THE STATE OF NEW HAMPSHIRE
SUPERIOR COURT

COÖS, SS SEPTEMBER TERM, 2025

STATE OF NEW HAMPSHIRE

V.

DUSTIN MARK DUREN

214-2024-CR-00028

STATE'S MOTION IN LIMINE: EXCLUDE TESTIMONY FROM BRENDA PLAMONDON AND SHANNON SPURGEON

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 exclude testimony from Brenda Plamondon and/or Shannon Spurgeon as irrelevant hearsay. If the Court allows this testimony, and the defense seeks to admit it, additional testimony related to the victim's fear of the defendant, including statements about his past assaultive behavior, must be admitted for completeness and under the open-the-door doctrine. In support of this pleading, the State submits the following:

FACTS AND PROCEDURAL HISTORY[1]

1. The defendant is charged with alternative charges 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.

[1] All facts listed below are drawn from material provided to the defendant in discovery.

2. On February 29, 2024, the defendant killed Caitlyn Naffziger by shooting her in the head inside of his apartment in Berlin, New Hampshire. At the time that the defendant killed Ms. Naffziger, they had two children in common. Those children, E.D. (age 4) and V.D. (age 1) were present in the apartment at the time of the murder.[2]

3. During the investigation into Ms. Naffziger's death, investigators spoke to Ms. Naffziger's aunt, Brenda Plamondon, and to Shannon Spurgeon. Ms. Spurgeon works with Ms. Plamondon and had known Ms. Naffziger for several years. It has recently come to the State's attention that the defendant has subpoenaed both of these individuals to testify at trial in this matter.[3]

4. In an interview with the New Hampshire State Police,[4] Ms. Plamondon stated that in mid-to-late February, Ms. Naffziger told her that she and V.D. were going to fly from Minnesota to visit the defendant and E.D. in Berlin, New Hampshire.[5] Arrangements were subsequently made for Ms. Naffziger to stay with Ms. Plamondon in Hampton, New Hampshire.

5. On February 27, 2025, Ms. Naffziger and V.D. flew to Boston Logan Airport and took a bus to Seabrook, New Hampshire. Ms. Spurgeon picked them up at the bus station and drove them to Ms. Plamondon's home where they spent the night.

6. According to both Ms. Plamondon and Ms. Spurgeon, that night, Ms. Naffziger told them that she had not been okay with the defendant taking E.D. with him when he moved to New Hampshire from Minnesota, but was afraid to tell him no. She expressed that she was

[2] There was no formal custody agreement related to the custody of the children.
[3] On April 28, 2025, the defendant filed a motion *in limine*: 404(b), in which he sought to exclude any evidence or statements of abuse or violence that the defendant was alleged to have committed against Ms. Naffziger beyond the charged offense. That motion specifically included several statements made by Brenda Plamondon and Shannon Spurgeon as discussed *infra.* In response, the State advised that it would not seek to admit such statements unless the defense opened the door to their admission.
[4] Ms. Plamondon and Ms. Spurgeon were interviewed together.
[5] The defendant had moved from Minnesota to New Hampshire with E.D. approximately one month earlier while Ms. Naffziger and V.D. had remained in Minnesota.

afraid of the defendant and that he had previously hurt and strangled her. She also stated that there had been multiple incidents between her and the defendant regarding custody of the two children, including where the defendant had refused to return the children to her care.

7. According to Ms. Plamondon, Ms. Naffziger told the defendant she was coming to New Hampshire to visit but actually planned to take custody of E.D. and return to Minnesota with both children.[6] Ms. Naffziger told Ms. Plamondon that her plan was to leave with the girls while the defendant was asleep. Ms. Plamondon and Ms. Spurgeon told detectives that they offered to help Ms. Naffziger regain custody of her oldest child by driving her and V.D. halfway to Berlin, to a restaurant in Ossipee where the defendant and Ms. Naffziger had agreed to meet.

8. Ms. Plamondon and Ms. Spurgeon drove Ms. Naffziger and V.D. to the restaurant and dropped them off in the parking lot. Ms. Naffziger asked them not to go inside and expressed concern that the defendant, who did not know Ms. Spurgeon, might be spooked by her presence. Ms. Naffziger told them not to call or text her because the defendant might watch her phone. Ms. Plamondon said that they all agreed on a "code word" that Ms. Naffziger could use if she felt unsafe and needed to get out of Berlin fast. If Ms. Naffziger did not call them by Sunday, March 2nd, Ms. Plamondon and Ms. Spurgeon planned to drive to Berlin to meet Ms. Naffziger at a local restaurant. Ms. Plamondon and Ms. Spurgeon did not see the defendant while they were in the parking lot. They watched Ms. Naffziger and V.D. enter the restaurant and then they returned to Hampton, New Hampshire without them. They never saw or heard from Ms. Naffziger again.

