

THE STATE OF NEW HAMPSHIRE
SUPERIOR COURT

HILLSBOROUGH, SS.
Northern District

JANUARY TERM 2024

THE STATE OF NEW HAMPSHIRE

v.

ADAM MONTGOMERY

Case No. 216-2022-CR-02372

OPPOSITION TO MOTION IN LIMINE RE: HOME DEPOT PURCHASES

NOW COMES the State of New Hampshire, by and through its attorneys, the Office of the Attorney General, and opposes the defendant’s motion to exclude evidence at trial. The Defendant is not entitled to an order excluding evidence of Home Depot purchases from February 2020. The evidence of purchases from Home Depot is relevant because it is circumstantial evidence connecting the defendant to an ATM withdrawal and lime that he purchased to further conceal and dispose of Harmony Montgomery's (“Harmony”) corpse. While the defendant may argue the weight of that evidence at trial, it is admissible under N.H. R. Ev. 401, 402, and 403, and his motion to exclude evidence must therefore be denied. In support thereof, the State submits the following:

FACTS¹

1. Relevant to this pleading, the defendant was indicted for one count of second-degree murder, one count of witness tampering, and one count of falsifying physical evidence, and one count of second degree assault. The defendant is also charged with abuse of a corpse.

¹ The State relies upon the, charging documents, discovery submitted to date, and the attached Affidavit of Detective Max Rahill, with the Manchester Police Department.

The charges are based on the December 7, 2019, murder of his 5-year-old daughter, Harmony, and the March 4, 2020 disposal of her corpse. The charges of falsifying physical evidence and abuse of a corpse are alleged to have occurred between approximately December 7, 2019, and March 4, 2020. The murder of Harmony was not uncovered for several years after the defendant's conduct occurred.

2. On June 23, 2023, Kayla Montgomery ("Kayla") informed officers that the defendant got lime because he believed that lime would assist in decomposing Harmony's body. *See* Exhibit 1 at ¶ 5. He believed that the lime would prevent the body from being uncovered. *Id.* Kayla disclosed that she did not know where the defendant picked up the lime from, but she said he got the lime and then used it in the bathroom of their apartment on Union Street. Officers learned that Kayla and the defendant moved into their Union Street apartment on February 20, 2020. *Id.* at ¶ 5. Kayla explained that while the defendant was in the bathroom of their Union Street apartment, he removed Harmony's corpse from a bag and held it under hot shower water to thaw her body out so that it could be further manipulated. While Kayla was not aware of whether the defendant used tools, she said that while the defendant was taking a break from his conduct in the bathroom, he disclosed to her that "he was going to try and like put her in pieces." *Id.* at ¶ 3. She also reported that the defendant was attempting to "squish" and "bend" the corpse to create additional space in the bag so he could add lime. *See, Id.* The defendant turned the shower on while he was manipulating Harmony's corpse, so Kayla was unable to hear or see what the defendant was doing in the bathroom. *Id.*

3. Following Kayla's report, officers obtained bank records from an account that Kayla shared with the Defendant.² *Id.* at 4. According to the records, on February 26, 2020, at 11:20 a.m. there was a cash withdrawal from the defendant's account at the Citizen's Bank ATM located at 688 S Willow Street in Manchester. *Id.* Officers were aware of a Home Depot location directly across the street from the Citizen's Bank ATM. *Id.* Officers were also aware that the defendant later worked at the same Home Depot during his time living on Union Street. As a result, officers subpoenaed records of lime purchases from Home Depot between February 1, 2020 and March 4, 2020 from the closest locations in Manchester, Hooksett, Londonderry, South Merrimack, and Concord, New Hampshire. *Id.* at 5 and 6. The records revealed thirty-three purchases of lime during the requested period. *Id.* at 6. Of the purchases, only two were made with cash. *Id.* Additionally, officers were able to exclude the defendant and his known associates as a source of the non-cash payments. *Id.*

4. One of the cash purchases of lime, was on February 15, 2020 at the Home Depot in Hooksett. *Id.* at 6.a. However, the other was on February 26, 2020, at the Home Depot in Manchester. *Id.* at 6.b. The Manchester purchase took place roughly twenty minutes after the ATM withdrawal and occurred across the street from the ATM. *See, Id.* at 5 – 6. Officers learned that the surveillance footage of the purchases was no longer available due to the length of time that passed between the purchases and the request by law enforcement.

