications between the defendant and the victim. This proffer arguably explained why the police focused their investigation on the defendant such that the introduction of the otherwise inadmissible Rule 404(b) evidence was unnecessary. See State v. Trempe, 140 N.H. 95, 99 (1995) (concluding that introducing Rule 404(b) evidence was unnecessary to correct a misleading impression because the prosecutor could have elicited other admissible testimony to correct the impression); see also State v. Morrill, 154 N.H. 547, 552 (2006) (concluding that the State had presented evidence which placed any misleading evidence into the proper context such that it was improper to admit inadmissible hearsay testimony). As the trial court observed in its ruling, the police’s discovery on September 30, 2020 of the victim’s communications with the defendant from September 29, “steered . . . law enforcement to the Defendant and his Facebook account,” and therefore “there was a reason not to pursue [a theory regarding the Driver].” Accordingly, we hold that the trial court misapplied the specific contradiction doctrine in admitting the evidence and thereby unsustainably exercised its discretion.

[¶23] We turn now to the State’s argument that any error in admitting the evidence was harmless beyond a reasonable doubt. “To establish harmless error, the State must prove beyond a reasonable doubt that the error did not affect the verdict.” Rouleau, 176 N.H. at 407, 2024 N.H. 2, ¶20. “To determine whether the State has proven beyond a reasonable doubt that an error did not affect the verdict, we must evaluate the totality of the circumstances at trial.” Id.

The factors that we consider in assessing whether an error did not affect the verdict include, but are not limited to: (1) the strength of the State’s case; (2) whether the admitted or excluded evidence is cumulative or inconsequential in relation to the strength of the State’s case; (3) the frequency of the error; (4) the presence or absence of evidence corroborating or contradicting the erroneously admitted or excluded evidence; (5) the nature of the defense; (6) the circumstances in which the evidence was introduced at trial; (7) whether the court took any curative steps; (8) whether the evidence is of an inflammatory nature; and (9) whether the other evidence of the defendant’s guilt is of an overwhelming nature.

Id. at 407-08, 2024 N.H. 2, ¶21. “No one factor is dispositive.” Id. at 408, 2024 N.H. 2, ¶21. “We may consider factors not listed above, and not all factors may be implicated in a given case.” Id.

[¶24] The State argues that any error in admitting the challenged evidence is harmless because its case against the defendant was strong, the challenged evidence was not inflammatory or prejudicial, and any unfair prejudice was eliminated by the trial court’s jury instruction. We disagree.

[¶25] We conclude that this case does not present one of “the rare instance[s] of a harmless 404(b) error.” State v. Smith, 141 N.H. 271, 278 (1996). The evidence proving that the defendant sold the fentanyl to the victim, while sufficient to convict the defendant as discussed below, was entirely circumstantial. See State v. Woodbury, 124 N.H. 218, 222 (1983) (finding error not harmless where the other evidence in the case was circumstantial). Indeed, there was no direct evidence that the defendant dispensed the fentanyl to the victim or that the defendant was even in Rochester at the time the victim was there. The admission of evidence showing the defendant’s engaging in unrelated drug sales on the date the victim consumed the drug created a substantial risk that the jury would construe the circumstantial evidence as establishing the defendant’s guilt. This evidence unfairly transformed the State’s case from one in which there was a steady stream of urgent but non-specific messages from the victim to the defendant after which the victim met with the defendant, and then overdosed into one in which the victim was urgently messaging a drug dealer, met with him, and died shortly thereafter from an overdose. Without the Rule 404(b) evidence, the evidence of the defendant’s guilt was not overwhelming.

[¶26] For the same reason, the challenged evidence was also undoubtedly prejudicial. See State v. Pelkey, 145 N.H. 133, 136 (2000) (finding that evidence showing that the defendant was a drug dealer had “extreme” “potential for prejudice”). Indeed, the trial court had described the “extremely high” risk of unfair prejudice from this evidence in its pretrial order denying reconsideration of its ruling excluding the evidence.

[¶27] Nor was the trial court’s jury instruction sufficient to cure the prejudicial effect of the challenged evidence. As we have noted, there are bounds on the efficacy of limiting instructions to prevent prejudice from the introduction of other acts evidence tending to show a propensity. See State v. Montgomery, 178 N.H. ___, ___ (2026), 2026 N.H. 24 ¶27 (concluding that “there was a significant risk that the jury would draw [an] impermissible inference” from propensity evidence); Pelkey, 145 N.H. at 136-37 (concluding that evidence showing that the defendant was a drug dealer was “odious” such that “cautionary or limiting instructions would not have been able to erase the taint of the prejudicial evidence”). Here, the instruction was insufficient to mitigate the risk that the jury would consider the evidence for the purpose of

establishing that because the defendant engaged in drug transactions with third parties, he sold the drug to the victim in this case. Furthermore, the efficacy of the limiting instruction was further diminished by the lack of a nexus between the stated purpose of the evidence (rebuttal of the argument that the early investigation prematurely excluded other suspects) and the date on which the police received the evidence. The instruction, moreover, was internally inconsistent because the “limited purpose” for which the evidence was admitted was to establish that because the defendant was a drug dealer it was reasonable for the police to focus upon him as the principal suspect. If the jury could not infer from the evidence that “the Defendant engaged in drug transactions with third parties” as the trial court instructed, however, it was irrelevant to the reasonableness of singling out the defendant as the principal suspect.

