

THE STATE OF NEW HAMPSHIRE
SUPERIOR COURT

MERRIMACK, SS.

JULY TERM, 2025

STATE OF NEW HAMPSHIRE

v.

ERIC SWEENEY

Docket No.: 217-2023-CR-00721

STATE'S MOTION IN LIMINE: DEFENDANT'S BEHAVIORAL ISSUES (GUILT PHASE)

NOW COMES the State of New Hampshire, by and through its attorneys, the Office of the Attorney General (“the State”), and submits this motion seeking to admit evidence at the guilt phase of the defendant’s behavioral issues in the home in the months before the murder. Such evidence is admissible as to the defendant’s motive to commit the charged murders under New Hampshire Rule of Evidence 403, and also under New Hampshire Rule of Evidence 404(b) to the extent that such an analysis is applicable. In support of this motion, the State submits the following.

1. The defendant is charged with, inter alia, three counts of first-degree murder. Trial on the matter is scheduled to begin with jury selection on September 8, 2025.
2. By previously-filed notice, the defendant informed the State and the Court that he may rely upon the affirmative defense of insanity at trial. See generally RSA 628:2. By recent communication, the defendant has notified the State that he seeks a bifurcated trial. See generally, e.g., Novosel v. Helgemoe, 118 N.H. 115 (1978).

3. As is pertinent to this motion, at the time of the charged murders the defendant lived in the home of the victims, and was under the guardianship of victim Cassandra Sweeney and Sean Sweeney, Cassandra's husband and the two minor victims' father. In the months prior to the murders, the defendant had increasing behavioral issues in the household that created tension between he and Sean and Cassandra Sweeney. In particular, the defendant would not follow house rules, including secreting food in his room and using tools without permission, and would lie to Sean and Cassandra.¹ These house rules violations resulted in Cassandra and Sean Sweeney punishing the defendant, yelling at him, and calling the police to talk to him.

4. The State seeks to introduce all of the above evidence in its case-in-chief at the guilt phase. To begin here, the State is specifically addressing admissibility at the guilt phase, because misconduct by the defendant—such as actual thefts and assault—would be independently admissible at the sanity phase, as evidence supporting diagnoses offered by psychiatric experts.

5. As to the guilt phase, the starting point here is that none of the evidence outlined by the State above reasonably can be viewed as falling within the purview of New Hampshire Rule of Evidence 404(b). Although Rule 404(b) refers to “[e]vidence of other crimes, wrongs, or acts,” the evidence at issue here—disobeying household rules—does not appear to readily fall within the ambit of “prior bads acts” evidence that Rule 404(b) historically has addressed.

¹ Sean Sweeney characterized the defendant's behavior as “stealing” items from the household. Even were such activities criminal in nature, they would be admissible for the reasons stated infra. That being said, a more accurate characterization would be acting without permission rather than theft.

There was an incident about a month before the murders when the defendant did take and use Sean Sweeney's vehicle without permission, resulting in criminal charges being filed. The State does not seek to get into the illicit aspects of that conduct in the first instance unless the defense were to open the door. But the State would seek to elicit that at some point in the summer the defendant unexpectedly left the house, as that was an incident that further increased tensions in the household and when the defendant left he wrote a note indicating in substance that he believed he did not belong in the family, a statement with independent relevance.

Moreover, it is hard to fathom how the evidence here somehow would lead to potentially impermissible propensity-based inferences that Rule 404(b) was designed to protect against. In other words, through what stretch of the imagination would evidence of the defendant's secreting food, using tools without permission, and lying lead to impermissible propensity, predisposition, or character-based inferences of his commission of murder.

6. That being said, viewing the conduct at issue under a Rule 404(b) analysis rather than a Rule 403 analysis,² the evidence is relevant, and its probative value is not outweighed by unfair prejudice at all, let alone substantially so. The evidence therefore is admissible.

