

THE STATE OF NEW HAMPSHIRE
SUPERIOR COURT

COÖS, SS

OCTOBER TERM, 2025

STATE OF NEW HAMPSHIRE

V.

DUSTIN MARK DUREN

214-2024-CR-00028

MOTION TO RECONSIDER

NOW COMES the State of New Hampshire, by and through its attorneys, the Office of the Attorney General, and respectfully moves this Honorable Court to reconsider its order denying the State’s motion *in limine* regarding the testimony of Brenda Plamondon and Shannon Spurgeon. In support of this pleading, the State submits the following:

FACTS AND PROCEDURAL HISTORY¹

1. On September 17, 2025, the State filed a motion *in limine* seeking an order from this Court excluding the testimony of Brenda Plamondon and Shannon Spurgeon – specifically, any testimony from Ms. Plamondon and/or Ms. Spurgeon regarding a “plan” to assist Caitlyn Naffziger in taking the children she shared with the defendant away while the defendant was sleeping.

2. The State argued that such testimony is hearsay, and irrelevant. Such testimony cannot be relevant to the defendant’s state of mind, as the defendant argued in its objection, because the evidence shows that the defendant was not aware of the plan.

¹ The State incorporates by reference the facts and procedural history contained in its original motion on this subject.

3. On October 17, 2025, this court denied the State’s motion as to Ms. Plamondon. This court stated in its order that “a fair reading of the transcript of the Defendant’s statement (at pp. 50-57), in the context of the entirety of his statement, demonstrates clearly that the Defendant was aware that “a plan” existed, but he did not know what it was.” This court further stated that it would be fundamentally unfair to the defendant to not allow him to put forth evidence as to the existence of a plan which he knew to be happening at the time of the incident.”

4. Further, this court ordered that such evidence carried little risk of confusion to the jury, and that there is a greater likelihood of confusion if the confirmation of the existence of “a plan” is withheld from the jury’s consideration.

5. Lastly, this court ruled that Ms. Plamondon can testify as to the scope and contours of “the plan,” but not as to hearsay statements of Ms. Naffziger. Additionally, this court ruled that Ms. Plamondon’s testimony must be focused on “what” rather than “why.”

6. The State respectfully disagrees with this court’s ruling, and submits this motion to reconsider, pursuant to Rule 12(e).

ARGUMENT

A. The Defendant Had No Knowledge Of Any Plan.

7. The State respectfully submits that this court’s interpretation of the defendant’s statement to police is mistaken. This court refers specifically to pp. 50-57 of the transcript of the defendant’s statement, as support for the proposition that the defendant knew that a plan existed between Ms. Naffziger, Ms. Plamondon, and Ms. Spurgeon. This court states, however, that the context of the defendant’s statement indicates the defendant knew of a plan, but did not know what it was.

8. Evidence that the defendant knew of the existence of a plan between Ms. Naffziger, Ms. Plamondon, and Ms. Spurgeon, but did not know what the plan was, logically cannot be relevant for any admissible purpose in this case. If the defendant did not know what the plan was, he therefore could not have known that the plan involved taking the girls away as part of a purported “kidnapping.” It is this belief that is central to the defendant’s justification defense – as stated at the motions hearing, the defendant intends to admit this to show that his belief that Ms. Naffziger was going to “kidnap” their child was correct.

9. The defendant, in his objection, stated that Ms. Plamondon’s testimony about a plan to “kidnap” the children is relevant because it “makes it more probable that Mr. Duren reasonably believed that Ms. Naffziger was committing or about to commit a kidnapping.” Def. Obj., ¶ 3. The crux of the defendant’s argument that evidence of the plan is admissible and relevant relies upon the fact that the plan specifically involved a kidnapping. *See* Def. Obj., ¶ 4 (“the fact that Ms. Naffziger did in fact have a plan to take the children back to Minnesota without Mr. Duren’s consent or knowledge substantiates Mr. Duren’s concerns and beliefs...it makes it more likely that Mr. Duren’s actions were reasonable”).