[¶28] We also note that the challenged evidence was referred to twice by the detective and referenced in the State’s closing argument. See Rouleau, 176 N.H. at 407-08, 2024 N.H. 2, ¶21 (noting that “the frequency of the error” is a factor we consider).

[¶29] Considering the above factors, we cannot conclude beyond a reasonable doubt that the admission of the challenged evidence did not affect the verdict. See State v. LaBranche, 118 N.H. 176, 180 (1978) (“The State here should not have the windfall of having the jury be influenced by evidence against a defendant which, as a matter of law, they should not consider but which they cannot put out of their minds.” (quotation omitted)). Therefore, the defendant’s conviction is reversed and the case remanded.

B. Sufficiency of the Evidence

[¶30] We next address the defendant’s argument that the circumstantial evidence was insufficient to support his conviction and thus “[n]o reasonable jury could have found that the evidence proved beyond a reasonable doubt that he supplied [the victim] with the fentanyl that caused his death.” If the defendant were to prevail on this argument, the Double Jeopardy Clauses of the State and Federal Constitutions would bar a second trial. See State v. Ojo, 166 N.H. 95, 98 (2014); Burks v. United States, 437 U.S. 1, 18 (1978).

[¶31] We begin by observing that there is a difference between our assessment of whether an error is harmless and whether the evidence is sufficient to support a conviction. While in both circumstances we review all the evidence in the record, we do so for different purposes and within differing legal frameworks. In the harmless error context, we review the record to determine “whether the State has proven beyond a reasonable doubt that an error did not affect the verdict.” Rouleau, 176 N.H. at 407, 2024 N.H. 2, ¶20. We do not view the evidence in the light most favorable to the State as part of this review; instead we “evaluate the totality of the circumstances at trial.” Id.

In contrast, when considering sufficiency of the evidence challenges, we objectively review the entire record to determine whether a rational jury could have found guilt beyond a reasonable doubt, considering the evidence, and all reasonable inferences drawn therefrom, in the light most favorable to the State. State v. Seibel, 174 N.H. 440, 445 (2021).

[¶32] In reviewing the sufficiency of the evidence, we examine each item of evidence in the context of the entire case, and not in isolation. Id. The trier of fact may draw reasonable inferences from facts proved as well as from facts found as the result of other inferences, provided they can be reasonably drawn therefrom. Id. Because the defendant chose to present a case, we review the entire trial record to determine the sufficiency of the evidence. Id. The defendant bears the burden of proving that the evidence was insufficient to prove guilt. Id. A challenge to the sufficiency of the evidence raises a question of law, which we review de novo. Id.

[¶33] If the evidence presented at trial consists of both direct and circumstantial evidence, we apply the standard set forth above and uphold the verdict unless no rational trier of fact could have found guilt beyond a reasonable doubt. Id. If, however, the record contains only circumstantial evidence as to an element of the offense, the defendant must establish that the evidence fails to exclude all reasonable conclusions except guilt. See id. Consistent with the standard of proof in criminal cases, the proper analysis is not whether the evidence excludes every possible conclusion consistent with innocence but whether it has excluded all reasonable conclusions other than guilt. See id. It is not enough that the defendant has suggested another possible hypothesis that could explain the events in an exculpatory fashion. Id. Rather, we evaluate the evidence in the light most favorable to the State and determine whether the alternative hypothesis offered by the defendant is sufficiently reasonable that a rational trier of fact could not have found proof of guilt beyond a reasonable doubt. Id. Where solely circumstantial evidence is at issue, the critical question is whether, even assuming all credibility resolutions in favor of the State, the inferential chain of circumstances is of sufficient strength that guilt is the sole rational conclusion. Id.

[¶34] In this case, because the record contains only circumstantial evidence that the defendant provided the fentanyl to the victim, the defendant must establish that the evidence fails to exclude all reasonable conclusions except guilt. See id. Viewing the evidence in the light most favorable to the State, we conclude that the prosecution established that: (1) the victim used illegal drugs; (2) the victim was trying to contact the defendant on dozens of occasions within the space of an hour and ten minutes; (3) the victim succeeded in reaching the defendant and proposed to purchase a “ticket” from the defendant; (4) the victim was let off by the driver a block from the defendant’s home and returned approximately twenty minutes later; (5) upon returning to the driver’s vehicle the victim “snorted” a substance and shortly

thereafter began exhibiting signs of an overdose; (6) the police found a substance containing fentanyl in the victim's wallet; and (7) the victim died as a result of fentanyl toxicity. This evidence permitted a rational jury to have found proof of guilt beyond a reasonable doubt.

[¶35] The defendant's alternative theories do not change this conclusion. For example, the defendant argues that the evidence did not exclude "the reasonable possibility that someone other than [the defendant] supplied [the victim] with the drugs." This argument does not view the evidence in the light most favorable to the State as we must in this context. Considering the evidence in this light, the jury could rationally conclude that the theoretical possibility that the victim obtained the fentanyl elsewhere did not create a reasonable doubt of the defendant's guilt. The defendant's other theories fare no better based upon the evidence, when viewed in the light most favorable to the State. Accordingly, we hold that the defendant has not met his burden of demonstrating that the evidence was insufficient to prove guilt.

Reversed and remanded.

DONOVAN and COUNTWAY, JJ., concurred; MACDONALD, C.J., sat for oral argument but did not participate in the final vote.