

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2010-0816, State of New Hampshire v. Timothy Perri, the court on January 10, 2013, issued the following order:

After consideration of the defendant's motion for reconsideration, the court modifies the slip opinion issued on December 7, 2012 as follows:

1. The first word of the first sentence of the first full paragraph on page 10 of the slip opinion ("Finally") is deleted and replaced by the word "Next", so that said sentence as amended shall state: "Next, the defendant argues that the trial court erred in denying his motion to suppress evidence that he possessed a folding pocket knife when he was arrested."

2. A new section V shall be added to the slip opinion on page 11 following the paragraph that concludes with the words "we reach the same conclusion under the Federal Constitution." New section V shall state as follows:

V

Finally, the defendant argues that the trial court erred by admitting the pocket knife evidence because it was irrelevant. All evidence must be relevant to be admissible. N.H. R. Ev. 402. Relevant evidence is that which has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." N.H. R. Ev. 401. Whether evidence is relevant is a question for the trial court's sound discretion, and we will not overturn its determination absent an unsustainable exercise of discretion. State v. Town, 163 N.H. 790, 795 (2012). To show an unsustainable exercise of discretion, the defendant must demonstrate that the court's ruling was clearly untenable or unreasonable to the prejudice of his case. Id.

The defendant contends that the evidence had no probative value because the State did not establish that the knife found on him when he was arrested was the same as, or even similar to, the knife used in the August 22, 2008 assault. However, contrary to the defendant's assertion that there was "no way to establish that the knife found on" him "was similar to" the knife described by N.R., both Officer Walker and N.R. described their observations in consistent terms: Walker testified that the knife on the defendant "was just a folding pocketknife," while N.R.

testified that she saw the defendant pull a pocket knife from his pocket, heard the sound of a knife clicking open, and felt the blade on her throat. Moreover, the State need not marshal conclusive evidence to connect the knife found on the defendant's person to the crime scene for the knife to be admissible in evidence. See People v. Farnam, 47 P.3d 988, 1025 (Cal. 2002). That many persons possess similar knives "may diminish the strength of the evidence, but it does not make it irrelevant." Id. (quotation omitted). The fact that the defendant carried a pocket knife on his person, near the scene of the crime, tended to make it more probable than without such evidence that he committed the assault. Cf. State v. Giddens, 155 N.H. 175, 180 (2007) (statements made by defendant about methods for committing rape were relevant because methods were similar to the events of the alleged rape). Therefore, the trial court acted within its discretion in admitting the evidence.

In all other respects, the defendant's motion for reconsideration is denied.

Slip opinion modified;
reconsideration otherwise
denied.

Dalianis, C.J., and Hicks, Conboy, Lynn and Bassett, JJ., concurred.

**Eileen Fox,
Clerk**