The State of New Hampshire

SUPREME COURT

Case Number 2021-0360

State of New Hampshire

V

Jeffrey Woodburn

RULE 7 APPEAL OF JURY VERDICT FROM

THE COOS COUNTY SUPERIOR COURT

BRIEF OF THE DEFENDANT JEFFREY WOODBURN

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N.H. RSA 627:4

I. A person is justified in using non-deadly force upon another person in order to defend himself or a third person from what he reasonably believes to be the imminent use of unlawful, non-deadly force by such other person, and he may use a degree of such force which he reasonably believes to be necessary for such purpose. However, such force is not justifiable if:

(a) With a purpose to cause physical harm to another person, he provoked the use of unlawful, non-deadly force by such other person; or

(b) He was the initial aggressor, unless after such aggression he withdraws from the encounter and effectively communicates to such other person his intent to do so, but the latter notwithstanding continues the use or threat of unlawful, non-deadly force; or

(c) The force involved was the product of a combat by agreement not authorized by law.

II. A person is justified in using deadly force upon another person when he reasonably believes that such other person:

(a) Is about to use unlawful, deadly force against the actor or a third person;

(b) Is likely to use any unlawful force against a person present while committing or attempting to commit a burglary;

(c) Is committing or about to commit kidnapping or a forcible sex offense; or

(d) Is likely to use any unlawful force in the commission of a felony against the actor within such actor's dwelling or its curtilage.

II-a. A person who responds to a threat which would be considered by a reasonable person as likely to cause serious bodily injury or death to the person or to another by displaying a firearm or other means of self-defense with the intent to warn away the person making the threat shall not have committed a criminal act.

III. A person is not justified in using deadly force on another to defend himself or herself or a third person from deadly force by the other if he or she knows that he or she and the third person can, with complete safety:

(a) Retreat from the encounter, except that he or she is not required to retreat if he or she is within his or her dwelling, its curtilage, or anywhere he or she has a right to be, and was not the initial aggressor; or

(b) Surrender property to a person asserting a claim of right thereto; or

(c) Comply with a demand that he or she abstain from performing an act which he or she is not obliged to perform; nor is the use of deadly force justifiable when, with the purpose of causing death or serious bodily harm, the person has provoked the use of force against himself or herself in the same encounter; or

(d) If he or she is a law enforcement officer or a private person assisting the officer at the officer's direction and was acting pursuant to RSA 627:5, the person need not retreat

N.H. RSA 627:8

A person is justified in using force upon another when and to the extent that he reasonably believes it necessary to prevent what is or reasonably appears to be an unlawful taking of his property, or criminal mischief, or to retake his property immediately following its taking; but he may use deadly force under such circumstances only in defense of a person as prescribed in RSA 627:4.

N.H. R. Evid. 404 N.H. R. Evid. 404(b)

Other Crimes, Wrongs, or Acts. (1) 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.(2) Evidence of other crimes, wrongs or acts is admissible under this subsection 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.

QUESTIONS PRESENTED

1. Did the trial court err when it refused to give a self-defense jury instruction? Issue preserved by Defendant's Notice of Self Defense, State's Objection, and trial court's ruling. Addendum 1, TR3-119-23
2. Did the trial court err when it interfered with the rights of the defendant to testify, present evidence and cross examine witnesses on prior acts of aggression by the complainant against and known by the defendant. Issue preserved by Memorandum of Law, Relating to testimony of the Defendant TR2-63; Complainant TR3-27 and Donahue TR2-156
3. Did the trial court err by prohibiting the defendant from eliciting evidence by denying: a) that the state opened the door to the admission of evidence of prior aggressive acts by the complainant against the defendant; b) the introduction of the remainder of the testimony under the doctrine of verbal completeness to ensure one party from gaining a misleading advantage? Issue preserved by trial court ruling relating to state's closing TR3-146-4 and Donahue testimony TR2-156

STATEMENT OF THE CASE

This appeal follows a jury trial in the Coos County Superior Court. Following trial, the defendant, Jeffrey Woodburn (Woodburn) was found guilty of simple assault, domestic violence, and two counts of criminal mischief. The defendant was found not guilty of three counts of simple assault, domestic violence, and criminal trespass. The defendant was sentenced, inter alia, to 3-years with all but 60-days suspended. The defendant remains on bail pending the outcome of this appeal.

STATEMENT OF THE FACTS

Late in the evening of December 15, 2018, the defendant was a passenger in a vehicle driven by his then-fiancé, the complainant. They were driving from a holiday party in the Northern New Hampshire town of Lancaster toward the complainant's home in Jefferson several miles away.

I. Verbal Argument

While traveling east on Route 2 in Lancaster an argument ensued. The defendant "asked her (the complainant) to pull over. And she did. And I got out." T2-183-4 The defendant then called a friend and said, "I needed a ride." T-184 The complainant interrupted him and was "sweet and wonderful. And I got back in the car." Id But the arguing continued.

After leaving Route 2, they turned on to Hyfield Lane, an isolated, mountainous, unpaved, unlit road, where the arguing increased. In testimony, the defendant said, "So we're fighting. Arguing.. it's just, again, the same thing… a sense of claustrophobia. It's just closing in on me." T2-185 The defendant demanded to be let out of the car, but the complainant refused to stop so, "I grabbed the wheel" and "she pulled over. I just had to get away from her" Id. In testimony, the complainant said the defendant "wanted to get out. So I pulled the car over…" T1-58, and then she said "as he was getting out, he says, I'm going to call Art and ask him to pick me up." Id The complainant responded, "He

(the defendant) threatened -- he threatened to call Art." Then she said "And so I reached for his phone because I just thought that was so ridiculous because he -- he wouldn't even let me talk to Art." Id. "I wanted to take his – I didn't want him to say bad things about me." T1-119 The complainant said that she "tried to take his cell phone," T1-138, "reach for his phone" T1-117, which was in the defendant's hand TR1-60, and that the complainant had no permission to take T1-139.

II. The Use of Force

The complainant said, "And so I reached for his phone, and that's when he bit my hand." T1-58 The complainant said it was her left, non-writing hand. T1-65 The complainant said, "I didn't touch him at all." T1-60 and "I did not touch his phone." T2-43 The complinant said, the defendant's phone was "not up by his ear like he was making a call," but when asked where her hands were she said she was "reaching up for it (the phone)." T-15 The complainant then said, "He – he may have grabbed my arm. I just remember the pain; it was so painful. T-159

The defendant said, the complainant attempted to take his phone out of his hand and then "came a tug of war for the phone… (where) I'm sure I either twisted or did something to get her to let go. And it wasn't working… she wouldn't let go… And I couldn't pry it or create any pressure or whatever to get her to let go…" he continued, "But what I can remember is… me using both of my hands to try to get it away or pry

it. Really pry her hand away. And… that's the only thing that sort of stands in my mind. It's like prying her and -- you know, she's a strong, strong person. And I -- you know, I wasn't succeeding." As he incrementally increased force, he said, "I was… a panic was… I need to get this and -- and it was not -- that was not a good situation." T2-186. "I don't remember the details. I just know that I did bite her. I mean it was so much so fast, but I know that that struggle."

