

THE STATE OF NEW HAMPSHIRE
SUPERIOR COURT

COÖS, SS

SEPTEMBER TERM, 2025

STATE OF NEW HAMPSHIRE

V.

DUSTIN MARK DUREN

214-2024-CR-00028

**OBJECTION TO DEFENDANT'S MOTION IN LIMINE: REDACT PORTIONS OF
DEFENDANT'S STATEMENTS**

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 deny the defendant's request to redact certain portions of the defendant's statement. In support of this pleading, the State submits the following:

FACTS AND PROCEDURAL HISTORY

1. The defendant is charged with alternative counts of knowing second-degree murder and reckless second-degree murder, for killing Caitlyn Naffziger on February 29, 2024, in Berlin, New Hampshire. The defendant is further charged with reckless conduct with a deadly weapon and child endangerment related to his actions in the homicide.
2. After he was arrested, the defendant conducted a lengthy interview with investigators. The interview was audio and video recorded, transcribed, and provided to the defendant in discovery.

3. The State may present all or some of the interview as evidence at trial. The State and the defendant have agreed that certain portions of the interview should be redacted.

Specifically, the parties have agreed to redact the following:

- a. P. 49, lines 18 to 20;
 - b. P. 77, line 20 to p. 79, line 14
 - c. P. 97, line 5 to p. 98, line 2
 - d. P. 103, lines 11 to 17
 - e. P. 108, lines 19 to 20
 - f. P. 113, line 2 to conclusion of interview
4. The State objects to additional redactions requested by the defendant including:
- a. a. Page 9, lines 17-22
 - b. b. Page 27, lines 4-9
 - c. c. Page 31, lines 2-5
 - d. d. Page 41, lines 9-11
 - e. e. Page 42, lines 11-14
 - f. f. Page 61, lines 7-11
 - g. g. Page 63, lines 3-5
 - h. h. Page 77, lines 7-19
 - i. i. Page 102, lines 19-21
 - j. j. Page 103, lines 18 to Page 104, line 3
 - k. k. Page 104, lines 18 to Page 105, line 5
 - l. l. Page 111, lines 3-8

5. The defendant now requests that this court grant their motion to redact the above, additional portions of the defendant's statement, on the grounds that the statements of the defendant contained therein are irrelevant, hearsay, and/or unfairly prejudicial.

6. The defendant provides no legal justification for his request beyond a single, overbroad, generalized assertion. Although the defendant identifies specific words and statements in the interview that he claims should be redacted, he has not articulated any specific legal or factual justification relating to these portions.

7. The defendant also claims that any statements that mention legal discussions or the word "lawyer" should be barred by the state and federal constitutions. In support of this claim, the defendant has provided no specific arguments or legal support, citing only N.H. Const. Part 1, Article 15, and the sixth amendment of the U.S. Constitution.

8. The defendant's motion should be denied.

ARGUMENT

9. The defendant correctly notes that the party offering evidence generally bears the burden of demonstrating its admissibility. *State v. Rice*, 169 N.H. 783, 800 (2017). The defendant's mere recitation of this principle, however, does not equate to sufficient legal grounds to grant his motion, and ignores necessary context. It is certainly true that at trial, if the State offers a piece of evidence and the defendant objects, the burden to demonstrate the admissibility of the evidence lies with the State. That is not the situation here.

10. The defendant has moved to redact specific portions of the defendant's statement, but has provided no factual or legal grounds in support of his request. The defendant cannot ask this court to preclude evidence in a pre-trial motion without explaining, to any degree, *why* this court should grant his request. The defendant's motion is vague, ambiguous, and lacks necessary specificity. For this reason, this court should deny the defendant's motion.¹

11. Notwithstanding the lack of any legal reasoning or support for the defendant's request, none of the statements identified by the defendant should be redacted. The defendant claims that the statements at issue are inadmissible because they are irrelevant, hearsay, and/or unfairly prejudicial. As described in more detail below, these generalized assertions are incorrect and inconsistent with the law and the rules of evidence, and should be rejected by this court.

¹ The State notes that this court has denied a similarly insufficient motion in another case. In *State v. Zhukovskyy*, no. 214-2019-CR-78, on October 22, 2021, the defendant filed a pre-trial motion seeking to exclude "statements or documents related to [the defendant]'s use of drugs on dates prior to and after the accident on June 21, 2019." The defense did not specify what evidence it sought to exclude, and offered only generalized arguments that such evidence was not relevant and would be unfairly prejudicial. In an order dated November 16, 2021, this court denied the defendant's motion on the grounds that where the defendant did not identify specific evidence he sought to exclude, the court could not rule on the inadmissibility of unspecified evidence. Here, although the defendant has identified the portions of his statement he wishes to redact, he has failed to offer any context, explanation, or legal justification for his request. This court is thus in the same position now as it was in *Zhukovskyy*, where this court had insufficient information to issue a ruling. The result should be the same.

