

THE STATE OF NEW HAMPSHIRE
SUPREME COURT

No. 2024-0304

State of New Hampshire

v.

Adam Montgomery

Appeal Pursuant to Rule 7 from Judgment
of the Hillsborough County (Northern) Superior Court

BRIEF FOR THE DEFENDANT

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QUESTIONS PRESENTED

1. Whether the court erred by denying the defense request to sever the July 2019 assault charge from the other charges related to the homicide in December 2019.

Issue preserved by defense motion to sever, the State's objection, the hearing on the motion, and the trial court's order. A 3-39; AD 67-80; M-I 3-44.*

2. Whether the court erred by admitting as "intrinsic evidence" certain prior bad act evidence.

Issue preserved by defense motion *in limine*, the State's objections, the hearing on the motion, and the trial court's orders. A 40-157; AD 85-88, 90-91, 101.

3. Whether the court erred by admitting video only evidence showing Montgomery's encounter with the police on December 31, 2021.

Issue preserved by defense motion to preclude, objection at trial, the State's objections, arguments on the issues, and the court's order. A 158-66; AD 81-83.

* Citations to the record are as follows:

"A" refers to the appendix to this brief;

"AD" refers to the addendum to this brief;

"M-I" refers to the transcript of the January 16, 2024 final pretrial conference;

"M-II" refers to the transcript of the February 2, 2024 motions hearing;

"T" refers to the transcript of trial on February 6 through 22, 2024.

STATEMENT OF THE CASE

Over Adam Montgomery's objection, the trial court (Messer, J.) joined for trial charges arising from two distinct events. The first involved a second-degree assault indictment for knowingly causing bodily injury to a child, H.M., sometime in July 2019. AD 47; T 99. The second involved several charges related to H.M.'s death, which the State contended happened on December 7, 2019. Specifically, the State charged (1) second-degree murder for recklessly causing H.M.'s death, (2) falsifying physical evidence by purposely altering, destroying, concealing or removing H.M.'s body, (3) witness tampering for purposely attempting to cause Kayla Montgomery to inform falsely, and (4) misdemeanor abuse-of-corpse for concealing or destroying H.M.'s body. AD 48-51; T 99-100.

Following an eleven-day trial, at which Montgomery chose not to appear, a jury found him guilty on the charges. T 2056-58. In total, the court sentenced Montgomery to serve fifty-six years to life in prison for second-degree murder, second-degree assault, falsifying physical evidence, and witness tampering convictions¹, consecutive to a lengthy

¹ The court sentenced Montgomery to serve forty-five years to life on the second-degree murder charge, three-and-a-half to seven years on the falsifying evidence and witness tampering charges, and four to eight years on the second-degree assault charge. AD 52-66; S 46-47.

prison sentence in a separate case.² AD 52-66; S 46-48. On the abuse-of-corpse conviction, the court sentenced him to serve a twelve-month jail sentence, all suspended for twenty-five years. AD 61-63; S 48-49.

² In Hillsborough County Superior Court docket number 216-2022-CR-577, Montgomery was sentenced to serve consecutive fifteen to thirty years in prison on two armed career criminal charges. Montgomery appealed the armed career criminal case in docket number 2024-0518.

STATEMENT OF THE FACTS

Adam Montgomery (“Montgomery”) contended at trial that he did not assault H.M. in July 2019 or murder her in December 2019. T 208-09, 1943-44. Regarding the homicide, Montgomery argued that his then wife and H.M.’s stepmother, Kayla Montgomery (“Kayla”), caused H.M.’s death. T 208-09, 1943-44. Montgomery was only guilty of the falsifying-physical-evidence and abuse-of-corpse charges for covering up what Kayla had done. T 208-09, 1943-44. The only direct evidence of the murder and the witness tampering charges came from Kayla.

The Statement of the Facts provides an overview of the Montgomery family and the evidence supporting the State’s case for the July 2019 assault and December 2019 homicide and related offenses as pertinent to the issues raised on appeal. It then describes the evidence associated with Kayla’s credibility issues. The facts pertaining to evidence admitted over Montgomery’s objection will be addressed in the argument section of the brief.

The Montgomery Family in 2019

Montgomery and Kayla married in June 2017. T 476. Montgomery was already a father to H.M., his daughter with Crystal Sorey. T 249. H.M. was in and out of foster care until February 2019 when a court awarded Montgomery custody of her. T 388. H.M. was five years old when she

moved in with Montgomery and Kayla. T 231, 249, 335. At that time, he and Kayla had two sons, S.M., who was two years old, and D.M., who was just a month old. T 249, 392, 393, 536.

In February 2019, they lived in Montgomery's grandmother's home at 77 Gilford Street in Manchester. T 269, 388. Montgomery's uncle, Kevin, also lived with them. T 269, 388-89. By that point, Montgomery's grandmother had relocated to Florida. T 276, 392-93.

July 2019

In July 2019, Kevin went to Florida to visit his mother and other family. T 275-76, 393. When he returned home on July 22 or 23, 2019, he saw H.M. standing in the kitchen with Montgomery behind her. T 276-78. Kevin said H.M. had a "full, like a racoon eye, black and blue." T 278.

Kevin asked her, "what did you do?" T 278. Montgomery replied, "she didn't do anything. I bashed her around the f---ing house." T 279. According to Kevin, Montgomery said it "like a cocky son of a bitch." T 279. Montgomery told Kevin he did it when he found H.M. with her hands over D.M.'s mouth, causing his lips to turn blue. T 279.

Kevin said he told several family members what Montgomery had done and said, and he reported the incident to the New Hampshire Division of Children, Youth and

Families (DCYF). T 280-81. Kevin moved out of the house the next morning. T 281. Sometime later, Montgomery told Kevin that he was sorry for having hit H.M. T 284-85.

The only other witnesses who testified about the July 2019 assault were Demetrios Tsaros (a DCYF worker), Katie Morin, Nickolas Ahern, Rebecca Maines, and Kayla. Except for Kayla, their testimony was brief and focused on the July 2019 assault.

Tsaros testified that he went to the Montgomery home in July 2019 after DCYF received a report of suspected neglect or abuse. T 347-50. As he arrived, Tsaros saw H.M. and Montgomery getting into a car and leaving. T 351-52, 360. After later talking with Montgomery by phone, Tsaros met Montgomery and H.M. at their home in early August 2019. T 356-57, 361. He saw a small red mark under one of H.M.'s eyes. T 357, 362. Montgomery told him that the injury happened when the children were playing with light sabers. T 357-58.

Morin became romantically involved with Montgomery when they were in substance use treatment together in 2021. T 327. She claimed that Montgomery told her that he once gave H.M. a black eye by backhanding her because she had her hand over his son's mouth. T 329. He told the same story to Maines. T 1853-54, 1882. Ahern, also Montgomery's friend, said that one time in the summer of 2019 he saw H.M.

with a “severe” black eye. T 332, 333-34. Montgomery told Ahern that H.M. got the black eye playing soccer. T 333-34.

Kayla claimed that she was home and overheard the conversation between Montgomery and Kevin. T 394, 723. But see T 288-89 (Kevin did not see anyone else in the home and did not think that anyone overheard his conversation with Montgomery). Kayla said Montgomery and Kevin argued about H.M.’s black eye and Kevin not contributing to the expenses. T 394-95, 723.

Kayla also described the black eye. T 396-97. She said Montgomery initially told her the injury happened when the children were playing with light sabers. T 397. Later, he told her that he hit H.M. when he found her with her hand over D.M.’s mouth. T 397-98, 486.

December 2019

On the day before Thanksgiving 2019, the Montgomerys were evicted from the 77 Gilford Street home for failure to pay the mortgage. T 399-400. With nowhere to go, they lived in their Chrysler Sebring. T 400-01. At night, they parked in a parking lot at the Colonial Village apartment complex where their friend Anthony Boderro lived. T 401. But see T 1068 (Boderro claimed he did not know they were parking there).

Kayla claimed that on December 7, 2019, Montgomery beat H.M. to death while the family was driving in Manchester. According to her, H.M. had been urinating and

defecating in her pants while they were living in the car. T 402. These bathroom accidents angered Montgomery, leading him to yell at and punch H.M. in the weeks prior to December 7. T 403-04. She had another accident during the early morning on December 7. T 408. Montgomery began yelling and punching H.M. in the head while H.M. was in the rear seat behind Kayla and next to her two brothers. T 408-09.

The family then drove to the methadone clinic, where Montgomery and Kayla took turns getting their methadone doses. T 408-09. According to Kayla, when Montgomery got back in the car and smelled urine, he resumed yelling and punching H.M. in the head. T 410.

Kayla asked Montgomery to take them to Burger King to get food. T 410. Throughout the drive, Montgomery continued punching H.M. T 410-11. But see T 1255, 1275 (no blood found from search of car and child's clothing found in it); T 1278, 1372-73, 1375 (blood found on women's adult sweater but not of sufficient quantity to DNA test). Kayla claimed that when she was about to put up her arm to stop Montgomery, he gave her an "evil" look that made her stop. T 412-13. She never looked back to check on H.M., but said she heard H.M. making a weird moaning noise. T 412, 413, 414.

At Burger King, they ordered food at the drive-through window. T 415. Kayla handed the food back to the children,

including H.M., but she did not see H.M. because Montgomery had put a blanket over her head. T 415-16. According to Kayla, Montgomery said that he thought he had “really hurt” H.M. and he felt bad. T 416. The family ate in the Burger King parking lot and drove back to Colonial Village. T 416. Kayla said H.M. was not making any noise. T 416.

When they got back to Colonial Village, Montgomery and Kayla used heroin and crack. T 417. But see T 662 (she thought they used heroin and fentanyl). Later, while they were out driving again, the car broke down in an intersection, and as they were packing up their things to leave the car, Kayla realized H.M. was dead. T 418. She said Montgomery tried to wake H.M. and, when that did not work, he folded her into a duffel bag. T 418-19, 673. Kayla said she saw that H.M.’s face was black and blue and puffy. T 420. The family walked back to Colonial Village, where Montgomery left the duffel bag in a snowbank in the parking lot. T 420-21, 673.

They spent the next couple of nights sleeping in Bodero’s Audi in the apartment parking lot. T 421-22. Montgomery kept the duffel bag in the car with them. T 422. They then went to Kayla’s aunt’s (Kimberly Simard’s) home and then spent a couple of weeks at Kayla’s mother’s (Christine Lubin’s) home. T 425-26, 429, 1058-61. At the end of December 2019, the family moved into a room at the

Families in Transition (FIT) shelter. T 432. In late February 2020, the family moved into an apartment on Union Street. T 449. Montgomery and Kayla told people who asked that Montgomery had taken H.M. to live with her biological mother (Sorey) in Massachusetts. T 681, 1622-23, 1637.

Each time they moved, Montgomery and Kayla brought the duffel bag that held H.M.'s remains. At Simard's, Montgomery put the bag under the porch. T 426, 428. At Lubin's, Montgomery stored the duffel bag in a red cooler in a hallway outside Lubin's apartment. T 430, 1063-64. But see T 1258-59 (no blood found in cooler). At FIT, Montgomery put the bag in the ceiling of their room, until a horrible smell prompted him to store it in a freezer at the Portland Pie restaurant where he was then working. T 437, 438, 446-48, 685-86, 720, 1402-04, 1408-09. See T 687-93 (Kayla used a stroller to deliver the bag to Montgomery at Portland Pie); T 1264-65, 1365 (H.M.'s DNA found on samples taken from parts of ceiling). When they moved to the Union Street apartment, he put the bag into other bags with powdered lime and stored the remains in the freezer. T 449, 450, 460-61, 464, 686-87, 693, 703-04, 721.

Kayla claimed that Montgomery talked about dismembering H.M.'s body and compelled her to participate in trying to take the clothing off of H.M.'s body and dispose of it. T 441-42, 451-52. She said that Montgomery talked about

using lime and power tools on H.M.'s body but acknowledged that she never heard or saw him use any power tools on the remains. T 706. See T 1434-35, 1456-57, 1462-63 (police discovered that, on February 26, 2020, cash was withdrawn from Montgomery and Kayla's bank account from an ATM within walking distance of a Home Depot where cash was used to purchase a bag of lime and a saw and saw blade).

Montgomery eventually disposed of the remains using a U-Haul van that his friends rented on March 1, 2020. T 465, 468-69, 1516, 1543-45, 1596, 1598-99. Kayla insisted that Montgomery did not tell her where he took the remains. T 469. The police investigation indicated that Montgomery drove the van to Massachusetts during the night of March 1. T 1822-24. Despite looking in several locations, the police did not find H.M.'s remains. See T 1889-1903.

Kayla's Credibility Issues

Kayla's credibility was a significant issue at trial. She repeatedly told police between December 2021 and May 2022 that she did not know what happened to H.M. T 495-96, 502-04. See also T 507 (on one occasion in December 2021 when police approached her to talk about H.M., she just smiled and walked away). She said the same in her grand jury testimony in May 2022. T 527-28, 537, 556. To both the police and the grand jury, she said she understood that

Montgomery took H.M. to live with Sorey around Thanksgiving 2019 while she was at work. T 528.

Kayla's changed her story on June 3 after her arrest on two perjury charges for lying to the grand jury. T 559. The charges arose from her claim to the grand jury that she was working at a Dunkin Donuts around Thanksgiving 2019, when Montgomery took H.M. to Sorey. T 530, 559. In fact, as the State knew, Dunkin Donuts had fired Kayla before then for theft. T 530.

Fearing she was going to be incarcerated for a second time in 2022, Kayla told the police a new story, claiming that Montgomery assaulted H.M. in July 2019 and caused her death on December 7, 2019. T 578-79, 583, 740-41. By the time Kayla told this story, she had already seen in discovery in her then-pending criminal cases, that included statements witnesses made to the police about the July assault and H.M.'s disappearance. T 581.

Kayla's excuse for having previously told a different story was that she feared Montgomery. T 384, 477, 727, 778-88. The credibility of that claim also was attacked at trial. Although evidence was admitted that Montgomery assaulted her numerous times beginning in 2020, see T 1565, 1626-27, 1667, 1671, by the time the police first talked with Kayla in December 2021 about H.M., she and Montgomery had been separated for over nine months. T 495-97. She lived in

Manchester, and he was in Maine. T 495-97. They separated when, in March 2021, Kayla called the police to report that Montgomery had assaulted her, resulting in his incarceration. T 497, 780. While she had no difficulty reporting that he had assaulted her in March 2021 and was living apart from him by December 2021, she did not then claim that he assaulted or caused H.M.'s death in 2019. T 497, 780.

While incarcerated for several months in early 2022 on theft charges, Kayla knew that the police were trying to determine what happened to H.M. T 495, 502-03. She also wanted to get out of jail. T 510-11. Montgomery, she knew, also was incarcerated. T 508. In notes that she wrote to herself while in jail about her circumstances (which the police later obtained). Notably, in those notes, she did not mention being afraid of Montgomery. T 512-13, 517-18, 784. On the contrary, she wrote about wanting to be with him one more time and wanting immunity. T 513-14.

Kayla acknowledged betraying him and during trial that she and Montgomery had agreed that she was more important to the children. T 514, 517. She said they were best friends and would do anything for each other, and Montgomery agreed "to take the fall after [she] discovered [H.M.]'s death." T 516-17. She later claimed, though, during her redirect examination, that she meant that Montgomery discussed taking the fall for what he did, not what she did. T

735-36. And, as discussed above, she was charged for lying to the grand jury in late May 2022.

Kayla had a history of dishonestly and misplaced trust. Prior to 2013, she was convicted of providing false information to a police officer and altering a prescription. T 560. In 2013, she was incarcerated for violation of probation and not released until sometime in 2014. T 560. In 2019, Dunkin Donuts fired her for stealing. T 625-26. In January 2022, she was arrested on two felony receipt-of-stolen-property charges and one felony theft-by-deception charge, which were dismissed as part of the agreement she later reached in exchange for her testimony against Montgomery. T 385, 561-62, 625-26.