7. The governing legal principles are well-established. Evidence of other crimes, wrongs, or acts committed by a criminal defendant is admissible at trial when such evidence is relevant for some purpose other than to show the defendant's propensity or character. See State v. Lamprey, 149 N.H. 364, 369 (2003); State v. Shackford, 127 N.H. 695, 699 (1986). In particular, under the New Hampshire Rules of Evidence:

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.

N.H. R. Evid. 404(b). The permissible uses of such extrinsic act evidence are not limited to those uses explicitly enumerated in Rule 404(b). See State v. Montgomery, 144 N.H. 205, 208 (1999). The purpose of Rule 404(b) in a criminal trial is to ensure that the defendant is tried on

² See Commentary to New Hampshire Rule of Evidence 404 ("No New Hampshire cases were found regarding wrongs or acts not constituting crimes, but it would appear that the same guidelines would apply, subject to the discretion of the court.").

The State does not engage in an independent Rule 403 analysis, as such analysis is subsumed in the Rule 404(b) analysis discussed infra, and the State cannot see how the proffered evidence possibly could "confus[e] the issues, mislead[] the jury, [cause] undue delay, wast[e] time, or needlessly present[] cumulative evidence."

the merits of the crimes as charged and to prevent convictions that are based on impermissible propensity and character inferences drawn from evidence of other crimes or wrongs. See State v. Thomas, 168 N.H. 589, 599 (2016); State v. Bassett, 139 N.H. 493, 496 (1995).

8. The decision whether to admit evidence under Rule 404(b) rests firmly within a trial court's discretion. See State v. Sawtell, 152 N.H. 177, 181 (2005); State v. Lesnick, 141 N.H. 121, 125 (1996). When a trial court exercises such discretion, the court must do so under the framework of a three-part analysis developed by the New Hampshire Supreme Court for determining admissibility of extrinsic acts evidence under Rule 404(b). Under that analysis, the trial court should admit such evidence when the court finds "(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 (2015) (internal quotation marks omitted); see, e.g., State v. Pepin, 156 N.H. 269, 277 (2007) (same); Kim, 153 N.H. 322, 326 (2006) (same).

9. Guided by these principles, and exercising its inherent discretion in such evidentiary matters, the Court should admit the evidence proffered by the State here, if the Court were to deem the evidence to constitute evidence subject to analysis under Rule 404(b). To begin, "clear proof" plainly is a nonissue. That requirement only necessitates that the State present evidence that "firmly establishes" that the defendant, and not some other person, committed the other act at issue. See State v. Howe, 159 N.H. 366, 377 (N.H. 2009); State v. Michaud, 135 N.H. 723, 727 (1992). Here, aside from Shawn Sweeney's statements regarding the aforementioned behavioral issues, the defendant talked about them with investigators in his interview.

10. The proffered evidence also is relevant. Evidence is relevant when it has “any tendency to make a fact more or less probable than it would be without the evidence” and when the fact at issue “is of consequence in determining the action.” N.H. R. Evid. 401; see State v. Guyette, 139 N.H. 526, 529 (1995); State v. Walsh, 139 N.H. 435, 436 (1995). In the context of relevancy under Rule 404(b), the proffered evidence must tend to prove or disprove an issue actually in dispute without relying upon forbidden inferences of predisposition, character, or propensity. See Lesnick, 141 N.H. at 125; State v. Ayotte, 146 N.H. 544, 547 (2001); State v. Whittaker, 138 N.H. 524, 526 (1994).

11. The evidence here is relevant as it reflects a deteriorating relationship between the defendant and the Sweeneys, which in turn reflects hostility and provides possible motive for committing the charged murders. “Motive does not mean a desire to engage in charged criminal activity.” State v. Bassett, 139 N.H. 493, 498 (1995). Rather, motive supplies the reason for why a person might engage in particular misconduct. “Motive has been defined as supplying the reason that nudges the will and prods the mind to indulge in criminal intent.” Id. at 497 (quoting 2 J. Weinstein & M. Berger, Weinstein’s Evidence ¶ 404[14], at 404-86 (1993)).