A. The Defendant's Statements Are Not Hearsay

12. A statement that was made by a party, and is offered against that party, is not hearsay. N.H. R. Ev. 801 (d)(2). If offered by the State, any statements made by the defendant during his interview constitute statements of a party-opponent, and thus are not hearsay. Redaction of any statements by the defendant on hearsay grounds would be improper and in clear violation of the rules of evidence.²

B. The Defendant's Statements Are Relevant And Not Unfairly Prejudicial

13. 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. Rule of Evidence 401. *See also State v. Shaw*, 173 N.H. 700, 710 (2020). The standard for relevancy under Rule 401 is low. *State v. Jette*, 174 N.H. 669, 675 (2021).

14. Under the Rule 403 balancing test, “relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.” *State v. Wells*, 166 N.H. 73, 79 (2014) (citation omitted). “Assessment of the probative value of the evidence entails analyzing the degree to which the evidence is relevant.” *Id.*

15. The State will address the admissibility of the specific statements identified by the defendant under Rules 401 and 403, for relevance and unfair prejudice, respectively.

i. P. 9, lines 17-22

² The State notes that the statements of the two detectives who participated in the interview, Sgt. McLaughlin and Det. Horton, do not fall within the definition of party-opponent statements. These statements are not hearsay, however, because the State is not offering them for the truth. These statements are admissible because they provide necessary context for the defendant's statements; to excise them would render the interview unintelligible. At trial, should the State choose to introduce the interview, it would be appropriate for this court to issue a limiting instruction to the jury, cautioning that while the defendant's statements are evidence, the detectives' statements are not substantive evidence and are being admitted purely for context.

16. The defendant challenges the admissibility of the following statement on p. 9,

lines 17-22:

17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]

17. This exchange takes place in the introductory portion of the interview, before any substantive discussion of matters relevant to the case, and before the defendant waives his *Miranda* rights. When the defendant says that a lawyer will probably yell at him, he is responding to Sgt. McLaughlin's explanation that the room where the interview is taking place is recording both audio and video. After being asked if he consents to the interview being recorded, the defendant says "okay." Sgt. McLaughlin then tells the defendant he is going to turn the recorder on, states that "I'm gonna turn it on and then do a little introduction, we'll kinda go around the table type thing." Transcript p. 9, lines 12-16. It is clear from the defendant's body language and tone of voice that he is joking when he says that a lawyer will probably yell at him for agreeing to the interview.

18. There is no basis for redacting this exchange. The defendant's statement is relevant because it shows that the defendant understood the detective's explanation about recording the interview, and provided his consent. Furthermore, the defendant's joke about a lawyer yelling at him for speaking with police is relevant to show his consciousness of guilt. By joking that a lawyer would be upset with him for speaking to police about Ms. Naffziger's murder, the defendant indicated that he knew that what he described would be evidence of his guilt. This is highly relevant, for obvious reasons.

19. There is no risk of unfair prejudice from the admission of this exchange. This statement is not inflammatory, and its introduction into evidence will not cause undue delay, confuse the issues, or mislead the jury. *See State v. Scott*, 149 N.H. 170, 172 (2003) (“Relevant evidence is not unfairly prejudicial if it merely causes detriment to a defendant because it tends to prove his guilt. Otherwise, all of the State’s evidence would be considered unfairly prejudicial to the defendant”).

20. The defendant claims that “any statements that mention ‘lawyer’ or legal discussion is bared [sic] by the NH and federal constitutions.” Def. Mtn, par. 7. The defendant is incorrect. The attorney-client privilege does not protect statements that merely mention the word “lawyer.”

21. “A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal services to the client.” N.H. R. Ev. 502(b). “A communication is ‘confidential’ if not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of professional legal services to the client.” R. 502(a)(5). *See also, State v. Stickney*, 248 N.H. 232, 234-5 (2002).

22. It is self-evident that the mere use of the word “lawyer” does not, in and of itself, trigger the protection of the attorney-client privilege. There are countless ways in which a person might use the term “lawyer” in conversation when discussing matters that do not relate to legal representation. The use of a particular word during a discussion does not have any bearing on the content of the discussion, and whether or not the information discussed is privileged. The defendant offers no legal authority for this argument, because none exists.

