

# THE STATE OF NEW HAMPSHIRE

## SUPREME COURT

**In Case No. 2018-0406, State of New Hampshire v. Christopher Daniel Peach, the court on December 23, 2019, issued the following order:**

The defendant, Christopher Daniel Peach, appeals his conviction, following a jury trial, of aggravated felonious sexual assault (AFSA) under the pattern sexual assault statute. See RSA 632-A:2, III (2016). He argues that the Superior Court (Anderson, J.) erred in denying his motion to dismiss the charge prior to trial. He also argues that the evidence was insufficient to support the conviction. We reverse on the first issue and, thus, need not address the sufficiency issue.

The record shows that in May 2017, the State charged the defendant with two single-act AFSA offenses. See RSA 632-A:2, I(l) (2016). A trial in October 2017 ended in a mistrial as a result of the State's negligence. In April 2018, shortly before the second trial, the State obtained a third indictment charging the defendant under the pattern AFSA statute. The trial court denied the defendant's pretrial motion to dismiss the pattern charge. After the close of the evidence, the State moved to dismiss the single-act charges, and the jury found the defendant guilty of the pattern charge.

The defendant first argues that the court erred in denying his motion to dismiss the pattern charge based upon the compulsory joinder rule. We first address the State's argument that this issue was not presented to the trial court and therefore not preserved for our review. Generally, we do not consider issues raised on appeal that were not presented to the trial court. State v. Batista-Salva, 171 N.H. 818, 822 (2019). The purpose of this rule is to provide the trial court with the opportunity to rule on issues and to correct errors before they are presented to the appellate court. Id.

In this case, although the record shows that the defendant did not use the term "compulsory joinder rule" or cite Rule 20(a)(4) of the New Hampshire Rules of Criminal Procedure, he argued in his motion, citing a case from the Supreme Court of Indiana, that "following a mistrial, new charges may only be added if they are based on newly discovered evidence." He also argued in his motion that, under these circumstances, it would be "fundamentally unfair" to allow the State to prosecute him on the pattern charge. At the hearing on his motion, the trial court noted that it would "have a hard time finding that the State's acting vindictively." However, the defendant argued in his motion that the pattern charge should be dismissed "regardless of whether the defendant

could demonstrate actual prosecutorial vindictiveness,” and at the hearing, defense counsel confirmed that he was not arguing that the State was “acting vindictively.” The State, in its objection, cited State v. Glenn, 160 N.H. 480 (2010) (Glenn I). In State v. Glenn, 167 N.H. 171 (2014) (Glenn II), we applied the compulsory joinder rule to vacate the defendant’s conviction of attempted armed robbery. See Glenn II, 167 N.H. at 176-78. Based upon this record, we conclude that the issue is preserved for our review. See Bach v. N.H. Dep’t of Safety, 169 N.H. 87, 91 (2016) (concluding that “ultra vires” argument was preserved though appellant did not use that term in the trial court). Accordingly, we address the issue on its merits.

The compulsory joinder rule, first adopted by opinion in State v. Locke, 166 N.H. 344, 349 (2014), and later codified in the New Hampshire Rules of Criminal Procedure, provides that, with exceptions not relevant here, “a defendant shall not be subject to separate trials for multiple offenses based on the same conduct . . . if such offenses are known to the appropriate prosecuting officer at the time of the commencement of the first trial and are within the jurisdiction of a single court.” Locke, 166 N.H. at 348.

We conclude that the compulsory joinder rule prohibited the State from adding the pattern charge after the first trial resulted in a mistrial. See Glenn II, 167 N.H. at 177-78 (dismissing charge brought after mistrial). The prosecutor stated that the pattern charge was an alternative theory based upon the same conduct as the single-act charges in the first trial. Thus, the pattern offense was necessarily known to the prosecuting officer at the time of the first trial. See Locke, 166 N.H. at 348. There is no dispute that the charges are within the jurisdiction of a single court. See id. Accordingly, we conclude that the trial court erred in denying the defendant’s motion to dismiss.

Reversed.

HICKS, BASSETT, and DONOVAN, JJ., concurred.

**Eileen Fox,  
Clerk**