III. The Presence of Danger

The defendant fully understood the presence of danger presented by the elements. He was ill-equipped for a long traverse in frigid weather, along a snow-ice covered and unlit mountainous road in the late evening. In testimony, the defendant twice referred to the "not a good situation" and "I needed to get out of that situation." In addition, the defendant identified a growing concern when he could not secure his phone. "I was… a panic was… I need to get this and -- and it was not -- that was not a good situation." T2-186 "I just wanted my phone. I just … wanted to call, you know, Art or somebody to come get me, and I wanted it… that's what I needed to -- to get out of that situation. Id.

SUMMARY OF ARGUMENT

I. The trial court erred when it refused to give self-defense jury instructions. The defendant used justified force to break free of the complainant's repeated efforts to confine him and prevent him from safely exiting her car and arranging a ride. The defendant asked to be let out of the complainant's car, and when she refused, he grabbed the steering wheel forcing the complainant to stop. The complainant said, as the defendant was leaving car, he said that he would ask a friend to pick him up and, at that point, the complainant expressed her upset and tried to take the defendant's cell phone away and thus keeping him confined in her car. The outside conditions created the presence of danger especially without a phone to arrange a ride or help. The defendant reasonably believed that the complainant either used, attempt to use or was going to use non-deadly force, which includes confinement, against him. This is more than "some evidence" and should have entitled him to a self-defense jury instruction.

II. Did the trial court err when it interfered with the rights of the defendant to testify, present evidence and cross examine witnesses on prior acts of aggression by the complainant against and known by the defendant. But the defendant never got to share this evidence and other exculpatory evidence. The pattern of the victim's assaultive behavior against the defendant to prevent him from leaving her was an integral part of the relationship, their couple counseling

sessions and the trial. The trial court prohibited the defendant from eliciting such evidence from the complainant and the couple counselor, Paul Donahue. This is contrary to law established by this court relating to the relevancy of previous acts of aggression by alleged victims against defendants.

III. Did the trial court err by prohibiting the defendant from eliciting exculpatory evidence by denying: a) that the state opened the door to the admission of evidence of prior aggressive acts by the complainant against the defendant; b) the introduction of the remainder of the testimony under the doctrine of verbal completeness to ensure one party from gaining a misleading advantage? Issue preserved by trial court rulings relating State's closing argument T3-146-7 and Donahue testimony T2-156

ARGUMENT

I. Did the trial court err when it refused to give a self-defense jury instruction? Issue preserved by Defendant's Notice of Self Defense, State's Objection, and trial court's ruling. Addendum 1, State Objection T-7-8, Court Ruling T3-119-23

This court has respected defendant's rights to use reasonable and necessary force to protect themselves from immediate and unlawful force. The recent case law established by this court on self-defense jury instructions has consistently expanded and affirmed defendant's right to provide a defense, share evidence that reveals relevant information about their relationship with the alleged victim and empowers juries' province to sort it all out and make informed, just decisions.

The trial court erred when it refused to give a self-defense jury instruction. Prior to trial, Woodburn, the defendant, filed a notice of self-defense (Addendum 1). The defendant advised the trial court that he would rely on RSA 627:4 (Physical Force in Defense of a Person"). The defendant repeatedly requested the trial court give self-defense jury instruction, but the court refused. TR3-122-3. Failing to instruct the Jury of self-defense is reversible error. State v. McMinn, 141 N.H. 636, 645 (1997) (citing State v. Hast, 133 N.H. 747, 749 (1990)); State v. Etienne, 163 N.H. 57, 70 (2011). When a defendant raise self-defense "conduct negating the defense becomes an element of the

charged offense that the State must prove beyond a reasonable doubt. State v. Etienne, 163 N.H. 57, 80-81 (2011); see RSA 626:7, I(a) (2016) And then the jury would have decided if the state disproved the defendant's defense of self-defense.

"The theory of defense must be given if such a theory is supported by some evidence that would support a rational finding in favor of the defense, even if it is not overwhelming. State v. Mayo, 167 N.H. 443, 454 (2015); State v. Vassar, 154 N.H. 370, 373 (2006) some evidence means that there is more than a minutia or scintilla."

In the Defendant's Notice of Defense, a theory of defense was established that the complainant "repeatedly tried to block and/or restrain Mr. Woodburn from leaving her" and "volatile situations created by E.J. (the complainant)." The complainant's pattern of blocking and/or restraining the defendant was a problem in the relationship. When the complainant, who at the time provided services to a crisis hotline for domestic violence victims T1-157, first met with the state to discuss the charges, she preemptively impugned the defendant's theory of a defense. The complainant told the state what his excuse would be if they charged him. She said, "one of [defendant's] defenses would be like, you know, she's - - she's preventing me from leaving...[s]he's blocking me." Bates 238.

But the state successfully excluded exculpatory evidence that would have proved the defendant's theory of defense and then exploited the situation to create a misleading impression and unfair advantage and was prejudicial to the defendant.

Still, this court only needs "some evidence" to determine that the defendant was intitled to a self-defense instruction. This threshold is met by the defendant's testimony alone and by whether he perceived that the complainant was about to use unlawful force against him. Even though RSA 627:4 is a higher standard than "some evidence," it is instructive to determine whether the law applies to the defendant's charged conduct and it is a useful measure of the "some evidence" threshold to be entitled to a self-defense jury instruction. As well, this process will align the law with the defendant's notice of self defense and the trial record to show that the defendant not only reasonably evaluated and interpreted the complainant's threat of non-deadly force, but responded to it with reasonable incremental force that increased as necessary to cause the complainant to release his property, which he needed to safely leave her confinement and navigate a dangerous situation.

"A person is justified in using non-deadly force upon another person in order to defend himself or a third person from what he reasonably believes to be the imminent use of unlawful, non-deadly force by such other person, and he may use a degree of such force which he reasonably believes to be necessary for such purpose." RSA 627:4

The term non-deadly force, which includes confinement, is defined in RSA 627:9 " as any assault or confinement which does not constitute deadly force" and deadly force "as any assault or confinement" that "create a substantial risk of causing death or serious bodily injury." The law provides for two classes of confinement, criminal restraint which includes "circumstances exposing him of risk of serious bodily injury" and the false imprisonment that "interferes substantially with his physical movement." The full definition of criminal restraint is in RSA 633:2 and is "knowingly confines another unlawfully in circumstances exposing him to risk of serious bodily injury" and "includes but is not limited to confinement accomplished by force, threat or deception…" RSA 633:3 defines false Imprisonment as " knowingly confines another unlawfully, as defined in RSA 633:2, so as to interfere substantially with his physical movement."

