

THE STATE OF NEW HAMPSHIRE
1st CIRCUIT COURT—DISTRICT DIVISION—LANCASTER

COOS, SS

OCTOBER TERM, 2018

Docket No: 451-2018-CR-00297

State of New Hampshire

v.

Jeffrey Woodburn

STATE'S OBJECTION TO DEFENDANT'S NOTICE OF DEFENSE AND MOTION TO STRIKE

NOW COMES the State of New Hampshire, by and through its attorneys, the Office of the Attorney General, with this objection to the defendant's notice of defense and motion to strike and in support thereof states as follows:

1. The defendant stands charged with four counts of simple assault, two counts of domestic violence, two counts of criminal mischief, and one count of criminal trespass. The defendant was arrested on these charges on August 2, 2018.

2. Specifically, the defendant is charged with simple assault and criminal mischief in connection with an incident on August 10, 2017, in which he threw a cup of water in the victim's face and also threw the empty cup at her, striking her in the face. During that same incident, the defendant also kicked the door of the clothes dryer in the victim's house, causing it to be broken off of the dryer machine housing. This is an incident where the defendant, in his journal, admitted to the damage done to the dryer writing that after an argument with the victim, in which she threw his clothes out onto the lawn, "I responded by kicking the door off the dryer, we have not communicated since that night, I feel bad about the whole thing."

3. Shortly after this incident, the victim told a mutual friend what had happened, and that individual confronted the defendant about the assault during the August 10, 2017 incident. Bates 615.¹ According to the friend, the defendant initially did not recognize what he did as a criminal assault, but that during the conversation, the defendant came around to understanding that he had assaulted the victim. Bates 617-18. The defendant also admitted to the friend that he had kicked the dryer door off and recognized that his anger had gotten the better of him. Bates 618.

4. In text message exchanges between the defendant and the victim which were provided by the victim, she confronts the defendant about throwing the water and the cup at her face and the defendant makes admissions about committing the assault. The following exchange occurred:

Victim: Ya it's a great feeling have someone who's upset and yelling..

Victim: Throw cold water at someone's face

Victim: And then the cup

Victim: How did you "miss"

Victim: It

Victim: Hard to believe

Defendant: I know I feel terrible about it

Victim: You even said you wanted to do that..planned in your head

Victim: Hours before

Victim: That's planned

¹ The citations refer to the sequentially paginated discovery provided by the State in this matter.

Defendant: My stubborn ego was broken by [friend] telling me

Defendant: I was wrong and stupid ... glad I apologized and am fortunate you forgave me.

5. In addition, on November 26, 2017, the defendant sent the victim the following email:

[Victim]

There is a dynamic in our relationship that causes me too [sic] lose my temper, yell, say unkind things and on rare occasions damage personal items. There is no excuse and I accept responsibility and will stop the behavior. I hope you will be [sic] support me to avoid such situations and not dwell on obvious topics discussed in counseling. Finally I hope you'll trust my judgement [sic] to have appropriately on conflicted, sensitive situations and I trust you will to engage in flirtation or other behaviors aimed to make me jealous. I also trust our relationship will be private and respect for each other. No threats of embarrassing disclosure!

Jeff

6. As such, there is no evidence to support the defendant's claim of self-defense, and specifically that the victim blocked or prevented her from leaving him, in connection with the August 10, 2017 incident. To the contrary, the evidence is that the defendant was unprovoked when committed the assault, an assault he has made admissions to committing, and for which he apologized. Further, as previously stated, the self-defense claim is inapplicable to the August 10, 2017 criminal mischief charge, another offense that the defendant had made multiple admissions to committing. Accordingly, the defendant should be precluded from raising the defense of self-defense at the trial in this matter.

