



Note: In the case title, an asterisk () indicates an appellant and a double asterisk (**) indicates a cross-appellant. Decisions of a three-justice panel are not to be considered as precedent before any tribunal.*

ENTRY ORDER

AUGUST TERM, 2026

State of Vermont v. Lucas Avis*	}	APPEALED FROM:
	}	Superior Court, Bennington Unit,
	}	Criminal Division
	}	CASE NO. 25-CR-00115
		Trial Judge: Jennifer L. Barrett

In the above-entitled cause, the Clerk will enter:

Defendant appeals his conviction for driving under the influence (DUI), arguing that the trial court abused its discretion in denying his motion for a new trial. We affirm.

In January 2025, the State charged defendant with two counts of DUI, third offense, for operating a vehicle under the influence of alcohol and with a blood-alcohol content exceeding 0.08. The supporting affidavits stated that one evening in December 2024, Sgt. Sokolowski and Troopers Johnson and Baidoo of the Vermont State Police responded to a complaint regarding a vehicle in the roadway on Route 7 in Pownal. They determined that defendant had been driving the car, and after locating him in an apparently intoxicated state on a nearby road, arrested him for DUI.

On the day of trial in June 2025, defendant filed a written motion to exclude State's exhibits 9, 10, and 12, which consisted of video footage of defendant while being transported in the police cruiser and at the police barracks. Defendant argued that the videos were unduly prejudicial against him because they showed him making vulgar statements towards the officers and requesting that his handcuffs be loosened by one or two "clicks," indicating prior law-enforcement involvement. Defense counsel also orally moved to exclude exhibits 16 and 17, body-camera videos from Troopers Johnson and Baidoo, because the State had disclosed the videos to the defense only four days earlier. Defense counsel noted that much of the footage was cumulative of Sgt. Sokolowski's body-camera video, which the State had provided earlier in the case, but that there were a few additional minutes that "definitely do[] change the defense's strategy."

The trial court denied defendant's motion to exclude the videos from the cruiser and barracks, concluding that they were probative of defendant's level of intoxication and not unduly prejudicial, and that defendant's statement about the number of "clicks" did not amount to

evidence of prior bad acts. The trial court also denied the motion to exclude the body-camera videos from Troopers Johnson and Baidoo, opining that defense counsel should have been aware that body cameras were worn by those officers and requested the footage when she realized it was missing. The trial court also stated that the motion was untimely.

The State presented the following evidence at trial. Sgt. Sokolowski testified that around 6:00 p.m. on the evening in question, he was dispatched to a motor-vehicle complaint on Route 7 and observed a black Saab parked on the side of the road. The dome light, which shuts off automatically after ten minutes, was on. There was a green Patagonia jacket on the hood of the car, which struck the officer as odd because it was very cold outside. There were at least six empty beer cans inside the vehicle. Sgt. Sokolowski contacted the registered owner of the vehicle and determined that defendant had been driving the car. He used cell-phone data to locate defendant's phone, which was in the woods near the car. He then heard snapping in the woods and called out to defendant, who did not respond. He directed Trooper Johnson to search for defendant on Burrington Road, on the other side of the woods.

Troopers Johnson and Baidoo eventually located defendant on Burrington Road. Defendant was holding a large dog by the collar and was not wearing shoes. Trooper Johnson testified that defendant had no jacket, smelled strongly of alcohol, was stumbling, had watery, bloodshot eyes, and his speech was difficult to understand. The State presented Trooper Baidoo's body-camera video, during which defendant was belligerent and incoherent. Defendant denied that he had been driving and said he was going for a walk with his dog.

The officers arrested defendant on suspicion of DUI and transported him to the police barracks. The State presented the video from the police cruiser, during which defendant repeatedly swore at the officers and made some racially offensive statements. At the barracks, defendant agreed to an evidentiary breath test. The breath-test results indicated that defendant's blood-alcohol content was 0.200. A chemist from the Vermont Forensic Lab testified that, based on the test result and an estimated time of operation of 6:17 p.m., defendant's blood-alcohol content was approximately 0.249 when he was driving the vehicle.

Defendant's girlfriend testified that she owned the Saab but drove her other car to work that day. Defendant had access to the Saab and the green Patagonia jacket found on the hood of the car belonged to him.

Defendant testified that on the day in question, he used the Saab to go grocery shopping and purchased a bottle of whiskey. The Saab ran out of gas on the way home.¹ He tried to put on his jacket, but the zipper broke. He got frustrated, grabbed his dog and the bottle of whiskey, and went for a walk in the woods. He testified that he drank half a bottle while walking.

The jury found defendant guilty of both counts of DUI and subsequently found that he had two prior convictions of DUI. At sentencing, the court imposed a sentence of fifteen days to three years to serve on the legal-limit count and dismissed the influence count.

Defendant moved for a new trial.² He argued that the videos of him in the cruiser and at the barracks should have been excluded as cumulative and prejudicial. He further argued that the

¹ Defendant's girlfriend testified earlier that defendant had texted her that evening but did not report running out of gas.

² Defendant also moved for judgment of acquittal, which the court denied. He does not challenge that aspect of the court's decision on appeal.

court should have granted his oral motion to exclude the body-camera videos because of the State's late disclosure and because the videos introduced defendant to the jury as someone untrustworthy and unreliable. The court denied the motion, concluding that the cruiser and barracks videos were probative of defendant's level of intoxication during his arrest and were not unduly prejudicial, and defendant had not demonstrated that he was prejudiced by the late disclosure of the body-camera videos. This appeal followed.

