

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

State of Minnesota,

Plaintiff,

**STATE'S NOTICE OF MOTIONS
AND MOTIONS IN LIMINE**

vs.

Court Case No. 27-CR-21-23628
C.A. Case No. 21A13240

Carmen Bendu Greaves,

Defendant.

TO: JUDGE OF DISTRICT COURT, ATTORNEY FOR THE DEFENDANT.

PLEASE TAKE NOTICE that the State hereby moves the Court for the following relief:

1. Impeachment Notice

The State moves the Court for an order allowing impeachment by prior conviction(s). *See* Minn. R. Evid. 609; *State v. Jones*, 271 N.W.2d 534 (Minn. 1978); *State v. Hill*, 801 N.W.2d 646 (Minn. 2011).

Offense	Court File Number	Date of Conviction or Release from Confinement
Battery with a Deadly Weapon	C163128771 (Clark Co, NV)	Convicted 3/18/16

When evaluating whether prior convictions are admissible for impeachment, the Court considers five factors set out in *State v. Jones*, 271 N.W.2d 534, 537–38 (Minn.1978). The Court examines:

- (1) The impeachment value of the prior crime,
- (2) The date of the conviction and the defendant's subsequent history,
- (3) The similarity of the past crime with the charged crime,
- (4) the importance of defendant's testimony, and
- (5) the centrality of the credibility issue.

Id. Based on these factors, Defendant's prior conviction should be admitted.

First, the conviction carries significant impeachment value. *See State v. Flemino*, 721 N.W.2d 326, 328 (Minn. Ct. App. 2006) ("The rationale for admitting felonies that do not directly

implicate honesty is that the jury should be allowed to consider a testifying witness as a ‘whole person.’”); *State v. Hill*, 801 N.W.2d 646 (Minn. 2011) (holding that “any felony conviction is probative of a witness’s credibility”).

Second, this conviction falls within the time window established by Minn. R. Evid. 609(b).

Third, Defendant’s conviction for “battery with a deadly weapon” is not similar to the current charges. Therefore, the risk of prejudice is reduced. *See State v. Swanson*, 707 N.W.2d 645, 655 (Minn. 2006) (under this *Jones* factor, the more similar the crimes are, the more likely the prior conviction will be prejudicial).

Fourth, if Defendant chooses to testify, her testimony will likely be important to the jury’s decision, which would weigh against allowing the use of impeachment evidence. *State v. Reek*, 942 N.W.2d 148, 163 (Minn. 2020). However, without an offer of proof regarding what Defendant’s trial testimony would entail, the Court’s ability to assess its importance is limited. *Id.* at 164.

Fifth, if Defendant testifies, her credibility as a witness will be central to the case. Her testimony would need to be weighed against the testimony of the eyewitnesses presented by the State. *Id.* This weighs in favor of allowing Defendant’s prior convictions to be admitted for impeachment. *Id.* When the jury has to choose between believing a defendant and believing another person, “a greater case can be made for admitting the impeachment evidence, because the need for the evidence is greater.” *See State v. Bettin*, 295 N.W.2d 542, 546 (Minn. 1980).

2. Probationary Status

The State moves the Court for an order allowing cross-examination of the defendant regarding her probationary status and conditions of probation in Court File No. 27-CR-20-22202. *See State v. Johnson*, 699 N.W.2d 335 (Minn. Ct. App. 2005) (holding that the State may cross-examine defendant about his probationary status and conditions of his probation to reveal possible motive to lie); Minn. R. Evid. 616 (stating that evidence of bias, prejudice, or interest for or against any party is admissible to test the credibility of a witness).

3. Domestic Conduct Pursuant to Minn. Stat. § 634.20

The State moves the Court for an order admitting evidence of domestic conduct by the accused against the victim. *See Minn. Stat. § 634.20; State v. Valentine*, 787 N.W.2d 630 (Minn.

Ct. App. 2010); *State v. Meyer*, 749 N.W.2d 844 (Minn. Ct. App. 2008).

“Evidence of domestic conduct by the accused against the victim of domestic conduct, or against other family or household members, is admissible unless the probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issue, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.” Minn. Stat. § 634.20. “Domestic conduct” includes, but is not limited to, evidence of domestic abuse, violation of an order for protection, violation of a harassment restraining order, or violation of a domestic abuse no contact order. *Id.*

Notice is not required for general relationship evidence. *See State v. Boyce*, 170 N.W.2d 104, 115 (Minn. 1969). This is because an offender is aware that his prior relationship with the victim, “particularly in so far as it involve[s] ill will or quarrels,” may be presented against him. *State v. McCoy*, 682 N.W.2d 153, 159-60 (Minn. 2004). The analysis for admitting relationship evidence under Minn. Stat. § 634.20 is not subject to the more stringent *Spreigl* analysis. *State v. Bell*, 719 N.W.2d 634, 638-39 (Minn. 2006); *McCoy*, 682 N.W.2d at 159-60. This is because, “[t]he crime of domestic abuse is unique in that it typically occurs in the privacy of the home, it frequently involves a pattern of activity that may escalate over time, and it is often underreported.” *McCoy*, 682 N.W.2d at 161 (internal quotation omitted). Therefore, the “interests of justice are best served” by admitting relationship evidence when it provides context for the crime charged. *Id.* at 159, 161. Furthermore, evidence admitted under Minn. Stat. § 634.20 need not be corroborated, and it does not need to be proved by clear and convincing evidence. *State v. Matthews*, 779 N.W.2d 543, 553 (Minn. 2010); *State v. Word*, 755 N.W.2d 776, 781 (Minn. Ct. App. 2008).

