

THE STATE OF NEW HAMPSHIRE  
SUPERIOR COURT

COÖS, SS

MAY TERM, 2025

STATE OF NEW HAMPSHIRE  
V.  
DUSTIN MARK DUREN

214-2024-CR-00028

**STATE'S RESPONSE TO DEFENDANT'S  
MOTION IN LIMINE: 404(b)**

NOW COMES the State of New Hampshire, by and through its attorneys, the Office of the Attorney General, and files this response to the Defendant's Motion *In Limine*: 404(b). The State partially assents to the defendant's motion but reserves the right to seek introduction of any evidence of the defendant's abusive or violent behavior in the event the defense "opens the door" to its admission. In support of this filing, the State submits the following:

1. The defendant is charged with alternative charges of first-degree murder, purposeful, second-degree murder, knowing, and second-degree murder, reckless 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. On November 14, 2024, the defendant filed an initial notice of defenses indicating that he may rely on RSA 627:4, II(c) as an affirmative defense. *See Defendant's Notice of Defense: Defense of Others*, ¶ 6 (November 14, 2024). Essentially, through this filing, the defendant seeks to argue that he killed Caitlyn Naffziger as she was committing or about to commit a kidnapping of her (and the defendant's) minor child, E.D.

3. Three weeks after the deadline for filing of defenses, on December 31, 2024, the defendant filed a supplemental notice of defenses in which he indicated that he may rely on any provision of RSA 627:4, Physical Force in Defense of a Person. *See Defendant's Supplement to Notice of Defense* (December 31, 2024).

4. Should the defendant proceed under any of these filed affirmative defense theories, the jury would be instructed that (1) the defendant's belief that he needed to act in defense of himself or E.D. had to be reasonable and (2) that the defendant did not act as the initial aggressor. N.H. Bar Assoc. Criminal Jury Instructions 3.11 and 3.14 (1985).

5. On April 28, 2025, the defendant filed "Defendant's Motion *In Limine*: 404(b)", moving to exclude from trial evidence of any crimes, wrongs, or acts allegedly committed by the defendant other than the offense alleged in the indictment, specifically:

- a. Naffziger's statements to the Anoka County Sheriff's Department that she would not give Duren her home address due to safety concerns.
- b. Timothy Smith's statements that he felt Duren tried to isolate Naffziger from her family.
- c. Brenda Plamondon's statement that her daughter Annie told her a story that one time Duren got physical and pulled on Naffziger, with Duren's father having to pull Duren off of Naffziger.
- d. Brenda Plamondon's statement that Naffziger told her she was afraid of Duren, that he had hurt her before, and that he had strangled her before.
- e. Brenda Plamondon's statement that Naffziger agreed to allow Duren to take their minor child, E.D., because Naffziger was afraid of Duren.
- f. Sarah Heil's statement that Duren pushed Naffziger and bruised her back.
- g. Shannon Spurgeon's statement that she believed that things between Naffziger and Duren turned physical when they lived in Las Vegas.
- h. Robert Naffziger's statement that he was aware of an incident when Duren restrained Naffziger.
- i. Tyler Johnson's statement that he had known Duren was physically abusive to Naffziger to the point where Naffziger's father had to split them up on several occasions.
- j. And any other claims or assertions of abuse.

6. Upon review of N.H. Rule 404(b) and applicable case law, the State does not intend to introduce evidence in its case-in-chief of the prior bad acts specifically delineated by the defendant in his motion and or encompassed under the overly broad category of “any other claims or assertions of abuse” without a further Court ruling. Defendant’s Motion *in Limine*: 404(b), ¶4(j).

7. However, the State anticipates that given the defense theories and possible case strategy that some evidence of behavior of the defendant may become admissible through the opening-the-door doctrine. “The opening-the-door doctrine itself subsumes two distinct doctrines, “curative admissibility” and “specific contradiction”. *State v. Morrill*, 154 N.H. 547, 550 (2006).<sup>1</sup> Either of these opening-the-door doctrines allow for the admission of otherwise inadmissible evidence, up to and including hearsay, at the discretion of the trial court.

8. Given that the State is not privy to the defendant’s trial strategy and, as such, cannot anticipate what testimony or arguments the defendant will put in front of the jury, the State reserves the right to seek a Court ruling that the defendant has “opened the door” to the admission of any relevant bad act. The State could seek such a ruling for acts, including any acts of abusive or violent behavior towards Ms. Naffziger, as discussed in the defendant’s motion.

9. Evidence sought to be admitted under the “opening-the-door” 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

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<sup>1</sup> The “curative admissibility” doctrine applies when inadmissible prejudicial evidence has been erroneously admitted, and the opponent seeks to introduce testimony to counter the prejudice. *State v. White*, 155 N.H. 119, 124, 920 A.2d 1216 (2007). The “specific contradiction” doctrine is more broadly applied when one party has introduced admissible evidence that creates a misleading advantage, and the opponent is then allowed to introduce previously suppressed or otherwise inadmissible evidence to counter the misleading advantage. *Id.* *State v. Wamala*, 158 N.H. 583, 589 (2009).

of the door.” *State v. DePaula*, 170 N.H. 139, 147-148 (2017). *See also State v. Cannon*, 146 N.H. 562 (2001).

10. The State would seek such admission should the defendant “open the door” during the examination of any witnesses (including on direct or cross examination) and/or based on any assertions presented during opening statements. *See State v. Barr*, 172 N.H. 681 (2019) (Remarks made in opening statements may trigger the opening-the-door doctrine); *State v. Nightingale*, 160 N.H. 569 (2010) (Stating “we have previously held that remarks in opening statements can create a misleading advantage and, thus, trigger the specific contradiction doctrine”). *See also State v. Goodman*, 145 N.H. 526, 529-30, 764 A.2d 925 (2000); *State v. Fecteau*, 133 N.H. 860, 874, 587 A.2d 591 (1991)).

11. Accordingly, the State would not seek admission of the specifically delineated evidence in the defendant’s Motion *In Limine*: 404(b) unless and until such time as the Court rules that the defendant has opened the door to the admission of the evidence.

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

- (A) Note the State's Response to the defendant's Motion *In Limine*: 404(b); and/or,
- (B) Grant such further relief as may be deemed just and proper.

Respectfully submitted,

THE STATE OF NEW HAMPSHIRE

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ATTORNEY GENERAL

Date: May 8, 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 defendant.

May 8, 2025

/s/ Bethany J. Durand  
Bethany J. Durand