The State of New Hampshire

SUPREME COURT

Case Number 2021-0360

State of New Hampshire

V

Jeffrey Woodburn

RULE 7 APPEAL OF JURY VERDICT FROM

THE COOS COUNTY SUPERIOR COURT

REPLY BRIEF FOR THE DEFENDANT

By: Jeffrey Woodburn, Pro Se
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ARGUMENT:

I. THE EVIDENCE IS SUFFICIENT TO PRESERVE THE ISSUE OF A DANGEROUS SITUATION (PRESENCE OF DANGER)

The state contends that the wintry and isolated conditions that caused the “dangerous situation” when the defendant was trying to leave the complaint’s control on the evening of December 15, 2017 were not properly preserved and therefore can’t be considered by this court. SB 25

The defendant testified that the complainant used non-deadly force (confinement) on two separate occasions that justify self-defense (RSA 627:4). The first, being false imprisonment when the complainant refused to stop and let the defendant out of her car until the point when the defendant pulled the steering wheel causing the complainant to stop the car to avoid veering off the road.

The second, possibly reaching the level of criminal restraint because of presence of danger caused by the cold weather, long distance from help and the defendant being deprived by the complainant of his cell phone to aid in his safe retreat from the situation.

The state ignores the defendant’s testimony regarding the first confinement and describes the second as a dispute over property, where the defendant was not restrained and was free to leave the car.

1Citations to record are as follows:
DB__ refers to defendant’s brief and page number
T1 __ refers to jury trial transcripts Day 1 and page number
T2 __ refers to jury trial transcripts Day 2 and page number
T3 __ refers to jury trial transcript Day 3 and page number
T4 __ refers to jury trial transcript Day 4 and page number

The defendant is not required to prove false imprisonment or criminal restraint that is the province of the jury, rather this court's focus is to find some evidence to justify self-defense. And the defendant need not preserve or prove common knowledge – namely, that it is cold in December in Coos County or for that matter that being left on a "dirt road" T2-185 in a location that is "a long walk to anything from there" T2-186. poses different dangers than a less rural area in that same jurisdiction. See *State v. Lucier*, 152 N.H. 780 (2005) where common knowledge is defined as, **"**… fact is so generally known or of such common notoriety within the territorial jurisdiction of the court that it cannot reasonably be the subject of dispute." *State v. Schuette*, 44 P.3d 459, 463 (Kan. 2002) (quotation and brackets omitted)"

Still, there is evidence in the record beyond what the defendant included in his brief. A reasonable Coos County jury would have little trouble understanding the defendant's dire predicament or his repeated laconic description of it as being merely "not a good situation" T2-186. And they would not require a detailed explanation as to the dangers of being left "on a side road in December in the middle of the night" T4-14 on "Hyfield Lane," T1-58 which is a "dirt road," T2-185 "off of Route 2 (in) Jefferson" T2-183 and was "a long walk to anything from there" T2-186.

II. THE STATE MISTATED STATE V. NOUCAS ON DEFENDANT'S THEORY OF THE DEFENSE

The state contends that the defendant was not entitled to self-defense instruction because he presented "his theory of the case," rather than a theory of defense. SB25 A "theory of defense" is… (where the) defendant admits the substance of the allegation but points to facts that excuse, exonerate or justify his actions such that he thereby escapes liability." *Id.* (quotation omitted); *State v. Guaraldi,* 124 N.H. 93 (1983). *State v. Noucas*, 165 N.H. 146, 155 (2013) at 155

The state's reliance on *State v. Noucas* is misguided as the defendant met the standard by admitting guilt, explaining the reasons justifying his actions and presenting evidence of a similar factual scenario.

The state acknowledged that admission of guilt is integral to a theory of defense. In this case, state said of *Noucas*, the "Defendant did not admit to any of the facts alleged in the indictment charging him for being an accomplice to armed robbery. Instead of admitting and pointing to facts that excuse, exonerate or justify his actions, he testified to a different factual scenario." (emphasis added) T3-118

Yet, in their brief the state seems to raise the bar, "It is not enough for the defendant to admit that he committed the acts he is charged with, he must explain why he committed those acts." SB at 23. The state contends that there is "no evidence that the defendant believed anything." SB at 21.

The defendant explained exactly why he bit the complainant: to regain his cell phone which he needed to safely exit her car. He said, "I needed and wanted to get out of the car, to get my phone." T3-79

And his state of mind:

> You know, the whole situation was -- was -- was -- was trying to get away from danger, not go towards danger… My ability to defend myself is -- is -- is limited from that piece, and any injury to (the complainant) in that process is -- is -- is -- I'm very concerned about. I'm very -- I mean, it was getting out of control. And I -- and -- and every incident that happened previously is -- it doesn't just go away; it stays in the mind and it is part of my psyche as I tried to negotiate this person. I'm just trying to put her fire out and you know, and -- and so that's -- that's the state of mind… T3-79

When the defense counsel asked, "If you lost the tug of war over the phone, would you still have gotten out of the car in December by yourself on the side of the road?" T2-186 The defendant explained in that moment freeing himself from the tight confinement of the complainant's moving car was paramount. Relief came when the complainant stopped the car, but turned to panic when the complainant grabbed his phone thus complicating his exit. But still the defendant wanted to get out - even if doing so presented a risk to his personal safety. The defendant said:

> Absolutely. I mean, I was -- yeah. That was my -- my goal was to get out of the car. I -- I felt not having the phone was -- was a problem. And it's a long walk to anything from there. Id.