9. On June 13, 2024, Ms. Plamondon was interviewed by the defense investigator, Arthur Boutin. At that time, she provided information consistent with her prior statement to

[6] The State notes that Ms. Naffziger had custody of V.D. in that she travelled from Minnesota to New Hampshire with her and had purchased a return ticket for the child.

investigators, including that Ms. Naffziger discussed her fear of the defendant, his prior abuse of her (mental and physical), and that she was afraid to tell him that he could not bring E.D. to New Hampshire. During that interview, Ms. Plamondon stated that when they arrived at the place where Ms. Naffziger arranged to meet the defendant, the defendant was not there, "so they dropped Caitlyn off with the baby and left."

10. The defendant, in a post-arrest interview told detectives that he and E.D. were waiting at the restaurant, and that "[he] never even saw Brenda. [Ms. Naffziger] just got dropped off." The context of the interview made it clear that the defendant never saw Brenda Plamondon, was unaware that Ms. Spurgeon was present, and did not communicate with either of them.

11. During his interview, the defendant stated that on February 29, 2024, Ms. Naffziger refused to leave his apartment despite his repeated requests for her to leave. He said that at some point, Ms. Naffiziger told him "I'm going to take the kids away from you. I'm going to call the cops. I'm going to get you arrested."

ARGUMENT

12. This court should exclude the testimony of both Brenda Plamondon and Shannon Spurgeon because it is hearsay, because it is irrelevant, and because of the significant risk that this testimony would cause unfair prejudice and/or mislead or confuse the jury. Put simply, testimony from Ms. Plamondon and Ms. Spurgeon about the out-of-court statements of Ms. Naffziger are irrelevant where the evidence clearly establishes that the defendant was unaware of those statements.[7]

[7] The defendant may argue that this testimony is needed, as all proofs favorable or otherwise, to put forth his defense of "defense of others" to stop a kidnapping or attempted kidnapping – however, any plan or action of Ms. Naffziger made to regain custody of E.D. would not amount to a kidnapping under New Hampshire law. *See* RSA 633:1, I-a. The defendant does not have a right to present irrelevant or confusing evidence, "for such evidence is not competent, favorable proof." *State v. Woodsum*, 137 N.H. 198, 201 (1993).

13. If this court allows testimony from Ms. Plamondon and/or Ms. Spurgeon as to Ms. Naffziger's statements about any plan to regain custody of E.D., the State should then be allowed to question them regarding the entirety of Ms. Naffziger's statements including those which formed the reasoning behind such a plan. This testimony would include her statements that she feared the defendant and had been abused by him in the past. These statements would be admissible under both the doctrine of completeness and the opening-the-door doctrine, to prevent the defense from obtaining a misleading advantage.

A. Ms. Naffziger's Statements to Ms. Plamondon and/or Ms. Spurgeon Constitute Irrelevant, Inadmissible Hearsay.

14. Rule of Evidence 801 defines hearsay as a statement that "(1) the declarant does not make while testifying at the current trial or hearing; and (2) a party offers to prove the truth of the matter asserted in the statement. N.H. Rule of Evidence 801(c).

15. Testimony from Ms. Plamondon and/or Ms. Spurgeon as to statements Ms. Naffziger made to them, as discussed *supra*, clearly fits within the definition of hearsay. Ms. Naffziger did not testify in court, will not be available to testify in court, and her statements will be offered by the defense for the truth of the matter asserted. These statements are therefore hearsay and inadmissible unless a valid exception applies.

16. Here, the defendant has provided notice of an affirmative defense in that he may argue that his use of deadly force against Ms. Naffziger was justified as a defense of others. The defendant filed this affirmative defense generally under RSA 627:4, and specifically under RSA 627:4, II(c) regarding the use of deadly force where a person is committing or about to commit a kidnapping. As such, the State anticipates that the defendant may argue that Ms. Naffziger's

statements to Ms. Plamondon or Ms. Spurgeon surrounding a plan to regain custody of the E.D. should be admissible to show Ms. Naffziger's then-existing state of mind under Rule 803(3). Essentially, the defendant may offer the above-described testimony of Ms. Plamondon and/or Ms. Spurgeon to somehow argue that the defendant's use of deadly force against Ms. Naffziger was justified.

