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 TO EXCLUDE TESTIMONY FROM BRENDA PLAMONDON AND SHANNON SPURGEON

Now comes the Defendant, Dustin Duren, through counsel, and hereby objects to the State's Motion in Limine to Exclude Testimony from Brenda Plamondon and Shannon Spurgeon. In support, the defendant, through counsel, states:

I. The testimony the State seeks to exclude is admissible.

A. Evidence that Ms. Naffziger planned to take V.D. and E.D. out of the state without Mr. Duren's permission is relevant: it makes it more likely that Mr. Duren reasonably believed that Ms. Naffziger was committing or about to commit a kidnapping and therefore that he was justified in using deadly force.

1. Brenda Plamondon's and Shannon Spurgeon's anticipated testimony regarding Caitlin Naffziger's plan to remove both of Mr. Duren's children from his home and take them to another state, without Mr. Duren's knowledge or consent, is admissible and relevant evidence.

2. "Evidence is relevant if it has any tendency to make a fact more or less probable than it would be without the evidence and the fact is of consequence in determining the action." N.H. R. Ev 401.

3. The evidence the State seeks to exclude – that Ms. Naffziger had a plan to take the children out of the state without their fathers' knowledge or permission – makes it more probable that Mr. Duren reasonably believed that Ms. Naffziger was committing or about to commit a kidnapping. Whether Mr. Duren reasonably believed Ms. Naffziger was committing or about to commit a kidnapping is a fact of consequence in determining the action. If Mr. Duren reasonably believed this, he was justified in using deadly force against Ms. Naffziger.
4. The statements the State seeks to exclude are highly probative to a core issue in this case: whether Mr. Duren was justified in using deadly force. Ms. Naffziger had a plan to "kidnap" the children – to remove them from Mr. Duren's home and take them across state lines without Mr. Duren's knowledge or consent. The fact that Ms. Naffziger had a plan to kidnap the children during the exact time frame as the charged conduct makes it more likely that Ms. Naffziger was committing or about to commit a kidnapping – one of the enumerated circumstances in which deadly force is justified. 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 she was speaking or acting in a manner consistent with someone who was planning a kidnapping. It makes it more likely that Mr. Duren's actions were reasonable.
5. Ms. Naffziger's plan is not only relevant to show that Mr. Duren's actions were justified; it is also relevant to show why Ms. Naffziger went to Mr. Duren's apartment – not to drop V.D. off, but instead to wait until Mr. Duren fell asleep and took both children. The plan

is also relevant as to why Ms. Naffziger was holding E.D. and refusing to let her go: she was doing so as part of her plan to kidnap E.D.

6. The cases cited by the State do not support the exclusion of Ms. Naffziger's plan to take the children.

7. In Commonwealth v. Castano, the trial court did not err in admitting the victim's statements to her cousin and her friend that she was planning to end her relationship with the defendant to demonstrate the defendant's motive to kill the victim. Castano explains "Such evidence is admissible when and only when there also is evidence that the defendant was aware of that state of mind at the time of the crime and would be likely to respond to it. There need not be direct evidence that the defendant learned of the victim's state of mind, so long as the jury reasonably could have inferred that he or she did learn of it." In Castano, the court explained the jury could have inferred that the victim made the defendant aware of her desire to end the relationship because she obtained a roommate release form from her landlord and because there was a suitcase on the floor. In this case, the jury can reasonably infer that Mr. Duren became aware of Ms. Naffziger's plan because Mr. Duren told the police that Ms. Naffziger told him she was going to take the kids away from him. Additionally, in this case, the statements are admissible for reasons beyond Mr. Duren's motive. Instead, the statements are admissible to show that Mr. Duren was justified, and that Ms. Naffziger was committing or attempting to commit a kidnapping. In other words, it is Ms. Naffziger's own state of mind, statements, and actions that make evidence of her plan admissible, not necessarily the impact the plan had on Mr. Duren.