5. On March 16, 2023, officers provided Kayla with a sheet containing photographs of several bags of lime that are sold by Home Depot. Kayla was asked to identify the bag that the defendant got and used at their Union Street apartment. *Id.* at 8. She identified

² During an interview on March 16, 2023, Kayla denied making the ATM withdrawal or accompanying the defendant to make the withdrawal.

a bag that she believed the defendant used. *Id.* Officers later determined that the item number or Stock Keeping Unit (“SKU”) of the bag Kayla selected was 221104. *See, Id.* Notably, this product and its SKU was identical to the SKU of the purchased at Home Depot on February 26, 2020. *See, Id.* at 6 – 7.

6. A review of the records from the defendant’s apartment on Union Street revealed that on February 27, 2020, just one day after the ATM withdrawal and Home Depot purchase, there was a work order for the defendant’s Union Street apartment. *Id.* at 10. The specific request made from the renter was to snake the drain of the bathtub. *Id.*

7. Finally, officers learned that the defendant disposed of Harmony's corpse between March 3 and 4, 2020, just five days after the ATM withdrawal and cash purchase at Home Depot. The following is a simplified sequence of events for ease of reference:

2/20/2020	The defendant moves into his Union Street apartment where lime is used
2/26/2020	<ul style="list-style-type: none"> • 11:20 a.m. ATM Withdrawal of \$500 at Citizens Bank ATM in Manchester • 11:42 a.m. Home Depot purchase with \$400 cash payment
2/27/2020	A work order is placed to snake the drain of the defendant's bathtub
3/3/2020 – 3/4/2020	The defendant disposes of Harmony’s corpse
3/16/2023	Kayla identifies a bag of lime that the defendant used. It is later determined that the bag she identified bears the same SKU as the bag purchased with cash at the Home Depot in Manchester on February 26, 2020.

8. On December 21, 2023, the defendant filed his *Motion In Limine Re: Home Depot Purchases* (“Def.’s Mot.”), seeking to preclude evidence of this Home Depot purchase at trial. The defendant submits that he is entitled to the relief he seeks because the “identity of

the customer(s) is unknown . . . ” which he believes means there can be no nexus connecting the defendant to the purchases. (See Def.’s Mot. ¶ 5.) The defendant also asserts, incorrectly, that the officers “obtained records of two purchases from Home Depot during the relevant time period . . . ” and, that “[u]pon information and belief, no purchases of lime were sought or obtained from any other location.” *Id.*

LAW AND ARGUMENT

9. Evidence is *relevant* if it has
 - (a) any tendency to make a fact more or less probable than it would be without the evidence; and
 - (b) the fact is of consequence in determining the action.

See N.H. R. Ev. 401.

10. If deemed relevant by Rule 401, evidence is admissible under Rule 402. Evidence is “relevant” if it has “any tendency” to make the existence of any “fact” of consequence” to the determination of the trial more or less probable than it would be without the evidence. *See, Id.* The defendant’s argument for exclusion is a lack of relevancy, and is therefore “unfairly prejudicial” pursuant to N.H. R. Ev. 403.

11. The defendant asserts that evidence of the Home Depot purchases are irrelevant because there is no nexus linking any purchase to the defendant. However, the defendant misapprehends the distinction between the different types of evidence. Specifically, the difference between circumstantial evidence and direct evidence. Circumstantial evidence is indirect evidence which tends to prove a disputed fact by proof of other facts. *See State v. Germain*, 165 N.H. 350, 360 – 61 (2013).

12. There is strong circumstantial evidence that the defendant made the cash purchase on February 26, 2020. The timing and proximity of the purchases in relation to the defendant bringing lime to the home, abusing Harmony's corpse, and requesting a work order to snake the very drain he abused Harmony's corpse in, is strong circumstantial evidence that the defendant purchased the lime on February 26, 2020. Hence, the timing of these purchases established the nexus, and make the purchases clearly relevant pursuant to N.H. R. Ev. 401. Thus, they are admissible pursuant to N.H. R. Ev. 402.

