

THE STATE OF NEW HAMPSHIRE

STRAFFORD, SS

SUPERIOR COURT

THE STATE OF NEW HAMPSHIRE

v.

MAURICIO DAMIAN GUERRERO

Docket No. 219-2022-cr-64; 68

STATE'S MOTION TO JOIN

NOW COMES the State of New Hampshire, by and through the Office of the Strafford County Attorney, Thomas P. Velardi, and moves this Honorable Court to consolidate the Defendant's charges, and in support thereof states:

FACTS

1. The Defendant is charged with several offenses related to the victim, R.N. (DOB 7/7/1997) to include two counts of Violation of Privacy and five counts of Burglary.
2. R.N. and the defendant met through OnlyFans, a website/application where R.N. exchanged photos and content, often nude images of herself, with subscribers in exchange for money.
3. The defendant was initially one of R.N.'s subscribers via OnlyFans. However, they eventually began to exchange messages and phone calls outside the app, and R.N. continued to supply the defendant with "content" in exchange for money. Eventually, they developed a flirtatious relationship, though they had only ever conversed over the phone as the defendant lived in Pennsylvania and R.N. lived in Somersworth. This relationship continued over the course of several months.
4. On December 7, 2021 R.N. went for a run at her apartment in Dover and saw a grey truck with a male whom she thought looked like the defendant. R.N. had given the defendant her address so he could send her gifts. When R.N. texted the defendant and asked him if he was outside her home, he initially denied being there. Eventually, he admitted to driving the 5+ hours to her apartment after she demanded he send her a picture of his current location.
5. The defendant apologized for coming to her house without notice, and R.N. told him that he scared her, and that he could not just show up like that again.

6. On December 12, 2021, the defendant's phone GPS places him in the area of R.N.'s home in Somersworth and he does not inform her during this visit that he is there.
7. On December 22, 2021, the defendant texts R.N. that he is on his way to her house. She tells him to turn around and he claims to turn around. She tells him she regrets asking him to turn around. He says that he regrets it too, and then surprises her by turning back around and driving to her house. She invites him inside and they have sexual intercourse. Later that day after the defendant drives home, she tells him that she does not want to continue any sort of relationship.
8. The pair continue to talk over messages and social media and eventually resuming flirting and exchanging sexual messages back and forth.
9. The defendant comes to Somersworth uninvited on January 10th, and again on the 20th. On January 20th, he uses his phone to take a video of the inside of a window in R.N.'s attached barn. He also uses his phone to take a video of a poem R.N. wrote when she was younger, which was located in a tote back stored in the same barn. R.N. was unaware that he was inside her home on this date. This is the basis of one of the Burglary charges, charge ID 1977940c in docket 219-2022-cr-68.
10. After R.N. learns that the defendant drove to Somersworth again unannounced, R.N. gets upset with the defendant and once again tells him she does not want to continue any sort of relationship. They continue to talk and go back and forth between blocking each other and engaging in romantic messages.
11. In early February, R.N. calls the defendant and tells him that she loves him. She later tells him that she was drunk and didn't mean it. On February 8, 2022 she tells him not to come to New Hampshire and asks if he is already there. He denied being there, but an hour and a half later he is taking a video of the inside of her home. From February 7-9th, data recovered from his phone show that he was inside of her home at least four separate times. At no point did R.N. invite him in.
12. The defendant was arrested after R.N. woke up and saw him in her doorway. Police came and caught the defendant on the roof and saw evidence that he had been hiding in the attic for some time. After his arrest, the police seized his phone and executed a search warrant, which uncovered the GPS evidence placing him in Somersworth on the above dates. The search of his phone also uncovered a video he had taken of R.N.'s genitals while he was in the home on February 9th and she was sleeping.
13. The State indicted the defendant for Burglary for entering R.N.'s home in January without her knowledge and for entering her home four separate times during the period of February 7-9th.
14. One of the 7-9th entries alleging that the defendant entered R.N.'s home a fourth time was placed under docket 219-2022-CR-68 along with the January entry. The remaining three

7-9th entries were placed under docket 219-2022-cr-64. Two violation of privacy misdemeanors were also filed under docket 219-2022-cr-64.

15. The State requests the charges be joined for trial. The State attempted to obtain the defense's position on the motion but no response was received.