In June 2022, after she implicated Montgomery and was released on bail, she was rearrested for a prescription-drug charge, which also was dismissed in exchange for her testimony. T 563. By the time she testified at trial, Kayla was convicted of the two felony perjury charges and serving a three and a half to seven year prison sentence with one and half years of the minimum suspended. T 485, 559, 584. One condition of her sentence and the dismissal of the other charges was that she testify against Montgomery. T 385, 485.

SUMMARY OF THE ARGUMENT

1. The court erred in denying Montgomery's request to sever the July 2019 charge from the December 2019 homicide charges. The charges were not "related" within the meaning of Criminal Procedure Rule 20's logically-and-factually-connected variant of relatedness. The only factors under this variant of the State v. Brown analysis that weighed in favor of relatedness was the commonality of the victim and the defendant, and the same alleged mode of operation. There was no temporal or spatial relationship between the charges and the law applicable to the offenses was different. And, most significantly, there was no support for the court's finding that separate trials would involve a significant duplication of witnesses and evidence.

Alternatively, even if the charges were "related" within the meaning of Rule 20, the court should have severed them in the interests of justice. Here the principal concern was that a jury hearing evidence about the July 2019 assault might draw an inference that Montgomery was a bad person prone to assaulting H.M., and thus dismiss any doubts it might have deliberating as to his guilt on the homicide charge.

2. The court erred in admitting as "intrinsic" evidence that Montgomery punched H.M. in the two weeks prior to December 7, 2019, and that he blocked Sorey from

having contact with H.M. throughout the ten months prior to H.M.'s death. There was no factual nexus firmly establishing a connection between the disputed evidence and whether Montgomery assaulted H.M. in July 2019 or caused her death in December 2019. More specifically, the disputed evidence bore no spatial, causal, or temporal connection to the alleged offenses.

3. The court erred in admitting a video showing an encounter between Montgomery and several police officers on December 31, 2021, despite ruling that it would be unconstitutional to admit the audio of the encounter. Contrary to the court's finding, Montgomery's "movements, his living situation, his demeanor, and his associates" more than two years after the homicide were not relevant. On the other hand, the evidence posed a significant risk of unfairly prejudicing Montgomery, inviting the jury to infer that the police had reason to believe him guilty.

I. THE COURT ERRED IN JOINING FOR TRIAL THE JULY 2019 ASSAULT CHARGE WITH THE CHARGES RELATED TO THE DECEMBER 2019 HOMICIDE

Criminal Procedure Rule 20 governs the joinder of charges. A defendant has the right to sever unrelated charges. State v. Brown, 159 N.H. 544, 549 (2009); N.H. R. Crim. Pro. 20(a)(3). Offenses are “related” within the meaning of the rule if they occur during a single criminal episode, constitute parts of a common scheme or plan, or are logically and factually connected in a manner that does not solely demonstrate that the accused has a propensity to engage in criminal conduct. N.H. R. Crim. Pro. 20(a)(1)(A) – (C). If offenses are “related,” a court shall join them “unless the trial judge determines that joinder is not in the best interests of justice.” N.H. R. Crim. Pro. 20(a)(2).

Before trial, Montgomery moved to sever the July 2019 assault charge from the other charges stemming from the December 2019 homicide. A 3-6, 19-39. The State objected. A 7-18. The parties generally discussed the issue at the January 16, 2024 final pretrial conference, but the court’s ruling rested on the pleadings. AD 67-80.³

³ Before the January 2, 2024 final pretrial conference, the defense agreed to join for trial the July 2019 and December 2019 charges. Montgomery changed his position and objected to joinder at the final pretrial conference. The State agreed that Montgomery had a right to then ask the court to sever the charges. M1 12-13, 22-23.

The court denied the defense motion by written order. AD 67-80. In so ruling, the court relied on the logically-and-factually-related variant of relatedness. AD 67-80. The court first addressed the relatedness of the July and December 2019 charges. Although it found that the charges were not temporally and spatially related and there was a difference in the law that applied to them, the court ruled that the other factors of the Brown analysis supported finding that the charges were related. AD 67-80. Rejecting the defense's argument that there was only minimal overlap of evidence between the two incidents, the court found a "significant duplication" of the evidence. AD 67-80. Specifically, the court embraced the State's assertions that it would be necessary in both cases:

to establish [H.M.]'s residence, the injuries seen, the after effects of the defendant's criminal behavior, and the defendant's intimidation of others in his circle to prevent them from reporting or testifying to what they had witnessed, or as retribution from having done so. Notably, underlying both cases is testimony from law enforcement who investigated [H.M.]'s disappearance, as well as the testimony of Kayla Montgomery who is alleged to have directly bore witness to much of the defendant's alleged criminal acts. Similarly, both cases will inevitably involve lengthy and detailed

cross examination and impeachment evidence of Kayla Montgomery. Further, in light of second degree assault charges being brought in connection with the police investigation of disappearance of [H.M.], there would be significant duplication of evidence regarding preliminary matters as well.

AD 75-76 (citations to State's pleading omitted). The court then found that the best interests of justice did not support severance. AD 76-80. In so ruling, the court erred.

In separate sections below, this brief addresses the law governing severance and joinder and then argues that the charges were not related or, if related, that the interests of justice nevertheless required their severance.

A. Law

Rule 20(a)(1)(C) defines two or more offenses as “related” if they “are alleged to have occurred during separate criminal episodes, but nonetheless, are logically and factually connected in a manner that does not solely demonstrate that the accused has a propensity to engage in criminal conduct.” In Brown, this Court listed factors that “will aid in discerning whether charges arising from separate criminal episodes are related” within the meaning of the logically-and-factually-connected variant, including:

(1) the temporal and spatial relationship among the underlying charged acts; (2) the commonality of

the victim(s) and/or participants; (3) the similarity in the defendant's mode of operation; (4) the duplication of law regarding the crimes charged; and (5) the duplication of witnesses, testimony, and other evidence related to the offenses.

Brown, 159 N.H. at 551-52. "No single factor is dispositive," but courts should use the factors as "guidelines that must be sensibly applied in accord with the purposes of joinder." Id. at 552.

In part, those purposes center on achieving efficiency as measured by several criteria, including "to avoid the duplication of evidence . . . , to reduce the inconvenience to victims and witnesses, to minimize the time required to dispose of the offenses, and to achieve a variety of other economies in connection with prosecutorial and judicial resources." Id. (quoting 5 LaFave, et al, Criminal Procedure §17.1(a) at 6 (3d ed. 2007)). The Court also noted some potential advantages to defendants from joinder, such as a faster disposition and an increase in the chance of concurrent sentences. Id. Fundamentally, "the policy underlying joinder recognizes that the government should not be put to the task of proving what is essentially the same set of facts more than once," while defendants "should be spared the task of defending more than once against what are essentially the

same, or at least connected, charges.” Id. (quoting State v. Ramos, 149 N.H. 118, 124 (2003)).

However, the desire to achieve those economies must not obscure the principle that “multiple offenses that involve different times, separate locations and distinct sets of witnesses and victims should not be joined....” Brown, 159 N.H. at 552. In such circumstances, “separate trials would not involve substantial duplication of evidence, repeated burdens on witnesses and victims, and increased drain on prosecutorial and judicial resources.” Id. Thus, “a close relationship must exist among offenses alleged to have occurred during separate criminal episodes in order to consider them related.” Id. at 553. The requisite connection “between charged offenses that occur during separate criminal episodes cannot rest solely upon the accused’s propensity to engage in criminal conduct.” Id. For the reasons stated below, Montgomery argues first that the court erred in its rulings that the July 2019 and December 2019 offenses were “related” to each other.

Rule 20(a)(2) authorizes the severance even of related charges. In pertinent part, the rule provides that “the trial judge shall join [related] charges for trial unless the trial judge determines that joinder is not in the best interests of justice.” Montgomery accordingly argues in the alternative that even if the offenses are “related” within the sense of Rule

20(a)(1), the court should still have severed the charges in the interests of justice. The inquiry here focuses on the risk of unfair prejudice. Brown, 159 N.H. at 554.

In Brown, this Court described the rule's interests-of-justice standard as "at least encompass[ing] the considerations outlined in Ramos." Id. at 555. It explained:

charges should be tried separately whenever it is deemed appropriate to promote a fair determination of the defendant's guilt or innocence, which includes evaluating whether, in view of the number of offenses charged and the complexity of the evidence to be offered, the trier of fact will be able to distinguish the evidence and apply the law intelligently to each offense.

Id. at 555 (citing Ramos, 149 N.H. at 128) (quotation marks omitted).

The Brown Court identified "other concerns of undue prejudice as well, which may cause the best interests of justice to override conducting a single trial." Id. at 555. By way of example, the Court noted the risks that "some charges may be likely to unusually inflame the jury against the defendant," and that the "State may gain an unfair advantage if a weak case is joined with a strong case." Id. "Ultimately, in determining the best interests of justice, the purposes underlying joinder, i.e. efficiency and economy, must give way when conducting a single trial would jeopardize a defendant's

right to a fair trial.” Id. at 556. See also State v. Rivera, 175 N.H. 496, 502 (2022).

On appeal, this Court will “uphold the trial court’s ruling unless the decision constitutes an unsustainable exercise of discretion.” Brown, 159 N.H. at 550. To show that the court’s decision was unsustainable, “the defendant must demonstrate that the ruling was clearly untenable or unreasonable to the prejudice of the defendant’s case.” Id. As the Court noted in State v. Stratton, 2019 WL 6525640 (Dec. 4, 2019), an unpublished decision, its “‘appraisal of [relatedness] is forward-looking, not backward-looking,’ meaning that [it] assess[es] the relatedness of charges based upon the evidence before the trial court at the time of its ruling, and ‘not on what a post-hoc autopsy of the trial transcript might suggest.’” (quoting United States v. Sabeau, 885 F.3d 27, 42 (1st Cir. 2018)).

B. There was no significant duplication of evidence between the offenses.

The court’s determination that the July 2019 and December 2019 offenses were related rested principally on its finding that there would be significant duplication of evidence, the fifth factor in the Brown analysis. The finding of significant duplication of evidence was not accurate.

The parties’ pleadings outlined the evidence that pertained to the July 2019 charge. It was limited to the

testimony of Kevin Montgomery, Tsaros (the DCYF worker), Morin, Ahern, Maines, and Kayla. With the exception of Kayla, none offered any evidence material to the homicide related charges.⁴ Excluding Kayla's, their collective testimony accounted for only 122 of the 2045 pages of the trial transcript. Indeed, as the State told the Court, if the charges were severed, there would be no need for a view in a trial on the July 2019 charge and the length of the trial would be considerably less than needed for the homicide and related charges. M-I 34.

There was no support in the record for the court's finding that, if the charges were severed, there would be "significant duplication" of evidence about H.M.'s residence, the "after effects of the defendant's criminal behavior," the "defendant's intimidation of others" to prevent reporting, the extensive police investigation of H.M.'s disappearance, and other "preliminary matters." AD 76 (essentially adopting the State's conclusory assertions). None of these circumstances were probative of the July 2019 assault charge, and the State's pleading did not explain otherwise. A 7-18.

The only issue cited in the court's decision that likely involved an overlap of evidence related to Kayla's credibility,

⁴ Tsaros also testified that he talked with Montgomery in January 2020 when Montgomery told him that H.M. was living with Sorey. T 358-59. Maines claimed that Montgomery told her he took H.M. to Sorey, and that he hated H.M. T 1855-56, 1858, 1874.

which would have been attacked in separate trials. AD 75-76. The challenge to her credibility, however, would not overlap to the extent the State contended. While information about Kayla's criminal history would be relevant in both trials, there was no basis to conclude that her various inconsistent and self-serving statements about the December 2019 homicide and Montgomery's conduct thereafter regarding the other charges would have been introduced in a trial on the July 2019 charge.

Contrary to the court's finding, the fifth Brown factor did not weigh "strongly" in favor of joinder. Only two other factors arguably supported joinder. The second Brown factor, commonality of the victim and the defendant, and the third, similarity between the defendant's alleged mode of operation or means of committing the July 2019 and December 2019 offenses by striking H.M. with his fists. AD 73-74. These factors, alone, were insufficient to find the charges related.

C. Even if related, the best interests of justice required that the charges be severed.

For the reasons outlined in the preceding section, joining the charges for trial did not offer any meaningful efficiency in the disposition of those charges, a primary reason for joinder. Instead, joinder here invited an improper propensity inference.

With respect to the homicide and related charges, there was a risk that a jury would use the July 2019 evidence for an improper propensity purpose when assessing whether Montgomery fatally struck H.M. in December 2019. Whereas the State's case on the July 2019 charge was strong and rested on testimony from several witnesses without such credibility issues, that was not the case with the December 2019 homicide charge.

The only direct evidence that Montgomery fatally struck H.M. in December 2019 was Kayla's testimony. Kayla, as the only other adult caring for H.M. in December 2019, had a clear motive to accuse Montgomery of the crime. In addition, as the State acknowledged, the defense was armed with considerable evidence with which to attack Kayla's testimony about what happened in December 2019. That evidence included her felony perjury convictions for lying to the grand jury, her prior criminal history, and her other criminal conduct that the State agreed not to prosecute her for in exchange for her testimony. She also made numerous self-serving and inconsistent statements about what happened in December 2019 and thereafter.

In contrast, the State's evidence of the July 2019 assault did not rest on Kayla's statements about it. On the contrary, several other witnesses saw the injury or heard Montgomery admit to causing it. Kevin saw H.M.'s severe

black eye, and heard Montgomery admit that he struck H.M. in anger. Tsaros, the DCYF worker who saw H.M. about a week later, saw H.M. with a fading bruise and mark under her eye. Morin and Maines testified that Montgomery told them the same story he told Kevin about backhanding H.M. in July, and Ahern saw the black eye.

This Court has often expressed concern about the improper propensity inference suggested when a jury hears evidence of different occasions of a defendant's commission of the same kind of crime. See, e.g., State v. Watkins, 148 N.H. 760, 767-68 (2002); State v. Ayotte, 146 N.H. 544, 548 (2001). Because the charges involved the allegations that Montgomery struck H.M. with his fist at different times, places, and contexts, there was a substantial risk that a jury hearing the strength of the State's case on the July 2019 charge would draw the improper inference that he similarly struck her in December and thus dismiss any doubts it might have had as to his guilt on the homicide charge.

The July 2019 and December 2019 charges should have been severed for trial. This Court must reverse.

II. THE COURT ERRED IN ADMITTING AS “INTRINSIC” CERTAIN PRIOR AND SUBSEQUENT BAD ACT EVIDENCE

Before trial, Montgomery moved to exclude certain prior and subsequent “bad acts” evidence. He argued that evidence that he assaulted and neglected H.M. during the two weeks prior to December 7, 2019 and that, beginning in April 2019, he prevented Sorey from having contact with H.M., was inadmissible under Rule 404(b). A 40-43. The State objected, contending that the evidence was not subject to Rule 404(b) because the conduct was inextricably intertwined with and intrinsic to the charged offenses. A 44-132.

The court ruled without conducting a hearing. Agreeing with the State, the court found that the alleged abuse and neglect in the weeks before December 7 had a “close spatial and temporal relationship with the charged offenses,” and was “part and parcel of the events that took place during the days leading up to” H.M.’s death. AD 85-88. As such, the court explained the “jury has a right to hear what happened . . . so it may “realistically evaluate the evidence.” AD 85-88. The court found the Sorey evidence “intrinsic to the charged crimes, and thus admissible.” AD 90-91.

The court later affirmed its ruling on the Sorey evidence, denying Montgomery’s motion to reconsider. AD 101. The court explained, quoting the State’s objection, that blocking Sorey from H.M. beginning in April 2019 “forms an integral

part of [Sorey's] testimony' and helps to 'complete the story' of her reporting to law enforcement [H.M's disappearance]." AD 101.