The defendant reveals much about his state of mind and his fear and panic about his evolving dilemma. The defense counsel summarized:

> (H)e is trying to get away from her. His counselors have told (the defendant) to get away from her… she had been volatile in the past and had committed assault, had blocked him from leaving repeatedly. And she's admitted it, that she's blocked him leaving. And that's what's going in his mind is how do I deal with this; how do I do this calculus? How do I

> get out of the car without hurting me, without hurting her, and getting away from her on the side of the road in the winter and try to keep my phone at least? T3-21

Moreover, the caselaw cited in Noucas, namely Bruneau, Giradli, Ramos and Shannon (see chart below) – all show that these defendants were denied jury instructions because they did not admit to the underlying charged conduct, presented an alternative theories or that such instructions were not legally available to them.

This case is far different from the above cases. When it comes to the complaint's version of events, the state said, "The Defendant largely agreed with most of it… He's not claiming that she's making things up out of whole cloth." T3-100

There is conflicting evidence, namely that the complainant doesn't acknowledge (1) that the defendant grabbed the steering wheel of her car to force her to stop and let him out rather than veer off the road and (2) that she grabbed the defendant's phone and engaged in a tug-of-war over it.

Case	Jury Instruction Requested	Reasons for Rejecting Request
Noucas	Theory Accomplice Liability Theory – armed robbery	"erroneous as a matter of law" "unrelated to charged conduct." "defendant could have used force defensively and also guilty of being an accomplice." *State v. Noucas*, 165 N.H. 146 (2013)
Bruneau	Theory of Defense on murder charges relating to absence of witnesses against him.	"No theory of defense, made a factual argument that tended to indicate someone else was guilty." *State v. Bruneau*, 131 N.H. 104 (1988)
Giraldi	Theory of Defense on sexual assault charges relating to "Victim is somehow perceptually impaired."	"Defendant's theory of the case was that he did not engage in acts in question." *State v. Giraldi,* 124 N.H. 93 (1983)
Shannon	Theory of Defense on "police have Authority to take an intoxicated person into custody."	"never advanced a legal basis for his conduct…(wanted) to bolster his Testimony that he fled to avoid trouble. *State v. Shannon,* 125 N.H. 653 (1984)
Ramos	Defense of Consent on sexual assault charges	"…because although he admitted to sexually penetrating the victim, in order for jury (to find guilt) necessarily had to find that victim did not consent). *State v. Ramos,* 149 N.H. 272 (2003)

III. TRIAL COURT EXCLUDED EVIDENCE OF PRIOR ACTS OF AGRESSION AGAINST THE DEFENDANT

The state contends that the "defendant failed to establish any nexus between the alleged prior acts of aggression and the charged conduct" SB at 28 and lacked "any specificity and (were) inconsistent." Id

The state and defendant both agree that *State v. Vassar* is the governing case. In Vassar, the victim's prior bad acts, which came from the defendant and his mother's testimony, were deemed relevant to the defendant's state of mind. In this case, it is not only the defendant who is alleging that complainant confined him, it is the complainant's own words in interviews with the state. This evidence is factual, probative and sheds light the defendant's state of mind. As the defense counsel said, "The (complainant's) blocking behavior is much more relevant than Vassar… the fact that the victim in the (Vassar) case had engaged in temper tantrums explosive behavior was relevant to the defendant's state of mind." T3-12

And the complainant's statements are an admission of criminal conduct. The defense counsel said:

> And I've had hundreds of clients charged with trying to take a phone out of the girlfriend's hands when she's trying to call someone. That's a crime. And she's doing that within the context of a history of blocking him from leaving that she's admitted to repeatedly. T3- 12

The state argued and the trial court ruled that the prior aggressive acts needed to be specific and temporally connected . The trial court asked "for a date" TR3-10 when one of the acts occured and the defense counsel responded, "during the relationship" and "I don't think we have to be specific under Vassar." Id. In an interview with the state the complainant said that her

assaultive behavior was more general than specific. She answered the question that it didn't have to go to the particular crimes (times), but it did have to do with the relationship. T3-4

In Vassar, evidenced stretched back 20-months. *Vassar*, 154 N.H. (2006) at 375 In *State v. Hayward*, 166 N.H. (2014) at 5 this court said, it was an error for the trial court to "conclude that the prior threats and violence were too remote in time to be relevant."

CONCLUSION

WHEREFORE, Jeffrey Woodburn respectfully requests this court reverse.

Undersigned requests 15 minutes oral argument.

This brief complies with the applicable word limitation and contains 1,834 words.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this reply brief is being timely provided to Joshua L. Speicher of the Attorney General's Office through the electronic filing system's electronic service.

/s/ Jeffrey Woodburn
Jeffrey Woodburn, Pro Se

DATED April 18, 2022