

THE STATE OF NEW HAMPSHIRE

ROCKINGHAM COUNTY, SS.

JULY TERM, 2009

SUPERIOR COURT

State of New Hampshire

v.

Jesse Brooks

07-S-2885; 08-S-579; 09-S-319

**STATE'S MOTION IN LIMINE TO EXCLUDE CHARACTER EVIDENCE
OF THE VICTIM**

NOW COMES the State of New Hampshire, by and through its attorneys, the Office of the Attorney General, and hereby seeks an order from this Court excluding evidence from trial regarding guns recovered from the victim's trailer, as well as evidence that a small amount of marijuana was found in the victim's trailer and truck. The victim's guns were recovered in his trailer after his murder, miles from the scene of the murder. The victim therefore could not have used them to threaten the defendant's co-conspirators prior to his death on June 27, 2005. Moreover, no party has ever suggested that this murder was somehow motivated or caused by the victim's marijuana use. The victim's gun ownership and drug possession are therefore not relevant to any issue in this case and would only serve to unfairly and impermissibly inflame the prejudices of the jury. In further support of its motion to exclude this evidence from trial, the State therefore says as follows:

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BACKGROUND

1. Jack Reid was murdered at 145 North Road in Deerfield, NH on June 27, 2005. On July 5, 2005, his body was found in the back of his truck, which was parked in Saugus, Massachusetts. An investigation ensued during which the defendant was identified and arrested for his part in the conspiracy to kill Jack Reid.

2. In the course of the State's investigation, the State recovered guns, ammunition and a small amount of marijuana from Jack Reid's trailer at Scobie Pond, Road in Derry, NH. The State also collected a small amount of marijuana from the ashtray of the victim's truck. These items were recovered after Reid was killed and the investigation commenced. Nothing in the record suggests that any of the items discovered in Reid's trailer were placed there by the defendant, his co-defendants, or any other person involved in Reid's murder.

3. Indeed, the defendant's co-conspirators have given multiple statements regarding the facts surrounding Reid's murder. Two of the defendant's co-defendants testified at the trial of John Brooks and at the trial of Robin Knight. None of the defendant's co-defendants have suggested at any point over the course of the State's investigation (including at depositions and trial) that the victim was the first aggressor in this matter. Nor have the defendant's co-defendants suggested that the victim engaged in gun violence on the date he was murdered, or that they believed that the victim was armed when he arrived at 145 North Road in Deerfield, N.H. Moreover, the defendant has made no indication that he intends to assert self-defense, or any other defense that would paint the victim as the first aggressor in this matter.

ARGUMENT

4. In New Hampshire, “Evidence which is not relevant is not admissible.” N.H. R. Ev. 402. 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.

5. “Evidence of a person’s character or a trait of character is not admissible for the purpose of proving that the person acted in conformity therewith on a particular occasion...” N.H. R. Ev. 404(a). The rationale behind Rule 404 is the notion that evidence of a person’s character is usually of little probative value, has a tendency to be highly prejudicial, and often confuses the issues in a case. See State v. Graf, 143 N.H. 294, 297 (1999).

6. This is also true with respect to evidence of other “bad acts.” See N.H. R. 404(b). “As a threshold issue, when a defendant seeks to introduce prior bad acts of another to impugn the State’s case, the defendant must demonstrate such evidence of other bad acts is relevant for a purpose other than to prove the witness’s character or disposition. To meet the relevancy requirement of Rule 404(b), there must be a clear connection between the particular evidentiary purpose and the other bad acts.” State v. Douthart, 146 N.H. 445, 447-48 (2001) (quotation, citation, and brackets omitted); see also State v. DeWitt, 143 N.H. 24, 26-27 (1999) (evidence of a sexual assault victim’s problems with “sexual behavior” was properly excluded from trial because there was an insufficient nexus between the victim’s character and her conduct towards the defendant at the time of the assault).

7. The New Hampshire Supreme Court has refused to lower the bar on admission of Rule 404 evidence where defendants seek to introduce such evidence against the State. In

State v. Monroe, 142 N.H. 857, 872 (1998), for example, the New Hampshire Supreme Court held that the trial court properly excluded evidence of prior bad acts committed by the defendant's son against the murder victim. The defendant in that case sought to introduce evidence that his son had a drug habit and had stolen from the victim in the past. Id. at 870. The defendant argued that this evidence was relevant to establish his son's motive to murder the victim by attempting to establish that on the night of the victim's death, his son was stealing from the victim to support his drug habit. Id. at 872. The Supreme Court held that the evidence was inadmissible because the defendant had failed to establish sufficient nexus between the prior thefts or drug use and the murder. Id. at 871-72.

