

THE STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS.

HILLSBOROUGH COUNTY SUPERIOR COURT - NORTH

STATE OF NEW HAMPSHIRE

V.

ADAM MONTGOMERY

216-2022-CR-577

*** REDACTED FOR PUBLIC ACCESS***

OBJECTION TO STATE'S MOTION IN *LIMINE* TO ADMIT EVIDENCE OF PAST ABUSE BY THE DEFENDANT AGAINST KAYLA MONTGOMERY

NOW COMES the accused, Mr. Adam Montgomery, by and through counsel, Caroline L. Smith, Public Defender, and respectfully requests this Honorable Court deny the State's Motion *In Limine* to Admit Evidence of Past Abuse by the defendant against Kayla Montgomery. In support of this Objection, it is stated:

1. Mr. Adam Montgomery is scheduled for a May 31, 2023 jury selection on multiple charges of Armed Career Criminal, Felon in Possession, Theft and Receiving Stolen Property.
2. The State has filed a motion seeking to admit evidence of alleged past abuse of his wife, Kayla. The State asserts that it anticipates Kayla Montgomery will testify different from her prior statements given on March 11 and March 20, 2022. It further asserts that it anticipates that the difference will be due to the defendant's past abusive behavior towards her.
3. The State further asserts that it does not intend to introduce evidence of other bad acts in its case in chief; however, should the defendant attempt to impeach Kayla Montgomery with her perjury conviction or her initial statement to police, it intends to present evidence of past abuse by the defendant on Kayla Montgomery. In its argument, the State asserts that "**to the extent Kayla's** initial lies on March 11 and May 20 were attributable to the defendant's prior

abuse towards her, evidence of that prior abuse would be admissible, just like in *Bertran*, for the purpose of other than providing the defendant's character or disposition." (emphasis added.) See paragraph 12 of State's Motion.

4. In this matter, Kayla Montgomery has given inconsistent statements regarding her knowledge of the firearms at issue in this case. Depending on her trial testimony, her prior inconsistent statements are admissible for impeachment.
5. The State articulated acts of alleged prior abuse against Kayla Montgomery as follows:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

6. At the time Kayla Montgomery made allegations of prior bad acts against Mr. Montgomery, both she and Mr. Montgomery were incarcerated. Further, she had been separated from Mr. Montgomery for almost a year prior to her incarceration and had filed for divorce once incarcerated and prior to her Grand Jury testimony. Mr. Montgomery, prior to incarceration, had been in a relationship with another person for around 6 months.

7. At Grand Jury, Kayla described [REDACTED]
[REDACTED], which, on information and belief, was around February/March 2021. Her statements to police and at Grand Jury in March and May 2022 were about events over a year prior. When specifically asked at Grand Jury [REDACTED]
[REDACTED] No reasonable inference can be made that the alleged

prior bad acts in 2020 created justifiable and current fear affecting her statements and testimony in 2022 (see attached Exhibit A, portion of Grand Jury Transcripts.)

8. The State fails to articulate the nexus between those prior acts and Kayla's statements in March or May 2022. Thus, the State has not met the three prongs of NHRE 404(b) necessary for the admission of 404(b) evidence.
9. It is important to note that in the time following Kayla's breakup with Mr. Montgomery, there is neither evidence nor allegation that Kayla had ongoing fear of the defendant, nor evidence or allegation of current threats or aggressive behavior by Mr. Montgomery towards Kayla. Not only were there no allegations of prior bad acts against her after she left Mr. Montgomery, [REDACTED]
[REDACTED]
10. The State relies on *State v. Beltran*, 153 N.H. 643(2006) for the proposition that the defendant's alleged abuse of Kayla provides "a **potential** explanation for why her previous statements would differ from her testimony at trial" (See paragraph 9 of State's Motion). This argument is unsupported and completely goes against the testimony of Kayla Montgomery regarding the effect of the purported past abuse.
11. In *Beltran*, the defendant's former girlfriend, Siegel, on instructions from the defendant, loaded the gun used in the murder and cleaned the gun and bullets afterwards. The defendant also instructed Siegel to lie to the police, which she did repeatedly. Siegel testified that she was afraid that she would be harmed by the defendant if she did not do as he instructed. The prior bad acts evidence in *Beltran* included pulling Siegel's hair, punching and beating her, and repeatedly shooting her with a taser gun--one time while she was naked in the shower.