In so ruling, the court erred. While the evidence may have been part of Sorey's story, that circumstance does not make the evidence admissible. The disputed evidence was not necessary or essential for the jury to realistically evaluate the evidence about what happened to H.M. on and after December 7, 2019. See State v. Papillon, 173 N.H. 13, 24-26 (2020).

This Court has distinguished between "extrinsic" evidence of other crimes, wrongs, or acts, which is governed by Rule 404(b), and "intrinsic" evidence, which is not. State v. Rouleau, 176 N.H. 400, 406 (2024). Evidence of other acts is "intrinsic," when the other act evidence and the evidence of the crime charged are "inextricably intertwined" or both acts are part of a single criminal episode, or the other acts were necessary preliminaries to the crime charged. State v. Papillon, 173 N.H. 13, 24-25 (2020). See also, State v. Wells, 166 N.H. 73, 77-78 (2014) (same); State v. Dion, 164 N.H. 544, 551 (2013) (same). Evidence is "intrinsic" or "inextricably intertwined" when it has a close spatial, causal or temporal connection with the charged crime. Rouleau, 176 N.H. at 406; Papillon, 173 N.H. at 24-25.

Importantly, although the “intrinsic” rule “is an exception to Rule 404(b) ... it does not allow a party to evade 404(b) by introducing any and all other act evidence.” U.S. v. Clay, 667 F.3d 689, 697-98 (6th Cir. 2012) (internal citations omitted). “The concerns that prompted Rule 404(b) are very real, and a party may not rely on [the *res gestae*] exception as a backdoor to circumvent its goals.” U.S. v. Buentello, 423 Fed. Appx. 528, 533 (6th Cir. 2011). See also, U.S. v. Hardy, 228 F.3d 745, 748-49 (6th Cir. 2000) (explaining that the rule that allows some background evidence at trial “contains severe limitations as to ‘temporal, proximity, causal relationship, or spatial connections’ among the other acts and the charged offense”).

The Papillon Court recognized the important limitations on “intrinsic” evidence. As the Court explained, evidence is not intrinsic unless there is a factual nexus firmly establishing a relationship between the other act evidence and the charged offenses. Papillon, 173 N.H. at 26-27. Absent that factual nexus, the other evidence is not a prelude to the charged offense, probative of it, or essential to telling a “coherent and intelligible description” of the charged offenses. Papillon, 173 N.H. at 27 (citing Hardy, and Clay).

The Court reviews a trial court’s ruling on the “admissibility of evidence for an unsustainable exercise of discretion and will reverse only if it was clearly untenable or

unreasonable to the prejudice of the defendant's case.” Papillon, 173 N.H. at 24. Because the court ruled prior to trial, the Court considers only the evidence presented at that time “to avoid the pitfall of justifying the court's ruling upon the defendant's response at trial to the evidence.” Rouleau, 176 N.H. at 406 (citing State v. Nightingale, 160 N.H. 569, 573, 8 A.3d 136 (2010)).

As with the evidence in Papillon and Rouleau, the disputed evidence here lacked a factual nexus to the charged offenses. The December 7, 2019 homicide did not depend in any way on the alleged abuse and neglect that previously occurred or on whether Montgomery blocked Sorey's contact with H.M. beginning in April 2019. There was no evidence that any alleged abuse prior to December 7 contributed to H.M.'s death. Kayla's testimony about the prior alleged abuse and neglect and Sorey's testimony about lack of contact with H.M. was not essential to providing an intelligent and coherent description of what occurred on December 7. Further, the prior-act evidence was not part of the same criminal episode or part of the events that lead to the homicide on December 7, nor did the State argue otherwise. A 49-51.

Although Kayla's testimony about the abuse and neglect bore an arguable temporal and spatial connection to the charged acts because it occurred in the weeks leading up to

December 7, the requisite factual connection was lacking. Similarly, while Sorey's testimony about Montgomery blocking her contact with H.M. beginning in April 2019 was part of Sorey's story it was not an essential part of the story about the charged acts. Indeed, Sorey offered no evidence about what occurred on December 7. The Sorey evidence also went well beyond simply rebutting Montgomery's statements to others that he had returned H.M. to Sorey around Thanksgiving 2019.

The other act evidence did not have a sufficiently firm factual relationship to the charged offenses to be "intrinsic." Admitting the evidence as intrinsic to the charged offenses was error. This Court must reverse.

III. THE COURT ERRED IN ADMITTING VIDEO SHOWING AN ENCOUNTER BETWEEN THE POLICE AND MONTGOMERY ON DECEMBER 31, 2021

Prior to trial, Montgomery successfully moved to exclude evidence that, on December 31, 2021, he did not cooperate with the police when they found him homeless and living in a car with his then girlfriend, Kelsey Small. A 158-60. On that issue, the court agreed that it would be unconstitutional to admit his pre-arrest silence in the State’s case-in-chief. AD 82 (citing State v. Remick, 149 N.H. 745, 747 (2003)). He further objected to the State admitting video-only evidence of the December 31, 2021 encounter, arguing that the admission of the video would similarly violate his federal and state constitutional rights to silence and simply was no relevant. A 158-60. As Montgomery argued, the video of the encounter also would unfairly prejudice him. A 158-60.⁵

The State objected, attempting to draw a distinction between Montgomery’s statements during the encounter, which it agreed were not admissible, and what the video showed without audio. A 161-66. According to the State, the video showed Montgomery’s “movements, his living situation, his demeanor, and his associates in the aftermath of [her] murder,” which were “highly probative” because H.M. had

⁵ Montgomery has filed a motion to transfer to the Court trial exhibit 142, which is the video admitted at trial.

been missing for two years and should have been in Montgomery's care. A 163.

The court agreed with the State, finding that

much of the encounter involves relevant information which includes neither questioning of the defendant nor the defendant's statements. . . . The [police] issued a "be on the lookout" for the defendant's girlfriend's vehicle "and individual to check on the condition of a child." . . . [The officer] identified the vehicle and prior to interacting with the defendant, made observations of the defendant, who he was with, and his living situation." These circumstances are relevant to the investigation and will not cause the jury to speculate on excluded or otherwise inadmissible evidence.

AD 82-83. In so ruling, the court erred.

As discussed in the preceding section, this Court reviews decisions on the admissibility of evidence for an unsustainable exercise of discretion. State v. Racette, 175 N.H. 132, 135 (2022). The Court will reverse a trial court's decision when the decision was "clearly untenable or unreasonable to the prejudice of the defendant's case." Id. The question on review is whether there was an objective basis upon which to sustain the trial court's decision. Id. Because the trial court ruled on the admissibility of the threats in a pretrial motion, the Court "considers only what

was presented at the pretrial hearing.” State v. Russell, 159 N.H. 475, 482-83 (2009).

Under Rule 402 of the New Hampshire Rules of Evidence, irrelevant evidence is always inadmissible. Rule 401 defines relevance thus:

Relevant evidence means evidence having 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. Evid. R. 401. This requires that the proponent of the evidence demonstrate a nexus between the proposed evidence and a fact in dispute. State v. Besk, 138 N.H. 412, 415 (1994).

Even if evidence is relevant, it still must be excluded under Rule 403 if “its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.” Evidence is unfairly prejudicial if it tends “to induce a decision ... on some improper basis, commonly one that is emotionally charged.” State v. Cochran, 132 N.H. 670, 672 (1990); State v. Pelkey, 145 N.H. 133, 136 (2000).

Evidence that invites a jury to speculate about a defendant’s pre-arrest silence violates the federal and state constitution

and is improper. U.S. Const., Amend. V and XIV; N.H. Const., Pt. 1, Art. 19. See State v. Boudreau, 176 N.H. 1 (2023) (discussing the invocation of the right to remain silence pre-arrest, and pre-Miranda); State v. Cassavaugh, 161 N.H. 90 (2010) (same); Remick, 149 N.H. 745.

The video evidence from December 31, 2021 showed the police locating Montgomery and Small asleep in a car. During the nearly three minute video, several officers surround Montgomery and the car and order him and Small to get out. An officer then frisks Montgomery and searches a coat that he was allowed to get from the car. The officers then appear to pepper him with questions that Montgomery seems to answer.

Without the audio, the jury could only speculate about what was said. The jury, however, could only understand from other evidence in the case that the police located Montgomery on December 31, 2021 to question him about H.M. Given the lack of any evidence indicating that Montgomery assisted the police in finding H.M., the jury also could only have understood that Montgomery did not cooperate. In these respects, contrary to the court's finding, the video was improper evidence of Montgomery's pre-arrest silence.

The evidence also had no probative value on any issue of consequence. There was no dispute that in December

2021, H.M. was not in Montgomery's care, she was missing, and the police were investigating her disappearance.

Contrary to the court's finding, there was nothing about the police investigation relative to the December 2021 encounter that was disputed, nor did the court explain otherwise. AD 81-83. None of the circumstances shown in the video made it more or less likely that Montgomery assaulted H.M. or caused her death two years earlier.

On the other hand, the evidence carried a risk of substantial unfair prejudice to Montgomery. The video invited the jury to infer that the police had reason to believe Montgomery caused H.M.'s disappearance given how they interacted with him and that he did not offer any information to help find her. What the police believed about his guilt and Montgomery's lack of cooperation were not proper matters for the jury to consider. See, e.g., State v. Willis, 165 N.H. 206, 220-24 (2013) (risk that jury would infer defendant's guilt from existence of DCYF investigation substantially outweighs evidence's probative value); Remick, 149 N.H. at 10-11. Further, the inferences about Montgomery's lack of cooperation carried a significant risk of arousing a sense of horror that he was not assisting in locating his daughter. See e.g., State v. McGlew, 139 N.H. 505, 510 (1995) (evidence is unduly prejudicial when it arouses a sense of horror that may

lead a jury to decide a case based on something other than the facts).

The error prejudiced Montgomery. Rather than prove a materially disputed fact, the evidence invited the jury to rely on improper inferences that were particularly tempting given the lack of credible evidence about the December 2019 homicide. The Court must reverse.

CONCLUSION

WHEREFORE, Adam Montgomery respectfully requests that this Court reverse his convictions.

Undersigned counsel requests fifteen minutes for oral argument.

The appealed decisions are in writing and made on the record. The written decisions are appended to the brief.

This brief complies with the applicable word limitation and contains 7965 words.

Respectfully submitted,

By /s/ Pamela E. Phelan
Pamela E. Phelan, #10089
Senior Assistant Appellate Defender
Appellate Defender Program
10 Ferry Street, Suite 202
Concord, NH 03301

CERTIFICATE OF SERVICE

I hereby certify that a copy of this brief is being timely provided to the Criminal Bureau of the New Hampshire Attorney General's office through the electronic filing system's electronic service.

/s/ Pamela E. Phelan
Pamela E. Phelan

DATED: February 14, 2025

A D D E N D U M

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HILLSBOROUGH, SS
Northern District

THE STATE OF NEW HAMPSHIRE

SUPERIOR COURT

INDICTMENT

HNSC #216 2022 CR 20
CHG ID# 1937947C

At the Superior Court, holden at Manchester, within and for the County of Hillsborough aforesaid, on the 21st day of March in the year of our Lord two thousand and twenty-two,

THE GRAND JURORS FOR THE STATE OF NEW HAMPSHIRE, upon oath, present that

ADAM MONTGOMERY
DOB: 01/22/1992

of or formerly of 445 Willow Street, Manchester, in the State of New Hampshire, between approximately July 1 and July 22, 2019, at Manchester in the County of Hillsborough aforesaid, did commit the crime of

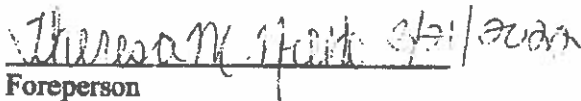
SECOND DEGREE ASSAULT
RSA 631:2, I(d)

in that Adam Montgomery did knowingly cause bodily injury to H.M. (DOB 06/07/2014), a child under the age of 13, by striking her in the face.

Said acts being contrary to the form of the Statute, in such case made and provided, and against the peace and dignity of the State.


Jesse O'Neill, NH Bar #20723
Senior Assistant Attorney General

This is a true bill.


Foreperson

Name: Adam Montgomery
DOB: 01/22/1992
Address: Hillsborough County House of Corrections
Mailing: c/o Caroline L. Smith, Esq., NHPD, 408 Union Ave., Laconia, NH 03246
RSA: 631:2, I(d)
Offense Level: Maximum of 10-30 years State Prison (RSA 651:6, I(e); III(a)), a \$4,000 fine, or both
Case Number: 216-2022-CR-00020

Verdict: Guilty
Entered February 22, 2024

HILLSBOROUGH, SS
Northern District

THE STATE OF NEW HAMPSHIRE

SUPERIOR COURT

INDICTMENT

HNSC #216-2022-CR-2372
CHG ID# 2027112C

At the Superior Court, holden at Manchester, within and for the County of Hillsborough aforesaid, on the 20th day of January in the year of our Lord two thousand and twenty-three,

THE GRAND JURORS FOR THE STATE OF NEW HAMPSHIRE, upon oath, present that

ADAM MONTGOMERY

DOB: 01/22/1990


of or formerly of 445 Willow Street, Manchester, in the State of New Hampshire, on or about December 7, 2019, at Manchester in the County of Hillsborough aforesaid, did commit the crime of

SECOND DEGREE MURDER

(RSA 630:1-b, I(b); 651:6, I(p))


in that Adam Montgomery did recklessly cause the death of Harmony Montgomery (DOB 06/07/2014), a person under 13 years of age, under circumstances manifesting an extreme indifference to the value of human life, by repeatedly striking Harmony Montgomery on the head with a closed first.

Said acts being contrary to the form of the Statute, in such case made and provided, and against the peace and dignity of the State.



Jesse O'Neill, NH Bar #20723
Senior Assistant Attorney General

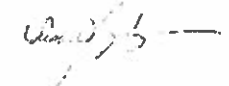
This is a true bill.



Foreperson

Name: Adam Montgomery
DOB: 01/22/1990
Address: Hillsborough County House of Corrections
RSA: 630:1-b, I(b); 651:6, I(p)
Offense Level: Special Felony; maximum of life in State Prison and a \$4,000 fine
Case No: 216-2022-CR-02372
Charge ID: 2027112C

Verdict: Guilty
Entered February 22, 2024



Administrative Court Assistant

THE STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS
Northern District

SUPERIOR COURT

INDICTMENT

HNSC #216-2022-CR-2372
CHG ID# 2027115C

At the Superior Court, holden at Manchester, within and for the County of Hillsborough aforesaid, on the 20th day of January in the year of our Lord two thousand and twenty-three,

THE GRAND JURORS FOR THE STATE OF NEW HAMPSHIRE, upon oath, present that

ADAM MONTGOMERY
DOB: 01/22/1990

of or formerly of 445 Willow Street, Manchester, in the State of New Hampshire, between approximately December 7, 2019, and January 4, 2022, at Manchester in the County of Hillsborough aforesaid, did commit the crime of

TAMPERING WITH WITNESSES AND INFORMANTS
(RSA 641:5, I(a))

in that Adam Montgomery, believing that an official proceeding, as defined in RSA 641:1, II, or investigation was pending or about to be instituted, did purposely attempt to induce or otherwise cause Kayla Montgomery to testify or inform falsely.

Said acts being contrary to the form of the Statute, in such case made and provided, and against the peace and dignity of the State.



Jesse O'Neill, NH Bar #20723
Senior Assistant Attorney General

This is a true bill.