7. The defendant is also charged with simple assault and domestic violence in connection with an incident on December 15, 2017, where he bit the victim on her left hand. During this incident, the defendant and the victim were returning home following a Christmas party. The victim was driving and the defendant was in the passenger's seat. The two got into an argument and the defendant stated that he wanted to get out of the car, so the victim pulled the

vehicle off to the side of the road. The victim admittedly did not want the defendant to get out of the car and the two argued. The victim never physically restrained or blocked the defendant from exiting the vehicle. The victim stated to investigators that the defendant proceeded to bite her left hand in the area of the palm and wrist as she reached for his phone. The defendant did not exit the vehicle and the victim stated she was able to get him to calm down and they continued home. The victim stated that she had difficulty using her left hand following the assault.

8. The mutual friend of the victim and the defendant, referenced *supra* at ¶ 3, also heard the defendant make admissions to biting the victim during this incident. Bates 636. The friend was present during a phone call between the victim and the defendant, and the call was on speakerphone so the friend could hear both the victim and the defendant speaking. Bates 636-37. According to the friend, during this call, the defendant admitted to, among other conduct, biting the victim. Bates 645. During the interview with the friend, the following exchange occurred:

Friend: He admitted to the cup. He admitted to, you know, the water in the face, to the bites --

Investigator: To the bites?

Friend: Yeah.

Bates 644-45.

9. The friend further described the conversation he witnessed in substance as follows:

Friend: Wording roughly would be like, okay, but Jeff you're saying I'm reckless but you did do this to me; right? I mean, this did happen? He'd be like, yes. Okay I did that. Okay I kicked down the door.

Investigator: Okay.

Friend: He's like, but that doesn't excuse what you're doing -- you know, your reckless behavior and, you know,

talking to your friends about this and telling people about these things. He's like, this is -- this is our affair. This is nothing -- and we're working on our issues. So our issue, Jeff, would be you biting me in the arm? Yeah, that was wrong, I shouldn't have done that.

Bates 646.

10. The defendant is also charged with simple assault, domestic violence, criminal mischief, and criminal trespass in connection with an incident on December 24, 2017, during which he struck the victim in her stomach with his hand and forced open the locked door to her residence by kicking in the locked door, damaging the door and the door casing. During that incident the victim was at her home with the defendant wrapping Christmas presents when they got into an argument. The victim stated to investigators that during the argument the defendant had struck her in the stomach with his hand. After she was struck, the victim said to him, "You just punched me in the stomach" and the defendant replied "oh did I hurt you...I'm sorry" or words to that effect and which were said in a mocking manner. The defendant ultimately left the residence that night, but a few moments later the victim heard a loud banging on the door that leads into the home from the mudroom. The door was locked and secured at that time. The victim stated that the defendant wanted to come back inside. The banging got louder and she reported becoming fearful at that point. The defendant then proceeded to kick in the door, damaging the door frame. She provided investigators with video of the damage to the door/frame, which ultimately required repair, as the door molding appeared to have been torn away from the wall and splintered.

11. After the defendant had kicked the door open, the defendant then entered her home and remained in the home for a period of time in spite of her requests that he leave. Specifically, the victim said that the defendant went over to the refrigerator, which she did not understand. He

then lingered in the home for a few minutes, at one point stating he was going to get a hammer and fix the door. The victim declined the offer, but the defendant persisted. The victim eventually stated that she was going to go to her parent's house for the night and the defendant finally left the residence. There is no evidence that at any time during this incident the victim physically restrained or blocked the defendant from leaving her residence. Rather, during this incident the defendant forced his way into the victim's residence.

12. A review of the defendant's diary/journal also reveals an entry on December 25, 2017, in which the defendant admits to kicking in the door. The entry states, "Mind is sad and focused on my failure to control my anger." The defendant added "I've had a few explosive moments with [the victim]..it's becoming regular and it scares me." He went on to write that the victim had gotten upset with him over some of his Facebook posts, which ultimately ended with him leaving her home. He wrote that in leaving he had forgotten his wallet and stated "I banged on the door and she didn't respond or let me in! I became enraged and kicked the door in busting up the framing around the door." He wrote that he left the victim's home and went to the Woodburn Home in Whitefield, N.H. He added in the journal entry "It's so embarrassing-upsetting. It just keeps repeating itself in my brain...52 years old I need to grow up! I risk so much and hurt people who I should be loving."

