

STATE OF NEW HAMPSHIRE

HILLSBOROUGH COUNTY
NORTHERN DISTRICT

SUPERIOR COURT

STATE OF NEW HAMPSHIRE

v.

ALEXANDRA ECKERSLEY

216-2022-CR-3011

MOTION IN LIMINE TO EXCLUDE EVIDENCE OF PRIOR BAD ACTS

Alexandra Eckersley, through counsel, Kimberly A. Kossick and Jordan Strand, respectfully requests the Court to exclude evidence of alleged prior bad acts. She relies on New Hampshire Rule of Evidence 404(b) as well as her rights to due process and a fair trial. N.H. Const. pt. I, art. 15; U.S. Const. Amends. V, XIV.

As grounds, Allie Eckersley states:

1. Allie Eckersley is charged with second degree assault, reckless conduct, falsifying physical evidence, and endangering the welfare of a child.
2. Discovery provided by the State makes multiple references to an electronic bench warrant (EBW) for endangering the welfare of a child. Allie was booked on this warrant the same night she was arrested on the instant charges. This charge (429-2021-CR-3886 charge #1927691C) was ultimately filed without a finding on August 30, 2023. Therefore, there was no conviction.
3. “Rule 404(b) goes to the heart of the judicial function; it strikes a balance between the search for evidence that furthers the truth-finding process and the accused’s right to due

process.” Opinion of the Justices (Prior Sexual Assault Evidence), 141 N.H. 562, 577 (1997) (quotation omitted). The admission of prior bad acts is governed by Rule of Evidence 404(b), which provides that 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.” The evidence “may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.”

4. “The proponent of bad acts evidence . . . bears the burden of demonstrating its relevance.” State v. Douthart, 146 N.H. 445, 447 (2001) (quotation omitted). The State must prove that the evidence is relevant for a purpose other than proving the person’s character or disposition, there is clear proof of the other acts, and that the probative value of the evidence is not substantially outweighed by the danger of unfair prejudice. State v. Thomas, 168 N.H. 589, 599 (2016).

5. With respect to the relevance prong, the State must specify the purpose for which the evidence is offered and “articulate the precise chain of reasoning by which the offered evidence will tend to prove or disprove an issue actually in dispute,” without relying on forbidden inferences of predisposition, character, or propensity. State v. Addison, 165 N.H. 381, 464 (2013). The State cannot meet its burden here because there is no reason to admit this evidence except for an improper purpose.

6. Under the second prong, “[t]he ‘clear proof’ requirement is satisfied when the State presents evidence firmly establishing that the defendant, and not some other person, committed the prior act.” State v. Howe, 159 N.H. 366, 377 (2009) (quotation omitted). The State cannot meet its burden to demonstrate clear proof in this case as this matter was adjudicated without a guilty finding.

7. In assessing the third prong, “[u]nfair prejudice is inherent in evidence of other similar crimes or wrongs because, notwithstanding the permissible reasons for which such evidence might be admitted, there is a risk that the jury will find the defendant had a propensity to commit the charged crime merely because the defendant committed a similar crime or wrong” on another occasion. State v. Belonga, 163 N.H. 343, 360 (2012). In this case, the proffered evidence would be unfairly prejudicial because if the jury hears that Allie had previously been accused of endangering the welfare of a child—and arrested on the warrant the same night as these alleged incidents—they may assume she is a person who is a danger to children.

WHEREFORE, Allie Eckersley requests that this Court:

- A. Grant this motion.
- B. Exclude evidence of the EBW and associated charges.
- C. Issue an order compelling the State to not elicit this evidence and to instruct their witnesses to not testify to this evidence.
- D. If this motion is denied, issue an order containing findings of fact and rulings of law to preserve the issue for appellate review.

Respectfully submitted,

/s/ Kimberly A. Kossick

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CERTIFICATE OF SERVICE

I certify that this motion was served through the electronic file and serve system.

/s/ Kimberly A. Kossick

Kimberly A. Kossick