8. The New Hampshire Supreme Court adopted a similar approach in State v. Plch, 149 N.H. 608, 620-21 (2003). In Plch, a defendant again sought to introduce evidence of a victim's prior bad acts. There the defendant, who had been convicted of second degree murder, argued that the trial court erred in excluding evidence that his victim engaged in illegal drug use. Id. The defendant claimed that this evidence was relevant to corroborate his testimony that the victim gave him drugs that caused him to pass out on the night of the murder. Id. The New Hampshire Supreme Court held that the trial court properly limited the evidence to the fact that the victim had prescription drugs in her apartment. Id. In the process, the Court held that the trial court had properly excluded from evidence the fact that the victim had obtained or used drugs illegally under Rules 403 and 404. Id.

9. Unlike in Plch, or Monroe, in the case at bar, there is no theory under which the defendant's gun ownership and the marijuana found in his possession may be admitted at trial. Thus, as in Monroe, the defendant in this case will not be able to

establish a sufficient nexus under Rule 404 between the victim's gun ownership and marijuana possession, on the one hand, and any facts giving rise to his murder, on the other.

10. In the first instance, the guns were found in the victim's trailer after he was murdered. The victim could not, therefore, have used them to threaten the defendant, or anyone else, in the moments before he was killed. Indeed, there has never been any indication that the victim would have had a reason to bring a weapon to the location where he was murdered. The record reflects that the defendant's codefendants called the victim to Deerfield to do a job using an assumed name that would have masked any threat of danger. The defendant's ownership of guns cannot therefore be sufficiently connected to the crime at issue in this case to be considered admissible under Rule 404(b).

11. The probative value of this evidence is, in any case, equivocal, at best. "[M]ere possession of a gun does not indicate that [the victim] was violent." People v. Costillo, 608 N.E.2d 100, 107 (Ill. App. Ct. 1992) (refusing to permit the defendant to introduce evidence of his victim's gun possession to prove self-defense). Parading the victim's gun collection before the jury therefore tells the jury nothing useful about the crimes for which the defendant is charged.

12. This is doubly true of any marijuana that may have been in the victim's possession at the time of his death. The logical relationship between the defendant's marijuana possession and potential use, and a violent character would be tenuous at best. Moreover, no one has ever suggested that the victim's drug use motivated, caused, or contributed to his murder.

13. As the New Hampshire Supreme Court has ruled, evidence which only “blackens” a person’s character or is introduced to show that the person is “worthless,” or “not worthy of painstaking and care,” has no relevant nexus to the charged conduct and must be excluded. State v. Blackey, 137 N.H. 91, 94 (1993). Evidence of the victim’s gun ownership and possession of marijuana would be designed only to “blacken” the victim’s character in this case and should be excluded from trial.

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

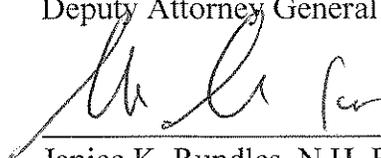
- A. Exclude from trial evidence of the guns collected from the victim’s trailer after his murder;
- B. Exclude from trial evidence of the marijuana collected from the victim’s trailer and truck after his murder;
- B. Grant such other and further relief as may be just and proper.

Respectfully submitted,

THE STATE OF NEW HAMPSHIRE

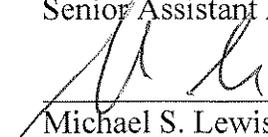
By its attorneys,

Orville B. Fitch
Acting Attorney General
Deputy Attorney General



Janice K. Rundles, N.H. Bar #2218

Senior Assistant Attorney General



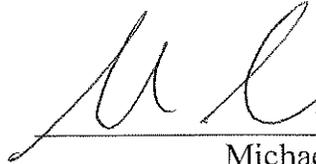
Michael S. Lewis, N.H. Bar #16466

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CERTIFICATE OF SERVICE

July 31, 2009

I hereby certify that I have this day forwarded a copy of the foregoing Motion in Limine – Character of Victim, by electronic mail and United States first class mail, postage prepaid, to William B. Kettlewell, Esq., Maria R. Durand, Esq., and Peter D. Anderson, Esq., counsel for the defendant.

A handwritten signature in cursive script, appearing to read "ML", is written above a horizontal line.

Michael S. Lewis