Therefore, the defendant's assaultive act against the complainant constitutes non-deadly force, and as it relates to what the defendant "reasonably believe(d) to be the imminent use of unlawful, non-deadly force" by the complainant that also constitutes non-deadly force. In short, the defendant reasonably believed that the complainant was about to confine him. The defendant contends in the trial record that the complainant did this when she refused to stop and when the complainant did stop, by attempting or actually taking his phone, she was in the act of confining him. Under

normal circumstance the complainants actions would qualify as false imprisonment to "interfere substantially with his physical movement." But, due to the presence of danger from the weather, isolated location and time of day and the complainant's attempt to take his phone, which was necessary to safely retreat and navigate out of the situation, the complainants' acts trigger the additional element of "circumstances exposing him to a risk of serious bodily injury." Therefor qualifying as criminal restraint, a class B felony. This court addressed the difference between the definition criminal restraint and false imprisonment and left the determination of whether the state proves the additional element of exposure to risk of serious bodily injury for juries to decide.

We note the defendant's concern that a definition of risk that is too broad may blur the line between criminal restraint and false imprisonment. However the crime of criminal restraint still requires the State to prove the additional element of exposure to a risk of serious bodily injury. We are confident that juries are fully capable of determining whether or not the State has proved this risk of serious bodily injury and see no reason to rewrite the statute to require a higher quantum of proof. State v Burke, 1962 N.H. 459 (2011)

The parameters of justified defense include negating factors where "such force is not justifiable" if "he provoked the use of unlawful force by such other person (b) "He was the initial aggressor." Id. In this case, the complainant was the initial

aggressor and provoked the situation first, by refusing to stop when the defendant demanded to be let out of her car and second by reaching for the defendant's cellphone as she contends or by taking it as the defendant contends. The trial record doesn't indicate that the defendant made any threating, gestures, acts or verbal assault upon the complainant. According to the complainant, the defendant expressed his plan to leave the car and arrange a ride from a friend, "he (the defendant) wanted to get out." (T-58) And when the defendant gave verbal notice of his plan to leave her car, the complainant's responded angrily and then acted upon that anger by trying to take his phone and prevent him from leaving. "As he was getting out, he says, I'm gong to call Art and ask him to pick me up. He threatened -- he threatened to call Art. So I reached for his phone because I just thought that was so ridiculous..." T1-119 The term "provoke" connotes speech as well as action to bring about a fight in which he intended at the outset to harm his opponent and is sufficient to destroy his legal defense of self-defense. State v. Gorham, 120 N.H. 162, 164 (1980).

There are two pillars of RSA 627:4 reasonable and necessary. The first half of the sentence is "A person is justified in using non-deadly force upon another person …in order to defend himself … from what he reasonably believes to be the imminent use of unlawful, non-deadly force." This relates to how the user of non-deadly force reasonably evaluated and interpreted the immediate threat.

A narrow review of the trial record of the complainant's testimony leading up to the defendant's justified assault shows: (a) the defendant asked her to let him out, (b) the defendant told her his plan to arrange a ride (c)as he was getting out, he says, "I'm going to call Art and ask him to pick me up." T1-119 (d) the complainant responded "he (the defendant) threatened -- he threatened to call Art. And so I reached for his phone because I just thought that was so ridiculous because he -- he wouldn't even let me talk to Art." Id. (e) the complainant then "tried to take his cellphone" T1-138. (f) which impeded his retreat from her confinement by thwarting his established, safe plan to leave her car and (f) thus causing the presence of danger for the defendant to navigate out of a frigid and isolated location. The complainant's testimony generally aligns with the defendant's testimony except in that she doesn't acknowledge her initial refusal to let the defendant out of her car and his grabbing of the steering wheel. The defendant's testimony is: (a) "I'm like, stop, let -- you know, let me out. Stop the car. She wouldn't." T-184 (b) "I grabbed at the wheel, and you know -- and then she pulled over." Id And of course, there is conflicting testimony as to whether the complainant reached for or actually engaged in a tug of war over control of the phone. The defendant's trial testimony is: the complainant attempted to take his phone and then "came a tug of war for the phone." T2-186

The second part of the sentence in RSA 627:4 is "he may use a degree of such force which he reasonably believes to be necessary for such purpose." The defendant's testimony shows his response to the complainant's attempt to take his phone was incremental and increased in response to her unwillingness to release his phone. His testimony is as follows: (a) the struggle escalated incrementally, he said, he "twisted" and pry or create pressure... to get her to let go." and "using both hands to try to get it away." Id (b) "I was a panic" as "I needed to get this (the phone) it was not a good situation," Id he said in reference to being without his phone on the side of a rural road on a winter night. (c) "I just wanted my phone… wanted to call, you know, Art or somebody to come get me, and I wanted it… that's what I needed to -- to get out of that situation." T2-186 and finally, (d) "I just know that I did bite her." Id..

As reasonableness is the ideal, it is instructive to consider RSA 627:4: III, which says, deadly force "is not justified" if the person "knows that" they can "with complete safety retreat from the encounter." When the defendant was leaving the complainant's car and she attempted to take his phone he could not "safely retreat the encounter." The defendant had three options: remain confined, retake his phone or head out into the cold. "To disprove the defendant's justification defense, the State had to prove, beyond a reasonable doubt, that the defendant was not justified "in using force" upon the victim because his belief that such force was necessary . . . was unreasonable."

State v. Clickner, No. 2018-0682, 2019 WL 4861368, at *2 (N.H. 2019). The trial court in State V. Clickner said, "[t]here were several options available to the Defendant, . . . that would have been far superior to physically assaulting his client. Here the defendant's dilemma was quite different, the situation was much dire due to weather, time of night and the isolated location.

Finally, the defendant's notice of self-defense relies on RSA 627:4 and asserts that the complainant "tried to repeatedly block or restrain (him) from leaving her…and any force that (he) used against (her) was necessary in order for him to leave her or attempt to leave a volatile situation created by (her)."

The law and trial testimony strongly indicates that the defendant reasonably believed from the complainant's words and actions, as well as her history of preventing him from leaving her during heated arguments, that she was not only -- about to use non-deadly force against him but was in the act of using non-deadly force, which includes confinement, against him. The complainant either confined or attempted to confine the defendant by not letting him out of the car and only complied with his demand in response to his grabbing of the steering wheel. And when this confinement was thwarted and she learned his plan to leave her, the complainant attempted to take his phone to prevent his retreat and continue his confinement. The complainant, like the defendant, knew the presence of danger of the situation and that by taking his phone he

couldn't safely free himself from her. RSA 627:8 deals with defense of property, "A person is justified in using force upon another when and to the extent that he reasonably believes it necessary to prevent what is or reasonably appears to be an unlawful taking of his property."