LEGAL ARGUMENT

1. N.H. Rule of Criminal Procedure Rule 20 outlines the rule for joinder of criminal offenses. Under Rule 20, "related offenses" should be joined for trial unless joinder "is not in the best interests of justice."
2. "Related offenses" include offenses which; (1) are alleged to have occurred during a single criminal episode; or (2) constitute parts of a common scheme or plan; or (3) are "alleged to have occurred during separate criminal episodes, but nonetheless, are logically and factually connected in a manner that does not solely demonstrate that the accused has a propensity to engage in criminal conduct." *Id.*
3. The defendant's entry of R.N.'s home in January without her permission and the defendant's entry of R.N. home a fourth time during the period of February 7-9th without her permission were part of a common plan or scheme and have an obvious logical and factual connection to the charges pending in docket -64.
4. Additionally, the facts surrounding the charges in -68 would be admissible at the trial for -64, and vice versa, for non-propensity purposes, and thus there is no prejudice to joining the -68 charges to the -64 docket.

I. Charge 11948138 – Alleging that the defendant entered R.N.'s home during February 7-9th "a fourth time."

5. During the period of February 7-9th, the defendant entered R.N. and her mother's home several times without their knowledge. During these entries, the defendant photographed the house to include R.N.'s bedroom, and raided the kitchen. He also stole R.N.'s keys, left the house to make a copy of the house key, and then reentered R.N.'s home to return the stolen keys as to not arouse suspicion. He also stole multiple items from the house during this period including R.N.'s underwear and clothing.
6. The defendant admitted to entering R.N.'s home several times by both prying the window open and using the copied key. The fourth and final time the defendant enters (charge ID - 138) is when he is caught by police, shortly after when the video of R.N.' genitals was taken.
7. These repeated entries during the short time frame were part of a common scheme or plan by the defendant to violate R.N.'s privacy. His intent was to not only take her items and take pictures of her, but to familiarize himself with her surroundings to know her better.

He schemed to allow himself easier entry to her home by copying her key, and hid in the attic more than once in order to avoid being caught.

8. Therefore, the fourth entry is part and parcel with the remaining entries during that time frame, and reflect a common scheme or plan for joinder purposes. Additionally, they are logically and factually connected.
9. In State v. Brown the court outlined several factors for the trial court to consider when determining “relatedness”. “In determining whether charges arise from separate criminal episodes are related the court should consider the following factors (1) the temporal and spatial relationship among the underlying charged acts; (2) the commonality of the victim(s) and/or participants for the charged offenses; (3) the similarity in the defendant’s mode of operation; (4) the duplication of law regarding the crimes charged; and (5) the duplication of witnesses, testimony and other evidence related to the offenses”. State v. Brown, 159 N.H. 544 (2009)
10. The Brown factors support consolidation for charge ID -138.
11. First, there is a temporal relationship as the charges occurred during the same timeframe. The victims for both trials would be exactly the same, and the mode of operation is based off the prior entries (obtaining the key and copying it). The law would be the same, and the witnesses, testimony, and other evidence would all be duplicative.
12. For all of these reasons, the -138 charge should be joined to the -64 docket.

II. Charge 1977940c – Alleging that the defendant entered R.N.’s home during January 2022

13. The January entry did not occur during the same criminal episode as the -64 charges, but should nonetheless be joined as part of a common plan or scheme to the February entries. Additionally, the entry is logically and factual connected to the -64 charges.
14. During the January and February entries, the defendant entered R.N.’s home and took photos of and/or stole items that were not necessarily valuable, but were family keepsakes. In January, when he enters the attached barn of R.N.’s house, he took a photo of a poem that R.N. had written in grammar school.
15. During the February entries, he took photographs of R.N.’s bedroom, her phone, her driver’s license and stole her clothing. Though it is unknown during which entry it occurred, at some point the defendant stole family photographs of R.N. from the home as there were several found in the defendant’s car after he was arrested.
16. There is no other reasonable explanation for stealing these items and photographing the house other than the defendant was obsessed with R.N. and wanted to know more about her and how she lived her life. This is especially true given the fact that he never told R.N. that he had entered her home without her permission.

I hereby certify that a copy of the State's Motion was forwarded to the Defendant's Attorney via e-filing.

By: /s/Emily C. Garod
Emily C. Garod ID # 20763
Deputy County Attorney