Foreperson

Name: Adam Montgomery
DOB: 01/22/1990
Address: Hillsborough County House of Corrections
RSA: 641:5, I(a)
Offense Level: Class B Felony; maximum of 3½-7 years in State Prison and a \$4,000 fine
Case No: 216-2022-CR-02372
Charge ID: 2027115C

Verdict: Guilty
Entered February 22, 2024

The State of New Hampshire SUPERIOR COURT COMPLAINT

Case Number: **216-2022-CR-02372** Charge ID: **2027114c**

<input type="checkbox"/> VIOLATION	MISDEMEANOR	<input checked="" type="checkbox"/> CLASS A	<input type="checkbox"/> CLASS B	<input type="checkbox"/> UNCLASSIFIED (non-person)
	FELONY	<input type="checkbox"/> CLASS A	<input type="checkbox"/> CLASS B	<input type="checkbox"/> SPECIAL <input type="checkbox"/> UNCLASSIFIED (non-person)

You are to appear at the: **Hillsborough Superior Court Northern District**
 address: **300 Chestnut Street Manchester NH 03101**
 in: **Hillsborough County**
 at:
 on:

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

THE UNDERSIGNED COMPLAINS THAT:

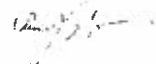
<u>Montgomery</u>		<u>Adam</u>		
Last Name		First Name		Middle
<u>445 Willow Street</u>		<u>Manchester</u>		<u>NH</u>
Address		City		State
				<u>03103</u>
				Zip
<u>Male</u>	<u>White</u>	<u>5' 9"</u>	<u>175</u>	<u>Brown</u>
Sex	Race	Height	Weight	Eye Color
				<u>Brown</u>
				Hair Color
<u>01/22/1990</u>	<u>01MYA90221</u>	<u>New Hampshire</u>		
DOB	License #:	OP License State		
<input type="checkbox"/> COMM. VEH.	<input type="checkbox"/> COMM. DR. LIC.	<input type="checkbox"/> HAZ. MAT.	<input type="checkbox"/> 16+ PASSENGER	

AT: **Manchester**
 On or about Between **12/07/2019 and 03/04/2020** in the above county and state, did commit the offense of:

RSA Name: **Abuse of Corpse**
 Contrary to RSA: **644:7**
 Inchoate:
 Extended Term Reason:

And the laws of New Hampshire for which the defendant should be held to answer, in that the defendant did: **purposely and unlawfully removed, concealed or destroyed the corpse of Harmony Montgomery or any part thereof**

Additional allegations are attached.
 against the peace and dignity of the State.
 Date: 10/25/2022

Verdict: Guilty
 Entered February 22, 2024

 Administrative Court Assistant

<u>/s/ Jesse O'Neill</u>	<u>20723</u>	<u>Jesse O'Neill</u>	
Prosecutor's Signature	NH Bar ID #	Printed Name	
Assistant Attorney General			NH Attorney General
			Prosecuting Attorney's Office

HILLSBOROUGH, SS
Northern District

THE STATE OF NEW HAMPSHIRE

SUPERIOR COURT

INDICTMENT

HNSC #216-2022-CR-2372
CHG ID# 2027113C

At the Superior Court, holden at Manchester, within and for the County of Hillsborough aforesaid, on the 20th day of January in the year of our Lord two thousand and twenty-three,

THE GRAND JURORS FOR THE STATE OF NEW HAMPSHIRE, upon oath, present that


ADAM MONTGOMERY
DOB: 01/22/1990

of or formerly of 445 Willow Street, Manchester, in the State of New Hampshire, between approximately December 7, 2019, and March 4, 2020, at Manchester in the County of Hillsborough aforesaid, did commit the crime of

FALSIFYING PHYSICAL EVIDENCE
(RSA 641:6, I)

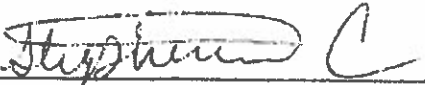
in that Adam Montgomery, believing that an official proceeding, as defined in RSA 641:1, II, or investigation was pending or about to be instituted, did purposely alter, destroy, conceal, or remove the body of Harmony Montgomery with a purpose to impair its verity or availability in such proceeding or investigation.

Said acts being contrary to the form of the Statute, in such case made and provided, and against the peace and dignity of the State.



Jesse O'Neill, NH Bar #20723
Senior Assistant Attorney General

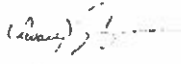
This is a true bill.



Foreperson

Name: Adam Montgomery
DOB: 01/22/1990
Address: Hillsborough County House of Corrections
RSA: 641:6, I
Offense Level: Class B Felony; maximum of 3½-7 years in State Prison and a \$4,000 fine
Case No: 216-2022-CR-02372
Charge ID: 2027113C

Verdict: Guilty
Entered February 22, 2024



Administrative Court Assistant

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
 https://www.courts.nh.gov

Court Name: Hillsborough Superior Court Northern District
 Case Name: State v. Adam Montgomery
 Case Number: 216-2022-CR-00020 Charge ID Number: 1937947C

STATE PRISON SENTENCE

Plea/Verdict: <u>Guilty</u> <input type="button" value="v"/>	
Crime/VOP: <u>2 Degree Assault - domestic violence</u>	Date of Crime/VOP:

Violation of Probation - A finding of TRUE is entered.

CONVICTION AND CONFINEMENT

A finding of GUILTY is entered.

A. The defendant has been convicted of Domestic Violence contrary to RSA 631:2-b or of an offense recorded as -Domestic Violence. See attached Domestic Violence Sentencing Addendum Section 2.

B. This Conviction is for an enhanced misdemeanor AND

1. DOES NOT include as an element of the offense the use or attempted use of physical force or the threatened use of a deadly weapon (2717-b; 2717-14)

2. DOES include as an element of the offense the use or attempted use of physical force, or the threatened use of a deadly weapon (2717-a), AND

2a. there exists a qualifying domestic violence relationship between the victim and defendant. See attached Domestic Violence Sentencing Addendum-Section 1, OR

2b. there is no qualifying domestic violence relationship between the victim and defendant (2717-14)

C. The defendant is sentenced to the New Hampshire State Prison for not more than 8 years, nor less than 4 years

There is added to the minimum sentence a disciplinary period equal to 150 days for each year of the minimum term of the defendant's sentence, to be prorated for any part of the year.

Pretrial confinement credit: 0 days.

D. This sentence is to be served as follows:

Stand committed Commencing _____

_____ of the minimum sentence and _____ of the maximum sentence is suspended.

Suspensions are conditioned upon good behavior and compliance with all of the terms of this order. Any suspended sentence may be imposed after a hearing at the request of the State. The suspended sentence begins today and ends _____ years from today or release on _____

_____ of the sentence is deferred for a period of _____ year(s). The Court retains jurisdiction up to and after the deferred period to impose or terminate the sentence or to suspend or further defer the sentence for an additional period of _____ year(s). Thirty (30) days prior to the expiration of the deferred period, the defendant may petition the Court to show cause why the deferred commitment should not be imposed, suspended and/or further deferred. Failure to petition within the prescribed time will result in the immediate issuance of a warrant for your arrest.

E. The sentence is consecutive to case number and charge ID ~~see attached~~ see I. Other _____
 concurrent with case number and charge ID _____

Case Name: State v. Adam Montgomery

Case Number: 216-2022-CR-00020

STATE PRISON SENTENCE

- F. See Addendum to State Prison Sentence Sexual Offender Assessment and Treatment.
- G. See Addendum to State Prison Sentence Substance Use Disorder Assessment and Treatment.
- H. The Court recommends to the Department of Corrections:
 - Screen and/or assess for drug and alcohol treatment needs.
 - Sentence to be served at House of Corrections
 - _____

If required by statute or Department of Corrections policies and procedures, the defendant shall provide a sample for DNA analysis.

PROBATION

- A. The defendant is placed on probation for a period of _____ year(s), upon the usual terms of probation and any special terms of probation determined by the Probation/Parole Officer.
Effective: Forthwith Upon release from _____
The defendant is ordered to report immediately, or immediately upon release, to the nearest Probation/Parole Office.
- B. Subject to the provisions of RSA 504-A:4, III, the probation/parole officer is granted the authority to impose a jail sentence of 1 to 7 days in response to a violation of a condition of probation, not to exceed a total of 30 days during the probationary period.
Violation of probation or any of the terms of this sentence may result in revocation of probation and imposition of any sentence within the legal limits for the underlying offense.

FINANCIAL OBLIGATIONS

- A. **Fines and Fees:**
Fine of \$ _____, plus a statutory penalty assessment of \$ 0.00 to be paid:
 Today
 By _____
 Through the Correctional Facility or Department of Corrections as directed by the Probation/Parole Officer. A 10 % service charge is assessed by DOC for the collection of fines and fees, other than supervision fees.
 \$ _____ of the fine and \$ _____ of the penalty assessment is suspended for _____ year(s).
A \$25.00 fee is assessed in each case file when a fine is paid on a date later than sentencing.
- B. **Restitution:**
The defendant shall pay restitution of \$ _____ to _____
 Restitution shall be paid through the Correctional Facility or Department of Corrections as directed by the Probation/Parole Officer. A 17% administrative fee is assessed for the collection of restitution.
 At the request of the defendant or the Department of Corrections, a hearing may be scheduled on the amount or method of payment of restitution.
 Restitution is not ordered because: _____
- C. **Appointed Counsel: NOTE: Financial Obligations, Section C is NOT a term and condition of the sentence.**
 The Court finds that the defendant has the ability to pay:
counsel fees and expenses in the amount of \$ _____
payable through _____ in the amount of \$ _____ per month.
 The Court order for repayment is suspended until the time of the defendant's release from state prison.
 The Court finds that the defendant has no ability to pay counsel fees and expenses.

Case Name: State v. Adam Montgomery

Case Number: 216-2022-CR-00020

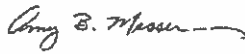
STATE PRISON SENTENCE

OTHER CONDITIONS

- A. The defendant is to participate meaningfully in and complete any counseling, treatment and educational programs as directed by the correctional authority or Probation/Parole Officer.
- B. Subject to the provisions of RSA 651-A:22-a, the Department of Corrections shall have the authority to award the defendant earned time reductions against the minimum and maximum sentences for successful completion of programming while incarcerated.
- C. Under the direction of the Probation/Parole Officer, the defendant shall tour the
 - New Hampshire State Prison
 - House of Corrections
- D. The defendant shall perform _____ hours of community service and provide proof to _____ within _____ of today's date.
- E. The defendant is ordered to have no contact with ~~family of Harmony Montgomery~~ either directly or indirectly, including but not limited to contact in-person, by mail, phone, email, text message, social networking sites or through third parties.
- F. Law enforcement agencies may destroy the evidence return evidence to its rightful owner.
- G. The defendant and the State have waived sentence review in writing or on the record.
- H. The defendant is ordered to be of good behavior and comply with all the terms of this sentence.
- I. Other:

This sentence is consecutive to those imposed in (1) 216-2022-CR-577, Charge IDs 2008742C, 743C, 1964096C, and 099C.

For Court Use Only


Honorable Amy E. Messer
May 9, 2024

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
<https://www.courts.nh.gov>

Court Name: Hillsborough Superior Court Northern District
 Case Name: State v. Adam Montgomery
 Case Number: 216-2022-CR-02372 Charge ID Number: 2027112C

STATE PRISON SENTENCE

Plea/Verdict: <u>Guilty</u> <input type="button" value="v"/>	
Crime/VOP: <u>2nd Murder - domestic violence</u>	Date of Crime/VOP: <u>12/07/2019</u>

Violation of Probation - A finding of TRUE is entered.

CONVICTION AND CONFINEMENT

A finding of GUILTY is entered.

- A. The defendant has been convicted of Domestic Violence contrary to RSA 631:2-b or of an offense recorded as -Domestic Violence. See attached Domestic Violence Sentencing Addendum Section 2.
- B. This Conviction is for an enhanced misdemeanor AND
 - 1. **DOES NOT** include as an element of the offense the use or attempted use of physical force or the threatened use of a deadly weapon (2717-b; 2717-14)
 - 2. **DOES** include as an element of the offense the use or attempted use of physical force, or the threatened use of a deadly weapon (2717-a), AND
 - 2a. there exists a qualifying domestic violence relationship between the victim and defendant. See attached Domestic Violence Sentencing Addendum-Section 1, OR
 - 2b. there is no qualifying domestic violence relationship between the victim and defendant (2717-14)
- C. The defendant is sentenced to the New Hampshire State Prison for not more than life, nor less than 45 years

There is added to the minimum sentence a disciplinary period equal to 150 days for each year of the minimum term of the defendant's sentence, to be prorated for any part of the year.

Pretrial confinement credit: 0 days.

- D. This sentence is to be served as follows:
 - Stand committed Commencing _____
 - _____ of the minimum sentence and _____ of the maximum sentence is suspended.

Suspensions are conditioned upon good behavior and compliance with all of the terms of this order. Any suspended sentence may be imposed after a hearing at the request of the State. The suspended sentence begins today and ends _____ years from today or release on _____

- _____ of the sentence is deferred for a period of _____ year(s). The Court retains jurisdiction up to and after the deferred period to impose or terminate the sentence or to suspend or further defer the sentence for an additional period of _____ year(s). Thirty (30) days prior to the expiration of the deferred period, the defendant may petition the Court to show cause why the deferred commitment should not be imposed, suspended and/or further deferred. Failure to petition within the prescribed time will result in the immediate issuance of a warrant for your arrest.

- E. The sentence is
 - consecutive to case number and charge ID see attached- section I. Other
 - concurrent with case number and charge ID _____

Case Name: State v. Adam Montgomery

Case Number: 216-2022-CR-02372

STATE PRISON SENTENCE

- F. See Addendum to State Prison Sentence Sexual Offender Assessment and Treatment.
- G. See Addendum to State Prison Sentence Substance Use Disorder Assessment and Treatment.
- H. The Court recommends to the Department of Corrections:
 - Screen and/or assess for drug and alcohol treatment needs.
 - Sentence to be served at House of Corrections
 - _____

If required by statute or Department of Corrections policies and procedures, the defendant shall provide a sample for DNA analysis.

PROBATION

- A. The defendant is placed on probation for a period of _____ year(s), upon the usual terms of probation and any special terms of probation determined by the Probation/Parole Officer.
Effective: Forthwith Upon release from _____
The defendant is ordered to report immediately, or immediately upon release, to the nearest Probation/Parole Office.
- B. Subject to the provisions of RSA 504-A:4, III, the probation/parole officer is granted the authority to impose a jail sentence of 1 to 7 days in response to a violation of a condition of probation, not to exceed a total of 30 days during the probationary period.
Violation of probation or any of the terms of this sentence may result in revocation of probation and imposition of any sentence within the legal limits for the underlying offense.

FINANCIAL OBLIGATIONS

- A. **Fines and Fees:**
Fine of \$ _____, plus a statutory penalty assessment of \$ 0.00 to be paid:
 - Today
 - By _____
 - Through the Correctional Facility or Department of Corrections as directed by the Probation/Parole Officer. A 10 % service charge is assessed by DOC for the collection of fines and fees, other than supervision fees.
 - \$ _____ of the fine and \$ _____ of the penalty assessment is suspended for _____ year(s).

A \$25.00 fee is assessed in each case file when a fine is paid on a date later than sentencing.

- B. **Restitution:**
The defendant shall pay restitution of \$ _____ to _____
 - Restitution shall be paid through the Correctional Facility or Department of Corrections as directed by the Probation/Parole Officer. A 17% administrative fee is assessed for the collection of restitution.
 - At the request of the defendant or the Department of Corrections, a hearing may be scheduled on the amount or method of payment of restitution.
 - Restitution is not ordered because: _____

- C. **Appointed Counsel:** NOTE: Financial Obligations, Section C is NOT a term and condition of the sentence.
 - The Court finds that the defendant has the ability to pay:
counsel fees and expenses in the amount of \$ _____
payable through _____ in the amount of \$ _____ per month.
 - The Court order for repayment is suspended until the time of the defendant's release from state prison.
 - The Court finds that the defendant has no ability to pay counsel fees and expenses.