The complainant and defendant were involved in another, similar incident in June, 2018, where the complainant was driving and refused to let the defendant out of her car. The defendant grabbed at the wheel but still the complainant refused to stop. To free himself from the complainant's confinement, the defendant use non-deadly force against the complainant. The jury found the defendant not guilty of this charge. T1-101

Logic would suggest that after the defendant was freed from the complainant's car and was, as the complainant said, "getting out," why would he remain in the vehicle to avenge the complainant's "missed reach" for his phone? And there is conflicting testimony as to where the defendant's phone was when complainant reached for it. The complainant said it was "not up by his ear like he was making a call," but yet she said she was "reaching up for it." T-159. The defendant said he used two hands in the struggle to recapture his phone and said he bit the complainant's left non-dominant hand. Again, logic suggests that the complainant would reach or grab with her dominant hand, which also was positioned closer to the defendant and his phone. If she grabbed the defendant's phone with her dominant, right hand and as the struggle ensued, the

complainant may well have employed her left hand to reinforce her grip thus exposing that hand to the defendant. It is illogical that the defendant would have or could have bypassed the complainant's right hand, which was closer to him, to pursue the' complainant's left hand, which was further away.

When there is evidence that conflicts, it is the province of the jury to reconcile inconsistent trial testimony. State v. Haycock, 146 N.H. 5, 11 (2001); State v. Santamaria, 145 N.H. 138, 142 (2000) Further, it's the jury's function to weigh conflicting evidence. State v. McGann, 122 N.H. 542, 447 A.2d 128 (1982). And one may be entitled to a self-defense instruction even if, in fact, he was wrong in that belief. See State v. Ke Tong Chen, 148 N.H. 565, 570 (2002).

By the complainant's words – calling the defendant's plan to leave her car and arrange a ride "so ridiculous" and "threatening" T1-119 and then actions – "reach(ing) for his phone" T1-117, she made an emotionally charged situation worse. It caused the defendant to have to respond to a new, far more complicated, and dangerous calculus. And still he wanted to get away from the complainant

There was, he said, "a sense of claustrophobia. It's just closing in on me." This was the defendant's state of mind as he tried to reasonably assess and respond to the situation. This court acknowledged that one may provoke with words alone. State v. Bashaw, 785 A.2d 897 (2001) The defendant need not have been confronted with actual

deadly peril rather than reasonably believing the danger to be real. State v. Norgren, 136, 401-02, 616A 2d, 505, 507 (1992)

Instead of determining if there was more than a scintilla of evidence to support a self-defense jury instruction, the trial court unsustainably exercised its discretion by deciding the merits. The trial court's focused on the defendant's state of mind by saying: "There's simply no evidence that he had any state of mind." T2-28 There's no evidence whatsoever that he reasonably believed that it was necessary to act in self-defense. There's no evidence that he believed anything." T3-121. "There's no evidence that the Defendant engaged in any sort of conscious thought processes before engaging in…"

While the trial court acknowledged the struggle over the defendant's phone, it placed unfair emphasis on lack of specificity of the defendant's memory and equated it with the absence of even the most rudimentary and instinctive reactions to escape confinement and the act of someone taking or attempting to take the personal property necessary to safely leave the situation. "I understand there's plenty of testimony about tug of wars of the phone and prying the phone out of each other's -- or her trying to pry it out of his hand or him trying to pry it out of her hand, depending on who you're listening to. But with respect to the charged conduct, there's no evidence that implicates

the mental processes and actions that are necessary to entitle somebody to an instruction on self-defense."

Understandably both the defendant and the complainant had trouble answering certain questions and remembering specific details about a tumultuous incident that occurred more than three years prior. Contrary to the court's statement, the defendant admitted to the charged conduct. The defendant said, " I just know that I did bite her." T2-185.

II. Did the trial court err when it interfered with the rights of the defendant to testify, present evidence and cross examine witnesses on prior acts of aggression by the complainant against and known by the defendant. Issue preserved by trial court rulings. Defendant TR2-206, T3-38; T-39; complainant T1-202; T3-27 and Donahue T3-130-131

A. Defendant's Testimony Issue preserved by trial rulings TR2-63

The defendant wanted to explain why he acted in self-defense and elicit exculpatory evidence of the complainant's prior use of force against him. The defendant was prohibited from eliciting such evidence from the complainant and defense witness, Dr. Paul Donahue, who provided counseling service to the defendant and complainant during the relationship. The defendant has a fundamental right to present a defense and testify. The rights that "are essential to due process of law in a fair adversary process." *Faretta v. California,* 422 U.S. 806, 819, n. 15, 95 S.Ct. 2525, 2533 n. 15, 45 L.Ed.2d 562 (1975). The necessary ingredients of the Fourteenth Amendment's guarantee that no one shall be deprived of liberty without due process of law include a right to be heard and to offer testimony. The restrictions of a defendant's right to testify may not be arbitrary or disproportionate to the purposes they are designed to serve. Rock v. Arkansas, 107 S.Ct. 2704, 2708–09, 483 U.S. 44, 51 (U.S.Ark.,1987)

The defendant was prohibited from providing testimony relating to the complainant's aggression against the defendant by blocking him from leaving her

during heated arguments, which was a central issue in the relationship, the couple's therapy and the defendant's theory of defense. The defendant was prevented from answering "Did Emily ever use physical force against you?" T2-206. To a question relating to him "trying to separate from E.J. (the complainant)" the defendant responded, "whatever those incidents were, you know, conflict and -- and me trying to leave T3-38, and her, you know, ripping my shirt or, you know." T3-39 The defendant's comments elicited an objection and was stricken from the record. And the same result occurred when, the defendant said, "no one has hit me harder with a body slam than E.J. (the complainant)." T2-206

B. Complainant's Testimony (Issue preserved by trial rulings TR3-27)

"The right to cross-examine adverse witnesses in criminal cases is fundamental," State v. Fichera, 153 N.H. 588, 598 (2006) and protected by the United States and state Constitutions. Evidence is relevant if it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." N.H. R. Ev.401;

In a self-defense case, the state of mind of the defendant is element of the crime. Therefore this court has ruled that "Evidence of the prior aggressive and violent acts of the alleged victim are relevant where they are "being offered for a purpose other than propensity" and it "is being offered to shed light on the defendant's state of mind, which

is a permissible use of such evidence under Rule 404(b).” State v. Vassar, 154 N.H. 370, 376 (2006). Such evidence would have revealed a pattern in the relationship of the complainant using force to prevent the defendant from leaving her and volatile situations. Further it would have shed light on the reasonableness of the defendant’s belief that he faced an immediate threat requiring the use force.

When the complainant was asked if she ever blocked the defendant from leaving, she answered that she did so on one occasion when he was attempting to drive drunk. “I did not jump on the hood of his car. I sat on his car before he came out.” T1-200 “He took off, and I didn't realize -- I did not think that that would happen. Yeah, he took off with me on the car…” T1-200 When cross examined, the complainant acknowledged that the defendant took a photo of her on his vehicle and sent it to her the next day in a “as sort of a mocking” way” T1-201. The defendant asked her, “Do you remember Jeff saying, I worry sick about you?” T1-201 The State objected, and the court sustained it and the defense tried to introduce Exhibit N but the court ruled it as inadmissible. T1-202

Defendant's Exhibit N was a screenshot of an electronic message from the defendant to the victim that included a photo of the complainant on the hood of the defendant’s car while he was trying to leave her control.