On appeal, defendant argues that the trial court erred in denying his motion for a new trial. "The trial court has discretion in granting a new trial in the 'interests of justice,' V.R.Cr.P. 33, and our review is for abuse of discretion only." State v. L'Esperance, 2024 VT 74, ¶ 17, 220 Vt. 254.

Defendant first argues that a new trial was required because the State did not disclose the troopers' body-camera videos until the Friday before the Tuesday trial and thus violated Vermont Rule of Criminal Procedure 16.³ Rule 16(a)(2)(A) requires the State to disclose written or recorded statements made by the defendant within a reasonable time, and Rule 16.2(b) imposes a continuing duty to promptly disclose additional information discovered after compliance with the initial request. "To establish reversible error, however, defendant must show both a violation of the rule and resulting prejudice." State v. Streich, 163 Vt. 331, 349 (1995). "Defendant must show that the discovery violation caused him prejudice, not that the late-discovered evidence itself was prejudicial." L'Esperance, 2024 VT 74, ¶ 32.

Assuming for the purposes of this decision that the late disclosure of the body-camera videos violated Rule 16, defendant fails to demonstrate that the court abused its discretion in denying him a new trial. See id. ¶ 33 (reviewing denial of motion for new trial based on alleged discovery violation for abuse of discretion). Defendant argued in his motion for a new trial that the late disclosure prejudiced him because he "had previously not had an opportunity to confront this opportunity for negative primacy on the part of the State, nor to consider its effect on whether or not [defendant] should continue to take the matter forward to trial." The trial court was unpersuaded by this claim, explaining that defendant did not argue that any evidence or testimony would have been different but for the late disclosure and did not claim that the evidence was improperly admitted under any procedural rule. Defendant also did not request a continuance when he received the evidence. See State v. Heath, 162 Vt. 618, 619 (1994) (mem.) (explaining that normal remedy for discovery violation is continuance). While defendant asserted generally that the alleged discovery violation impaired his defense strategy and his ability to evaluate an unspecified plea offer, he offered no further explanation to support these claims. Cf. id. (concluding that new trial was required because of posttrial disclosure of lab report showing defendant's hair samples did not match hair found in victim's underwear). The fact that the evidence itself may have made him look untrustworthy or unreliable does not mean that the discovery violation was prejudicial. L'Esperance, 2024 VT 74, ¶ 32. The trial court considered and rejected defendant's arguments in reaching its decision, and its decision was not clearly unreasonable. See id. ¶ 33 (holding trial court did not abuse discretion in denying motion for new trial based on late disclosure of bartender's statement to police about defendant where court considered and rejected defendant's arguments about prejudice and "articulated a reasonable basis for its decision"). We therefore see no abuse of discretion.

³ The State presented only Trooper Baidoo's video at trial.

Defendant also argues that he was entitled to a new trial because the court abused its discretion in admitting State's exhibit 9, which contained remarks by him to the officers that had minimal probative value but were unduly prejudicial.⁴ Relevant evidence "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." V.R.E. 403. We review the trial court's decision to admit or exclude evidence for abuse of discretion. State v. Russell, 2011 VT 36, ¶ 6, 189 Vt. 632 (mem.).

During the video, defendant said that one of his handcuffs was "one click too much" and asked the officers to adjust it "one click back, that's it. I don't need it two clicks," and asked, "how many clicks is legal for the Vermont State Troopers?" Defendant argues that his familiarity with the way handcuffs are adjusted was a clear indication that he had previously been arrested. Defendant contends the evidence therefore should have been excluded under Vermont Rule of Evidence 404(b), which provides that "[e]vidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that the person acted in conformity therewith."

We see no abuse of discretion. The trial court explained that the video was admissible to prove defendant's high level of intoxication during his arrest, and its probative value was not outweighed by its prejudicial impact. The court explained that defendant's request to loosen his handcuffs by a few clicks did not create a reasonable inference that he had previously been arrested. We agree. Defendant's statements about the handcuffs could allow the jury to infer that he was familiar with how handcuffs worked but provided no indication regarding the source of that familiarity. He may have simply heard the clicking as the handcuffs were being put on. Absent some more direct suggestion that he had been previously arrested or convicted for any crime, the remarks "could have only a minimal tendency to convey to the jurors that sense of a 'vicious criminal record' which provides the reason for the exclusionary rule." State v. Rebideau, 132 Vt. 445, 449-50 (1974) (holding that witness's statement that he knew defendant from prison, without any indication of seriousness of prior crime or even that defendant was there on incarcerated status, was not sufficiently prejudicial to warrant mistrial).

Defendant argues that the exhibit should also have been excluded because he said, "I'm glad you're putting white people in jail . . . as a Puerto Rican and black guy, I hope that works out well for you," and said that one of the troopers was Mexican and would be deported. Defendant argues that these statements had limited probative value and were likely to provoke the jury to punish him for his racist beliefs. We are unpersuaded by these claims. The primary purpose of the evidence was to demonstrate defendant's demeanor and extreme level of intoxication, not to prove any racist beliefs. See State v. Myers, 2011 VT 43, ¶ 14, 190 Vt. 29 (explaining that "to tip the Rule 403 scale on prejudice, the primary purpose of the evidence must be to provoke horror or punish the defendant, or to appeal to the jury's sympathies" (quotation omitted)). Defendant's comments about the troopers were a relatively minor part of his lengthy and rambling tirade in the back of the police cruiser. We therefore defer to the trial court's evidentiary ruling and conclude there was no error in the denial of a new trial.

Affirmed.

⁴ Defendant moved below to exclude exhibit 12 as well but does not specifically address that exhibit on appeal. Even if he had, our analysis would remain the same.

BY THE COURT:

Paul L. Reiber, Chief Justice

Harold E. Eaton, Jr., Associate Justice

Nancy J. Waples, Associate Justice