At trial, the State intends to introduce evidence of the following prior domestic conduct by Defendant against Victim M.P.

- Domestic assault charges (27-CR-20-10740), offense date 4/30/20. An agreement was reached on 10/28/20 and the case was dismissed.
- DANCO violation (27-CR-20-11781), offense date 5/14/20. An agreement was reached on 10/28/20 and the case was dismissed.
- DANCO violation (27-CR-20-22202), offense date 10/16/20. Defendant pled guilty and received a stay of adjudication. A violation hearing is scheduled for 2/2/22.
- In June 2021, Defendant came to Victim’s church with their baby. She began shaking

the baby, and Defendant tried hitting Victim when he intervened. *See* 27-DA-FA-21-5253.

- On June 25, 2021, Defendant came to Victim's home and pushed her way inside. Defendant physically assaulted Victim by hitting him, slapping him, and scratching him. Their baby was present during the fight, and Victim had to use his body as a shield to protect the baby. *See* 27-DA-FA-21-5253.
- OFP violation (27-CR-21-12783), offense date 6/30/21. Defendant pled guilty on 12/14/21. Sentencing is scheduled for 2/2/22.
- OFP Violation (27-CR-21-12497), offense date 7/3/21. Defendant pled guilty on 12/14/21, sentencing scheduled for 2/2/22.
- OFP Violation (27-CR-21-16521), offense date 9/2/21. A hearing is scheduled for 2/2/22.
- OFP violation (27-CR-21-21448), offense date 11/18/21. A hearing is scheduled for 2/2/22.

4. 911 Calls

In this case, the Victims placed three 911 calls on December 22, 2021. The Victims repeatedly told dispatchers that Defendant came through the window, assaulted Victim M.M., and fought with Victim M.P. They asked for an ambulance because Victim M.M. was bleeding. In the calls, there is yelling, screaming, and crying in the background. During the first two calls, the Victims told dispatch that Defendant was still inside the apartment during the calls. The 911 calls were placed between 7:01 AM and 7:07 AM. Defendant was located next to Victim's apartment building minutes later, at approximately 7:11 AM.

The State moves the Court for an order admitting evidence of prior statements by the victims to the 911 operators as an "excited utterance," regardless of whether or not the victims testify at trial. *See* Minn. R. Evid. 803(2); *Davis v. Washington*, 547 U.S. 813, 822 (2006) ("Statements are nontestimonial when made in the course of police interrogation under circumstances objectively indicating that the primary purpose of the interrogation is to enable police assistance to meet an ongoing emergency."); *State v. Wright*, 726 N.W.2d 464 (Minn. 2007) (statements made by victim to 911 operator were not "testimonial," and, thus, admission of statements absent victim's testimony at trial did not violate Confrontation Clause in assault

prosecution; primary purpose of victim's 911 telephone call was to enable police assistance to meet an ongoing emergency); *State v. Dye*, 871 N.W.2d 916, 923 (Minn. Ct. App. 2015) (Victim's emergency call and her initial statements to officers were nontestimonial for purposes of Confrontation Clause, and were thus admissible at trial without her presence).

If the victims testify at trial, their statements to the 911 operators are additionally admissible present sense impressions. *See* Minn. R. Evid. 801(d)(1)(D) (a present sense impression is "a statement describing or explaining an event or condition made while the declarant was perceiving the event or condition or immediately thereafter"); *State v. Taylor*, 650 N.W.2d 190, 204 (Minn. 2002) (hearsay objections to 911 call were cured by the "present sense impression" exclusion from hearsay).

5. Notice of Intent to Amend¹

Defendant is currently charged with first degree burglary of an occupied dwelling pursuant to Minn. Stat. § 609.582, Subd. 1(a). Based on Defendant's criminal history score, the presumptive sentence for that offense is a 27 month stay. However, if the case proceeds to trial, the State intends to amend the complaint to add an additional count for first degree burglary – assault, pursuant to Minn. Stat. § 609.582, Subd. 1(c). Based on Defendant's criminal history score, the presumptive sentence for that offense is a 58 month prison commit.

Date: January 31, 2022

Respectfully submitted,

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¹ The State also provided notice to counsel for Defendant via e-mail on January 6, 2022.