The message read:

Defendant:	Oh really and your sudden jump on my car is normal behavior?
Defendant:	Did you black out? And then 22 calls?
Complainant:	Is that all you thought about today.
Defendant:	No I was very busy.
Defendant:	But I worry sick about U getting hurt when you do these things.

This evidence is probative and relevant as it sheds important light on the defendant's state of mind ("I worry sick about u getting hurt when you do these things"), the pattern of the complainant blocking the defendant and impugns her truthfulness and triggers the theory of verbal completeness important to understanding the context of the situation and the broader relationship. The defendant while trying to describe the consequences of ending the relationship with the complainant, referenced the incident. "… there's a much deeper, harder psychological piece that -- that was so disturbing, starting with, you know, jumping on the hood of my car." T1-200-02

In response to the trial court's decisions, the defendant filed a memorandum of law (also known as the "Defendant's trial memorandum regarding evidence of alleged victim's prior aggressive and violent acts against the defendant asserting self-defense.")

See Addendum 2. The defendant provided examples of evidence that the court had previously ruled inadmissible:

1. When the complainant was questioned about whether she was involved in “any aggressive physical action” with the defendant, the complainant previously stated, “I may have been in his way, standing in his way, and which he would have pushed me out of the way. But other than that, no.” Bates 1953. During an interview with the mental health licensing board about the complainant’s complaint against Donahue, the examiner says addressing the complaint, "And you know when couples are together, feelings run high, the love, the anger. There was abuse. Did you get involved in any aggressive physical action with him during those times?" Complainant: "You're talking about particular times? No. I was never. I was never (Indiscernible)." "No. During your relationship with Jeff." Complainant: "The only, you know -- if he was leaving drunk, I would try and talk him out of it. And I may have been in his way, standing in his way, which he would have pushed me out of the way. But other than that, no." T1-181. Trial Court ruled the evidence was inadmissible. T1-185
2. In her interview with the State about these crimes, the complaint (EJ) said, “one of [Mr. Woodburn’s] defenses would be like, you know, she’s - - she’s preventing me from leaving...[s]he’s blocking me.” Bates 238

3. The complainant (EJ) stated that, during the June 2018 speaker phone call wherein she sought to get admissions from the defendant about the above crimes while McGrath listened in the defendant stated that the complainant (EJ) had scratched him and told her, “You ripped my shirt” during “one of the tug of wars that- that time that he was leaving.” T2-77

The court ruled against the defendant’s motion saying that the complainant’s prior aggressive acts “are not probative as to the Defendant's state of mind, that they will not shed light on the Defendant's state of mind, and that any probative value they may have substantially outweighed, again, by the danger of unfair prejudice, confusing the issues, and misleading the jury.” T3-27 The trial court also said, “I find that the -- again, evidence that the alleged victim got in the Defendant's way on prior occasions, blocked him, whether it was to stop him from driving drunk or otherwise, and impeded his movement in various ways, I find has no bearing on the Defendant's self-defense claim. It is irrelevant to his state of mind and use of force to the extent he used force on any of the dates of the charged conduct and it is simply -- the logical connection”. T2-63.

This ruling is contrary to law. In Vassar, the defendant sought to introduce prior bad acts of the victim to prove the reasonableness of his belief that he faced an immediate threat requiring the use force. Id. at 374. Specifically, the defendant in Vassar sought to introduce evidence that: 1) during the twenty months prior to the alleged crime, the

alleged victim's "temper tantrums" increased in "frequency" and "violence"; 2) the defendant was beaten by the alleged victim four months prior to the alleged crime; and (3) two weeks before the crime, the victim had been 3 drunk, "cranking" shells into his shotgun, demanding that his mother fetch a beer for him while he held the gun, and drunkenly firing his shotgun and a .22 caliber rifle out the window of his room. Id. at 374. 7. In Vassar, the N.H. Supreme Court held that where "the defendant is offering evidence of the victim's prior bad acts to show the defendant's belief that the victim was about to use force was reasonable…the evidence is being offered for a purpose other than propensity…[i]t is being offered to shed light on the defendant's state of mind, which is a permissible use of such evidence under Rule 404(b)." Id. at 376.

The exclusion of evidence of prior aggressive and violent acts of a victim known to the defendant at the time of the alleged assault, would violate his State and Federal constitutional rights to present a defense and would have a "substantial and injurious effect or influence in determining the jury's verdict." See Brecht v. Abrahamson, 507 U.S. 619, 638(1993); Chambers v. Mississippi, 410 U.S. 284, 294 (1973).

The N.H. Supreme Court has held that the trial court's exclusion of evidence that the co-defendant had previously threatened and been violent toward the defendant deprived the jury of evidence necessary to its assessment of her duress defense because "[e]vidence that an individual has been the victim of past violent acts may be relevant to

explain that individual's present behavior." State v. Hayward, 166 N.H. 575, 580-581 (2014). Not only was the evidence of prior violent acts of the co-defendant relevant to Hayward's justification defense, but this evidence was also admissible under the doctrine of verbal completeness where the State introduced related admissions by the defendant but excluded statements supporting the defendant's justification defense. In State v. Dukette, 145 N.H. 226, 230 (2000) (In a self-defense case, the defendant's state of mind was one of the "other purposes" for which "other crimes, wrongs, or acts" may be admissible under Rule 404(b).)

The exclusion of this evidence discussed herein would violate the defendant's State and Federal Constitutional rights to "meet the witnesses against him face to face and be fully heard in his defense." See State v. Stowe, 162 N.H. 464, 467 (2011); Part 1, Article 15 of the New Hampshire Constitution and the Sixth and Fourteenth Amendments to the United States Constitution.

C. Dr. Paul Donahue, couples' counselor Issue preserved by trial rulings Additional Medical Disclosure T2-130-1 and Donahue testimony T2-156

The defendant has a right to confront evidence against him and present all favorable proofs. The sixth amendment to the U.S. Constitution specifically provides for a compulsory process for obtaining witnesses in his favor.

The defendant's sole witness (beyond the defendant himself) was Dr. Paul Donahue, the couple's counselor who provided services to the complainant and defendant during the relationship. After the relationship ended, the complainant filed a professional misconduct complaint against Donahue. One of the allegations related to a voice message that Donahue left for the defendant warning him of what he perceived to be viable physical threat made against him by the complainant on March 3, 2020, while the complainant's complaint was being investigated, Donahue was deposed by the state. In that interview, Donahue provided both exculpatory and inculpatory evidence. On March 16, 2021, Donahue settled the complaint brought by the complainant by agreeing to voluntarily surrender his license. But he did so while not agreeing that the allegations were accurate. T2-147

At trial, the state objected to Donahue even testifying T2-130. The trial court ruled against the defendant's attempt to elicit additional disclosure of testimony from a medical witness. T2-130-31 That testimony could have included evidence that both the defendant and complainant acknowledged to the complainant's pattern of blocking the defendant from leaving during heated arguments. The defendant said in a chamber conference, "She (the complainant) admits that she's constantly blocking him. And it was told in a counseling session… So both of them talked about that being an issue that they had worked on." Id.

