

THE STATE OF NEW HAMPSHIRE

SUPERIOR COURT

ROCKINGHAM, SS.

OCTOBER 2025

STATE OF NEW HAMPSHIRE

v.

GENO MARCONI

**218-2024-CR-1426**

OBJECTION TO STATE’S MOTION REGARDING  
INTRINSIC EVIDENCE: 404 (b)

NOW COMES the defendant, Geno Marconi, by and through counsel, Richard E. Samdperil and Joseph E. Welsh, and hereby objects to the State’s Motion Regarding Intrinsic Evidence. The Defendant submits that the proffered evidence is not “intrinsic” evidence, and it must therefore meet admissibility tests under both Rules 403 and 404(b) of the New Hampshire Rules of Evidence. Under those rules, the proffered evidence is inadmissible, as it seeks to introduce improper uncharged conduct that is irrelevant, lacks clear proof, and is unfairly prejudicial, and such evidence is further improper because it invites factual determinations based upon speculation as opposed to actual evidence. N.H. R. Ev. 401-404; 602.

In support of this motion, the following is stated:

1. Geno Marconi is charged with two felonies and four misdemeanors in connection to allegations that he provided N.L.'s confidential motor vehicle record to another person and deleted a voicemail or voicemails from his phone.

2. Mr. Marconi has previously noted his objection to the introduction of 404(b) evidence and hereby incorporates by reference that objection into this pleading.

3. The State now seeks leave to introduce at trial various evidence under the theory that it is "intrinsic evidence" in the case and therefore limited by Rule 403 only, and not subject to a 404(b) analysis. For the reasons set forth below, the defendant disagrees and objects.

#### ARGUMENT

A. The proffered evidence is not "intrinsic evidence."

4. At the outset, it should be noted that several indictments use language referencing an official proceeding or investigation, but do not identify any specific proceeding or investigation. For example, one indictment alleges retaliation against N.L. "in his capacity as witness or informant" (Charge ID#2257801C), another charge alleges "an official proceeding or investigation was pending or about to be instituted" (Charge ID# 2257802C), and two other charges allege "a public servant performing or purporting to form an official function and/or retaliate for the performance of such a function" (Charge ID# 2257803C and 2257805C). Looking at the indictments alone, one would assume they reference a single, specific proceeding or investigation.

2. In its motion, however, the State seeks to admit evidence referenced in State's Motion to Admit #1, and "investigations and/or actions of Cheri Patterson," and "the commercial activities of Greg Bauer," and "a complaint by PDA Board Member Neil Levesque" against Rye Harbormaster Leo Axtin.

3. Because the State fails to identify in the charging documents a specific proceeding or investigation, and now relies upon different collateral proceedings and investigations, none of the proffered evidence is "intrinsic evidence." This is exactly what Rule 404(b) prohibits, because even under the State's theory, the jury must necessarily sort through evidence that is both relevant and irrelevant, both probative and unfairly prejudicial, and both related and completely unrelated. That is not the jury's role, and it wrongly invites the jury to consider and speculate about inadmissible evidence.

B. The proffered evidence is irrelevant, lacks clear proof, and/or is unfairly prejudicial.

4. On April 18, 2024, the Pease Development Authority (PDA) placed Mr. Marconi, the Director of Ports and Harbors, on administrative suspension. Upon information and belief, the PDA acted at the specific request or suggestion of the Attorney General and/or New Hampshire Department of Justice (NH DOJ). At the time of his suspension, Mr. Marconi was not provided any information about why he was being investigated or even the general nature of the investigation beyond that it was criminal in nature.

(1) *State's Motion to Admit #1 Evidence*

5. The Defendant has filed an extensive pleading objecting to State's Motion to Admit #1 and incorporates by reference that objection into this objection. The Defendant submits that the proffered evidence referenced is neither evidence nor probative, further submits that, even if probative, the probative value of such evidence is substantially outweighed by the danger of unfair prejudice. *See* N.H. R. Ev. 401-404, 602 & 805.

