

THE STATE OF NEW HAMPSHIRE

COOS SS.

MAY TERM 2025

STATE OF NEW HAMPSHIRE

V.

DUSTIN DUREN

214-2024-CR-28

DEFENDANT’S OBJECTION TO STATE’S MOTION IN LIMINE #1

NOW COMES, the defendant, Dustin Duren, by and through his counsel, Hanna Kinne and Margaret Kettles, Public Defenders, and respectfully submits this objection to the State’s Motion in *Limine* #1- To Preclude Testimony Related to Hearsay Statements of the Defendant.

In support of this motion, the following is stated:

1. Mr. Duren is charged with First Degree Murder and, in the alternative, Second Degree Murder. Mr. Duren is also charged with Reckless Conduct and Endangering the Welfare of a Child.
2. On April 30, 2025, the State filed a motion in *limine* to preclude any testimony Dr. Pitman, a potential defense expert witness, may make at trial regarding out-of-court statements made by Mr. Duren during Dr. Pitman’s evaluation of him.
3. It is undersigned counsel’s position that the State’s motion relies upon contingent future events that may or may not occur, and is therefore, not ripe.
4. Ripeness “relates to the degree to which defined issues in a case are based on actual facts are capable of being adjudicated on an adequately developed record.” *Appeal of City of Concord*, 161 N.H. 344, 354, 13 A.3d 186, (2011).
5. Although mostly discussed in the civil context in New Hampshire, the issue of ripeness in the criminal context has been litigated in other jurisdictions.

6. Of particular interest, the Court in *People v. Owen* addressed this issue when stating that, “a court is fully justified to exercise its discretion by telling the moving party that, for whatever reason, the court chooses not to entertain the party’s motion in limine and instead will require the evidence in question, if it is to be offered at all, to be presented in the normal course of things during trial.” *People v. Owen*, 299 Ill. App. 3d 818, 823, 701 N.E.2d 1174, 1178 (1998). The Court went on to note that if the Court must balance the prejudice that might be avoided if it grants the motion against the complication that could result if the motion is denied, the Court might conclude that the best way to ensure a correct ruling on a complicated evidentiary issue is to wait for that issue to become ripe at trial. *Id.*
7. That same Court in *People v. DeBerry* notes that because motions in *limine* typically ask the court to bar certain evidence, these motions are “powerful weapons”, and as such, courts have discretion on whether to entertain a motion in *limine* at all. *People v. DeBerry*, 375 Ill. App. 3d 822, 826, 875 N.E.2d 1, 4 (2007).
8. The State’s motion seeks a premature judgment on possible future testimony that may, during trial, not only be relevant, but admissible under the N.H. Rules of Evidence, specifically N.H.R.E. 703, 803(3), and 803(4).
9. A complete bar on any testimony related to out-of-court statements made by Mr. Duren during Dr. Pitman’s evaluation could be contrary to the New Hampshire Rules of Evidence and to the defendant’s constitutional rights to due process, a fair trial, effective assistance of counsel and equal protection of the law. *See* U.S. Const. Amends V, IV and XIV; and N.H. Const. pt. I, arts. 1, 2, 14 and 15.

10. Understanding that the State is concerned with the potential elicitation of objectionable testimony during trial, that concern would best be addressed during trial as these statements are made, if they are made at all.

WHEREFORE, Mr. Duren, by and through counsel, moves this Court to:

- A. Deny the State's motion; or
- B. Hold a hearing on this matter; and
- C. Grant other relief deemed equitable and just.

DATED: May 9, 2025

Respectfully submitted,

/s/Hanna Kinne
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CERTIFICATE OF SERVICE

I hereby certify this motion has been electronically served on Assistant Attorney General, Bethany Durand and Charles Bucca, Esq., representing the State on May 9, 2025.

/s/Hanna Kinne
Hanna Kinne Esq., #18946