13. The defendant is also charged with falsifying physical evidence pursuant to RSA 641:6, I, which will involve the State putting forth evidence showing that the defendant purposely altered, destroyed, concealed, or removed Harmony's body with the purpose of impairing its verity or availability. *See*, Indictment, Charge ID No. 2027113C. The defendant is also charged with abuse of a corpse pursuant to RSA 644:7, which will involve the State putting forth evidence that he purposely concealed and destroyed Harmony's corpse. *See*, Misdemeanor Complaint, Charge ID No. 2027114c. The purchases provide circumstantial establishing Kayla Montgomery's credibility that the defendant obtained the items and lime during the relevant three-day time period that he then used to further destroy/alter Harmony's corpse with criminal purpose.

14. Under N.H. R. Ev. 403, the court may exclude relevant evidence if "its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence." N.H. R. Ev. 403. In his motion, the defendant asserts that Rule 403 requires exclusion because "without a nexus[] the jury is left to speculate . . ." (*See* Def.'s Mot. ¶ 7.) While "juror speculation" is not codified in the Rule, the jurors will be presented

with the same information outlined *supra* and, from the evidence, both direct and circumstantial, they may make reasonable inferences.

15. Finally, the evidence is admissible as not unduly prejudicial under the balancing test of N.H. R. Ev. 403. The defendant is charged with beating his daughter to death, concealing and transporting her body around the city of Manchester for months, threatening others from reporting what he had done, horribly contorting and condensing her remains so she fit into a canvas hospital bag, using lime and other implements to further hide the fact of her death and his crimes, and disposing of her roughly three months later. The admission of these purchases of lime and other items from Home Depot will hardly cause unfair prejudice since they are the tools he employed to partially accomplish and conceal his crimes. The evidence is readily capable of being observed and evaluated by the trier of fact. The defendant's assertion that his name or his face doesn't appear on the Home Depot sales receipt may be an argument proper for the jury's consideration, however, it does not make the evidence of his purchase less relevant or admissible. Therefore, the court should deny the defendant's motion for an order excluding the evidence on this basis.

WHEREFORE, the State respectfully requests this Honorable Court:

- A. Deny the defendant's motion to preclude evidence of Home Depot purchases; and
- B. Order such other and further relief as may be just and proper.

Respectfully submitted,

THE STATE OF NEW HAMPSHIRE

JOHN M. FORMELLA
ATTORNEY GENERAL

Date: January 2, 2024

/s/ Benjamin J. Agati
Benjamin J. Agati, Bar # 16161
Senior Assistant Attorney General

/s/ R. Christopher Knowles
R. Christopher Knowles, Bar #276524
Assistant Attorney General

Criminal Justice Bureau
33 Capitol Street
Concord, NH 03301-6397

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was sent via the State of New Hampshire e-filing system to Carrie Smith and Jamie Brooks, Esqs., counsel of record in this matter.

/s/ R. Christopher Knowles
R. Christopher Knowles

AFFIDAVIT OF DETECTIVE MAX RAHILL

1. I am a Detective with the Manchester Police Department and have been so employed with the Manchester Police Department as a sworn full-time officer since 2014. Since my hiring, I have attended the NHPSTC Police Academy, as well at the in-house Manchester Police Academy. I have also attended additional training classes and seminars specifically to include training in homicide and violent crime investigations. My duties include investigating misdemeanor and felony-level crimes. I have participated in several violent crime cases within the City of Manchester
2. The information set forth below is based on information known to me personally through my own investigation and through my communications with other Manchester Police Officers. Additionally, I reviewed police reports prepared by Manchester Police Officers detailing their involvement in this investigation.
3. On 6-23-22, Kayla Montgomery ("Kayla") provided information to officers regarding the steps Adam Montgomery ("Adam") took to dispose of his daughter's corpse. She told us that Adam got lime because he thought that the lime would help decompose her body "even more" so that "it couldn't get found." However, she did not know "where he picked [the lime] up from." Kayla said that this occurred in their Union Street apartment bathroom. Kayla also disclosed that Adam removed his daughter, Harmony Montgomery ("Harmony"), from a bag where he stored her corpse, and attempted to "squish" it and "bend" it into the bag and create additional space to add lime. While Kayla was not aware of whether Adam used any tools on Harmony, she said that Adam told her that "he was going to try and like put her in pieces." She said that she left the bathroom because she "couldn't deal" with what Adam was

doing. Kayla said that Adam had the shower running and she was unable to see or hear what he was doing during the process.