10. Where the defendant’s justification defense relies upon the idea that the defendant believed that Ms. Naffziger was committing or about to commit a kidnapping, evidence that the defendant was aware that Ms. Naffziger had a non-specific “plan,” but did not know that it involved “kidnapping,” is irrelevant. Such evidence would only be relevant if the defendant had specific knowledge that the “plan” involved something that he believed constituted a “kidnapping.”

11. A reading of the defendant’s statement, including at pp. 50-57, shows that the defendant was not aware of any plan to “kidnap” the children. Although the defendant makes

several references to a “plan,” it is clear from the context of the defendant’s statement that he is referring to something different, and has no knowledge of any plan relating to a kidnapping.

12. Beginning on p. 49, the defendant describes how Ms. Naffziger flew in to Boston on February 27th, and how she texted him asking for money to pay for her food and transportation. Def. Mot, pp. 49-50. He then discusses how he didn’t hear from Ms. Naffziger for some time. *Id.*, p. 50. The defendant stated that he assumed that Ms. Plamondon, who lives in Hampton, picked Ms. Naffziger up from the airport, and that Ms. Naffziger spent the night with Ms. Plamondon. The defendant stated that he texted Ms. Naffziger to tell her that they should meet somewhere halfway between Hampton and Berlin, because he did not want to drive all the way to Hampton to pick Ms. Naffziger up. The defendant said that it was agreed that they would meet at a restaurant in Ossipee. *Id.*, p. 51

13. In this portion of the defendant’s statement, he does not use the word “plan.” The only plan that he conceivably could reference would be the plans between he and Ms. Naffziger to meet.

14. The defendant next states that he texted Ms. Naffziger with questions about Ms. Plamondon driving her to the restaurant. When Ms. Naffziger responded that Ms. Plamondon was dropping her off, the defendant questioned if Ms. Plamondon would be picking Ms. Naffziger up afterwards. Ms. Naffziger did not respond. The defendant stated that this confused him, because it would not make sense for Ms. Plamondon to drive back to Hampton and then return to pick Ms. Naffziger up after the meal. *Id.*, pp. 52-53. It is clear from the context that the defendant believed, at that point, that Ms. Naffziger would be returning to Hampton with Ms. Plamondon, and would not be staying with him.

15. The defendant next stated that when he arrived at the restaurant, he waited with Elowyn. He said that Ms. Naffziger was dropped off, and he never saw Ms. Plamondon. Ms. Naffziger had bags for her and Vaelyn, and gave it to the defendant to put in the trunk of his car. *Id.*, p. 53.

16. This section is important, because it makes clear that the defendant, by his own admission, never spoke to Ms. Plamondon. He did not even see her. Since he never spoke to her, it is impossible that he learned of “the plan” from Ms. Plamondon.

17. During their meal at the restaurant, Ms. Naffziger made statements to the children about coming to the defendant’s home. According to the defendant, he thought “this feels like a bad idea...because this was never part of the plan.” *Id.*, p. 54. The defendant’s use of the term “plan” in this context does not refer to a plan to “kidnap” the girls; it clearly refers to the plan the defendant believed he had worked out with Ms. Naffziger regarding her visit. The defendant references that Ms. Naffziger had previously stated that she did not want to stay at his house.

18. The defendant states that he then began asking Ms. Naffziger if Ms. Plamondon was coming to pick her up. Ms. Naffziger said no. *Id.*, pp. 54-55. The defendant then decided that it was alright for Ms. Naffziger to come stay the night at his apartment. He stated that “she was not going to stay there any longer than that.” *Id.*, p. 55.