Case Name: State v. Adam Montgomery

Case Number: 216-2022-CR-02372

STATE PRISON SENTENCE

OTHER CONDITIONS

- A. The defendant is to participate meaningfully in and complete any counseling, treatment and educational programs as directed by the correctional authority or Probation/Parole Officer.
- B. Subject to the provisions of RSA 651-A:22-a, the Department of Corrections shall have the authority to award the defendant earned time reductions against the minimum and maximum sentences for successful completion of programming while incarcerated.
- C. Under the direction of the Probation/Parole Officer, the defendant shall tour the
 - New Hampshire State Prison
 - House of Corrections
- D. The defendant shall perform _____ hours of community service and provide proof to _____ within _____ of today's date.
- E. The defendant is ordered to have no contact with ~~Family of Harmony Montgomery~~ either directly or indirectly, including but not limited to contact in-person, by mail, phone, email, text message, social networking sites or through third parties.
- F. Law enforcement agencies may destroy the evidence return evidence to its rightful owner.
- G. The defendant and the State have waived sentence review in writing or on the record.
- H. The defendant is ordered to be of good behavior and comply with all the terms of this sentence.
- I. Other:

This sentence is consecutive to those imposed in (1) 216-2022-CR-577, Charge IDs 2008742C, 743C, 1964098C, and 099C; (2) 2022-CR-20, Charge ID 1937947C; and (3) 2022-CR-2372, Charge IDs 2027113C, 114C, and 115C.

For Court Use Only

Amy B. Messer

HONORABLE Amy B. Messer

May 9, 2024

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
<https://www.courts.nh.gov>

Court Name: Hillsborough Superior Court Northern District
 Case Name: State v. Adam Montgomery
 Case Number: 216-2022-CR-02372 Charge ID Number: 2027115C

STATE PRISON SENTENCE

Plea/Verdict: Guilty <input type="button" value="v"/>	
Crime/VOP: Tampering with Witnesses	Date of Crime/VOP:

Violation of Probation - A finding of TRUE is entered.

CONVICTION AND CONFINEMENT

A finding of GUILTY is entered.

- A. The defendant has been convicted of Domestic Violence contrary to RSA 631:2-b or of an offense recorded as -Domestic Violence. See attached Domestic Violence Sentencing Addendum Section 2.
- B. This Conviction is for an enhanced misdemeanor AND
 - 1. **DOES NOT** include as an element of the offense the use or attempted use of physical force or the threatened use of a deadly weapon (2717-b; 2717-14)
 - 2. **DOES** include as an element of the offense the use or attempted use of physical force, or the threatened use of a deadly weapon (2717-a), AND
 - 2a. there exists a qualifying domestic violence relationship between the victim and defendant. See attached Domestic Violence Sentencing Addendum-Section 1, OR
 - 2b. there is no qualifying domestic violence relationship between the victim and defendant (2717-14)

C. The defendant is sentenced to the New Hampshire State Prison for not more than 7 years, nor less than 3.5 years

There is added to the minimum sentence a disciplinary period equal to 150 days for each year of the minimum term of the defendant's sentence, to be prorated for any part of the year.

Pretrial confinement credit: 0 days.

D. This sentence is to be served as follows:

Stand committed Commencing _____
 _____ of the minimum sentence and _____ of the maximum sentence is suspended.

Suspensions are conditioned upon good behavior and compliance with all of the terms of this order. Any suspended sentence may be imposed after a hearing at the request of the State. The suspended sentence begins today and ends _____ years from today or release on _____
 _____ of the sentence is deferred for a period of _____ year(s). The Court retains jurisdiction up to and after the deferred period to impose or terminate the sentence or to suspend or further defer the sentence for an additional period of _____ year(s). Thirty (30) days prior to the expiration of the deferred period, the defendant may petition the Court to show cause why the deferred commitment should not be imposed, suspended and/or further deferred. Failure to petition within the prescribed time will result in the immediate issuance of a warrant for your arrest.

E. The sentence is

- consecutive to case number and charge ID see attached section I. Other
- concurrent with case number and charge ID 2027115C

Case Name: State v. Adam Montgomery

Case Number: 216-2022-CR-02372

STATE PRISON SENTENCE

- F. See Addendum to State Prison Sentence Sexual Offender Assessment and Treatment.
- G. See Addendum to State Prison Sentence Substance Use Disorder Assessment and Treatment.
- H. The Court recommends to the Department of Corrections:
 - Screen and/or assess for drug and alcohol treatment needs.
 - Sentence to be served at House of Corrections
 - _____

If required by statute or Department of Corrections policies and procedures, the defendant shall provide a sample for DNA analysis.

PROBATION

- A. The defendant is placed on probation for a period of _____ year(s), upon the usual terms of probation and any special terms of probation determined by the Probation/Parole Officer.
Effective: Forthwith Upon release from _____
The defendant is ordered to report immediately, or immediately upon release, to the nearest Probation/Parole Office.
- B. Subject to the provisions of RSA 504-A:4, III, the probation/parole officer is granted the authority to impose a jail sentence of 1 to 7 days in response to a violation of a condition of probation, not to exceed a total of 30 days during the probationary period.
Violation of probation or any of the terms of this sentence may result in revocation of probation and imposition of any sentence within the legal limits for the underlying offense.

FINANCIAL OBLIGATIONS

- A. **Fines and Fees:**
Fine of \$ _____, plus a statutory penalty assessment of \$ 0.00 to be paid:
 - Today
 - By _____
 - Through the Correctional Facility or Department of Corrections as directed by the Probation/Parole Officer. A 10 % service charge is assessed by DOC for the collection of fines and fees, other than supervision fees.
 - \$ _____ of the fine and \$ _____ of the penalty assessment is suspended for _____ year(s).

A \$25.00 fee is assessed in each case file when a fine is paid on a date later than sentencing.
- B. **Restitution:**
The defendant shall pay restitution of \$ _____ to _____
 Restitution shall be paid through the Correctional Facility or Department of Corrections as directed by the Probation/Parole Officer. A 17% administrative fee is assessed for the collection of restitution.
 - At the request of the defendant or the Department of Corrections, a hearing may be scheduled on the amount or method of payment of restitution.
 - Restitution is not ordered because: _____

- C. **Appointed Counsel: NOTE:** Financial Obligations, Section C is NOT a term and condition of the sentence.
 - The Court finds that the defendant has the ability to pay:
counsel fees and expenses in the amount of \$ _____
payable through _____ in the amount of \$ _____ per month.
 - The Court order for repayment is suspended until the time of the defendant's release from state prison.
 - The Court finds that the defendant has no ability to pay counsel fees and expenses.

Case Name: State v. Adam Montgomery

Case Number: 216-2022-CR-02372


STATE PRISON SENTENCE

OTHER CONDITIONS

- A. The defendant is to participate meaningfully in and complete any counseling, treatment and educational programs as directed by the correctional authority or Probation/Parole Officer.
- B. Subject to the provisions of RSA 651-A:22-a, the Department of Corrections shall have the authority to award the defendant earned time reductions against the minimum and maximum sentences for successful completion of programming while incarcerated.
- C. Under the direction of the Probation/Parole Officer, the defendant shall tour the
 - New Hampshire State Prison
 - House of Corrections
- D. The defendant shall perform _____ hours of community service and provide proof to _____ within _____ of today's date.
- E. The defendant is ordered to have no contact with family of Harmony Montgomery either directly or indirectly, including but not limited to contact in-person, by mail, phone, email, text message, social networking sites or through third parties.
- F. Law enforcement agencies may destroy the evidence return evidence to its rightful owner.
- G. The defendant and the State have waived sentence review in writing or on the record.
- H. The defendant is ordered to be of good behavior and comply with all the terms of this sentence.
- I. Other:

This sentence is consecutive to those imposed in (1) 216-2022-CR-577, Charge IDs 2008742C, 743C, 1964096C, and 099C; (2) 2022-CR-20, Charge ID 1937947C; and (3) 2022-CR-2372, Charge ID 2027113C. Charge ID 2027114C

For Court Use Only



HONORABLE Amy B. Messer

May 9, 2024

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
 https://www.courts.nh.gov

Court Name: Hillsborough Superior Court Northern District
 Case Name: State v. Adam Montgomery
 Case Number: 216-2022-CR-02372 Charge ID Number: 2027114C

HOUSE OF CORRECTIONS SENTENCE

Plea/Verdict: Guilty <input checked="" type="checkbox"/>	
Crime/VOP: Abuse of a Corpse	Date of Crime/VOP:

Violation of Probation – A finding of TRUE is entered.

CONVICTION

A finding of GUILTY is entered.

- 1. This conviction is for a **felony**.
- 2. This conviction is for a **misdemeanor** and DOES NOT include as an element of the offense the use or attempted use of physical force or the threatened use of a deadly weapon (2717-b; 2717-14)
- 3. This conviction is for a **misdemeanor** that DOES include as an element of the offense the use or attempted use of physical force, or the threatened use of a deadly weapon (2717-a), and
 - 3a. there exists a qualifying domestic violence relationship between the victim and defendant. See attached Domestic Violence Sentencing Addendum, OR
 - 3b. there is no qualifying domestic violence relationship between the victim and defendant (2717-14)
- 4. This conviction is for Domestic Violence contrary to RSA 631:2-b or an offense recorded as **-Domestic Violence**. See attached Domestic Violence Sentencing Addendum Section 2.

CONFINEMENT

A. The defendant is sentenced to the House of Corrections for a period of 12 months.
 Pretrial confinement credit is 0 days.

B. This sentence is to be served as follows:

- Stand committed Commencing _____
- Consecutive weekends from _____ PM Friday to _____ PM Sunday beginning _____
- All** _____ of the sentence is suspended during good behavior and compliance with all terms and conditions of this order. Any suspended sentence may be imposed after hearing at the request of the State. The suspended sentence begins today and ends 25 years from today or release on charge ID number _____.
- _____ of the sentence is deferred for a period of _____.

The Court retains jurisdiction up to and after the deferred period to impose or terminate the sentence or to suspend or further defer the sentence for an additional period of _____.

Thirty (30) days prior to the expiration of the deferred period, the defendant may petition the Court to show cause why the deferred commitment should not be imposed. Failure to petition within the prescribed time will result in the immediate issuance of a warrant for the defendant's arrest.

Other: _____

C. The sentence is consecutive to case number and charge ID see attachment section I. Other concurrent with case number and charge ID 2027115C

- D. The court recommends to the county correctional authority:
- Work release consistent with administrative regulations.
 - Drug and alcohol treatment and counseling.
 - Sexual offender program.
 - _____

Case Name: State v. Adam Montgomery

Case Number: 216-2022-CR-02372

HOUSE OF CORRECTIONS SENTENCE

If required by statute or Department of Corrections policies and procedures, the defendant shall provide a sample for DNA analysis.

PROBATION

- A. The defendant is placed on probation for a period of _____ year(s), upon the usual terms of probation and any special terms of probation determined by the probation/parole officer.
Effective: Forthwith Upon release from _____
The defendant is ordered to report immediately, or immediately upon release, to the nearest Probation/Parole Field Office.
- B. Subject to the provisions of RSA 504-A:4, III, the probation/parole officer is granted the authority to impose a jail sentence of 1 to 7 days in response to a violation of a condition of probation, not to exceed a total of 30 days during the probationary period.

Violation of probation or any of the terms of this sentence may result in revocation of probation and imposition of any sentence within the legal limits for the underlying offense.

FINANCIAL OBLIGATIONS

- A. **Fines and Fees:**
Fine of \$ _____, plus a statutory penalty assessment of \$ 0.00 to be paid:
 Today
 By _____
 Through the Correctional Facility or Department of Corrections as directed by the Probation/Parole Officer. A 10 % service charge is assessed by DOC for the collection of fines and fees, other than supervision fees.
 \$ _____ of the fine and \$ _____ of the penalty assessment is suspended for _____ year(s).

A \$25.00 fee is assessed in each case file when a fine is paid on a date later than sentencing.

- B. **Restitution:**
The defendant shall pay restitution of \$ _____ to _____
 Restitution shall be paid through the Correctional Facility or Department of Corrections as directed by the Probation/Parole Officer. A 17% administrative fee is assessed for the collection of restitution.
 At the request of the defendant or the Department of Corrections, a hearing may be scheduled on the amount or method of payment of restitution.
 Restitution is not ordered because: _____

C. **Appointed Counsel: NOTE:** Financial Obligations, Section C is NOT a term and condition of the sentence.

- The Court finds that the defendant has the ability to pay:
counsel fees and expenses in the amount of \$ _____
payable through _____ in the amount of \$ _____ per month.
- The Court finds that the defendant has no ability to pay counsel fees and expenses.

Case Name: State v. Adam Montgomery

Case Number: 216-2022-CR-02372

HOUSE OF CORRECTIONS SENTENCE

OTHER CONDITIONS

- A. The defendant is to participate meaningfully and complete any counseling, treatment and educational programs as directed by the correctional authority or Probation/Parole Officer.
- B. The defendant's _____ in New Hampshire is revoked for a period of _____ effective _____
- C. Under the direction of the Probation/Parole Officer, the defendant shall tour the _____
- D. The defendant shall perform _____ hours of community service and provide proof to _____ within _____ of today's date. **Sorey Family, Rafferty Family,**
- E. The defendant is ordered to have no contact with **and Miller Family** _____ either directly or indirectly, including but not limited to contact in-person, by mail, phone, e-mail, text message, social networking sites and/or third parties.
- F. Law enforcement agencies may destroy the evidence return evidence to its rightful owner.
- G. The defendant is ordered to be of good behavior and comply with all the terms of this sentence.
- I. Other:

This sentence is consecutive to those imposed in (1) 216-2022-CR-577, Charge IDs 2008742C, 743C, 1964098C, and 099C; (2) 2022-CR-20, Charge ID 1937947C; and (3) 2022-CR-2372, Charge IDs 2027113C. ~~This sentence is only concurrent with that imposed in 2022-CR-2372, Charge ID 2024115C. and Charge ID 2027112C~~

For Court Use Only



Honorable Amy B. Messer

May 9, 2024

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
<https://www.courts.nh.gov>

Court Name: Hillsborough Superior Court Northern District
 Case Name: State v. Adam Montgomery
 Case Number: 216-2022-CR-02372 Charge ID Number: 2027113C

STATE PRISON SENTENCE

Plea/Verdict: Guilty <input type="button" value="v"/>	
Crime/VOP: Falsifying Physical Evidence	Date of Crime/VOP:

Violation of Probation - A finding of TRUE is entered.

CONVICTION AND CONFINEMENT

A finding of GUILTY is entered.

- A. The defendant has been convicted of Domestic Violence contrary to RSA 631:2-b or of an offense recorded as -Domestic Violence. See attached Domestic Violence Sentencing Addendum Section 2.
- B. This Conviction is for an enhanced misdemeanor AND
 - 1. DOES NOT include as an element of the offense the use or attempted use of physical force or the threatened use of a deadly weapon (2717-b; 2717-14)
 - 2. DOES include as an element of the offense the use or attempted use of physical force, or the threatened use of a deadly weapon (2717-a), AND
 - 2a. there exists a qualifying domestic violence relationship between the victim and defendant. See attached Domestic Violence Sentencing Addendum-Section 1, OR
 - 2b. there is no qualifying domestic violence relationship between the victim and defendant (2717-14)
- C. The defendant is sentenced to the New Hampshire State Prison for not more than 7 years, nor less than 3.5 years
 There is added to the minimum sentence a disciplinary period equal to 150 days for each year of the minimum term of the defendant's sentence, to be prorated for any part of the year.
 Pretrial confinement credit: 0 days.
- D. This sentence is to be served as follows:
 - Stand committed Commencing _____
 - _____ of the minimum sentence and _____ of the maximum sentence is suspended.
 Suspensions are conditioned upon good behavior and compliance with all of the terms of this order. Any suspended sentence may be imposed after a hearing at the request of the State. The suspended sentence begins today and ends _____ years from today or release on _____
 _____ of the sentence is deferred for a period of _____ year(s). The Court retains jurisdiction up to and after the deferred period to impose or terminate the sentence or to suspend or further defer the sentence for an additional period of _____ year(s). Thirty (30) days prior to the expiration of the deferred period, the defendant may petition the Court to show cause why the deferred commitment should not be imposed, suspended and/or further deferred. Failure to petition within the prescribed time will result in the immediate issuance of a warrant for your arrest.
- E. The sentence is
 - consecutive to case number and charge ID see attached section I. Other _____
 - concurrent with case number and charge ID _____

Case Name: State v. Adam Montgomery

Case Number: 216-2022-CR-02372

STATE PRISON SENTENCE

- F. See Addendum to State Prison Sentence Sexual Offender Assessment and Treatment.
- G. See Addendum to State Prison Sentence Substance Use Disorder Assessment and Treatment.
- H. The Court recommends to the Department of Corrections:
 - Screen and/or assess for drug and alcohol treatment needs.
 - Sentence to be served at House of Corrections
 - _____

If required by statute or Department of Corrections policies and procedures, the defendant shall provide a sample for DNA analysis.