23. The defendant’s related assertion - that any statements that mention legal discussions should be excluded - is similarly baseless and without merit. “A person claiming a

privilege against disclosure waives the privilege if the person...knowingly and voluntarily discloses or consents to disclosure of any significant part of the privileged matter.” N.H. R. Ev. 510. To the extent that any privileged information was discussed during the defendant’s interview, the defendant waived the privilege by knowingly and voluntarily sharing it with investigators.³

24. Here, the defendant merely used the word lawyer as part of a joke, indicating his understanding that a defense lawyer would likely be upset with him for agreeing to speak with the police about his role in the death of Ms. Naffziger. The defendant did not describe discussions with a lawyer, or anything else that could conceivably fall within the attorney-client privilege. The privilege does not apply to this statement, and it should not be redacted.

ii. p. 27, lines 4-9

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[REDACTED]

25. This statement is relevant because it relates to the defendant’s relationship with Ms. Naffziger. The defendant’s description of problems in his relationship with Ms. Naffziger is relevant to show his state of mind during the time frame leading up to and culminating in the murder of Ms. Naffziger.

26. This statement is not unfairly prejudicial. It is common for people engaged in romantic relationships to have problems, and the defendant will not be prejudiced by his

³ The defendant knowingly and voluntarily waived his *Miranda* rights at the beginning of the interview, and signed a *Miranda* waiver form. By not filing a timely motion to suppress, the defendant has waived his right to challenge the validity of this waiver, or otherwise move to suppress his statements during the interview. The defendant cannot now claim that any of his statements were not knowingly or voluntarily made.

admission of such strife in his relationship. The defendant spoke at length about previous problems in his relationship at many other points during the interview, which the defendant has chosen not to challenge.

iii. p. 31, lines 2-5⁴

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27. This statement is relevant for similar reasons. The defendant's descriptions of prior problems in his relationship with Ms. Naffziger, including a reference to [REDACTED] being called, is relevant to show the defendant's state of mind. Where the defendant has stated in pleadings that he may argue that he was justified in using deadly force against Ms. Naffziger because he believed she was planning to take custody of his children away from him, this statement is particularly relevant, as it deals with similar subject matter.

28. This statement is not unduly prejudicial, and its probative value is not substantially outweighed by whatever minimal prejudice might exist. The statement does not mention who called the police, and does not mention any violence or injuries perpetrated by either the defendant or Ms. Naffziger. It contains no inflammatory content.

iv. p. 41, lines 9-11⁵

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[REDACTED]

⁴ Although the defendant only challenges lines 2-5, the defendant's statement continues until line 7.

⁵ Although the defendant challenges lines 9-11, the defendant's statement actually begins on line 8.

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[REDACTED]

29. This statement is relevant for the same reasons. Like the statements above, this statement relates to problems in the relationship between the defendant and Ms. Naffziger during their relationship in the time period preceding the murder. In this case, the defendant explains to the detectives that after moving to Berlin, he preemptively called the [REDACTED] to inform them about a potential civil dispute between himself and Ms. Naffziger. He told the detectives that he was worried Ms. Naffziger would attempt to lie to the police and cause them to raid his house.

30. In the portion of the interview immediately following the highlighted exchange, the defendant tells the detectives that “she’s trying to make some stuff up. So I did actually call the Berlin Police Department.” Transcript, lines 13-15. The defendant has not included this statement in his list of purportedly inadmissible statements. The defendant cannot cherry pick portions of his statements and claim they are inadmissible, while not challenging statements containing nearly identical content.

31. This statement is relevant and would not cause undue prejudice. Furthermore, the attorney-client privilege does not protect this statement. In this case, the defendant essentially tells the police about a legal question he asked his lawyer. Although a question to an attorney clearly falls within the scope of the attorney-client privilege, the privilege does not apply because the defendant waived it. By describing his question to his attorney to the police, the defendant knowingly and voluntarily disclosed the contents of privileged communications. He cannot now claim the protection of the privilege. *See* N.H. R. Ev. 510.

v. p. 42, lines 11-14

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[REDACTED]

32. This statement is relevant and admissible for similar reasons as the statements listed above. The defendant’s discussion of relationship problems, including a suggestion to the police that the contents of his phone would corroborate his description of those problems, is relevant because it relates to his state of mind prior to the murder. It does not contain inflammatory material, and is similar to other material the defendant does not challenge. It is therefore relevant and admissible under Rules 401 and 403.