12. Of course, motive is not an element of the murders charge against the defendant that the State must prove beyond a reasonable doubt. But motive is an important issue in any case, and typically bears direct relevance to other facts that are ultimate issues. Identity is but one example. As explained by the New Hampshire Supreme Court nearly a hundred and fifty years ago, and with applicable force today:

When there is a question whether any act was done by any person, any fact is relevant to the issue which supplies a motive for such an act. The question is, whether A murdered B. The facts, that at the instigation of A, B murdered C twenty-five years before B’s murder, and that A at or before that time used expressions showing malice against C, are deemed to be relevant, as showing a motive on A’s part to murder B. The question is, whether A burned a certain

building. The fact that A had excessive insurance upon the building is relevant, as showing that A had a motive to destroy it. These are common illustrations of what must be regarded as an elementary proposition.

It is undoubtedly true that a motive is never required to be shown in order to establish the fact of a person's guilt, because the motives of men are so various as to defy calculation; but it is also true that the absence of any apparent motive is always a fact in favor of the accused. What could have been his motive? is a question the pertinency of which will never be a matter of dispute; and so the existence of a motive becomes an important element in a chain of presumptive proof. The influences of good or ill will are constantly considered in estimating the probability of the guilt of a person charged with a malicious act. The absence or presence of motive renders the alleged fact less or more probable.

State v. Dearborn, 59 N.H. 348, 349 (1879) (emphases added; internal quotation marks and citations omitted). Yet another ultimate issue to which motive may have plain relevance is mens rea. Indeed, the model jury instructions on the first-degree murder charge here specifically list motive as a factor that the jurors can consider when determining whether the State has met its burden of establishing premeditation and deliberation for the purposeful mental state of that crime. N.H. Model Jury Instruction 2.30 (“You may consider whether [the defendant] had a motive to kill [the victims].”), at <https://www.nhbar.org/wp-content/uploads/NH-Criminal-Jury-Instructions-1985.pdf>.

13. As the New Hampshire Supreme Court noted over a century ago with respect to the significance and inherent relevance of motive:

The absence or presence of motive renders the alleged fact less or more probable. Motive does not of itself prove guilt. It is a unit contributing to make up the sum total of proof, and proof of the guilty act need not be established by evidence aliunde before the question of motive is considered. The natural and logical course of human thought, when a crime has been committed, is to inquire, what motive could have influenced a sane person to do such an act? . . . The absence of any apparent motive is always a fact in favor of the accused. Hence any fact which supplies a motive for the crime charged is relevant. . . . Any motive rendering the [charged crime] probable, or explaining it against inherent probabilities, or otherwise helpful to the jury as a circumstance in the case, may be shown against the defendant.

State v. Palmer, 65 N.H. 216, 218-19 (1890) (emphasis added and citations omitted); see also, e.g., State v. Kim, 153 N.H. 322, 328-29 (2006) (discussing central relevancy of motive to crime such as murder). Over a hundred years later, the New Hampshire Supreme Court reaffirmed the importance of motive evidence, especially in shedding proper light on an accused's mental state:

[E]vidence of other bad acts that evinces an accused's motive to commit the charged crime is particularly relevant to the issue of intent. . . . Although the reason why an individual commits a criminal act is not an element of the charged offense, presenting motive evidence can help explain to the jury why the accused would commit an otherwise senseless criminal act. Indeed, we have long recognized that [t]he absence or presence of a motive renders the alleged fact less or more probable, such that the lack of motive evidence operates as a distinct disadvantage to the State and a corresponding advantage to the defense regarding the issue of whether the accused committed the charged crime.

State v. Addison, 165 N.H. 381, 465-66 (2013) (citations and internal quotation marks omitted); see People v. Zack, 229 Cal. Rptr. 317, 319 (Ct. App. 1986) ("Evidence having a direct tendency, in view of the surrounding circumstances, to prove motive on the part of a person for a crime, and thus to solve a doubt, . . . as to the identity of the slayer . . . is admissible against a defendant, however discredibly it may reflect on him, and even where it may show him guilty of other crimes.") (quoted in Kim, 153 N.H. at 329-30).