6. The State also references a statement by counsel in October 2024, shortly after Mr. Marconi was indicted, and prior to any discovery disclosure to Mr. Marconi of the subject matter referenced in State's Motion to Admit #1. It is unclear how that statement is relevant here. Moreover, the public statement is true: the pending indictments do not include any alleged violations of RSA 21-G:23 (Misuse of Position), Chapter 637 (Theft), 638 (Forgery and Fraudulent Practices), or 640 (Falsification in Official Matters); rather they allege the Defendant provided a motor vehicle record and deleted voicemails – i.e., the pending indictments contain no allegations of financial impropriety or port mismanagement. To the extent the State thinks these indictments charge something else, that logic is opaque.

(2) *"Patterson and Bauer Evidence"*

8. The State seeks to introduce evidence at trial that as part of the investigations, investigators with NH DOJ contacted Cheri Patterson, then Chief of Marine Fisheries for the New Hampshire Fish and Game Department, regarding the use

of federal CARES Act<sup>1</sup> funds. When NH DOJ investigators met with Ms. Patterson in September of 2024, Mr. Marconi had been on administrative leave for over 5 months. See State’s Motion at ¶ 8. Patterson, who was cooperative during the interview, told investigators that she had communicated with Mr. Marconi regarding CARES Act funds, but said nothing that could be construed as Mr. Marconi influencing or obstructing the State’s investigation.

9. The State now seeks to introduce that evidence to suggest that the deletion of two voicemails from Patterson in April of 2024, as Mr. Marconi prepared to return his phone to the PDA, is relevant to show criminal intent.

10. However, there is simply no nexus between these events. First, Patterson did not testify at any grand jury proceeding. Although investigators and prosecutors interviewed Patterson in September of 2024 – five months after Mr. Marconi was placed on leave and well after they had conducted a forensic review of his PDA phone – they never asked Patterson about the voicemails or what she said in those 5 and 17 second messages. The word “voicemail” does not even appear in the 75-page transcript of her interview. Nevertheless, the State now asks the Court to speculate that these voicemails had some materiality or evidentiary value.

11. Regarding Bauer, the State suggests that the Defendant’s friendship with Bauer’s brother and Bauer’s contracts with the PDA to keep equipment at Rye Harbor is intrinsic evidence that supports the State’s accusation that deletion of Bauer’s single 12

---

<sup>1</sup> Coronavirus Aid, Relief, and Economic Security Act (CARES Act) became public law in March 2020 and was issued in response to the National Emergency due to the coronavirus outbreak (COVID-19).

second voicemail was Falsifying Physical Evidence and Obstructing Government Administration.<sup>2</sup>

12. However, the State conveniently omits from its pleading that when investigators asked Bauer during a proffer what he and Mr. Marconi discussed shortly thereafter, the Defendant told Bauer to simply cooperate and tell the truth:

So I called Geno and I says, what the hell's going on. He says, I have no idea. He says, I said, well, there was a policeman at my house and he wants to talk to me. I'm gonna get subpoenaed. He says, answer his questions and tell him the truth.

13. Further, when Bauer was asked how he knew why investigators had come to his home, he responded:

Because Mandy had said that she was subpoenaed, and Syliva said that I might be asked, questioned that Friday and I says, okay. So when you [the DOJ investigator] came to my house, I assumed that's what it was about and that's why I called him. And he says, yep, they're gonna ask you some questions, tell them the truth.

14. [REDACTED]

[REDACTED]

---

<sup>2</sup> Bauer paid the PDA a monthly fee to store rocks and equipment needed to rebuild sea walls in the Rye Harbor parking lot. There is no evidence of any wrongdoing by Bauer or Mr. Marconi regarding these contracts, which the PDA Board approved.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

15. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

16. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

17. Thus, there is simply no evidentiary support for the State’s position that the 12 second voicemail from Bauer that was deleted from Mr. Marconi’s phone in April 2024 is material to any investigation involving either the commercial activities of Bauer’s company or Levesque’s motor vehicle records. To suggest this is ‘intrinsic evidence’ of any charged offenses is purely speculative.