33. The defendant’s statement that “this is going to be more of a lawyer thing” does not render this statement one that is protected by attorney-client privilege. The defendant does not mention any communications with an attorney; instead, he merely suggests that a review of the contents of his phone might be relevant for lawyers. The privilege therefore does not apply.

vi. p. 61, lines 7-11

[REDACTED]

34. This statement is relevant because it relates to the defendant’s description of the murder, and his consciousness of guilt. In the statements preceding this one, the defendant describes how his daughter E.D., who he says he held in one arm while he used the other to shoot and kill Ms. Naffziger, complained about the gunshot being loud. The State has charged the defendant with reckless conduct with a deadly weapon and child endangerment for shooting in such close proximity to his daughter. His admission that “[REDACTED]” is relevant because it relates to the circumstances that underlie those charges.

35. Crucially, the defendant's statement that, immediately after he shot Ms. Naffziger, he thought [REDACTED] and understood the consequences of his actions is relevant because it shows his consciousness of guilt and his state of mind. The fact that the defendant professed that [REDACTED] [REDACTED] is highly probative and bears no risk of unfair prejudice. This statement should not be excluded.

vii. p. 63, lines 3-5⁶

[REDACTED]

36. This statement is relevant and admissible for the same reasons as the statement above. It shows the defendant's consciousness of guilt. The defendant's statement that he [REDACTED], shows that he knew he was guilty of committing murder. This statement also indicates that the defendant himself did not believe that he was justified in killing Ms. Naffziger. This is highly relevant in a case where the defendant may assert that his actions were justified under RSA 627:4. Rather than tell the police that he acted in self-defense, the defendant stated that he knew it didn't matter what Ms. Naffziger did, and he understood the consequences of killing her.

37. This statement is similarly relevant for the jury to understand the defendant's state of mind. The defendant says that after killing Ms. Naffziger, [REDACTED]

⁶ For context, the State has included the entirety of this portion of the defendant's statement.

██████████ This indicates that the defendant knew at the time of the killing that what he had done was wrong, and is indicative of the defendant's intent and mental processes. This evidence is crucial for the jury to understand the defendant's actions, particularly where the defendant may argue that he did not act with intent.

38. The defendant has chosen not to object to the portions of the defendant's statement immediately preceding and following, in which the defendant states that he knew what was going to happen to him, and would turn himself in at some point. These portions are relevant and admissible for the same reasons. Nothing distinguishes them from the statement the defendant attempts to have excluded.

39. The fact that the defendant essentially inculpated himself through this statement does not make it inadmissible. There is no risk of unfair prejudice. *See State v. Scott, supra* ("Relevant evidence is not unfairly prejudicial if it merely causes detriment to a defendant because it tends to prove his guilt").

viii. p. 77, lines 7-19

40. In this section, after expressing hesitation to discuss the matter with detectives, the defendant tells them that during their relationship, he "██████████" Ms. Naffziger, and ██████████.

41. This statement is relevant and admissible, like others described above, because it relates to the defendant's state of mind and how he viewed his relationship with Ms. Naffziger. The defendant's description of the state of his relationship with Ms. Naffziger is highly relevant to show his motive and intent. It is clear from the entirety of the defendant's interview that his frustration with Ms. Naffziger, arising from past disputes over parenting and custody of their children, was a principle driver of the anger that led him to shoot and kill her.

42. The context in which the defendant made this statement is important. The defendant, in making this statement to detectives, told them that he was hesitant to bring it up. This is an indication of consciousness of guilt, and is relevant for that purpose. Further, the defendant's statement appears to be an attempt to convince the detectives that prior to the murder, he had never physically harmed Ms. Naffziger. This is a self-serving statement that serves as the defendant's attempt to improve his standing in the eyes of the detectives investigating Ms. Naffziger's murder. It is relevant for the jury to see this, to gain a better understanding of the defendant's credibility during the interview.

43. There is no risk of unfair prejudice from the introduction of this statement. It discusses matter that is not inflammatory, confusing, or misleading.

ix. p. 102, lines 19-21

[REDACTED]

44. This statement is relevant and not unfairly prejudicial. Here, the defendant tells the detectives that he had exchanged text messages with his mother in which he said that [REDACTED]

[REDACTED]

[REDACTED] The defendant believed that Ms. Naffziger's intent in coming to New Hampshire was to leave V.D. with him, and return to Minnesota without either of their daughters, in essence giving sole physical custody of the children to the defendant.

45. This statement is highly relevant because it contains the defendant's description of his state of mind before Ms. Naffziger's visit occurred. After she arrived and it became clear to the defendant that she had different intentions, he became frustrated and angry, ultimately

leading to his actions in killing Ms. Naffziger. The defendant's description of his state of mind is crucial to understanding his intent and motive at the time of the murder.