Seigel was in the abusive relationship at the time she committed the acts as instructed by the defendant. She testified to the Court prior to the admission of the evidence that she was:

"scared that [the defendant] might do something to [her] or have someone hurt [her]." She testified that in the past the defendant had told her that "he could have [her] watched and that he could have someone hurt [her] or beat [her] up or do something to [her] or [her] family if [she] ever did anything wrong." She also testified that she loaded the gun just prior to the murders because she was afraid that the defendant would hurt her if she disobeyed his orders.

State v. Beltran, 153 N.H. 643, 648 (2006)

12. The nexus between the defendant's abusive behavior in *Beltran* and the actions of Seigel in following his instructions was readily apparent. Not only was the witness in the abusive relationship when she was instructed to take certain actions, the defendant was present and in a position to cause immediate harm if Seigel did not follow those instructions. The prior assaults gave credence to her fear that if she did not comply, he would cause her grievous harm. Further, the prior bad acts, including threats to her family if she did anything wrong in the future, explained why she would believe the defendant's threats of future harm, and lie to the police even when he was not around. None of that exists in the instant matter.
13. Neither the State in its Motion, nor Kayla in her Grand Jury testimony, alleged that Mr. Montgomery was abusive to her in proximity to her statements, nor that Mr. Montgomery ever made the types of threats regarding future conduct as in *Beltran* that caused her to give the statements about guns that she gave in March and May 2022. Nor is it a reasonable inference from the facts alleged, especially given the lack of proximity between the alleged abuse and the statements. Because there is no nexus between the prior bad act allegations and Kayla's March and May statements, the State cannot establish that the evidence is relevant for a purpose other than propensity.

14. The purpose of NHRE Rule 404(b) “is to ensure that an accused is tried on the merits of the crime charged and to prevent a conviction that is based upon propensity and character inferences drawn from evidence of other crimes or wrongs.” *State v. Addison*, 165 N.H. 381, 463 (2013). Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that the person acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.
15. Before admitting evidence under Rule 404(b), a trial court “must first determine: (1) that the evidence is relevant for a purpose other than character or disposition; (2) that there is clear proof that the defendant committed the prior act; and (3) that the probative value of the evidence is not substantially outweighed by the danger of unfair prejudice to the defendant.” *State v. Roy*, 167 N.H. 276, 287, 111 A.3d 1061 (quotation omitted). “The State bears the burden of demonstrating the admissibility of prior bad acts.” *State v. Beltran*, 153 N.H. 643, 647 (2006).
16. To meet its burden under the first prong, the State is required to specify the purpose for which the evidence is offered and articulate the precise chain of reasoning by which the proffered evidence will tend to prove or disprove an issue actually in dispute, without relying upon forbidden inferences of predisposition, character, or propensity.” *State v. Howe*, 159 N.H. 366, 376 (2009) (quotation omitted). “That chain of reasoning must demonstrate a sufficient logical connection between the prior acts and the permissible purpose for which the State offers the evidence.” *Id.* “To be relevant, prior bad acts must be in some significant way connected to material events constituting the crime charged **and not so remote in time as to eliminate the nexus.**” *Beltran*, 153 N.H. at 647–48 (emphasis added).

17. The State's Motion also makes reference to a charge the defendant faces in an unrelated case of Tampering with Witnesses, however does not explain what this charge has to do with allegations of prior abuse. The defendant has pled not guilty to this charge. The charge has no connection to this case involving missing guns from the Frain residence.
18. The State points to no evidence to make a nexus to the allegations of prior abuse other than parroting reasons in *Beltran* that do not exist in this case.
19. Finally, in this instance, the only probative value is to put before the jury evidence of alleged bad character. The acts are not relevant to the charges and not relevant to Kayla Montgomery's statements in 2022. Because character evidence of this nature is inadmissible under these circumstances, the probative value is substantially outweighed by the danger of unfair prejudice. See NHRE 401, 402, 403 and 404(b)(2)(C).

WHEREFORE, Mr. Adam Montgomery, by and through his undersigned defense counsel, respectfully requests that this Honorable Court:

- A. Deny the State's *Motion in Limine* to Admit Evidence of Past Abuse By the Defendant Against Kayla Montgomery;
- B. Schedule a hearing on this matter should the Court find it necessary; and,
- C. Grant such further relief as may be deemed just and proper.

Respectfully submitted,

/s/ Caroline L. Smith

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CERTIFICATE OF SERVICE:

I hereby certify that a copy of this OBJECTION TO STATE'S MOTION *IN LIMINE* TO ADMIT EVIDENCE OF PAST ABUSE BY THE DEFENDANT AGAINST KAYLA MONTGOMERY has been forwarded to the Office of the Attorney General on this 9th day of May, 2023.

/s/ Caroline L. Smith

Caroline L. Smith, Esq.