18. Second, neither Patterson nor Bauer are witnesses to any fact or event involving the alleged sharing of N.L.’s records. They have no connection to the charges that claim violations of the DPA nor contribute in any way to the jury’s task of resolving those charges.

19. Applying the *Wells* factors, neither Bauer’s nor Patterson’s testimony is intrinsic to those charges. *State v. Wells*, 166 N.H. 73, 77-78 (“Typically, such evidence is a prelude to the charged offense, is directly probative of the charged offense, arises from the same events as the charged offense, forms an integral part of a witness’s testimony, or completes the story of the charged offense.”) (quotations omitted). As the Court noted when denying the defendant’s motion to dismiss, “[i]n order to put forth adequate evidence to support a conviction under RSA 641:6, the State will need to prove that the voicemails were at least relevant for investigatory purposes.” Court’s Order on Pending Motions at 23. In other words, as the defendant argued in his motion, the State must prove that the deleted voicemail has some materiality, that it is physical evidence of a crime. See *State v. Gunnip*, 174 N.H. 778, 779 (2022); *Draft Criminal Jury Instructions (2010) at 201*. The Court should therefore exclude the proffered evidence as inadmissible under Rules 404(b) and 403, and because it invites the jury to speculate about the existence of uncharged crimes.

20. Third, in its pleading, the State claims that “[o]ther voicemails aside from the Patterson and Bauer voicemails) left on Mr. Marconi’s phone contemporaneously with the Patterson and Bauer voicemails, including voicemails related to the investigation from potential witnesses, were on the phone and not deleted.” According to the State, “[t]his indicates that Defendant intended to delete these three voicemails specifically, and that the contents of these voicemails was beyond mere passing reference to the investigation or offers of support after Defendant was placed on administrative leave and placed under criminal investigation.” The State further argues: “The existence of other contemporaneous voicemails on Defendant’s phone that were not deleted, combined with the deletion of the Patterson and Bauer voicemails, shows that the deletion of the emails [sic] was not a mistake or accident, but rather a deliberate and purposeful attempt to conceal and destroy messages from individuals known by Defendant to be witnesses or potential witnesses in the investigations (and that their voicemails would be potential evidence in the investigations).”

21. Those accusations and inferences are not consistent with the defendant’s understanding of the State’s evidence. According to discovery provided to defense counsel, a forensic investigator from the Attorney General’s Office was asked to “[c]onduct a forensic examination on a mobile device [and] to perform targeted searches for deleted artifacts, occurring between **April 18, 2024 - May 12, 2024.**” (emphasis in original). The investigator identified three voicemails, two from Patterson and one from Bauer, each between 5 and 17 seconds in length. According to the State’s forensic expert, “I observed the above voicemails were deleted. **There were no other voicemails, present or deleted, within the timeframe**” (emphasis added).

22. If the State now intends to present evidence that contradicts the conclusion of its own expert forensic witness, either in the form of the expert changing her opinion or another expert reaching a contrary opinion, the defendant moves the Court (1) order the person or expert to provide a report including the basis for their conclusions, (2) instruct the State to make the witness available for deposition, and (3) order the defendant be permitted to call his own expert witness to contradict these new and inconsistent findings.