19. The defendant stated that Ms. Naffziger stayed the night without incident. The defendant stated that over the course of the night, he asked Ms. Naffziger if Ms. Plamondon was coming to get her, and “What’s the plan?” According to the defendant, Ms. Naffziger never answered the question, and he did not push it that night. *Id.*

20. Here, the defendant’s reference to a “plan” is clearly to a plan for Ms. Plamondon to pick up Ms. Naffziger and take her back to Ms. Plamondon’s residence; not a plan to “kidnap”

the girls. By asking Ms. Naffziger “what’s the plan,” he was asking when Ms. Naffziger was leaving. The context of these statements make clear that the defendant thought “the plan” was for Ms. Plamondon to come and retrieve Ms. Naffziger, and leave the girls with him. There is no indication whatsoever that the defendant suspected that Ms. Naffziger and Ms. Plamondon had any other plans involving the children.

21. The next morning, according to the defendant, he kept asking Ms. Naffziger when Ms. Plamondon was coming to pick her up, and Ms. Naffziger refused to answer. The defendant stated that Ms. Naffziger then began stating that she wasn’t going to leave, which led them to have a conversation in which the defendant stated “I didn’t plan for this...we weren’t planning on you even being here in the first place. Like, I don’t want you here.” *Id.*, p. 56.

22. The defendant here states that he didn’t plan for Ms. Naffziger to stay. His reference to a plan clearly relates to his understanding that Ms. Naffziger would drop off Vaelyn with him, and return to Minnesota. He is not referencing any plan between Ms. Naffziger, Ms. Plamondon, and Ms. Spurgeon, but instead the plan between he and Ms. Naffziger regarding her visit.

23. The defendant states that Ms. Naffziger then threatened to call the police, have the defendant arrested, and take the children away from him. *Id.*, pp. 56-57. While this statement clearly relates to Ms. Naffziger’s state of mind regarding the children and taking them away from the defendant, it does not include Ms. Plamondon. Ms. Naffziger’s statement to the defendant is a clear, obvious statement of her intent. It does not in any way relate to a covert plan to kidnap the children without the defendant’s knowledge. Ms. Plamondon’s testimony would establish that the plan was secret, and the intent was for the defendant not to know about the plan. Ms.

Naffziger, in telling the defendant that she wanted to call the police, was not referencing her plan with Ms. Plamondon.

24. The defendant next states that as “things got more aggressive,” and Ms. Naffziger continued her threats to take the children away, he made clear to Ms. Naffziger that “you cannot be here.” He told her to “call Brenda. Call Brenda.” He told detectives that he considered trying to get Ms. Plamondon’s phone number from someone else so that he could communicate with her directly, but either didn’t or couldn’t do so. *Id.*, p. 57.

25. The fact that the defendant, at this point in his interactions with Ms. Naffziger, stated that he wanted to call Ms. Plamondon is telling. If the defendant had any inkling that Ms. Plamondon was part of a plan with Ms. Naffziger to take his children away, he would not have called her or invited her to his home. Instead, he told detectives that he wished he had been able to call her. The defendant’s stated desire to call Ms. Plamondon is completely inconsistent with having any knowledge of her involvement in a plan to “kidnap” the girls.

26. The defendant may argue that he knew generally of a “plan” to kidnap the girls, but did not know of the specific details such as the time or exact manner in which Ms. Naffziger and Ms. Plamondon planned to do so. There is no support in the evidence for this interpretation of the defendant’s statement. As described above, the defendant does not tell the detectives at any point that he had a suspicion that Ms. Naffziger and Ms. Plamondon were up to something, or that he had a vague idea that Ms. Naffziger planned to somehow take his children away from him with Ms. Plamondon’s assistance, but didn’t know when or how. He in fact tells them that he wanted to call Ms. Plamondon, so that she could take Ms. Naffziger away.

27. It would make no sense for Ms. Naffziger to tell the defendant about any “plan”. The plan, such as it was, necessarily involved secrecy from the defendant. Although the

defendant said that Ms. Naffziger threatened to have his children taken away from him, that was as part of a threat to call the police and have him arrested. That is entirely different from a plan to take the children away without his knowledge. The context of the defendant's statement, and common sense, show that Ms. Naffziger did not tell the defendant of the plan.