8. In State v. Furgal, evidence of a prior altercation involving the decedent was excluded. Those acts "involved different people and…occurred for different reasons." 164 N.H. 430, 437—38 (2012). The Court explained that the specific acts were not probative of the defendant's state of mind where the defendant was not aware of them, and, to the extent the defendant asserts they were probative of aggressiveness, "the assertion is based entirely on prohibited rationale of propensity for bad behavior." Id. at 439. Ms. Naffziger's plan is probative of her state of mind, her behavior, and whether she was attempting to commit a kidnapping. It is admissible not to show her propensity for bad behavior, but instead to show that she was acting in conformity with her plan.
9. In State v. Jette, evidence of the decedent's prior drug activity not relevant because it was "not highly probative as to the central premise of the defendant's self-defense claim: whether he was justified in using deadly force." 174 N.H. 669, 674 (2021). In this case, the exact opposite is true. The evidence the State seeks to exclude is highly probative as to the central premise of Mr. Duren's defense of others claim: it shows that he was justified in using deadly force.
10. Since the evidence the State seeks to exclude is relevant and not barred by any other rule of evidence, it is admissible. See N.H. R. Ev. 402.

B. Evidence of Ms. Naffziger's plan is admissible under N.H. R. Ev. 803(3).

11. Evidence of a declarant's then-existing state of mind, including their motive, intent, or plan, is not excluded by the rule against hearsay. N.H. R. Ev. 803(3). To be admissible under this exception, "[t]he declaration must concern the mental state of the declarant and have reference to the time at which the declaration was made." MacDonald v. Bishop, 145 N.H. 442, 444—45 (2000). Here, Ms. Naffziger was the declarant, and her

statements concern her own mental state. The statements also reference her plan at the time the declaration was made. The statements are therefore admissible under 803(3).

C. The evidence is not needlessly cumulative.

12. When the jury hears that Ms. Naffziger did in fact have a plan to remove the children from Mr. Duren's home without his knowledge or consent, it will not be cumulative: it will be evidence that Mr. Duren's belief or suspicion was correct. Mr. Duren cannot testify that Ms. Naffziger in fact made this plan to take the children in advance, because he was not the person to whom Ms. Naffziger made the statements at issue. Mr. Duren can only testify to what Ms. Naffziger said the night of the incident, and what his belief was about what was occurring. Ms. Plamondon and Ms. Spurgeon are the only sources of information to show that Ms. Naffziger actually went to Mr. Duren's home with the plan to take the children. They are the people to whom Ms. Naffziger made the statements at issue. Their testimony is not cumulative.

II. The introduction of evidence of Ms. Naffziger's plan to take the children does not open the door to evidence of Ms. Naffziger's supposed fear of Mr. Duren or to allegations of past abuse.

13. The jury would not be misled were evidence of Ms. Naffziger's plan to take the children admitted without the remainder of the statements being admitted. Whether or not Mr. Duren was previously abusive to Ms. Naffziger has no bearing on whether or not he was justified in using deadly force. The defense hereby reincorporates the arguments it made in previous pleadings and hearings regarding the exclusion of the abuse allegations, including that there is no clear proof that these allegations were true.

14. Evidence of past abuse allegations and Ms. Naffziger's supposed fear of Mr. Duren is not admissible under either the curative admissibility or specific contradiction doctrines.
15. The curative admissibility doctrine would only apply if inadmissible prejudicial evidence had been erroneously admitted. State v. Roman, 176 N.H. 367, 371 (2023). For the reasons discussed above, evidence of Ms. Naffziger's plan is admissible, and therefore the curative admissibility doctrine does not apply.
16. The specific contradiction doctrine likewise does not apply. "Under the specific contradiction doctrine, a trial judge has discretion to admit previously suppressed or otherwise inadmissible evidence to directly counter the misleading advantage." State v. Barr, 172 N.H. 693—94 (2019) (internal citations omitted). The evidence the defense seeks to admit is not contradicted by the abuse allegations or Ms. Naffziger's supposed fear. The defense gains no misleading advantage by introducing evidence that Ms. Naffziger planned to take the children, as her motivation for taking the children does not change the facts at issue in the case or impact the analysis the jury must undertake regarding whether or not Mr. Duren's actions were justified. For the specific contradiction doctrine to apply, "the initial evidence must…have reasonably misled the fact finder in some way." State v. Lopez, 156 N.H. 416, 422 (2007). The State does not explain how, specifically, evidence of Ms. Naffziger's plan would create a misleading advantage for the defense. The fact that the evidence is helpful to the defense does not make it misleading. The jury will not be misled by hearing that Ms. Naffziger had a plan to take the children, when in fact she did have a plan to take the children.
17. Furthermore, the opening the door doctrine does not allow all evidence to "pass through" the door. "[T]he doctrine is intended to prevent prejudice and is not to be subverted into a