(3) “Levesque Evidence”

23. The State seeks to admit “the existence and nature of a complaint by PDA Board Member Neil Levesque against then-Rye Harbor Master Leo Axtin” as well as evidence related to a disagreement about the completeness of minutes of a PDA Ports and Harbors Subcommittee Committee. However, most of the supposed “intrinsic evidence” the State seeks to introduce are communications by Mr. Marconi *after* being placed on administrative leave. Again, Mr. Marconi was never provided a reason for why he was placed on leave, other than there was a criminal investigation. But more significantly, in none of the communications the State seeks to introduce as intrinsic evidence does Mr. Marconi say his suspension or the criminal investigation was because he had provided Levesque’s confidential records to Cook. The State does not refer to language where Mr. Marconi expresses a consciousness of doing something wrong or unlawful, or which could be construed as being aware that providing Levesque’s motor vehicle records to Cooks was retaliatory or obstructed government administration. Indeed, the State does not claim that these post-suspension communications, Mr. Marconi had any idea that the

investigation or his suspension was related to a violation of the Driver Privacy Act. These communications should therefore be excluded under Rule 404(b) because they merely invite speculation and are offered to show Mr. Marconi's character and disposition toward Levesque, not that he engaged in the charged criminal acts.

24. The evidence proffered does not demonstrate that Mr. Marconi was even aware that providing Levesque's records to Cook was unlawful.

25. Charge ID #'s 2257801C, 2257804C, 2257805C, and 2257806C, each allege that Mr. Marconi committed the respective offense "by providing confidential motor vehicle records pertaining to N.L. to another individual, B.C." Charge ID#'s 2257801C and 2257805C allege that by giving records to Cook was "unlawful conduct." Charge ID# 2257804C alleges that Cook was an "unauthorized person." And Charge ID# 2257806C alleges that providing the records to Cook was a use not unauthorized by New Hampshire Department of Safety.

26. Thus, the indictments here appear to allege that providing N.L.'s records to B.C. was itself the unlawful conduct or retaliatory act. The indictments do not allege some further act or unlawful conduct in furtherance of some other act of retaliation. This is an important distinction because the State, through the indictments, alleges that Mr. Marconi knew that the New Hampshire DMV records were confidential and could not be shared with B.C.

27. N.L. is Neil Levesque. Levesque both maintains a mooring at Rye Harbor, has a pier use permit, and has commercial fishing and lobstering licenses. Levesque is also the vice-chair of the PDA, which oversees the Division of Ports and Harbors and

establishes policy and rules related to commercial fishing, pier use and moorings, and rights of entry and use fees.

28. B.C. is Bradley Cook. During the relevant time, Cook was chairman of the Division of Ports and Harbors Advisory Council (PAC). The PAC's statutory authority includes consulting with and advising the Port Director (the Defendant) with respect to the policy, programs, and goals of the division, the operation of the port, the selection of harbor masters and assistant harbor masters, and the procurement of services of a port terminal operating firm. RSA 12-G:44.

29. To defense counsel's knowledge, there is no applicable PDA regulation that governs NH DMV registrations or prevents PAC members from requesting or reviewing this information. To the contrary, the Defendant's position is that Cook's ability to review such records is well within the scope of authority granted by RSA 12-G:44.

30. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

32. Similarly, in her interview, Mandy Huff, the Assistant Harbor Master at Rye Harbor, told NH DOJ investigators that “she did not specifically recall giving Levesque’s information to Cook, but she said that if Cook asked for it, she would have given it to Cook because he is a member of the Port Advisory Council (Chairman), and that Board makes the rules that govern the Harbor.”

33. Until this Court’s order interpreting the Driver Privacy Act (DPA) as applying to motor vehicle records held by a private person and voluntarily provided to another, there was no case law interpreting such documents as “confidential records.” Even if, in light of the Court’s ruling, the records should have been treated as “confidential” records, the PDA, which has its own in-house counsel, has not historically done so.

34. For example, in 2022, the PDA Board took up the mooring permit appeal of Stephen Bailey. Prior to the board meeting, PDA staff circulated a “Public Board Packet” including Bailey’s mooring application and permit, and his New Hampshire Boat Registration Certificate (NH DMV boat registration).<sup>3</sup> Although some information

---

<sup>3</sup> Boats and other watercraft are “motor vehicles” as used in RSA 260:14. *See* RSA 259:60, V & RSA 270-E:2, XII.

provided in the board packets are identified as “Confidential Materials,” Bailey’s registration was not; rather, the records were part of the public board packet, meaning not only did PDA Board members receive copies of the registration, but those records were also made accessible to members of the general public, including PAC members.