17. This argument ignores the fact that the defendant was not aware of Ms. Naffziger's statements to Ms. Plamondon and Ms. Spurgeon. He was never confronted by either of them or by Ms. Naffziger with the plan to regain custody of E.D. and return to Minnesota. He was not affected by the statements Ms. Naffziger made to Ms. Plamondon or to Ms. Spurgeon and did not take any action because of them. The testimony of Ms. Plamondon and/or Ms. Spurgeon is therefore irrelevant and should be excluded.

18. "Relevant evidence" is generally admissible at trial. See N.H. R. Evid. 402. In turn, evidence is "relevant" if the evidence "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. Evid. 401. Once the low relevancy threshold has been crossed, a Court should exclude relevant evidence only "if its probative value is substantially outweighed by a danger of . . . unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence." N.H. R. Evid. 403.

19. Appellate courts in Massachusetts have addressed this very issue multiple times, in the similar context of crimes of violence committed by one intimate partner against another. As succinctly explained by the Supreme Judicial Court in *Commonwealth v. Qualls*, 425 Mass. 163, 168 (1997), "[a] murder victim's attitude of contempt or hostility toward the defendant,

when it is known to the defendant, would constitute some evidence which, augmented by other evidence, might warrant a fact finder's determination that the defendant responded by killing the victim. However, a victim's contempt for the defendant or hostile attitude toward him, unknown to the defendant, would be irrelevant and inadmissible at the defendant's trial for murder" (emphasis added). *See also, Commonwealth v. Castano*, 478 Mass. 75, 85 (2017) (a victim's statements may be admissible only if "there is also 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"); and *Commonwealth v. Tassinari*, 466 Mass. 340, 347 (2013) ("Here, the statements are relevant to the victim's hopes for a divorce, her dissatisfaction with the marriage, and the defendant's response to those issues. They are also relevant to the defendant's motive to kill the victim because he was made aware of her state of mind at the time of the crime through their electronic communications") (internal citation omitted).

20. It is abundantly clear from their interviews that neither Ms. Plamondon nor Ms. Spurgeon communicated with the defendant. The defendant himself told detectives that he never saw Ms. Plamondon when she dropped off Ms. Naffziger, he did not mention communicating with her, and further, the defendant had no knowledge of Ms. Spurgeon. The statements therefore did not affect or shape the defendant's state of mind at the time of the murder and are wholly irrelevant.

21. The New Hampshire Supreme Court has excluded similar, irrelevant evidence in other cases. *See State v. Furgal*, 164 N.H. 430, 438-9 (2012) (evidence of a prior altercation was not probative of defendant's state of mind, and therefore irrelevant and inadmissible at trial, because defendant was not aware of the prior altercation); and *State v. Jette*, 274 N.H. 669, 674-

676 (2021) (evidence of prior drug sale inadmissible under rule 403 for numerous reasons, including that there was no evidence the defendant was aware of it).

22. Any conversation Ms. Naffziger had with Ms. Plamondon and/or Ms. Spurgeon is irrelevant because the defendant had no knowledge of the content of that communication. The risk of unfair prejudice and misleading the jury, on the other hand, would be extremely high. Testimony about Ms. Naffziger's statements would likely confuse the jury and waste time and resources.

23. Arguably, the testimony would also be needlessly cumulative because of the defendant's statement to investigators that he developed a belief that Ms. Naffziger planned to take both children home (to Minnesota) and that during their argument on the day of the murder, Ms. Naffziger made statements to him including that she was going to take the kids away, going to call the cops, and going to get the defendant arrested. As such, the substance of Ms. Naffziger's "plan" will likely be available to the jury via other, admissible evidence.

B. Should Testimony of Brenda Plamondon and Shannon Spurgeon be Admitted, the Doctrine of Completeness and the Opening-the-Door Doctrine Require the Admission of the Complete Statement of Ms. Naffziger's State of Mind.

24. Notwithstanding the above, if this court allows and the defendant offers Ms. Naffziger's statements related to her purported state of mind through the testimony of Ms. Plamondon and/or Ms. Spurgeon, this court should allow the State to elicit the other portions of Ms. Naffziger's conversations with Ms. Plamondon and Ms. Spurgeon, relating to her fear of the defendant and his past abuse of her. This testimony would be needed to provide the jury with necessary context about Ms. Naffziger's purported state of mind, and to prevent the defendant from gaining a misleading advantage.