PROBATION

- A. The defendant is placed on probation for a period of _____ year(s), upon the usual terms of probation and any special terms of probation determined by the Probation/Parole Officer.
Effective: Forthwith Upon release from _____
The defendant is ordered to report immediately, or immediately upon release, to the nearest Probation/Parole Office.
- B. Subject to the provisions of RSA 504-A:4, III, the probation/parole officer is granted the authority to impose a jail sentence of 1 to 7 days in response to a violation of a condition of probation, not to exceed a total of 30 days during the probationary period.
Violation of probation or any of the terms of this sentence may result in revocation of probation and imposition of any sentence within the legal limits for the underlying offense.

FINANCIAL OBLIGATIONS

- A. **Fines and Fees:**
Fine of \$ _____, plus a statutory penalty assessment of \$ 0.00 to be paid:
 Today
 By _____
 Through the Correctional Facility or Department of Corrections as directed by the Probation/Parole Officer. A 10 % service charge is assessed by DOC for the collection of fines and fees, other than supervision fees.
 \$ _____ of the fine and \$ _____ of the penalty assessment is suspended for _____ year(s).

A \$25.00 fee is assessed in each case file when a fine is paid on a date later than sentencing.

- B. **Restitution:**
The defendant shall pay restitution of \$ _____ to _____
 Restitution shall be paid through the Correctional Facility or Department of Corrections as directed by the Probation/Parole Officer. A 17% administrative fee is assessed for the collection of restitution.
 At the request of the defendant or the Department of Corrections, a hearing may be scheduled on the amount or method of payment of restitution.
 Restitution is not ordered because: _____

- C. **Appointed Counsel: NOTE:** Financial Obligations, Section C is NOT a term and condition of the sentence.
 The Court finds that the defendant has the ability to pay:
counsel fees and expenses in the amount of \$ _____
payable through _____ in the amount of \$ _____ per month.
 The Court order for repayment is suspended until the time of the defendant's release from state prison.
 The Court finds that the defendant has no ability to pay counsel fees and expenses.

Case Name: State v. Adam Montgomery

Case Number: 216-2022-CR-02372

STATE PRISON SENTENCE

OTHER CONDITIONS

- A. The defendant is to participate meaningfully in and complete any counseling, treatment and educational programs as directed by the correctional authority or Probation/Parole Officer.
- B. Subject to the provisions of RSA 651-A:22-a, the Department of Corrections shall have the authority to award the defendant earned time reductions against the minimum and maximum sentences for successful completion of programming while incarcerated.
- C. Under the direction of the Probation/Parole Officer, the defendant shall tour the
 - New Hampshire State Prison
 - House of Corrections
- D. The defendant shall perform _____ hours of community service and provide proof to _____ within _____ of today's date.
- E. The defendant is ordered to have no contact with family of Harmony Montgomery either directly or indirectly, including but not limited to contact in-person, by mail, phone, email, text message, social networking sites or through third parties.
- F. Law enforcement agencies may destroy the evidence return evidence to its rightful owner.
- G. The defendant and the State have waived sentence review in writing or on the record.
- H. The defendant is ordered to be of good behavior and comply with all the terms of this sentence.
- I. Other:

This sentence is consecutive to those imposed in (1) 216-2022-CR-577, Charge IDs 2008742C, 743C, 1964098 C, and 099C; and (2) 2022-CR-20, Charge ID 1937947C.

For Court Use Only

Amy B. Messer
 Honorable Amy B. Messer
 May 9, 2024

STATE OF NEW HAMPSHIRE

**HILLSBOROUGH, SS.
NORTHERN DISTRICT**

SUPERIOR COURT

State of New Hampshire

v.

Adam Montgomery

NO. 216-2022-CR-00020 & -02372

ORDER ON THE DEFENDANT'S MOTION TO SEVER

The defendant, Adam Montgomery, is charged with second degree assault based on the defendant's alleged July 2019 assault of his then 5-year-old child, Harmony Montgomery ("Harmony").¹ See Docket No. 216-2022-CR-00020. In another docket, the defendant is charged with second degree murder, tampering with witnesses and informants, falsifying physical evidence, and abuse of corpse based on his alleged murder of Harmony on December 7, 2019, and the resultant actions the State alleges were taken to conceal the murder and dispose of her body. See Docket No. 216-2022-CR-02372. The defendant previously filed an assented-to motion to join both cases, which the Court granted. Mot. to Join (Doc. 14.)²

The defendant now seeks to revisit the joining of the two dockets and moves to sever the charges before trial. Mot. to Sever (Doc. 92.) The State and the defendant subsequently exchanged responsive pleadings regarding the defendant's motion to

¹ Originally, docket number 216-2022-CR-00020 included one count of interference with custody, and two counts of endangering the welfare of a child. On June 28, 2022, the Court granted the defendant's motion without objection to sever the felony charge of second degree assault from the misdemeanor charges. (See Doc. 19 in No. 00020.)

² Unless otherwise provided, the Court references documents in docket number 216-2022-CR-02372.

sever. See State's Resp. to Def.'s Mot. to Sever (Doc. 95); Def.'s Resp. to State's Resp. (Doc. 99.) For the reasons that follow, the defendant's motion to sever is DENIED.

Factual Background

The following facts are derived from the parties' proffers in their pleadings, as well as the probable cause affidavits filed in support of both cases. (See Doc. 9 in No. 00020; Doc. 6 in No. 02372). On November 18, 2021, Crystal Sorey called the Manchester Police Department ("MPD") to report her biological daughter missing. (Doc. 9 in No. 00020.) Sorey told the MPD that she had not seen her daughter, Harmony, since approximately April 21, 2019. (Id.) At the time, the child was in the physical and legal custody of the defendant, her biological father, pursuant to a decision from the Lawrence Juvenile Court in Massachusetts on February 21, 2019. (Id.) Subsequently, an employee of the MPD contacted the Division for Children, Youth and Families ("DCYF") of the New Hampshire Department of Health and Human Services. (Id.) MPD's Initial attempts to check the previous addresses provided by DCYF proved unsuccessful. (Id.)

On December 27, 2021, DCYF notified the MPD that they were unable to locate Harmony. (Id.) As a result, the MPD initiated an investigation into Harmony's whereabouts and actively attempted to track down the defendant. (Id.) During their investigation, MPD officers and investigators made contact with members of the defendant's family. (Id.) After speaking with the defendant's uncle, Kevin Montgomery, the MPD learned that the defendant had reportedly given Harmony a black eye in July 2019 and admitted the conduct to Kevin Montgomery when Kevin was at the Montgomery house. (Id.)

On December 28, 2021, a detective with the MPD spoke with Kayla Montgomery, the defendant's wife, and inquired about the last time she had seen Harmony. (Id.) Kayla

indicated she had last seen Harmony in November or December of 2019. (Id.) She said she believed the defendant brought Harmony to Sorey around that time. (Id.) Kayla told police that she had not physically seen the defendant since late October 2021, and had not spoken with him since mid-November 2021. (Id.) On December 31, 2021, Kayla participated in a voluntary interview with MPD detectives and discussed in further detail the last day she had seen Harmony. (Id.)

Also on December 31, 2021, MPD patrol officers were on the lookout for the defendant and his then girlfriend, Kelsey Small, in Manchester. (Id.) Upon discovery of the defendant's whereabouts, detectives responded to the location to speak with the couple. (Id.) At that time, the MPD determined that Harmony was not with the defendant and her whereabouts continued to be unknown to the police.

Because DCYF was granted protective supervision of Harmony, the defendant was given an order that day instructing him to cooperate with the MPD and assist with locating Harmony. (Id.) However, the Defendant did not cooperate with police. (Id.) Upon issuance of a warrant, the defendant was arrested and charged with second degree assault for causing bodily injury to Harmony in July of 2019, as well as one count of interference with custody, and two counts of endangering the welfare of a child. See generally Docket No. 216-2022-CR-00020.

Subsequently, the MPD continued their investigation and search for Harmony. On May 20, 2022, Kayla Montgomery testified under oath before the Grand Jury in Hillsborough County Northern District as part of the Grand Jury's investigation into Harmony's disappearance. (Doc. 06 in No. 02372.) After investigating Kayla's testimony to the Grand Jury, investigators discovered she made several untruthful statements while

under oath. (Id.) As a result, an arrest warrant was obtained and Kayla was arrested on two charges of perjury on June 03, 2022. (Id.) On that same day, Kayla participated in a proffer interview at the Manchester Police Department. (Id.) During the interview, Kayla revealed that Harmony had died on December 7, 2019. (Id.)

Kayla shared that they had become homeless in November of 2019 and that she lived with the defendant and their children in their vehicle. (Id.) Kayla explained that the defendant would become upset that five-year-old Harmony was not communicating when she needed to go to the bathroom and was having accidents in the car. (Id.) Kayla indicated that after each accident, the defendant would strike Harmony in the face/head with a closed fist. (Id.) She stated that the defendant struck Harmony multiple times after one of her accidents which caused her death. (Id.)

Over the succeeding months, law enforcement personnel continued their investigation to gather evidence and corroborate Kayla's account of Harmony's death. In October of 2022, the defendant was charged with second degree murder, tampering with witnesses and informants, falsifying physical evidence, and abuse of corpse. See generally Docket No. 216-2022-CR-02372. On November 23, 2022, the defendant filed an assented-to motion to join the second degree assault charge with the charges in the second case. (See Doc. 14.) The motion was subsequently granted, and the cases were joined. (Id.)

On January 11, 2024, members of the State met with Kayla in anticipation of trial. (Doc. 95 ¶ 4.) After that meeting, the State supplemented their previously provided discovery materials and sent the defense notice of three purported changes or additions to Kayla's account of the circumstances leading to Harmony's death in the form of a

“Zwicker letter.” See State v. Zwicker, 151 N.H. 179, 192 (2004). The instant motion followed.

Analysis

In support of his motion, the defendant points to the Zwicker letter he received on January 11, 2024, and argues that there has been a substantial change in evidence in the weeks before trial. The defendant argues that the State “now portrays the second degree assault and second degree murder charges as mere parts of a larger, pervasive, and sustained pattern of abuse.” (See Doc. 92 ¶ 3.) The defendant contends that such a strategy will interfere with the jury’s ability to “impartially consider the charges separately on the own individual merits.” (Id. ¶ 9.) The extent to which, if at all, these new pieces of information, along with the other evidence in the case, would result in unfair prejudice to the defendant if the previously joined dockets remain together, “is a factor for the trial court to consider under the ‘best interests of justice’ prong” of the joinder analysis. State v. Brown, 159 N.H. 544, 554 (2009); see N.H. R. Crim. P. 20(b). Accordingly, the Court analyzes whether joinder is appropriate under the present circumstances of the cases.

Pursuant to Rule 20 of the New Hampshire Rules of Criminal Procedure, “[i]f a defendant is charged with two or more related offenses, either party may move for joinder of such charges. The trial judge shall join the charges for trial unless the trial judge determines that joinder is not in the best interests of justice.” N.H. R. Crim. P. 20. (emphasis added). In doing so, joinder seeks to “achieve efficiency and economy for both the government and the defendant.” Brown, 159 N.H. at 555 (2009); see also State v. Girard, 173 N.H. 619, 624–25 (2020) (“Joint trials avoid the duplication of evidence and may reduce inconvenience to victims and witnesses,” and “[t]he potential benefits to the

defendant may include the faster disposition of pending charges, the possibility of concurrent sentence in the event of conviction, and protection against enhanced sentencing that might occur from separate trials.”).

I. Related Offenses

The Court must first determine whether offenses are related for purposes of Rule

20. Offenses are related if they:

- (A) are alleged to have occurred during a single criminal episode; or
- (B) constitute parts of a common scheme or plan; or
- (C) are alleged to have occurred during separate criminal episodes, but nonetheless, are logically and factually connected in a manner that does not solely demonstrate that the accused has a propensity to engage in criminal conduct.

N.H. R. Crim. P. 20(a)(1)(A)–(C). As the state recognizes, the absence of evidence indicating a single criminal episode or common scheme requires the Court’s analysis to focus on whether the offenses are “logically and factually connected.” (See Doc. 95 ¶ 17.)

This is “largely determined by the close relationship among the offenses with respect to both the underlying charged conduct and the evidence to be used to prove the charges[.]”

Id. In Brown, the New Hampshire Supreme Court set forth five factors that trial courts should consider when determining whether charges resulting from separate criminal episodes are related:

- (1) the temporal and spatial relationship among the underlying charged acts;
- (2) the commonality of the victim(s) and/or participant(s) for the charged offenses;
- (3) the similarity in the defendant's mode of operation;
- (4) the duplication of law regarding the crimes charged; and
- (5) the duplication of witnesses, testimony and other evidence related to the offenses.

159 N.H. at 551–52.³ While no single factor is dispositive on the question of relatedness, these factors are “guidelines that must be sensibly applied in accord with the purposes of joinder.” Id. at 552.