28. Although the defendant refers to a "plan" or "planning" or "what we planned for," those are references to other plans, unrelated to kidnapping. The evidence shows that Ms. Naffziger and the defendant had a plan for her to visit him in New Hampshire. This plan involved the logistics of Ms. Naffziger's travel and accommodations, and has no relevance to the defendant's state of mind for purposes of justification. According to the defendant, Ms. Naffziger at one point informed him of her plan to have the kids taken away from him by calling the police. This plan was overt, and in no way connected to Ms. Plamondon or Ms. Spurgeon. While this plan may have contributed to the defendant's state of mind and motive in shooting Ms. Naffziger, it does not involve Ms. Plamondon, and her testimony would therefore not be relevant.

29. Allowing Ms. Plamondon to testify would conflate the plans between the defendant and Ms. Naffziger described above with the plans Ms. Plamondon describes. This court should not allow this conflation, which would distort the evidence and result in unfair prejudice to the State.

B. Testimony About "the Plan" Would Constitute Inadmissible Hearsay.

30. This court, in its order, states that Ms. Plamondon can testify as to her personal knowledge of "the plan" but not as to hearsay statements of Ms. Naffziger. The State respectfully submits that this is an unworkable restriction. The introduction of Ms. Plamondon's knowledge

of the plan, without Ms. Naffziger's statements, would constitute inadmissible hearsay testimony. It should therefore not be allowed.

31. There is no way for Ms. Plamondon to testify about the scope and contours of the plan without introducing the content of Ms. Naffziger's statements, which would constitute hearsay. As the State argued in its motion, hearsay statements of Ms. Naffziger are not relevant to show her state of mind as to a motive, intent or plan under Rule 803, because the defendant was not aware of them. By ruling that Ms. Naffziger's statements to Ms. Plamondon are inadmissible hearsay, it is clear that this court agrees.

32. Where Ms. Naffziger's statements are inadmissible hearsay, indirect evidence of the content of those statements should also be inadmissible. Ms. Plamondon cannot permissibly testify about Ms. Naffziger's state of mind without testifying to her statements, either directly or indirectly.

33. Although New Hampshire courts have not addressed the subject, multiple other jurisdictions have ruled that "indirect hearsay" is inadmissible in situations similar to this. *See Mitchell v. Hoke*, 745 F.Supp. 874, 876 (E.D.N.Y. 1990) (prosecution's attempt to avoid the hearsay rule by not asking a detective who a witness picked out of a lineup, and instead asking whether the witness picked someone, and who was arrested as a result, was "a classic example of indirect hearsay" which violated the hearsay rule); and *Commonwealth v. Kirk*, 39 Mass.App.Ct. 225, 229 (1995) (similar) (citing *Mitchell v. Hoke, supra*).

C. Ms. Plamondon's Testimony Would Confuse The Jury.

34. Introduction Ms. Plamondon's testimony, as described in this court's order, would confuse the jury. As described above, there is no evidence that the defendant had any knowledge, inkling, or suspicion that Ms. Naffziger had a plan with Ms. Plamondon regarding the children.

Ms. Plamondon’s testimony would therefore be confusing to the jury. Ms. Plamondon’s testimony that she and Ms. Naffziger had a plan to take the children away without the defendant’s knowledge, which neither she nor Ms. Naffziger communicated to the defendant, would not be “confirmation” of anything related to the defendant’s state of mind.

35. Where the risk of confusion from the introduction of Ms. Plamondon’s testimony is greater than if such testimony is excluded, such testimony should not be allowed.

WHEREFORE, the State of New Hampshire respectfully requests that this Honorable Court:

- (A) Exclude the testimony of Brenda Plamondon and Shannon Spurgeon as described above; and
- (B) Grant such further relief as may be deemed just and proper.

Respectfully submitted,

THE STATE OF NEW HAMPSHIRE

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Date: October 17, 2025

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this pleading was filed through the Court's electronic filing system and will be electronically served by the e-Filing system on counsel for the defendant on the date listed above.

/s/ Joshua L. Speicher

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