25. Again, the defendant, presumably, would offer Ms. Naffziger's statements in order to show her state of mind under Rule 803(3). It would be incredibly misleading and prejudicial to do so by introducing only the portions of Ms. Naffziger's statements that describe her plan to take custody of E.D., without also including the portions that explain *why* Ms. Naffziger formed the plan and believed it was necessary. Such information would provide necessary context, without which the jury would not receive a complete picture of Ms. Naffziger's state of mind.

26. In this scenario, the remainder of Ms. Naffziger's statements to Ms. Plamondon and Ms. Spurgeon would be admissible through either the doctrine of completeness or the opening-the-door doctrine. In either case, admission of the full content of the statements would be necessary to avoid unfair prejudice and misleading the jury.

27. The doctrine of completeness is a common law rule wherein "[a] party has the right to introduce the remainder of a writing, statement, correspondence, former testimony or conversation that his or her opponent introduced so far as it relates to the same subject matter and hence tends to explain or shed light on the meaning of the part already received." *State v. Mitchell*, 166 N.H. 288, 293 (2014) (citing *State v. Lopez*, 156 N.H. 416, 421 (2007). The doctrine exists to prevent one party from gaining an advantage by misleading the jury. *Id*. "[T]here 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." *Id*.

28. Here, the introduction of only the portion of Ms. Naffziger's statements that describes her plan to take custody of E.D. from the defendant would create a potentially significant advantage for the defendant and also mislead the jury. The introduction of the

remainder of the statements, in which Ms. Naffziger described Mr. Duren's past abuse of her and her fear of him, would be necessary to prevent the jury from being misled. The remainder of the statements would satisfy both requirements of the completeness doctrine, since they are part of the same conversation and the introduction of only a portion of her entire statement would mislead the jury.

29. For the same reasons, the full context of Ms. Naffziger's statements would be admissible under the opening-the-door doctrine. "The opening the door doctrine comprises two doctrines governing the admissibility of evidence." *State v. Roman*, 176 N.H. 367, 371 (2023) (citation omitted). The first, known as the doctrine of curative admissibility, "arises when inadmissible prejudicial evidence has been erroneously admitted by one party, and the opposing party seeks to introduce other evidence to counter the prejudice." *Id*. (citation omitted). The second, known as the doctrine of specific contradiction, "applies more broadly to situations in which a party introduces admissible evidence that creates a misleading advantage for that party, and the opposing party is then permitted to introduce previously suppressed or otherwise inadmissible evidence to counter the misleading advantage." *Id*.

30. With respect to either doctrine, the fact that "the door has been opened" does not permit all evidence to "pass through" because the doctrine is intended to prevent prejudice and is not to be subverted into a vehicle for the introduction of prejudice." However, rebuttal evidence sought to be admitted under this doctrine is "evaluated, not by its relevance to the charged conduct, but by its ability, and whether it is necessary to counter the prejudice or misleading advantage created by the other party's opening of the door." *State v. DePaula,* 170 N.H. 139, 147-148 (2017). *See also State v. Cannon*, 146 N.H. 562 (2001).

31. In this case, the admission of Ms. Naffziger's statements through either Ms. Plamondon or Ms. Spurgeon would trigger the specific contradiction doctrine and provide this court with discretion to admit otherwise inadmissible evidence to directly counter the misleading advantage triggered by the introduction of admissible evidence. *State v. Barr*, 172 N.H. 681, 693 (2019). As described above, it is the State's position that Ms. Naffziger's statements, if introduced through Ms. Plamondon or Ms. Spurgeon, would constitute inadmissible hearsay. Should this court determine that they are admissible under an exception to the hearsay rule, and that they do not violate Rule 403, the statements would constitute misleading admissible evidence (rather than erroneously admitted inadmissible evidence) were defense to solicit only part of the information.

32. The introduction of Ms. Naffziger's statements to Ms. Plamondon and Ms. Spurgeon that she intended to take custody of E.D. and return home to Minnesota with both children without the defendant's knowledge, without the necessary context of *why* Ms. Naffziger believed it was necessary to do so, would constitute a misleading advantage. Testimony limited to those statements would likely cause the jury to view Ms. Naffziger in a negative light. The remainder of Ms. Naffziger's statements would be necessary to counter this advantage and provide the jury with necessary context.

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: September 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.

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