46. Introduction of this statement would not be unfairly prejudicial. The probative value is high, and there is no risk of unfair prejudice, undue delay, or confusing or misleading the jury. Tellingly, the defendant has not challenged similar statements that appear immediately after this one. On page 103, lines 4-7, the defendant tells the detectives that [REDACTED]. [REDACTED] The substance of this statement is identical to the prior statement that the defendant wouldn't consider the weekend a victory until Ms. Naffziger was gone and he had custody of both children.

47. The defendant may argue that it would be unfairly prejudicial to introduce this statement because the jury might infer that by [REDACTED]. [REDACTED]. While the defendant is free to make this argument to the jury, the fact that the jury might draw such an inference is not grounds to exclude the statement. The statement is relevant whether the defendant meant [REDACTED]. [REDACTED] While certainly prejudicial in the sense that is indicative of guilt, it is not unfairly prejudicial.

48. It is important to note that the detectives ask Mr. Duren directly about this statement. On p. 104, the detectives reference the defendant's statements about the text message with his mother, and ask him directly if it was intent to have Ms. Naffziger come to New Hampshire so that he could kill her. The defendant replied, in substance, that it was not. There is therefore no risk of unfair prejudice, when the possibility that a juror might interpret the defendant's statement unfairly is addressed by the detectives' questioning, which allowed the defendant to directly answer that concern.

x. p. 103, line 18 to p. 104, line 3

49. In this section, the detectives tell the defendant that their job is to give the defendant the best interview they can, and they think they are doing that by letting the defendant “fill in the blanks.”

50. This exchange is relevant because it helps the jury understand the context of the interview, by giving them an understanding of the detectives’ motives. As noted above, if the interview is offered into evidence at trial, the State would not seek to admit the detectives’ statements as substantive evidence. Instead, they would be admitted only for context. In order to understand the defendant’s answers, it is necessary for the jury to also understand the motives of the detectives asking the questions. This statement ensures that the jury will not draw unfair inferences about the detectives, and penalize them for attempting to trick or mislead the defendant. While the entirety of the interview makes clear that the detectives did not engage in any deceptive or misleading behavior, it is important for the jury to hear the detectives describe their methods.

51. There is no risk of unfair prejudice from this statement.

xi. p. 104, line 18 to p. 105, line 5

52. This section of the interview contains an exchange in which the detectives have just informed the defendant that they feel it is necessary to follow up on the defendant’s statement about telling his mother that [REDACTED]

[REDACTED] The defendant replies that [REDACTED]

[REDACTED]

[REDACTED]

53. It is clear from the context of this exchange that the defendant is, essentially, telling the detectives that [REDACTED]. This is relevant to show the defendant's state of mind, intent, and consciousness of guilt. The defendant references lawyers, courts, and degrees, indicating that he knew that telling police [REDACTED] would likely make him look guilty of murder.

54. Statements indicating the defendant understood the nature of his crime, and understood that others might believe him to be guilty, are relevant to show consciousness of guilt. This is particularly true in this case, where the defendant may claim that he did not act knowingly or recklessly. Evidence that the defendant was able to calmly and intelligently make statements such as the one referenced in an interview with detectives the day after the murder are relevant to show his knowledge, intelligence, and comprehension of legal issues during that timeframe.

55. There is no risk of unfair prejudice from this statement. It should not be excluded.

xii. p. 111, lines 3-8

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[REDACTED]

56. This section is relevant. The State presumes that the defendant seeks to exclude this statement because a jury may look unfavorably on him for accusing Ms. Naffziger of not caring for their children. This is not a valid basis for excluding this statement.

57. This statement is relevant, like others, because it speaks to the defendant's state of mind. That the defendant believed Ms. Naffziger did not care about her children is important for the jury to understand, because such a sentiment shows that the defendant had motive to kill her. The ongoing dispute between the defendant and Ms. Naffziger over custody of their children was a key part of the defendant's frustration and anger with Ms. Naffziger prior to the murder. The defendant's stated belief that Ms. Naffziger did not care about her children is a crucial component of those discussions, and the defendant's anger.

58. This statement is also relevant to show consciousness of guilt. The defendant, by painting Ms. Naffziger as a bad mother who did not care for her children, likely was attempting to in some way justify his actions. This is relevant and probative of his state of mind and intent.

59. There is no risk of unfair prejudice to the defendant. This statement is not inflammatory, and will not confuse or mislead the jury.

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

- (A) Deny the defendant's request for redactions; and
- (B) Grant such further relief as may be deemed just and proper.

Respectfully submitted,

THE STATE OF NEW HAMPSHIRE

JOHN M. FORMELLA
ATTORNEY GENERAL

Date: September 29, 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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