13. As discussed in ¶ 9, *supra*, the defendant later made admissions to kicking in the door to the victim's house during a phone which was overheard by their mutual friend. In addition to overhearing that phone call, the mutual friend also reported that he spoke with the defendant on Christmas Eve and that the defendant had admitted to getting angry and kicking in the door to the victim's residence. Bates 652-53.

14. The defendant is also charged with simple assault and domestic violence in connection with an incident that occurred between June 9, 2018 and June 10, 2018, in which he bit the victim on her right forearm. During this incident the victim had picked up the defendant from his birthday party and was driving with him to her residence. While in the vehicle the two got into an argument over the victim having left the party earlier in the night, before she returned to pick him up so that they could return to her residence. During the argument, the defendant, who was in the passenger seat, reached across and grabbed the steering wheel of the car while the victim was driving and the car was still moving. The defendant then proceeded to bite the victim's right arm as she struggled to maintain control of the car while driving. The victim was eventually able to pull over to the side of the road, at which point the defendant got out of the car. The two talked, and the victim reported that she was able to calm the defendant down to the point that he got back into the car and they drove home. There is no evidence that at any time during this incident the victim physically restrained or blocked the defendant from leaving the vehicle. Instead, the evidence is that the defendant created an incredibly dangerous situation by grabbing the steering wheel of a moving vehicle, but once the vehicle was stopped, he exited the vehicle.

15. As previously discussed, the defendant later made admissions to biting the victim on this occasion during a phone call which was overheard by the mutual friend. *See* ¶ 8-9, *supra*.

16. On September 27, 2018, the defendant filed a notice of defenses with the Court in which he stated that he intends to rely on a claim of self-defense at the trial in these matters, under RSA 627:4.

17. In raising self-defense, the defendant claims that the evidence will show that the victim in this matter tried to block or restrain the defendant from leaving her, to include

brandishing a knife. Therefore, the defendant claims that any force that he used was necessary for him to leave or attempt to leave. In his pleading, the defendant does not specify as to which pending charge or charges he intends to raise this defense. Plainly, a claim of self-defense would be inapplicable to the charged criminal mischief and criminal trespass complaints so it is presumed that the defendant seeks to raise this defense as to the pending simple assault and domestic violence charges. Further, as discussed above, none of the incidents for which the defendant is charged involve him attempting to leave a particular location, or involve the brandishing of a knife. During the two biting incidents in the car the victim never physically restrained or blocked the defendant from exiting the vehicle, and during at least one of those instances the defendant did exit the vehicle after it stopped moving.

18. There is discussion in the interview of the victim physically trying to block the defendant from leaving her residence because he was too intoxicated to drive. Bates 730. According to the mutual friend, the defendant drove away from the residence anyway and ended up crashing into a snowbank and getting his vehicle stuck at the bottom of the victim's driveway overnight. However, this incident is not among the charged incidents.

19. Therefore, as to the pending charges, the defendant's notice of self-defense is insufficient and he should be precluded from introducing any testimony related to that defense.

20. As applicable to this matter, RSA 627:4, states:

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, I.

21. Notably, the use of such force by a defendant cannot be justified, if “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.” RSA 627:4, I(b).

22. Here, the evidence, as outlined above, does not support the defendant’s claims that he reasonably believed that the victim was about to use unlawful, non-deadly force against him during any of the charged instances, or a claim that he was not the initial aggressor in the assaults. In addition, the defendant has not provided this Court with any information specific to the charged incidents that would support his claim of self-defense, nor has any reciprocal discovery been provided to the State by the defendant which would support such claims. For those reasons, the defendant’s notice of defense should be stricken.

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

- (A) Strike the defendant's notice of self-defense; and
- (B) Grant such further relief as may be deemed just and proper.


Respectfully submitted,

THE STATE OF NEW HAMPSHIRE


By its attorneys,

GORDON J. MACDONALD
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Date: October 9, 2018



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing sent to counsel for the defendant, Donna Brown, Esquire.



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