

HILLSBOROUGH, SS.  
Northern District

THE STATE OF NEW HAMPSHIRE

SUPERIOR COURT

**\*\*\* REDACTED FOR PUBLIC ACCESS \*\*\***

State of New Hampshire

v.

Adam Montgomery

Case No. 216-2022-CR-00577

**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 notifies the Court and the defendant of its intent to introduce evidence at the upcoming trial, pursuant to Rule 404(b) of the New Hampshire Rule of Evidence, evidence of the defendant's past abuse against his wife, Kayla Montgomery. As grounds therefore, the State submits as follows:

**FACTS**

1. The defendant is facing charges relating to his theft and possession of two firearms: a shotgun and a rifle. These crimes are alleged to have occurred in September/October 2019. At the time, the defendant's wife was Kayla Montgomery, and they were living on Gilford Street in Manchester.

2. On March 11, 2022, Kayla was interviewed by police regarding the defendant's theft/possession of the two firearms in question. In sum, Kayla told police that while she remembered the firearms being stolen, she never saw the defendant with firearms at their house on Gilford Street. Kayla was told that other people were saying they had seen the firearms at the

Gilford Street house, and Kayla said that wasn't when she was around. Kayla said she didn't know who ended up with the firearms or if the firearms were recovered.

3. On May 20, 2022, Kayla testified under oath before the Grand Jury for Hillsborough County Northern District. [REDACTED]

4. On May 20, Kayla also testified [REDACTED]

5. The State anticipates that if Kayla is called as a witness at the upcoming trial in the instant case, that her testimony would differ materially from her statements on March 11 and May 20. Specifically, the State anticipates that Kayla would testify that she saw the defendant with firearms at the Gilford Street house right after the theft happened, and that he kept the firearms in the attic. Kayla would testify that around the end of October 2019, two individuals came to the Gilford Street house and the defendant sold them the firearms or traded them for drugs. Kayla would testify that there were two firearms: one was a shotgun with a thing that looked like a big bullet on top, and the other was another big one which she thought was a rifle. Kayla would testify that the firearms were wrapped in a sheet and/or a blanket. Kayla would testify that the defendant told her he stole the firearms. The State anticipates that the difference between Kayla's anticipated testimony at trial and her prior statements would be due to the defendant's past abusive behavior towards her. Additionally, the defendant is charged with Tampering with a Witness as a result of his abuse towards Kayla Montgomery in case no. 216-2022-CR-02372.

6. On October 12, 2022, the defendant filed a *Motion to Admit Impeachment Evidence Re: Kayla Montgomery* asking this Court to allow the defendant to present evidence of then pending charges against Kayla Montgomery. On October 24, 2022, the State filed its response in partial objection to the defendant's motion. The defendant's motion is pending before this Court. The State 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 Montgomery with her perjury conviction or initial statement to the police, the State intends to present evidence of past abuse by the defendant on Kayla Montgomery.

### ARGUMENT

7. The admissibility of evidence of other bad acts is governed by Rule 404 of the New Hampshire Rules of Evidence. In essence, Rule 404 generally prohibits evidence of prior bad acts when it is being offered as nothing more than character evidence; however, under Rule 404(b) evidence of other crimes, wrongs, or acts may be admissible for other purposes “such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.”

8. Under Rule 404(b)(2), evidence of other crimes, wrongs, or acts is admissible only if:

- (A) it is relevant for a purpose other than proving the person’s character or disposition;
- (B) there is clear proof, meaning that there is sufficient evidence to support a finding by the fact-finder that the other crimes, wrongs or acts occurred and that the person committed them; and
- (C) the probative value of the evidence is not substantially outweighed by the danger of unfair prejudice.

9. Here, the State is seeking to admit evidence of past abuse of Kayla Montgomery by the defendant as a potential explanation for why her previous statements would differ from her testimony at trial. This would be a permissible purpose other than proving the defendant’s character or disposition. *See State v. Beltran*, 153 N.H. 643 (2006).

10. *Beltran* was a case involving two counts of second-degree murder, where Beltran’s girlfriend, at Beltran’s instruction, loaded the firearm that was eventually used in the killings. *Id.* at 644–46. The girlfriend testified that she loaded the firearm because she was afraid she would be harmed by Beltran if she did not do as he instructed. *Id.* at 646. There was also evidence that the girlfriend lied to police after the murders. *Id.* at 648. The trial court permitted the girlfriend to testify to physical abuse that she had previously been subjected to by Beltran. *Id.* at 647. The trial court held a pretrial hearing at which the girlfriend testified about the abuse and its impact on her conduct on the night of the murders, after which the trial court found, “that the evidence was highly relevant to explain her conduct, that there was clear proof of the bad acts, and that the probative value of the evidence was far greater than the prejudice, in particular in light of the defendant’s claim that [another individual had] committed the murders and not the defendant.” *Id.* at 646 (internal quotations and edits omitted).

11. The New Hampshire Supreme Court upheld the admission of evidence of Beltran’s abuse of his girlfriend “to explain her submission to the defendant’s demands surrounding the murders and her delay in reporting.” *Id.* at 648. “The defendant’s abuse of [his girlfriend] was relevant for non-propensity reasons to explain her justifiable fear of the defendant that prompted her to chamber the round and subsequently lie to police.” *Id.* The Court concluded that the evidence of abuse was relevant under Rule 404(b) for purposes other than proving the defendant’s character or disposition, and that it was highly relevant to the girlfriend’s credibility, “an issue vigorously pursued at trial.” *Id.* at 648–49.

12. In the instant case, 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 *Beltran*, for purposes other than proving the defendant’s character or disposition. Therefore, Rule 404(b)(2)(A) would be satisfied.

13. As to Rule 404(b)(2)(B), Kayla’s testimony about the prior abuse would provide the clear proof required by the rule. Specifically, Kayla’s testimony would be “sufficient evidence to support a finding by the fact-finder” that the abuse occurred and that the defendant committed the abuse.

14. 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, any evidence of why Kayla made conflicting statements will be highly relevant—especially if a reason for the conflicting statements is 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.

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.

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Respectfully submitted,

THE STATE OF NEW HAMPSHIRE

JOHN M. FORMELLA  
ATTORNEY GENERAL

Date: April 28, 2023

/s/ R. Christopher Knowles  
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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  
R. Christopher Knowles

AFFIDAVIT

I hereby certify that I have reviewed the above pleading and attest that all facts contained within are true to the best of my knowledge and understanding.

/s/ R. Christopher Knowles  
R. Christopher Knowles