vehicle for the introduction of prejudice." State v. Depaula, 170 N.H. 139, 146 (2017). Here, introduction of past allegations of abuse – which are unsubstantiated – would subvert the doctrine into a vehicle for the introduction of prejudice. The jury should not make its decisions or evaluate Mr. Duren's actions on the night of the incident based on whether it believes that Mr. Duren was previously abusive. It should make its decision based on the facts of this case.

18. Cases regarding the specific contradiction doctrine demonstrate that that doctrine does not apply in this instance. In State v. Cannon, the State introduced evidence that the complainant said no to having sex with the defendant because she had a boyfriend. The defense then sought to admit evidence to show that the complainant had recently had sex with a different person, while she had a boyfriend. The Court ruled that the State opened the door to otherwise inadmissible evidence, and "the defendant was entitled to present evidence to refute her assertion." 146 N.H. 562, 555—56 (2001). By contrast, in this case, allegations of past abuse would not refute or contradict evidence that Ms. Naffziger planned to take the children.

19. For the same reasons listed above, allegations of past abuse or that Ms. Naffziger feared Mr. Duren are not admissible under the rule of completeness.

> The doctrine exists to prevent one party from gaining an advantage by misleading the jury. Thus, there are two requirements to trigger the doctrine respecting conversations: first, the statements must be part of the same conversation; and second, admission of only a portion would mislead the jury. The rule does not render evidence automatically admissible, though otherwise inadmissible

evidence may be admitted to prevent a party from gaining a misleading advantage.

State v. Mitchell, 166 N.H. 288, 293 (2014). As discussed above, the jury will not be misled by hearing that Ms. Naffziger had a plan to take the children without hearing about the abuse allegations of Ms. Naffziger's supposed fear, and therefore the rule of completeness does not render that evidence admissible.

20. Finally, evidence of the past abuse allegations and of Ms. Naffziger's supposed fear is barred by N.H. R. Ev. 403. This evidence has little to no probative value, as it does not make it more or less likely that Mr. Duren was justified in using deadly force. Any probative value that it may have is substantially outweighed by the danger of unfair prejudice and confusing the issues. Testimony about allegations of past actions of abuse or violence has no probative value apart from propensity evidence so it does not have probative value that the State may rely upon under the rules of evidence for admissibility. There is, however, great danger for unfair prejudice. "Unfair prejudice is inherent in evidence of other similar wrongs because … there is a risk that the jury will find the defendant had a propensity to commit the charged crime merely because the defendant committed a similar crime or wrong in the past. State v. Belonga, 163 N.H. 343, 360 (2012). The risk of unfair prejudice "increases as the degree of similarity between the prior act and the charged crime increases." Id. at 360. Here, the indictments allege an act of violence against Caitlyn Naffziger and the evidence the defense seeks to exclude includes unrelated allegations of acts of violence or abuse against Caitlyn Naffziger. Because this evidence is so similar to the charged conduct, it is highly prejudicial and without invoking propensity, it has no probative

value. The evidence therefore does not meet the standard for admission under the prejudicial-probative balancing test.

21. For all the reasons discussed above, and discussed in prior litigation on this issue, the Court should not allow the State to introduce evidence of the alleged abuse or of Ms. Naffziger's supposed fear of Mr. Duren, even if evidence of Ms. Naffziger's plan to take the children is admitted.

THEREFORE, Mr. Duren respectfully prays the Court:

A) DENY the State's Motion; and

B) ALLOW the defense to introduce evidence of Ms. Naffziger's plan; and

C) BAR the State from introducing evidence of abuse allegations or Ms. Naffziger's supposed fear; or

D) HOLD a hearing on the motion; and

E) GRANT any other fair and just relief.

Respectfully submitted,

/s/ Margaret Kettles
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CERTIFICATE OF SERVICE

I certify that a copy of this has been forwarded to Bethany Durand, Esq. and Joshua Speicher, Esq. of the NH Attorney General's Office on September 23, 2025.

/s/ Margaret Kettles

Margaret Kettles, Esq.