

# THE STATE OF NEW HAMPSHIRE

## SUPREME COURT

**In Case No. 2005-0228, State of New Hampshire v. Roland Chretien, the court on August 11, 2006, issued the following order:**

Following a bench trial, the defendant, Roland Chretien, was convicted of three counts of aggravated felonious sexual assault and two counts of sexual assault. On appeal, he argues that the trial court erred when it denied his motions: to depose the victim; to admit extrinsic evidence that, approximately one year after the assault, the victim made an allegedly false accusation against another man; and, for a new trial. Based upon the parties' briefs, the record submitted on appeal and the parties' oral arguments, we affirm.

We agree with the State for the reasons set forth in its brief that the defendant did not preserve his arguments concerning the trial court's order denying his motions to depose the victim and for a new trial.

We also agree with the State that the defendant has not preserved his claim that the trial court erred when it did not permit him to cross-examine the victim about the alleged subsequent assault. Although cross-examining the victim about the assault was one of the kinds of relief the defendant sought in his pretrial motion in limine, the trial court did not rule on this motion. Rather, the court deferred until trial any ruling upon whether evidence of the subsequent assault was admissible. At trial, the defendant never asked to cross-examine the victim about the subsequent assault. Therefore, this claim is also not preserved for our review. See State v. Hoag, 145 N.H. 47, 52 (2000) (motion in limine sufficient to preserve appeal issue without an objection at trial if trial court definitively rules on issue before trial).

In light of the above, we limit our analysis to the defendant's assertion that the trial court erred by excluding extrinsic evidence of the victim's alleged subsequent false accusation. The defendant argues that excluding this evidence violated his State and Federal due process and confrontation rights.

At the outset, we assume, without deciding, that the defendant is correct when he asserts that the New Hampshire Rape Shield Law and New Hampshire Rule of Evidence 412 apply to the admission of the extrinsic evidence at issue, even though this evidence is of a subsequent and not a prior sexual assault. We first examine the defendant's claim under the State Constitution, using federal opinions for guidance only. State v. Ball, 124 N.H. 226, 231-33 (1986).

Extrinsic evidence of a prior (or, in this case, a subsequent) false allegation of sexual assault by a victim in a sexual assault case may be admitted “only where the allegations are similar, and the proffered evidence is highly probative of the material issue of the complainant’s motives.” State v. Ellsworth, 142 N.H. 710, 719 (1998), petition for habeas denied by Ellsworth v. Warden, New Hampshire State Prison, 242 F. Supp. 2d 95 (D.N.H. 2002). Because the trial court has broad discretion to determine the admissibility of evidence, we will not upset its ruling absent an unsustainable exercise of discretion. State v. Abram, 153 N.H. \_\_\_, \_\_\_ (decided June 13, 2006). Based upon the record before us, we conclude that the trial court’s decision was a sustainable exercise of discretion.

We now review the defendant’s claims under the Federal Constitution. The defendant argues that this case presents similar facts to those in State v. White, 145 N.H. 544 (2000), cert. denied, 533 U.S. 932 (2001), petition for habeas denied by White v. Coplan, 296 F. Supp. 2d 46 (D.N.H. 2003), vacated on fed<sup>1</sup> constitutional grounds, 399 F.3d 18 (1<sup>st</sup> Cir.), cert. denied, 126 S. Ct. 478 (2005). He contends that the facts in this case are the type of “extreme” and “unusual” facts that were presented in White. We disagree.

White concerned cross-examination, while this case concerns extrinsic proof. These “are two different issues.” Coplan, 399 F.3d at 25. While “[t]he ability to ask a witness about discrediting . . . events . . . is worth a great deal,” extrinsic evidence “requires more witnesses and documents, and so greater risks of confusion and delay.” Id. at 25, 26.

Moreover, in White, the evidence of the falsity of the victims’ earlier accusations was much more compelling than the evidence here. See id. at 27. Here, the defendant proffered only the testimony of the victim’s alleged sexual partner and the friends with whom the partner discussed the alleged encounter. The only evidence that the victim ever accused this sexual partner of assaulting her was testimony that an unknown man accused the partner of assaulting the victim. Similarly, the only evidence that the victim ever recanted was testimony that the unknown man told the partner this.

Under these circumstances, we conclude that excluding the defendant’s proffered extrinsic evidence did not violate his due process and confrontation rights under the Federal Constitution. See Abram, 153 N.H. at \_\_\_.

Affirmed.

DALIANIS, DUGGAN and GALWAY, JJ., concurred.