Here, the parties agree that the underlying events from which the charges arise lack a clear temporal and spatial relationship, which weighs against joinder. (Compare Doc. 95 ¶ 19, with Doc. 92 ¶ 8.) However, the State argues that the remaining Brown factors support keeping the two cases joined. (See Doc. 95 ¶ 19) The Court addresses each in turn.

a) Commonality

The State argues, and the defendant does not appear to dispute, that there is commonality between the two charges because the two cases involve a common defendant and victim. (Id.) In State v. Bruno, No. 2017-0414, 2018 WL 7080488 at *3 (N.H. Dec. 26, 2018) (nonprecedential), the supreme court found the charged offenses were logically and factually related, where they involved the same perpetrator and victim. Here, the defendant is the common perpetrator and Harmony is the common victim in the second degree assault charge in the first case and the second degree murder charge in the second case. Additionally, Kayla Montgomery is a central witness in both cases. This commonality between the two cases supports the relatedness of the charges.

b) Mode of Operation

The defendant argues that the mode of operation is dissimilar in each case, because “the alleged mode of operation – striking the victim with one’s fist – differs in

³ The Court notes that the “relevant language of the joinder rule in effect at the [time of the Brown Court’s ruling], Superior Court Rule 97-A, is identical to the corresponding provisions of the current rule, New Hampshire Rule of Criminal Procedure 20.” State v. Rivera, 175 N.H. 496, 498 (2022); compare Superior Court Rule 97-A(I)(A)–(B) with N.H. R. Crim. P. 20(a)(1)–(2).

the degree of force and number of blows.” (Doc. 92 ¶ 8.) In response, the State argues that the mode of operation in the two cases supports joinder, because in each case, the defendant physically assaulted Harmony with his hands when he was angry with her. (Doc. 95 ¶ 19.) The Court agrees with the State. The supreme court has found a consistent mode of operation supporting joinder when a defendant utilizes a similar means or method when committing the alleged offenses. In Girard, the supreme court determined that the defendant’s “proficiency with technology enabled the defendant to take actions that underlay each of the . . . charges.” 173 N.H. at 626. Likewise, in Brown, the supreme court found the defendant’s mode of operation was similar for all the charges because they all involved a “drug buy” in the defendant’s car. 159 N.H. at 547, 554. While the defendant’s alleged conduct may differ in the degree of force and number of blows, the supreme court has focused on the underlying method utilized when committing the alleged offenses, which is the same in both matters. See Girard, 173 N.H. at 626. Thus, the mode of operation is sufficiently similar to weigh strongly in favor of joinder.

c) Duplication of Law

The defendant argues that there is no duplication of law because the law the jury will be expected to apply differs in both *mens rea* and *actus reus*. (Doc. 92 ¶ 8.) In response, the State argues that the law of assault and murder have running through them the same core concepts. (Doc. 95 ¶ 19.) The Court agrees with the defendant that the *mens rea* and *actus reas* in the two matters differ. There is little overlap in the law to be applied in these cases to support joinder on the basis of this factor. However, while this factor weighs against joinder, the Court does not find this factor to be particularly

significant in the context of the pending charges here. The law to be applied on the charges is not particularly complex. The Court does not find that this will create confusion amongst the jury or challenge their ability to apply the law to the facts as they find them. Therefore, while the Court finds this factor weighs against joinder, it does not find the weight significant.

d) Duplication of Witnesses, Testimony, and Other Evidence

Lastly, the Court must consider the duplication of witnesses, testimony, and other evidence, which is routinely an important factor and policy goal of joinder that contributes to the relatedness of offenses. See Brown, 159 N.H. at 552. While the defendant recognizes there will be some duplication in witnesses, he argues the overlap is minimal when compared to the number of witnesses and evidence pertaining solely to the second degree murder charge. (Doc. 92 ¶ 8.) He also points to Kevin Montgomery, who he argues will have relevant information to impart solely with respect to the second degree assault, but not for the second degree murder charge. (Id.) In response, the State admits that the length and number of witnesses for each case would be different if severed. (Doc. 95 ¶ 19.) However, the State indicates it would rely on the same witnesses “to establish Harmony’s residence, the injuries seen, the after effects of the defendant’s criminal behavior, and the defendant’s intimidation of others in his circle to prevent them from reporting or testifying to what they had witnessed, or as retribution from having done so.” (Id.) Notably, underlying both cases is testimony from law enforcement who investigated Harmony’s disappearance, as well as the testimony of Kayla Montgomery who is alleged to have directly bore witness to much of the defendant’s alleged criminal acts. Similarly, both cases will inevitably involve lengthy and detailed cross examination and

impeachment evidence of Kayla Montgomery. Further, in light of second degree assault charges being brought in connection with the police investigation of disappearance of Harmony, there would be significant duplication of evidence regarding preliminary matters as well. While the two cases lack a complete duplication in witnesses and testimony, the Court finds significant duplication weighing strongly in favor of joinder. See Magoon, 2019 WL 2184829 at *3 (affirming the trial court’s determination that significant overlap in witnesses, including “the witness testimony and evidence that explains the investigation and the events leading to the discovery of each alleged victim” supported joinder).

For the aforementioned reasons, the Court concludes that the underlying offenses are related and thus finds that the Brown factors weight in favor of joinder.

II. Best Interests of Justice

After considering the Brown relatedness factors, the Court must evaluate whether joinder will offend the best interests of justice. See Brown, 159 N.H. at 554. The New Hampshire Supreme Court has articulated the “best interests of justice” standard as follows:

[C]harges should be tried separately whenever it is deemed appropriate to promote a fair determination of the defendant’s guilt or innocence, which includes evaluating whether, in view of the number of offenses charged and the complexity of the evidence to be offered, the trier of fact will be able to distinguish the evidence and apply the law intelligently to each offense.

Joinder can give rise to other concerns of undue prejudice as well, which may cause the best interests of justice to override conducting a single trial . . . [such as when] charges may be likely to unusually inflame the jury against the defendant . . . [or when] a weak case is joined with a strong case . . . A defendant can also be disadvantaged if the available defenses are inconsistent or if the defendant wants to testify as to one offense but not as to others. Ultimately, in determining the best interest of justice, the purposes underlying joinder, i.e., efficiency and economy, must give way

when conducting a single trial would jeopardize a defendant's right to a fair trial.

Id. at 555–56.

Accordingly, the Court now considers the defendant's argument that the State "portrays the second degree assault and second degree murder charges as mere parts of a larger, pervasive, and sustained pattern of abuse." (Doc. 92 ¶ 3.) Specifically, the defendant argues that the State "intends to employ a trial strategy of bootstrapping the separate offenses and portray a long and unrelenting pattern of abuse and neglect that defies a jury's ability to impartially consider the charges separately on their own individual merits." (Id. ¶ 9.) In support thereof, the defendant points to the Zwicker letter which provided three asserted deviations from Kayla's originally anticipated testimony as discerned from Kayla's interview on January 11, 2024. Notably, the letter notifies the defendant of the following: (1) Kayla herself saw the defendant strike Harmony in the week prior to the family becoming homeless; (2) Kayla disclosed that she believes the defendant cut off contact with Crystal Sorey because he did not want her to discover he was bruising Harmony; and (3) Kayla now describes Harmony as skinny and looking exhausted at the time they were living homeless in their car. (Id. ¶¶ 3–7.)

The Court notes, however, that evidence of abuse is not necessarily inadmissible or unfairly prejudicial to the defendant. Rule 404(b)(1) of the New Hampshire Rules of Evidence provides in pertinent part that "[e]vidence of other crimes, wrongs, or acts is not admissible to prove the character of a person . . . [i]t may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident." In State v. Thomas, 168 N.H. 589, 600 (2016), the supreme court affirmed the admission of evidence of physical abuse under

Rule 404(b) and highlighted that evidence of other forms of abuse the defendant perpetrated against the victim was relevant to show the conduct was committed knowingly and reflected that the defendant's actions were part of an obvious and deliberate pattern of abuse.

While the State has not noticed any intent to admit evidence under Rule 404(b), the supreme court has indicated “[o]ther act’ evidence is ‘intrinsic,’ and therefore not subject to Rule 404(b), when the evidence of the other act and the evidence of the crime charged are ‘inextricably intertwined’ or both acts are part of a ‘single criminal episode’ or the other acts were ‘necessary preliminaries’ to the crime charged.” State v. Wells, 166 N.H. 73, 77–78 (2014) (quotation and citation omitted); see United States v. Hardy, 228 F.3d 745, 748 (6th Cir. 2000) (characterizing evidence of “other acts that are inextricably intertwined with the charged offense” as “background evidence”). “Typically, such evidence is a prelude to the charged offense, is directly probative of the charged offense, arises from the same events as the charged offense, forms an integral part of a witness's testimony, or completes the story of the charged offense.” Wells, 166 N.H. at 77–78. Against this backdrop, the first and third deviations in Kayla's anticipated testimony may be properly admissible as intrinsic evidence of other acts.⁴ Otherwise, the State indicates that it has no intention of raising the second deviation regarding Kayla's opinions about why the defendant cut off contact with Sorey in its case-in-chief.

Given the state of the evidence at this time, including the information in the January 11, 2024 Zwicker letter, and taking into account the Court's ruling on the defendant's motion to exclude Rule 404(b) evidence, the Court is unpersuaded that the second

⁴ This evaluation and determination on the admissibility of potentially intrinsic evidence will be more thoroughly discussed in another order in response to the defendant's pending motions *in limine*.

degree assault and second degree murder charges, when tried in the same case, prevent a jury from impartially considering the charges. Notably, the lack of any Rule 404(b) evidence in the period between the alleged second degree assault in July of 2019 and directly preceding the alleged second degree murder in December of 2019, would allow a jury to discretely consider the two charges. See Bean v. Calderon, 163 F.3d 1073, 1085 (9th Cir. 1998) (“[P]rejudice generally does not arise from joinder when the evidence of each crime is simple and distinct[.]”). Further, the underlying charges and the evidence supporting them are not so complex as to raise concerns that a jury cannot intelligently apply the law and relevant facts to each charge. See Bruno, 2018 WL 7080488 at *4 (noting the jury’s ability to distinguish the evidence and apply the law intelligently to each offense even when joinder resulted in the joining of thirty-five charges, some of which the defendant believed could risk “inflaming the emotions of the jury”). Any remaining concern that the jury will convict a defendant upon the accumulated effect of the evidence is appropriately quelled through carefully crafted jury instructions. See Magoon, 2019 WL 2184829 at *4 (noting the danger of propensity was mitigated when the “trial court committed to taking measures, including craft[ing] instructions that will clearly and carefully convey to the jury what may be considered when evaluating [the defendant’s] guilt or innocence for each offense.”).

Ultimately, both the State and the defendant can benefit from joinder in this circumstance. Joinder “enables the state to avoid the duplication of evidence required by separate trials, to reduce the inconvenience to victims and witnesses, to minimize the time required to dispose of the offenses, and to achieve a variety of other economies in connection with prosecutorial and judicial resources.” Brown, 159 N.H. at 552. Likewise,

when “charges are joined into a single trial, the defendant may . . . raise reasonable doubt as to his responsibility for one of the charges, [and] that doubt might undermine the strength of the State's case as to all of the other charges.” Bruno, 2018 WL 7080488 at *3. Additionally, “[i]f the defendant successfully impeaches the credibility of [a witness] in one instance, such impeachment will [a]ffect the credibility of the witnesses in regard to their testimony as to all offenses.” Brown, 159 N.H. at 556. Here, the recent deviations in Kayla Montgomery’s intended testimony, as indicated in the Zwicker letter, provide additional opportunity for the defendant to seek to impeach her credibility, but does not support severance.


Therefore, the Court finds that the jury will be able to distinguish the evidence and apply the law intelligently to each offense without jeopardizing the defendant’s right to a fair trial and the best interests of justice are served by consolidation. See Brown, 159 N.H. at 554.

Conclusion

For the foregoing reasons, the Court determines that the charges in the two dockets are sufficiently related and comport with the best interests of justice. Accordingly, the State’s motion to sever the two dockets is DENIED.

SO ORDERED.

January 25, 2024
Date



Amy B. Messer
Presiding Justice

Clerk's Notice of Decision
Document Sent to Parties
on 01/25/2024

STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS.
NORTHERN DISTRICT

SUPERIOR COURT

State of New Hampshire

v.

Adam Montgomery

Docket No. 216-2022-CR-00020
216-2022-CR-02372

OMNIBUS ORDER ON PENDING MOTIONS *IN LIMINE*

The defendant, Adam Montgomery, is charged with second degree assault based on the defendant's alleged July 2019 assault of his then 5-year-old child, Harmony Montgomery ("Harmony").¹ See Docket No. 216-2022-CR-00020. In another docket, the defendant is charged with second degree murder, tampering with witnesses and informants, falsifying physical evidence, and abuse of corpse based on his alleged murder of Harmony on December 7, 2019, and the subsequent actions the State alleges were taken to conceal the murder and dispose of her body. See Docket No. 216-2022-CR-02372. These matters have been joined for trial. Presently before the Court are numerous motions *in limine*. For the reasons set forth below, the Court finds and rules as follows.

I. Defendant's Motion *in Limine* to Preclude the State from Introducing Evidence of the Defendant's Encounter with Law Enforcement on the Morning of December 31, 2021 (Doc. 66); State's Objection (Doc. 71)²

¹ Originally, docket number 216-2022-CR-00020 included one count of interference with custody, and two counts of endangering the welfare of a child. On June 28, 2022, the Court granted the defendant's motion without objection to sever the felony charge of second degree assault from the misdemeanor charges. (See Doc. 19 in No. 00020.)

² The defendant filed identical motions in each of the above-captioned dockets. The State filed its objections only in docket 216-2022-CR-2372. Since both the defendant's motions and the State's responses are in docket 216-2022-CR-2372, the document numbers referred to in this order are those

The defendant moves to exclude all evidence of his encounter with the police on the morning of December 31, 2021. (Doc. 66.) The defendant contends that since his statements from that morning have been excluded, *any* evidence of the encounter will cause the jury to engage in speculation regarding the encounter and impinges on his right to remain silent. He further asserts that because his statements have been suppressed, the probative value of the encounter is substantially outweighed by the danger of unfair prejudice. N.H. R. Ev. 401, 402, 403. In significant measure, the Court disagrees.

The defendant is correct that the State may not use the defendant's statements from the morning of Dec. 31, 2021 in its case-in-chief. State v. Remick, 149 N.H. 745, 747 (2003) (the use of pre-arrest silence in the State's case-in-chief is unconstitutional). As noted by the State, however, much of the encounter involves relevant information which includes neither questioning of the defendant nor the defendant's statements. The Manchester Police Department issued a "be on the lookout" for the defendant's girlfriend's vehicle "and individual to check on the condition of a child." Ofc. Stanzel's report indicated the "goal in making contact with [the defendant] was to attempt to make contact with [the defendant's] daughter Harmony to check her condition as family had not seen her in approximately two years." Ofc. Stanzel reported that he identified the vehicle and prior to interacting with the defendant, made observations of the defendant, who he was with, and his living situation. (Doc. 71 ¶ 4.) These circumstances are relevant to the investigation and will not cause the jury to speculate on excluded or otherwise

found in docket 216-2022-CR-2372. The rulings, however, apply to the motions which have been filed in docket 216-2022-CR-00020 as well.

inadmissible evidence. Therefore, the Court denies the defendant's request to exclude this evidence. N.H. R. Ev. 401, 402, 403.

To the extent that the State seeks to admit evidence of the defendant's "demeanor" by asserting that he "became defensive and stated that he did not want to speak with officers," (Doc. 71 ¶ 4), the Court finds the officer's questioning and the defendant's answers inadmissible. It is somewhat difficult to ascertain from the State's pleading precisely how the State intends to introduce evidence of the defendant's demeanor. However, to the extent the State intends to introduce questions posed to the defendant but withhold the defendant's answer, the Court agrees with the defendant that this would lead the jury to improperly speculate on the answer to the question and/or consider the defendant's invocation of the right to remain silent. Therefore, the Court finds that questions posed to the defendant which resulted in his asserting his right to silence are excluded. Further, any assessment of his demeanor based on his asserting his right to silence is also precluded.

Accordingly, the defendant's motion to preclude this evidence is **DENIED in part and GRANTED in part.**

II. Defendant's Motion *in Limine* Re: Allegations of Prior or Subsequent Bad Acts of the Defendant (Doc. 68); State's Partial Objection (Doc. 76); Defendant's Response (Doc. 87)

The defendant moves to exclude eleven categories of evidence the defendant asserts are inadmissible pursuant to the New Hampshire Rules of Evidence 401, 402, 403, and 404 as well as the defendant's rights to due process and a fair trial as guaranteed by the New Hampshire and United States Constitutions. (Doc. 68.) The State

filed a partial objection, (Doc. 76), and the defendant filed a reply, (Doc. 87.) For the reasons that follow, the motion is **GRANTED in part and DENIED in part**.

First, the defendant moves to exclude evidence of conduct underlying the charges in docket numbers 216-2022-CR-00577, 216-2023-CR-00507, and 216-2023-CR-00509 and any other evidence relating to the defendant's possession and/or sale of firearms. (Doc. 68 ¶ 2. a.) The State responds that it does not intend to introduce this evidence in its case-in-chief and has no objection to the exclusion of the evidence with the exception of convictions in docket 216-2022-CR-00577 should the defendant testify. The Court agrees that the convictions in docket 216-2022-CR-00577 are admissible under Rule 609 if the defendant testifies. Accordingly, the defendant's motion to exclude evidence related to the firearms is **GRANTED in part and DENIED in part** consistent with this ruling.