35. Even after Mr. Marconi was placed on administrative leave in 2024 and later indicted, the PDA Board continued to distribute NH DMV records as part of public board packets and continues to make that material available to the public through the PDA website: In 2024, the PDA Board took up the mooring permit appeal of Richard Wickson. PDA Board members were provided with Wickson’s commercial lobster license, pier use permit, mooring application, NH DMV vehicle registration, and two NH DMV boat registrations.<sup>4</sup> Again, these materials were included in the public board packets and none was redacted or labeled confidential.

36. Similarly, in 2025, the PDA’s public board packet materials included the mooring permit appeals of John Cacace and Derik Fisher, which included a copy of their mooring applications, fishing and lobster licenses, NH DMV boat registrations, and other New Hampshire DMV documents.<sup>5</sup> These materials remain public and accessible through the PDA website.

37. The State also seeks to introduce evidence that Levesque confronted Mr. Marconi about the accuracy of minutes from a PDA Ports and Harbors Subcommittee meeting. The State implies that Mr. Marconi was somehow responsible for taking those

---

<sup>4</sup> <https://peasedev.org/wp-content/uploads/2024/06/Public-Board-Packet-6-13-24.pdf> at 192-207.

<sup>5</sup> <https://peasedev.org/wp-content/uploads/2025/06/Public-Board-Packet-6-17-2025.pdf> at 214-240, 279-302.

minutes or approving the minutes. However, the meeting minutes were actually taken by the PDA's administrative assistant, Brenda Therrien, and, although initially reviewed by the Port Director, are then provided to the port subcommittee for review and approval at the next meeting.

38. [REDACTED]

39. Thus, the State's contention that any disagreement about minutes was the motive to knowingly commit a criminal act of retaliation or obstruction is without merit. Moreover, this is again an improper attempt to introduce character or disposition evidence that is inadmissible under Rule 404(b).

#### CONCLUSION

40. For all of these reasons, the State's Motion Regarding Intrinsic Evidence; 404(b) should be denied. The evidence is not intrinsic evidence. The proffered evidence should also be excluded under N.H. Rule of Evidence 404(b) because it is either irrelevant, lacking in clear proof, or unfairly prejudicial, and in some instances it is simply hearsay and improperly inviting speculation.

41. Should the court deny the defendant's objection, the evidence involving Levesque should only be admitted if accompanied by the jury instruction previously requested by the defense. Thus, to the extent the Court grants this part of the State's motion, the Defendant moves the Court reconsider its prior ruling on the jury instructions related to RSA Chapter 12-G.

WHEREFORE, the defendant, Geno Marconi, respectfully requests this Court deny the State's Motion Regarding Intrinsic Evidence; 404 (b), and/or hold a hearing to determine whether the proffered evidence is admissible under Rule 404(b); and grant the other relief referenced herein.

DATED: October 22, 2025

Respectfully submitted,

/s/ Richard E. Samdperil

Richard E. Samdperil, N.H. Bar no. 11036

and

/s/ Joseph E. Welsh

Joseph E. Welsh, N.H. Bar no. 10079

Samdperil & Welsh, PLLC

100 High Street

Exeter, New Hampshire 03833

(603) 775-7570

**CERTIFICATION OF SERVICE**

I hereby certify that a copy of the foregoing Objection to State's Motion Regarding Intrinsic Evidence 404 (b) has been forwarded this 22nd day of October 2025, through the New Hampshire Judicial Branch electronic case filing system (e-file) with service to registered parties, attorneys Dan Alan Jimenez and Joe Michael Finchman of the New Hampshire Attorney General's office.

*/s/ Richard E. Samdperil*

Richard E. Samdperil