During Donahue's testimony, the state went line by line through the complainant's misconduct allegations against him. The defendant was repeatedly prohibited from eliciting evidence to rehabilitate Donahue's credibility after being impugned by the state, including details about the phone message where Donahue warned the defendant of what he perceived to be a viable threat made by the complainant against the defendant. Donahue was not allowed to answer: Did you take any steps to communicate that (the threat) to Jeff (the defendant)? T2-150 This potentially left the impression with the jury that Donahue's call to the defendant was improper.

The state asked and Donahue responded affirmatively to several questions relating to the complainant's report of abusive behavior by the defendant. T2-143 The defendant attempted to elicit evidence from Donahue whether the abuse was one-sided or mutual. The defendant could not ask Donahue: "When she (the complainant) described this abusive conduct was she describing it as one-sided by Jeff (the defendant) or that they both engaged in mutual conduct?" T2-152 This issue is further addressed in question 3.

III. Did the trial court err by prohibiting the defendant from eliciting exculpatory evidence by denying: a) that the state opened the door to the admission of evidence of prior aggressive acts by the complainant against the defendant; b) the introduction of the remainder of the testimony under the doctrine of verbal completeness to ensure one party from gaining a misleading advantage? Issue preserved by trial court rulings relating State's closing argument T3-146-7 and Donahue testimony T2-156

"Under the doctrine of verbal completeness, a party has the right to introduce the remainder of a writing, statement, correspondence, former testimony, or conversation that his or her opponent introduced so far as it relates to the same subject matter and hence tends to explain or shed light on the meaning of the part already received." State v Warren, 143 N.H. at 636, 732 A.2d 1017 (quotation and brackets omitted). This doctrine exists to prevent one party from gaining an advantage by misleading the jury. See Id. Thus, there are two requirements to trigger the doctrine respecting conversations: first, the statements must be part of the same conversation; and second, admission of only a portion would mislead the jury. "[T]he defendant, by presenting certain evidence, may `open the door' to the introduction of otherwise inadmissible evidence for the limited purpose of impugning the veracity of the witness presented by the defendant." State v. Mello, 137 N.H. 597, 601, 631 A.2d 146, 148 (1993) (quotation omitted). The trial court may introduce otherwise inadmissible evidence to counter a

misleading advantage if a party has opened the door to such evidence. Norgren, 136, 401-02, 616A 2d, 505, 507 (1992)

The defendant consistently tried to elicit evidence of the complainant's prior aggressive acts of preventing the defendant from leaving her during heated arguments. The trial court ruled that defendant couldn't elicit evidence of the complainant's comments about a telephone conversation where she tried to get the defendant to admit to abusing her while her friend, Arthur McGrath, listened in. The defendant, who didn't know of the third-party witness, admitted to certain acts but justified them by saying the complainant had assaulted him first. T2-74-5 The defendant made record of the suppression of evidence as the exclusion was prejudicial and read into the record the following from the state's interview with the complainant:

"I don't remember exactly what I said, but I remember saying, you know, you know, Jeff, well, you bite me and I -- Art, you know, but something, something like that along those lines and I remember him saying -- saying that he bit me. And then he mentioned, it was weird because he brought it up. What did he bring up"? This is all her. It's not questioning. "He brought up his shirt. I think it was a shirt and something else. It was like a scratch that, um, he brought up too. I can't remember, but he brought up something else and -- but in that conversation, but um, his shirt, I remember -- is it him or one of the things was, you ripped my shirt. It was just over the -- one of the tug-of-wars that -- that time that he was leaving, and I don't remember when it was, but um, I

had ripped his shirt and it wasn't like I intended to rip his shirt and so that came up in the conversation, and then was there something else? I'm trying to remember. He, um -- he, oh, like, if he's going to -- he was questioning if I was going to build a case against him." T2-77

The defendant offered a defense, an excuse and he did it with the expectation that it was a private conversation not a trap to create an admission with a witness to corroborate. The state's witness, Arthur McGrath confirmed such in his testimony. He said, the defendant said, "You know, maybe you'll grab my shirt, try to stop me from leaving the house. I shouldn't do these things, but you make me do these things." T2-109

During closing arguments, the state returned to the topic to exploit the excluded evidence by sharing one-side of the two-sided, pre-arrest interrogation of the defendant but the state quotes Arthur McGrath, the witness, not the complainant: "Art hears that conversation between EJ (the complainant) and the Defendant, the conversation where he admits to doing everything -- everything -- he's charged with doing, his words, his words that Art (Arthur McGrath) hears. He doesn't deny it. He doesn't offer excuses. T4-37

At this point, the defendant objected, and a chamber conference followed. By claiming that the defendant didn't offer excuses, when in fact he did, was prejudicial

to the defendant. T4-39. The trial court ruled that the state's comments were permissible and didn't open the door to allowing previously inadmissible evidence of prior aggressive acts by the complainant against the defendant to be admitted and nor did it create a right to introduce the remainder of the testimony under the doctrine of verbal completeness and to ensure that one party from gaining a misleading advantage. T4-46-7

During another occasion, the trial court ruled that the defendant couldn't ask the complainant about Donahue's therapy session notes T2-13, even though the state asked the complainant "on direct examination, did Paul Donahue get these records right? And she's like, no, he didn't get them right, and here's why." T2-12.

Later, when Donahue testified, the state asked him several questions about the complainant's report of abusive behavior by the defendant. T2-143

The state asked Donahue the following questions:

State:	In this progress note, did you write that Emily had reported that the Defendant was physically abusive to her?
Donahue:	Yes.
State:	Did EJ (the complainant) tell you whether or not that was the first time the Defendant had been physically abusive?
Donahue:	Yes. She had reported a history since April that she indicated incidents of him (defendant) being abusive.
State:	So EJ (the complainant) had reported multiple incidents of physical abuse by the Defendant to you? T2-143

Donahue: Well, yes. Yes.

State: On occasions, she made reports about that?

Donahue: That's right. T2-144

The defendant attempted to elicit evidence from Donahue whether the abuse was one-sided or mutual but was prohibited. The defendant could not ask Donahue: "When she (the complainant) described this abusive conduct was she describing it as one-sided by Jeff (the defendant) or that they both engaged in mutual conduct?" T2-152

This question and the evidence it would have elicited would have supported the defendant's theory of defense, opened the door to evidence of the victim's prior acts of aggression against the defendant and shed light on the defendant's state of mind. Further, the defendant argued that the state opened the door for the evidence of mutual abusive behavior and that by allowing the defense to ask Donahue about the complainant's allegation of abuse but not the defendant could be misunderstood by the jury and thus prejudicial to the defendant. T2-153. The defendant made record that the court's rulings were contrary to the law and defendant's right to produce all favorable proofs, right to confront evidence against him and the right to present a defense and are protected rights under the federal and state constitution. T2-131 The court said that any evidence of aggressive or violent acts by the victim towards the defendant were not

admissible unless the defendant could prove they happened contemporaneously with those acts alleged in the complaints.