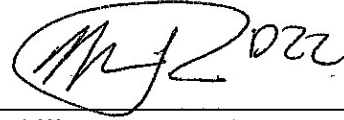
4. On 7-12-22, the Manchester Police Department received bank records from a Metabank account that Kayla shared with her husband, Adam. Based on a review of the records, it appeared that there was a \$500 cash withdrawal from the Citizen's Bank ATM located at 688 S Willow St in Manchester on 2-26-20 at approx. 1120hrs, only 22 minutes prior to the \$400.00 purchase at Home Depot located at 129 March Ave. It should be noted that according to Google Maps, 688 S Willow St to 129 March Ave is only .4 miles and a 9-minute walk. It is also a 4-minute car ride. According to the Metabank records, there were no transactions between 2-8-20 and 2-25-20.
5. On 8-12-22, Det Dunleavy submitted a subpoena to Home Depot for records of lime or pelletized limestone purchased between 2-1-20 and 3-4-20 from The Home Depot locations in Manchester, Hooksett, Londonderry, South Merrimack, and Concord, New Hampshire. Home Depot records were requested due to the proximity of Home Depot in relation to the Citizen's Bank ATM, where there was a withdrawal from Kayla's account.
6. On 9-12-22 Det Dunleavy received those records via mail from Home Depot. There were approximately 33 purchasers of lime between all locations during that timeframe. Only two of the purchases were by cash. The non-cash purchases were not associated with Adam or his known contacts. The cash purchases were on:
 - a. 2-15-20 at approximately 1014hrs for \$6.00 cash payment for 1 40lb bag which was \$5.38 (SKU 221104) – Hooksett Home Depot
 - b. 2-26-20 at approximately 1142hrs for \$400.00 cash payment, which included 1 40lb bag which was \$5.38 (SKU 221104), there was also a purchase of a "Fuel Grinder".

Home Depot confirmed this was a Milwaukee M18 Fuel 18V Brushless Cordless 4.5in/5in Angle Grinder. There was also a purchase of a 4.5 Diablo blade, and a M18 battery, totaling \$396.35. The purchase was paid for using \$400 in cash – Manchester Home Depot

7. This SKU number (SKU 221104) was for Pavestone Pelletized Lime. This was a white 40lb bag that appeared to have green writing. The price of this lime is \$4.37 as of 12-23-23 but it is still the same SKU number associated with the purchase on 2-26-20.
8. During Kayla's Proffer on 3-16-23, she was asked about the lime Adam used and was given a sheet with different types of limestone sold by The Home Depot. Kayla pointed at the Pavestone Pelletized Lime and identified a bag of lime bearing the same SKU number associated with the purchase on 2-26-20. She then circled and initialed that paper indicating that it was the bag she saw. During her proffers, Kayla disclosed that Adam had a saw. She was shown several pictures of saw including one similar to the saw purchased on 2-26-20. Kayla did not recognize the saw that was purchased on 2-26-20 and she was unable to identify the saw that the defendant had.
9. According to records, Adam and Kayla moved into their apartment at 644 Union St Apt 2 on 2-20-20. Based on the investigation, it is believed that Adam disposed of Harmony's corpse between March 3 and 4, 2020.
10. According to records, on 2-27-20 there was a work order for the Montgomery's Union Street apartment, for snaking the drain of the bathtub, just one day after the Citizen Bank withdrawal and the Home Depot purchase of lime, an angle grinder, a blade, and a battery.
11. According to timeanddate.com the weather for 2-26-20 was a high of 50 degrees and low of 37 degrees. Based on my knowledge and experience, I know that using pelletized

limestone this early in the season is not likely, due to snow being on the ground and fluctuating temperatures.

DATED: December 29, 2023

A handwritten signature in black ink, appearing to read 'M. J. Rahill', enclosed within a hand-drawn oval.

Max Rahill
Manchester Police Department