

THE STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS.
NORTHERN DISTRICT

SUPERIOR COURT

216-2022-CR-577

State of New Hampshire

v.

Adam Montgomery

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

NOW COMES the State of New Hampshire, by and through its attorneys, the Office of the Attorney General, and files its Reply to Defendant’s *Objection to State’s Motion In Limine to Admit Evidence of Past Abuse by the Defendant Against Kayla Montgomery*. The State incorporates the facts and arguments previously asserted in its initial pleading. In his *Objection*, the defendant advances essentially two points. First, that there is no nexus between the defendant’s abuse and Kayla Montgomery’s (“Kayla”) initial statements to law enforcement and to the grand jury. Second, that the probative value of the evidence is substantially outweighed by the danger of unfair prejudice. His arguments are substantively flawed and do not form a basis for denying the State’s motion and excluding the relevant evidence.

1. The State disagrees with the defendant’s assertion that “there is no nexus between the prior bad act allegations and Kayla’s March and May statements . . .” *See* *Objection* ¶ 13. The defendant correctly points out that in her grand jury testimony, Kayla did not allege that the defendant “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 [] that she gave in March and May 2022.” *Id.* However, the defendant fails to consider that Kayla was charged with perjury following her statements at grand jury. The very charge, and subsequent conviction, which the defendant seeks to use as impeachment evidence against her. And it is because of the defendant’s intended impeachment purpose that creates the nexus between the two statements, opening the door to the prior abuse. The specific contradiction doctrine is subsumed by the opening the door doctrine. It applies when a party introduces admissible evidence that creates a misleading advantage for that party, and the opposing party is then allowed to introduce previously suppressed or otherwise inadmissible evidence to counter the misleading advantage. *See State v. Barr*, 172 N.H. 681, 692. In its original motion, the State provided that it “has no intention of offering the bad act evidence in its case-in-chief; however, the State provides notice that should the defendant attempt to impeach Kayla [] with her perjury conviction or initial statement to the police, the State intends to present evidence of past abuse by the defendant on Kayla [].” Motion ¶ 6. This line of inquiry by the defense opens the door to the prior abuse under the specific contradiction doctrine, therefore establishing the nexus between the two statements.

2. Following Kayla’s conviction, she proffered evidence, and provided evidence which formed the basis of the defendant’s charge of Tampering with a Witness. The State anticipates that Kayla will testify that she provided false statements due to the abuse and conditioning she suffered at the hands of the defendant, and the fear he instilled in her that should she report his criminal acts, he would harm her.

3. In a recent proffer, Kayla provided significant information on the causal relationship between the defendant's fear that she would expose his criminal activities, and the abuse he perpetrated on her.¹ Kayla said that the abuse occurred consistently "[l]ike pretty much almost every day[.]" *see* attached Exhibit 1, Kayla Montgomery's March 16, 2023, Proffer ("Proffer") Redacted at pg. 44. During her proffer, Kayla described how, for almost a year the defendant would assault her daily, threaten her, and restrict her movements, all while accusing her of "telling" on him. *See* Proffer pg. 34.

4. During her proffer, Kayla was asked if the defendant ever hit or punched her after accusing her of telling on him. Kayla responded that, "[y]eah. Yeah, a lot. A lot of times. I like can't even count. And I would - - I would try to go to bed, and he'd be like - - he'd be calling my name, and the kids would be sleeping. And then I'd be like, dude, I'm going to bed. And he'd be like, come sit out here with me. And I'm like, no, I'm not. Like mentioning the living room because he was sitting out in the living room. And - - and he just kept like repeating himself. I didn't want him to wake up the kids, so I would go sit out there with him. And then he would just keep running his mouth, like oh, I know you're doing this, **I know you're telling**, I know you're cheating on me, I know you're doing all these[] things that I wasn't doing." *Id.* at pg. 37. (emphasis added)

5. Kayla was asked if the defendant would ever threaten her after accusing her of telling on him. Kayla stated that "**[h]e would - - he hurt me**. He tried - - he hurt me like a few times and - - because he was being crazy. And I just - - I remember that. And I would like try

¹ Kalya also documented her abuse. *See* Exhibit 2.

to leave and he's like - - I'd be like, I'm leaving. He'd be like, okay. And then I'd go to leave, and **he doesn't let me leave.**" *Id.* at pg. 34-5. (emphasis added).

6. Kayla's report of the domestic violence perpetrated upon her by the defendant was directly linked to his fear that she would provide inculpatory testimony against him. The violence and conditioning immediately preceded her statements to law enforcement and to the grand jury. The State anticipates that Kayla will testify that she was conditioned against providing inculpatory evidence against the defendant through threats, physical abuse, and deprivation of her ability to move freely, all perpetrated by the defendant. As in *Beltran*, these acts are directly related to the defendant's intended impeachment of Kayla and are "not so remote in time as to eliminate the nexus." *State v. Beltran*, 153 N.H. at 647-48.

7. Finally, as to Rule 404(b)(2)(C), the probative value of the evidence would not be substantially outweighed by the danger of unfair prejudice. The State expects that Kayla's credibility will be a key issue at trial. Therefore, the evidence of why Kayla made conflicting statements will be highly probative—especially because the conflicting statements are due to the defendant's own abuse. This would also be consistent with *Beltran*, where the Court found that the evidence of past abuse was "highly relevant to [the girlfriend's] credibility, an issue vigorously pursued at trial." 153 N.H. at 649.

Conclusion

8. As the reasons advanced by the defendant's objection lack substantive validity under the applicable standard, the State's pending motion should be granted.

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

- (A) Hold a hearing on this motion;
- (B) After hearing, admit evidence of past abuse by the defendant against Kayla Montgomery; and
- (C) 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 15, 2023

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was sent via the State of New Hampshire e-filing system to Carrie Smith, Esq., counsel of record in this matter.

/s/ R. Christopher Knowles
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