14. Evidence offered under Rule 404(b) can be relevant as to motive in several ways. For example, the extrinsic evidence can provide a possible direct cause for a defendant's commission of charged criminal conduct. See, e.g., Addison, 165 N.H. at 466-67 (in capital murder trial, evidence of defendant's prior armed robberies relevant "to establish not only that [he] had a motive and intent to evade the police when he fired the gun, but also that he had a motive and intent to take extreme measures to avoid capture, including using deadly force on any police officer who tried to apprehend him."). Extrinsic other acts evidence also can establish motive by evincing the same motive that impelled charged criminal conduct. In other words, not

only can an extrinsic act directly cause a charged crime, but the extrinsic act can also be a consequence of the same motive and demonstrate similar attitude or emotion that may “nudge one’s will” to commit charged crime. Both forms of evidence are acceptable for proving motive.

As one renowned commentator has explained:

In the former category, the uncharged act supplies the motive for the charged crime; the uncharged crime is cause, and the charged crime is effect. In the second category, the uncharged act evidences the existence of a motive, but the act does not supply the motive. . . . [T]he motive is the cause, and both the charged and the uncharged acts are effects. Both crimes are explainable as a result of the same motive. The prosecutor uses the uncharged act to show the existence of the motive, and in turn the motive strengthens the inference of the defendant’s identity as the perpetrator of the charged crime.

E. Imwinkelried, Uncharged Misconduct Evidence (Revised Ed., 2009), at § 3:18 (and cases cited therein). Under this line of reasoning, proffered extrinsic act evidence is not offered to show propensity. That is because the evidence is not used to establish that the actor generally acted a certain way, but rather more narrowly to establish that in response to specific identified motivating circumstances, typically involving the same parties, the actor reacted in a specific manner.

15. It is in this latter way that evidence of the defendant’s behavioral issues provides relevant motive evidence. That evidence, and the consequential acts of punishment by the Sweeneys, resulted in a deteriorating relationship, close in time to the death of the three victims—one of whom was in direct conflict with the defendant, and the other two children in the same household—while they were living together. In this proper context, the proffered evidence has a “tendency to make [it] more . . . probable than it would be without the evidence,” N.H. R. Evid. 401, that the defendant harbored anger and hostility against the Sweeneys, which could give rise to violent actions against members of the household.

16. Thus, evidence of the defendant's behavioral issues meets the low threshold needed for relevancy. Turning to the weighing of probative value against the possibility of unfair prejudice, that calculus strongly favors admission. The probative value of the evidence is high, providing some reasoning behind otherwise inexplicable acts of extreme violence against family members. See, e.g., State v. Towle, 167 N.H. 315, 323 (2015) (“We have recognized that evidence that provides context to a witness’s statements or actions may have significant probative value.”). In comparison, the possibility for any prejudice, let alone unfair prejudice substantially outweighing probative value, is virtually nonexistent. The conduct at issue by no stretch of the imagination either shocks the conscious nor rises to a criminal level. Added to that reality is the fact that the evidence is brief in the context of the anticipated trial evidence as a whole—compromising at most minutes of testimony in a presentation anticipated to occur over the course of several days—and does not delve into possible tawdry, embarrassing, or salacious matters at all. Consequently, it is hard to fathom what possible unfair prejudice the evidence may bring to bear, let alone unfair prejudice that may substantially outweigh probative value.

17. For all these reasons, the proffered evidence is relevant and admissible.

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

- A. Grant the State's motion; and
- B. Grant such further relief as may be just and proper.

Respectfully submitted,

THE STATE OF NEW HAMPSHIRE

By its attorneys,

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July 22, 2025

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CERTIFICATION

I certify that a copy of this notice has been sent to counsel for the defendant, via the electronic case filing system.

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