

**THE STATE OF NEW HAMPSHIRE**  
**SUPREME COURT**

**In Case No. 2006-0429, State of New Hampshire v. Harold J. Baird, the court on April 2, 2007, issued the following order:**

Having considered the briefs and record submitted on appeal, we conclude that oral argument is unnecessary for the disposition of this appeal and affirm the decision of the trial court.

The defendant, Harold J. Baird, appeals his convictions on three counts of aggravated felonious sexual assault. He contends that, because the young victim lacked sufficient capacity to remember, the trial court erred in finding her competent to testify.

New Hampshire Rule of Evidence 601 establishes a presumption that witnesses are competent to testify. It further provides that an individual “is not competent to testify as a witness if the court finds that the witness lacks sufficient capacity to observe, remember and narrate as well as understand the duty to tell the truth.” N.H.R. Ev. 601(b). Absent an unsustainable exercise of discretion, we will not reverse a trial court’s competency determination where the record contains evidence to support it. See State v. Briere, 138 N.H. 617, 620 (1994); State v. Lambert, 147 N.H. 2895, 296 (2003) (explaining unsustainable exercise of discretion standard).

The defendant contends that the inquiry into the victim’s ability to remember was inadequate because it addressed recent events rather than those that occurred at the time of the assaults. The record, however, indicates that the victim was able to recall who lived in the house when the assaults occurred and what the sleeping arrangements were. She also knew that she had attended a different school at the time of the assaults. We have previously stated that, except in quite clear cases of incompetency, a witness should be allowed to testify and the jury should be allowed to assess her credibility. State v. Briere, 138 N.H. at 621.

Because the record contains evidence to support the trial court’s ruling, we affirm.

Affirmed.

Broderick, C.J., and Dalianis, Duggan, Galway and Hicks, JJ., concurred.

**Eileen Fox,**  
**Clerk**

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Distribution:

Rockingham County Superior Court, 05-S-529, -530 -531

Honorable Patricia C. Coffey

Nicholas Cort, Esquire

~~James T. Brooks, Esquire~~

Rodkey Craighead, Jr., Esquire

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Donna R. Craig, Supreme Court

Case Manager

File