

STATE OF NEW HAMPSHIRE

Coos, ss

Superior Court

State of New Hampshire

v.

Dustin Duren

214-2024-CR-28

**OBJECTION TO STATE’S MOTION IN LIMINE #2 TO PRECLUDE THE
DEFENDANT’S USE OF THE AFFIRMATIVE DEFENSE OF DEFENSE OF OTHERS**

NOW COMES the Defendant, by and through his attorneys, and objects to the State’s “Motion in Limine #2 - To Preclude the Defendant’s Use of the Affirmative Defense of Defense of Others”. The Defendant relies on his rights to due process and all proofs favorable under part 1, article 15 of the New Hampshire and the Fifth and Fourteenth Amendments to United States Constitution, as well as RSAs 627:1 and 627:8 and N.H. R. Crim. P. 41(b)(2)(A). In support, the Defendant, through counsel, states:

1. The State has filed a motion in limine seeking to preclude Mr. Duren from using a noticed affirmative defense.
2. The State’s motion, in essence, argues that Mr. Duren should be barred from using the affirmative defense of defense of others because the State does not agree that the defense applies. In its motion, the State provides its interpretation of certain evidence and expert reports, and discusses self-defense cases to why it does not agree with Mr. Duren’s noticed defense.
3. The State cites no legal authority for its proposition that the defendant should be precluded from using a defense specified in the criminal code, upon which the defendant gave notice he intended to rely.

4. The State cites no legal authority for its proposition because none exists. The defendant is not required to provide evidentiary support for a noticed defense in advance of trial. “The rule does not allow trial courts to require that defendants identify evidentiary support for a noticed defense.” State v. Munroe, 173 N.H. 469, 477 (2020). When the court does so, it errs. Id.

5. Defense of others is a pure defense under New Hampshire law. See RSA 627:1 (“Conduct which is justifiable under this chapter constitutes a defense to any offense.”); see also State v. Munroe, 173 N.H. at 474 (stating that self-defense is a pure defense under New Hampshire law). “[T]he State is required to disprove a pure defense when evidence relevant to the defense is admitted at trial.” Id. at 473. “When evidence of [a pure defense] is admitted, conduct negating the defense becomes an element of the charged offense.” Id. at 474. The defendant is not required to assist the State in meeting its burden to prove the elements of the crime by providing advance notice of the evidence which it intends to introduce in support of his defense of property claim. See id. at 478. For example, the Defendant does not have to inform the state of potential cross-examination topics that would support the noticed defense, nor does the Defendant have to inform the State of whether he will testify and if so, what his testimony will be.

6. The State does not get to simply announce that the defendant has no valid defense of others claim and bar the defendant from raising that defense. Instead, the Court determines whether to give a jury instruction on a specific defense if there is some evidence to support a rational finding in favor of that defense. State v. Larose, 157 N.H. 27, 33 (2008). The Court can only make that determination once all evidence has been presented at trial. And it is the jury, not the State, that determines after hearing the evidence and being instructed on the applicable law whether the Defendant was justified in his actions through defense of property. “[P]art I, article

15 of the New Hampshire Constitution entitles a criminal defendant to a jury determination on all the factual elements of the crime charged.” State v. Soucy, 139 N.H. 349, 351 (1995). Once some evidence of defense of property is admitted, negating that defense will be an element of the charged crime, and the jury must determine whether that element has been proven.

7. To summarize, the State is requesting that the Court preclude Mr. Duren from using a defense of others defense prior to evidence having been presented. The Court cannot determine whether there is some evidence of defense of others prior to hearing the evidence. The Defendant is not required to provide this evidence in advance of trial, and the Court cannot make such a decision prior to the conclusion of the presentation of evidence in this case. Therefore, the State’s motion should be denied.

WHEREFORE the Defendant, through counsel, respectfully requests that this Honorable Court:

- A. DENY the State’s Motion in Limine #2; or
- B. Hold a hearing on the matter; and
- C. Order such other and further relief as may be deemed just and proper.

Respectfully submitted,
/s/ Margaret Kettles

Margaret Kettles, Esq. #270836
New Hampshire Public Defender
485 NH Route 10, Unit 3
Orford, N.H. 03777
(603) 353-4440

CERTIFICATION

I, Margaret Kettles, Esq., Public Defender, do hereby certify that a copy of the foregoing motion has been forwarded to Bethany Durand, Esq., and Charles Bucca, Esq. on this the 12th day of May, 2025.

/s/ Margaret Kettles

Margaret Kettles
Public Defender