

STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS.

HILLSBOROUGH COUNTY SUPERIOR COURT
SOUTHERN DISTRICT
CASE NO. 226-2021-CR-00944

STATE OF NEW HAMPSHIRE

v.

DANIELLE D. DAUPHINAIS

**RESPONSE TO STATE'S MOTION IN LIMINE #8
TO ADMIT EVIDENCE OF OTHER CRIMES**

Defendant Danielle Dauphinais hereby responds to the State's Motion in Limine #8 to Admit Evidence of Other Crimes. Dauphinais responds as follows:

In its motion in limine, the State seeks to admit the following categories of evidence: "that the defendant (1) moved E.L.'s body across state lines on October 14, 2021, (2) that the defendant aided in the disposal and burial of E.L. in Abington, Massachusetts on October 14, 2021, and (3) that the defendant caused neglect, assault, and/or injury to E.L. during the period of time between September 27, 2020, and September 24, 2021 by assaulting him and by failing to provide food, water, or proper care for E.L. in the months leading up to the murder." See Motion, p. 1.

While as a general matter, Dauphinais understands that the state may try to introduce such evidence at trial, the State's motion is premature, and Dauphinais calls upon the State to demonstrate, with admissible trial evidence, both that Dauphinais actually engaged or participated in the alleged conduct.

Evidence of other acts is intrinsic only when the evidence is “inextricably intertwined” or both acts are part of a single criminal episode.” State v. Papillon, 173 NH 13, 25 (2020). “Intrinsic or inextricably intertwined evidence must have a causal, temporal, or spatial connections with the charged crime.” Id. Typically, such evidence is a prelude to the charged offense, is directly probative of the charged offense, arising out of the same events as the charged offense, forms an integral part of the witness’s testimony, or completes the story. Id. A sequence of acts resembling a design when examined in retrospect is insufficient to make a finding of plan or intent on the part of the defendant. State v. Melcher, 140 NH 823, 825 (1996). The Court rejected the State’s argument that the acts “demonstrated a plan by the defendant to condition the victim through an escalating series of assaults...” (i.e. tickling, fondling of breasts and genitals and sitting naked on the couch with the defendant). Id. Absent evidence that the charged and uncharged acts were mutually dependent one “cannot find that a defendant had in mind an overarching scheme of which each of the prior acts was but a part of.” Id. Furthermore, context evidence is merely a synonym for propensity and therefore inadmissible. State v. Davidson, 163 N.H. 462, 471 (2012) Lastly, intrinsic evidence must be more probative than prejudicial to be admissible. Thomas at 79.

Throughout its motion, the State sets forth facts that it intends to prove merely presuming, without demonstrating, the evidentiary admissibility of each fact. Dauphinais notes that the proof of any and all such facts must be presented by the State in accordance with all relevant rules of evidence, including, without

limitation, Rules 401-403, 801-804, 901-903 and 1001-1004. It is impossible in the context of a pretrial motion in limine to determine whether the State will have laid the appropriate evidentiary foundation for the admission of any of the proposed pieces of evidence, and Dauphinais calls upon the State to make that showing as to each piece of evidence. Which witnesses have custody of which evidence? How did the witness come into possession of the evidence? Is each piece of evidence an original or a duplicate and, if a duplicate, is it an authentic duplicate? Is the evidence what it purports to be? These questions and others apply to all of the evidence described by the State. Among other things, as Dauphinais has set forth in her responses to the State's other motions in limine, each alleged statement of Dauphinais must be assessed, at the time that the State seeks to admit that particular statement, to determine whether it is an admissible statement of a party opponent, whether it was actually made by Dauphinais, whether it is actually intrinsic, whether it is actually consciousness of guilt evidence. Each statement of Joseph Stapf must be assessed to determine whether it qualifies as a co-conspirator statement. All of these and, potentially, other determinations must be made in the context of the actual trial, rather than in the context of a pre-trial motion in limine.

WHEREFORE, for all the foregoing reasons, Defendant Danielle D. Dauphinais respectfully requests that the Court RESERVE ruling on the State's Motion in Limine #8 to Admit Evidence of Other Crimes until trial.

Defendant
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By her Attorney,

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Dated: May 17, 2024

CERTIFICATE OF SERVICE

I hereby certify that I served a true and genuine copy of the within document upon counsel to the State via efileing on May 17, 2024.

/s/ Benjamin L. Falkner
Benjamin L. Falkner