By presenting certain information the state may have opened the door to the introduction of otherwise inadmissible evidence for the limited purpose of impugning the veracity of the witness presented by the defendant. See State v. Pugliese, 129 N.H. 442, 529 A.2d 925 (1987); State v. Judkins, 128 N.H. 223, 512 A.2d 427 (1986); State v. Brown, 125 N.H. 346, 480 A.2d 901 (1984). Opening the door occurs "when one party introduces evidence that provides a justification beyond mere relevance for an opponent's introduction of otherwise inadmissible evidence." State v. Crosman, 125 N.H. 527, 530, 484 A.2d 1095, 1097 (1984). By means of this mechanism, "a misleading advantage may be countered with previously suppressed or otherwise inadmissible evidence." Id. at 531, 484 A.2d at 1098.

CONCLUSION

WHEREFORE, Mr. Woodburn respectfully requests that this court vacate his convictions of simple assault and domestic violence and criminal mischief class A.

The defendant, Jeffrey Woodburn, Pro Se, request 15 minutes of oral argument before the full panel of the court.

CERTIFICATION

I, Jeffrey Woodburn, hereby certify that on January 31, 2022 copies of the foregoing was forwarded to the NH Attorney General's office as counsel for the state by electronic service.

I, Jeffrey Woodburn, hereby certify that the decision being appealed is in writing and is appended to this brief.

Respectfully submitted,

/s/ Jeffrey Woodburn

Dated: January 31, 2022

Jeffrey Woodburn, Pro Se
30 King Square
Whitefield, NH 03598
603.259.6878

DEFENDANT'S BRIEF ADDENDUM

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The State of New Hampshire

SUPREME COURT

Case Number 2021-0360

State of New Hampshire

V

Jeffrey Woodburn

RULE 7 APPEAL OF JURY VERDICT FROM

THE COOS COUNTY SUPERIOR COURT

APPENDIX TO THE DEFENDANT'S BRIEF

By: Jeffrey Woodburn, Pro Se
30 King Square
Whitefield, NH 03598
(603) 259-6878

SUBMITTED ELECTRONICALLY ON COURT'S E-FILING SYSTEM

TRIAL RECORD

TRAIL DAY 1

TRIAL DAY 2

TRIAL DAY 3

TRIAL DAY 4 CLOSING

FULL MITTIMUS

THE STATE OF NEW HAMPSHIRE

1st Cir. District Div. Lancaster

THE STATE OF NEW HAMPSHIRE

V.

JEFFREY WOODBURN

Docket No: 451-2018-CR-00297

NOTICE OF DEFENSE

NOW COMES the accused, Jeffrey Woodburn, by and through counsel, Wadleigh, Starr and Peters, and hereby notifies this Court of his intent to rely on the defense of self-defense as to the above-captioned matters pursuant to RSA 627:4. The evidence at trial will show that the alleged victim, Emily Jacobs, repeatedly tried to block and/or restrain Mr. Woodburn from leaving her, including at one point her brandishing a knife, and that any force that Mr. Woodburn used against Ms. Jacobs was necessary for him to use in order to either leave or attempt to leave a volatile situation created by Ms. Jacobs.

Respectfully submitted,
Jeffrey Woodburn

By his attorneys
Wadleigh, Starr, & Peters, P.L.L.C.

Dated: September 27, 2018

By: _____
Donna Brown, Esq., NH Bar 387
95 Market Street
Manchester, NH 03101
(603)669-4140

THE STATE OF NEW HAMPSHIRE

COOS, SS. SUPERIOR COURT

THE STATE OF NEW HAMPSHIRE

V.

JEFFREY WOODBURN

214-2019-CR-00007

DEFENDANT'S TRIAL MEMORANDUM REGARDING EVIDENCE OF ALLEGED VICTIM'S PRIOR AGGRESSIVE AND VIOLENT ACTS KNOWN TO DEFENDANT ASSERTING SELF-DEFENSE

Jeffrey Woodburn, the accused, by and through counsel, Wadleigh, Starr and Peters, hereby submits this memorandum in support of his position that "certain acts of violence by the victim are admissible to corroborate defendant's position that he reasonably feared he was in danger of imminent…bodily injury" including evidence of the alleged victim's "specific instances of aggressive conduct toward the alleged victim." *State v. Vassar*, 154 N.H. 370, 375 (2006).

In support of this Motion, Mr. Woodburn states the following:

I. Factual and Legal Background

1. On May 10, 2021, trial in the above-captioned matter commenced on complaints charging Mr. Woodburn with four counts of simple assault, two counts of domestic violence, two counts of criminal mischief, and one count of criminal trespass. Mr. Woodburn filed a timely Notice of Self-Defense to these charges.

2. During the cross-examination of the alleged victim, Emily Jacobs, counsel for the defendant repeatedly attempted to cross-examine her regarding her prior use of force and aggressive acts against the defendant during their relationship including prior statements by Ms. Jacobs wherein she admitted to the use of force against the defendant. The State repeatedly objected to this evidence and successively blocked the defendant's attempts to introduce the following evidence:

- When questioned about whether she was involved in "any aggressive physical action" with the defendant, Emily Jacobs previously stated, **"I may have been in his way, standing in his way, and which he would have pushed me out of the way**. But other than that, no." (Bates 1953)(emphasis added);

- In her interview with the State about these crimes, Ms. Jacobs said, "**one of [Mr. Woodburn's] defenses would be like, you know, she's - - she's preventing me from leaving...[s]he's blocking me**." (Bates 238)(emphasis added);

- Ms. Jacobs stated that, during the June 2018 speaker phone call wherein she sought to get admissions from the defendant about the above crimes while McGrath listened in, **the defendant stated that she had scratched him and told her, "you ripped my shirt" during "one of the tug of wars that- that time that he was leaving."** (Bates 1595)(emphasis added).

3. Although they did not seek to exclude this evidence prior to trial with a motion in limine, the State repeatedly misstated the law on this issue by arguing that that any evidence of aggressive or violent acts by Ms. Jacobs towards the defendant were not admissible unless the defendant could prove they happened contemporaneously with those acts alleged in the complaints. The State repeatedly argued that the alleged victim's prior aggressive acts towards the defendant were inadmissible propensity evidence.

4. On May 11, 2021, the defendant argued that the State has repeatedly misstated the law on this issue and cited two cases in support of his argument that his knowledge of relevant prior aggressive actions of the alleged victim were relevant to the reasonableness of the defendant's use of force: 1) *State v. Hayward*, 166 N.H. 575, 580-581 (2014)(Holding that the trial court's exclusion of evidence that the co-defendant had previously threatened and been violent toward the defendant deprived the jury of evidence necessary to its assessment of her duress defense because "[e]vidence that an individual has been the victim of past violent acts may be relevant to explain that individual's present behavior;" 2) *Hayward* also held that evidence regarding justification was admissible under the doctrine of verbal completeness where the State introduced related admissions by the defendant but excluded statements supporting the defendant's justification defense; and 3) *State v. Dukette,* 145 N.H. 226, 230 (2000)(In a self-defense case, the defendant's state of mind was one of the "other purposes" for which "other crimes, wrongs, or acts" may be admissible under Rule 404(b).)[1]

5. Despite the State offering no legal support for its position on this issue, this Court repeatedly sustained the State's objection to the defendant's attempts to introduce evidence of the alleged victim's prior aggressive and assaultive acts towards Mr. Woodburn.

6. After the testimony of the alleged victim was completed and the State asked if she may be excused, counsel for the defendant noted that the defense may recall the alleged victim as facts were developed in support of the defendant's defense.

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[1] During the chambers conference on this issue, the State mistakenly represented to this Court that *Dukette* was an "ID case," a representation that is untrue. *See Dukette*, 145 N.H. at 227 ("[T]he defendant [sought] to introduce specific instances of the alleged victim's aggressive conduct toward her" in her "self-defense claim.")

7. On the afternoon of May 12, 2021, the defendant took the witness stand. When the defendant attempted to explain the reasonableness of his use of force, the State repeatedly objected to this testimony. The Court held a conference out of the hearing of the jury and the defendant notified the Court that he intended to file a memorandum on this issue as he believed that the Court's rulings on this issue were contrary to the law. This pleading states the applicable and controlling law on this issue.

II. Prior aggressive and violent acts by the alleged victim are admissible to corroborate defendant's position that he reasonably feared he was in danger of imminent bodily injury.

8. As the defendant previously stated, and consistent with *State v. Dukette,* evidence of the prior aggressive and violent acts of the alleged victim are "being offered for a purpose other than propensity…[i]t is being offered to shed light on the defendant's state of mind, which is a permissible use of such evidence under Rule 404(b)." *State v. Vassar*, 154 N.H. 370, 376 (2006).[2]

9. In *Vassar*, the defendant sought to introduce prior bad acts of the victim to prove the reasonableness of his belief that he faced an immediate threat requiring the use force. *Id.* at 374. Specifically, the defendant in *Vassar* sought to introduce evidence that: 1) during the twenty months prior to the alleged crime, the alleged victim's "temper tantrums" increased in "frequency" and "violence"; 2) the defendant was beaten by the alleged victim four months prior to the alleged crime; and (3) two weeks before the crime, the victim had been drunk, "cranking"

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[2] As this case is in the middle of trial and *State v. Vassar* is controlling, the defendant has attached a copy of the case for the Court's convenience.

shells into his shotgun, demanding that his mother fetch a beer for him while he held the gun, and drunkenly firing his shotgun and a .22 caliber rifle out the window of his room. *Id.* at 374

10. In *Vassar*, the N.H. Supreme Court held that where "the defendant is offering evidence of the victim's prior bad acts to show the defendant's belief that the victim was about to use [] force was reasonable…the evidence is being offered for a purpose other than propensity…[i]t is being offered to shed light on the defendant's state of mind, which is a permissible use of such evidence under Rule 404(b)." *Id.* at 376. The State has therefore repeatedly misstated the law on this issue as they have argued that prior bad acts of the alleged victim are not admissible under Rule 404(b) in a self-defense case.

11. The exclusion of evidence of the prior aggressive and violent acts of the alleged victim would: 1) violate the defendant's constitutional right to present a defense; and 2) the unconstitutional exclusion of this evidence would also have a "substantial and injurious effect or influence in determining the jury's verdict." *See Brecht v. Abrahamson*, 507 U.S. 619, 638(1993); *Chambers v. Mississippi*, 410 U.S. 284, 294 (1973).

12. The exclusion of evidence of the prior aggressive and violent acts of the alleged victim would violate the defendant's State and Federal Constitutional rights to "meet the witnesses against him face to face and be fully heard in his defense." *See State v. Stowe*, 162 N.H. 464, 467 (2011); Part 1, Article 15 of the New Hampshire Constitution and the Sixth and Fourteenth Amendments to the United States Constitution. Exclusion of this evidence would also violate the defendant's State and Federal right to testify on his own behalf. *See Rock v. Arkansas*, 483 U.S. 44, 49 (1987).

The State of New Hampshire
SUPERIOR COURT COMPLAINT

Case Number: 214-2019-CR-07 **Charge ID:** 1580454C

☐ VIOLATION	MISDEMEANOR ☑ CLASS A ☐ CLASS B ☐ UNCLASSIFIED (non-person)
	FELONY ☐ CLASS A ☐ CLASS B ☐ SPECIAL ☐ UNCLASSIFIED (non-person)

You are to appear at the: **Coos Superior Court**
address: **55 School Street Lancaster NH 03584**
in: **Coos County**
at:
on:

Under penalty of law to answer to a complaint charging you with the following offense:

THE UNDERSIGNED COMPLAINS THAT:

Last Name	First Name	Middle
Woodburn	**Jeffrey**	**R**

Address	City	State	Zip
30 King Square	**Whitefield**	**NH**	**03598**

Sex	Race	Height	Weight	Eye Color	Hair Color
Male	**White**	**6'3"**	**212**	**Brown**	**Grey or partially Grey**

DOB	License #:	OP License State
06/07/1965	**06WNJ65071**	**New Hampshire**

☐ COMM. VEH. ☐ COMM. DR. LIC. ☐ HAZ. MAT. ☐ 16+ PASSENGER

AT: **Jefferson, NH**

☑ On or about ☐ Between **December 15, 2017** in the above county and state, did commit the offense of:

RSA Name: **Simple Assault**
Contrary to RSA: **631:2-a, I(a)**
Inchoate:

And the laws of New Hampshire for which the defendant should be held to answer, in that the defendant did:

Recklessly cause bodily injury to another, the adult female victim (DOB: (10/12/1982), by biting the victim on her left hand, resulting in bruising,

Verdict: Guilty 3
Entered May 14, 2021
Lana L. Lesperance
Lana L. Lesperance

RECEIVED
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2019 JAN -9 A 11:34

☐ Additional allegations are attached.

against the peace and dignity of the State.

Date: **01/07/2019**

Prosecutor's Signature	NH Bar ID # Printed Name	Prosecuting Attorney's Office
/s/ Peter H. Bornstein	**19557 John J. Kennedy**	**NH Attorney General**

/s/ Peter H. Bornstein, Attorney General
NH ID # 2468, S. Ct. 201 (2016)
Honorable Peter H. Bornstein

The defendant having been sentenced on Charge ID 1580453C, no sentence is imposed on this charge.

July 13, 2021

(4)