Second, the defendant moves to exclude allegations of domestic abuse against Kayla Montgomery. (Doc. 68 ¶ 2. b.) The State argues it intends to introduce evidence that on or between December 7, 2019 and January 4, 2022, the defendant threatened, physically assaulted, and abused Kayla Montgomery in an attempt to induce her to testify or inform falsely for the purpose of proving the charge of witness tampering. (Doc. 76 ¶¶ 8–16.) The State asserts that these facts will be proved through the testimony of Kayla Montgomery and other witnesses and corroborative evidence as “direct evidence that the defendant tampered with Kayla.” As this is direct evidence to support the charge of witness tampering, the Court finds that it is not “[e]vidence of other crimes, wrongs or acts” under Rule 404(b). The State has made no showing, however, that conduct prior to or after these dates would be admissible. Therefore, evidence of domestic abuse is limited to conduct occurring on or between December 7, 2019 and January 4, 2022.

Accordingly, the defendant's request to exclude is **GRANTED in part and DENIED in part** consistent with this ruling.

Third, the defendant moves to exclude evidence of neglect and assaults on Harmony Montgomery other than the charged conduct. (Doc. 68 ¶ 2. c.) The State argues that it intends to introduce evidence of Harmony's condition, her bruises and low weight, on or about November 29, 2019, just before she was allegedly murdered by the defendant. The State will present witness testimony that on that date the Montgomery family was involved in a traffic incident, the police arrived on scene, and the defendant covered Harmony with a blanket so she would not be seen by the police because of her condition. The State contends that this explains why the police did not see Harmony on that day and undermines the defendant's claim that he had returned Harmony to her mother, Crystal Sorey, the day before Thanksgiving. The Court agrees with the State that these allegations are admissible as they are "inextricably intertwined" with the charged crimes and under the balancing test of Rule 403, their probative value is not substantially outweighed by their prejudicial effect. N.H. R. Ev. 403, 404(b).

"'Other act' evidence is 'intrinsic'" and therefore not subject to Rule 404(b), "when the evidence of the other act and the evidence of the crime charged are 'inextricably intertwined' or both acts are part of a 'single criminal episode' or the other acts were 'necessary preliminaries' to the crime charged." State v. Wells, 166 N.H. 73, 77 (2014) (citation omitted). "Intrinsic" or "inextricably intertwined" evidence will have a causal, temporal, or spatial connection with the charged crime. Id. (citation omitted). As noted in Wells, such evidence is typically a prelude to the charged offense, directly probative of the charged offense, arises from the same events as the charged offense, forms an

integral part of a witness's testimony, or completes the story of the charged offense. Id. at 77, 78.

Here, evidence that the defendant caused bruising on Harmony and that she was of very low weight and he therefore hid her under a blanket when police responded to their car accident, has a close spatial and temporal relationship with the charged offenses. It is part and parcel of the events that took place during the days leading up to Harmony's reported death and is evidence related to the defendant's claim that he had taken Harmony to her mother. The "evidence is admissible under the rationale that events do not occur in a vacuum, and the jury has a right to hear what occurred immediately prior to and subsequent to the commission of the charged act so that it may realistically evaluate the evidence." Id. at 78 (quotation and brackets omitted). Therefore, the Court finds that evidence of Harmony's condition and defendant's alleged assault on Harmony resulting in bruising on or about November 29, 2019 is intrinsic evidence and is properly analyzed pursuant to Rule 403, rather than 404(b). Id. at 79.

In assessing whether the evidence should be excluded under Rule 403, the Court notes the probative value, and relevance, identified above. The Court next analyzes whether and to what extent, if any, there exists any unfair prejudice related to admission of such evidence. While there is certainly a negative inference associated with the defendant's alleged treatment of Harmony and her condition on or about November 29, 2019, the Court does not find that its "primary purpose or effect is to appeal to a jury's sympathies, arouse its sense of horror, provoke its instinct to punish, or trigger other mainsprings of human action that may cause a jury to base its decision on something other than the established propositions in the case." State v. Nightingale, 160 N.H. 569,

574 (2010). “Unfair prejudice is not, of course, mere detriment to a defendant from the tendency of the evidence to prove guilt, in which sense all evidence offered by the prosecution is meant to be prejudicial.” Id. “Rather, the prejudice required to predicate reversible error is an undue tendency to induce a decision against the defendant on some improper basis, commonly one that is emotionally charged.” Id. Here, the evidence sought to be presented is not unfairly prejudicial. Although the evidence is somewhat inflammatory, the Court does not find it is so prejudicial as to induce a decision on the defendant’s charges on an improper basis or “provoke [a jury’s] instinct to punish” or arouse its “sense of horror” in the context of all of the other evidence in the case. Wells, 166 N.H. at 81 (citation omitted). Therefore, the Court finds that the probative value of the evidence addressed above is not substantially outweighed by its prejudicial effect and is admissible.

This ruling is limited, however, to the evidence of the defendant’s conduct and Harmony’s condition in the two weeks leading up to, and including, November 29, 2019, and between November 29, 2019 and December 7, 2019. Kayla Montgomery had previously reported that the defendant hit Harmony on more than one occasion when they were living in the Chrysler Sebring. According to the probable cause affidavit, the family was evicted and living out of the car as of November 27, 2019. Aff. (Doc. 6.) Kayla has more recently added that “she witnessed Adam strike Harmony during the week prior to the family becoming homeless.” Def.’s Mot. to Sever (Doc. 92 ¶ 4.) The Court finds that Kayla’s testimony regarding the defendant striking Harmony during the week prior, is sufficiently close in time, related, and intrinsic to the charged offenses to be admissible

for the same reasons as noted above regarding her bruising and condition and the police encounter on November 29, 2019.

However, the Court finds that although the above testimony is admissible, this does not give the State carte blanche to enter into evidence other instances of purported neglect or abuse outside this timeframe. As the defendant points out, the State did not provide timely notice of other crimes, wrongs or bad acts as required pursuant to Rule 12. N.H. Crim. P. 12. Although the State now wishes to assert that in the “months and weeks prior to Harmony’s death, she appeared to be malnourished and covered in bruises,” they provide little in the way of specific information regarding instances of conduct outside the November/December 2019 timeframe. The State points only to evidence that Harmony weighed approximately 35 pounds during a doctor’s visit in June 2019, and testimony from another witness describing her as looking malnourished. Based upon the limited information provided to the Court, the Court does not find that evidence of alleged abuse or neglect in the “months” leading up to Harmony’s death, other than that identified above, is either intrinsic or admissible pursuant to Rule 404(b).

Accordingly, the State may introduce evidence of allegations of abuse and neglect related to the November/December 2019 timeframe noted above, as well as evidence of the charged conduct in docket number 216-2022-CR-20. The State may not introduce evidence of allegations of abuse and neglect outside these time periods.

The motion is therefore **GRANTED in part and DENIED in part** consistent with this ruling.

Fourth, the defendant moves to exclude allegations of assaults and assaultive behavior, including but not limited to the allegations of an assault on Corey Watts. (Doc.

68 ¶ 2. d.) The defendant does not elaborate on the evidence to be excluded. For its part the State objects by referring to Walmart surveillance video footage shown during the trial in docket 216-2022-CR-557 showing the purported disposal of electronic devices. (Doc. 76 ¶¶ 25, 26.) If there is a connection here, the Court does not see it. The Court cannot make a substantive ruling based upon the information provided in the defendant's motion or the State's response. Accordingly, this request is **DENIED WITHOUT PREJUDICE**. Either party may seek further ruling by filing a new pleading.

Fifth, the defendant seeks to exclude evidence of allegations that he sold drugs. (Doc. 68 ¶ 2. e.) The State has no objection. This request is **GRANTED**.

Sixth, the defendant seeks to exclude evidence that the defendant used drugs, including, but not limited to, allegations that he experienced episodes of paranoia due to illegal drug use. (Doc. 68 ¶ 2. f.) The State describes at length the evidence it would introduce relating to the defendant's drug use on the date of the alleged murder of Harmony as well both leading up to that date and the months that followed. The State asserts that this evidence is intrinsic to the charged conduct for several reasons. First, the drug use explains the circumstances leading to the Montgomery family moving from location to location as well as the period during which they were living in their car. The State further argues it goes directly to the circumstances surrounding Harmony's death as it is alleged that the defendant used drugs after striking Harmony several times rather than checking on her leading to her death. The Court finds that evidence of drug use by the defendant in this context is inextricably intertwined with the charged conduct and its probative value is not substantially outweighed by the danger of unfair prejudice, and it is therefore admissible. N.H. R. Ev. 403. To the extent that subsequent to the alleged death

of Harmony, Kayla or other witnesses would testify that the defendant was using drugs and it affected his conduct with respect to the tampering with witness, the Court finds it is also inextricably intertwined with the charged conduct. Beyond that, however, the Court declines to rule and admission of such evidence is subject to contemporaneous objection. Accordingly, the defendant's request to exclude evidence of the defendant's drug use is **DENIED**.

Seventh, the defendant moves to exclude evidence of allegations of theft. (Doc. 68 ¶ 2. g.) The State does not intend to introduce evidence of theft in its case-in-chief. The Court finds evidence of theft inadmissible unless the defendant chooses to testify, in which case it may be admissible under New Hampshire Rule of Evidence 609. The request is therefore **GRANTED in part and DENIED in part** consistent with this ruling.

Eighth, the defendant moves to exclude allegations of domestic violence perpetrated on Crystal Sorey and evidence the defendant kept Crystal Sorey from seeing Harmony. (Doc. 68 ¶ 2. h.) The State does not seek to introduce evidence of allegations domestic abuse against Crystal Sorey. The Court finds that such evidence is inadmissible. The State does argue, however, that the facts and circumstances of the defendant's conduct in interfering with Crystal Sorey's efforts to have contact with Harmony after her death are intrinsic to the charged crimes. The Court agrees. The State seeks to introduce evidence that the defendant blocked Crystal Sorey from having contact with Harmony beginning in April 2019, after the last time Crystal saw Harmony. The State also intends to introduce evidence of the efforts Crystal Sorey made to find Harmony prior to alerting police and the police department's involvement. The defendant's conduct with respect to communications or acts related to Crystal Sorey as she attempted to be in

contact with Harmony are inextricably intertwined with the charged conduct. Accordingly, the defendant's request to exclude evidence of domestic violence against Crystal Sorey is **GRANTED**. However, the defendant's request as it pertains to excluding evidence related to the defendant's interference with Crystal Sorey's efforts to see Harmony Montgomery at or after the time of her death is **DENIED**.

The defendant also moves to exclude evidence of allegations of wrongdoing in the defendant's attempt to obtain custody of Harmony (Doc. 68 ¶ 2. i.) and evidence of the defendant's juvenile adjudications and time at the Youth Development Center (Doc. 68 ¶ 2. j.). The State has no objection to the granting of these requests. Accordingly, the requests are **GRANTED**.

Finally, the defendant moves to exclude evidence of the defendant's prior convictions unless he testifies. (Doc. 68 ¶ 2. k.). State has no objection. This request is **GRANTED**.

III. Defendant's Motion *in Limine* to Admit Impeachment Evidence Re: Kayla Montgomery (Doc. 69); State's Partial Objection (Doc. 74); Defendant's Response (Doc. 89)

The defendant moves to admit evidence of Kayla Montgomery's prior criminal convictions, as well as certain instances of both charged and uncharged misconduct. (Doc. 69 I. a. – g.) The State filed a partial objection, (Doc. 74), and the defendant filed a reply, (Doc. 89.) For the reasons that follow, the defendant's motion is **GRANTED**.

First, in subparagraphs a, b, and c, the defendant moves to admit criminal convictions qualifying for admission pursuant to N.H. R. Ev. 609(a)(1)–(2). The State

agrees that these convictions are admissible under Rule 609. Accordingly, defendant's request as to I a, b, and c is **GRANTED**.

Second, the defendant moves to admit Kayla Montgomery's previously pending charges of receiving stolen property and theft by deception, (Doc. 69 I. d., I. e.), arguing that although these charges did not proceed to conviction, they go directly to her credibility as they were pending while she was cooperating with the police and provide her with a motive to curry favor with the police. The defendant asserts that they are admissible pursuant to N.H. R. Ev. 401, 402, 403, 404(b) and the defendant's constitutional rights to confrontation. The State, again, does not disagree. The Court finds that these pending charges are admissible and defendant's request for admission of subparagraphs I. d. and I. e. is **GRANTED**.

Next, the defendant moves to admit uncharged conduct of the crime of dealing/possession of prescription drugs. The offense date alleged is September 9, 2022. The defendant argues that this charge was pending during the time period that negotiations regarding her felony charges were ongoing. Additionally, the State opines that the information may be admissible as intrinsic evidence as it relates generally to the living situation and family dynamics of the defendant, Kayla Montgomery and the children just prior to and after Harmony's death. The State does not object to admission of this information on the grounds that it is inextricably intertwined with the case as a whole. In light of both the defendant's and State's positions, the defendant's request to admit the uncharged conduct of dealing/possession of prescription drugs on or about September 9, 2022 is **GRANTED**.

Finally, the defendant moves to admit evidence that in November of 2019, Kayla Montgomery committed the crime of theft from her employer, admitted to the theft, and was terminated. Kayla Montgomery told the police and testified to the grand jury, however, that on November 30, 2019 she was at work at Dunkin' Donuts and the defendant took Harmony Montgomery to her mother, Crystal Sorey. She subsequently informed the police that this statement was untrue and that she had been with Harmony Montgomery until December 7, 2019, when the defendant caused her death. The State objects to admission of the evidence arguing it is not a crime of dishonesty pursuant to New Hampshire Rule of Evidence 609, nor is it inextricably intertwined with the charged conduct.

There is little doubt that the jury will hear evidence Kayla Montgomery initially told police that she was working at Dunkin' Donuts in late November when the defendant had taken Harmony to her mother. The jury will also hear evidence that Kayla Montgomery did not work at Dunkin' Donuts at that time. The jury will hear that Kayla was convicted of perjury for her statements to the grand jury. Although the reason she was terminated from Dunkin' Donuts is not essential to the charged conduct, the Court finds it is sufficiently intertwined with the circumstances of her presence or lack thereof at Dunkin' Donuts and to the perjury charge, as well as sufficiently part of the criminal episode to merit admission. See State v Papillion, 173 N.H. 13 (2020). Additionally, its probative value is not substantially outweighed by the danger of unfair prejudice, confusing the issues, misleading to the jury, undue delay, or wasting time. N.H. R. Ev. 403. Accordingly, after consideration of the arguments presented and the applicable law, the request to admit evidence of uncharged misconduct of theft at Dunkin' Donuts is **GRANTED**.

IV. Defendant's Motion *in Limine* to Exclude Evidence of Home Depot Purchases (Doc. 70); State's Objection (Doc. 75); Defendant's Response (Doc. 84)

The defendant moves to exclude evidence of a February 15, 2020 purchase of pelletized limestone from Home Depot in Hooksett and a February 26, 2020 purchase of pelletized limestone, a metal cutting diamond blade, a fuel grinder, and a lithium-ion battery and charger from the Home Depot in Manchester. (Doc. 70.) The defendant contends that the evidence is irrelevant because the identity of the purchaser is unknown.

Evidence is relevant if it has any tendency to make a fact of consequence to the determination more or less probable than it would be without the evidence. N.H. R. Ev. 401. Here, there is substantial circumstantial evidence that the defendant purchased the lime identified above and used it in the commission of the crimes charged. (Doc. 75 ¶¶ 2–8.) The State will introduce evidence that on February 26, 2020, a cash withdrawal was made from Kayla Montgomery's bank account, sufficient to cover the purchased items, approximately twenty minutes prior to the purchase. The State will also introduce evidence of the steps taken by investigators to identify purchases of lime made throughout the surrounding area, and their ability to exclude the defendant and his known associates as the purchaser of all but the two cash purchases. The timing of the February 26, 2020 purchase in relation to the date that Kayla Montgomery indicates that lime was used on Harmony's body in the Union Street apartment, as well as the work order to snake the drain in the apartment and Kayla's identification of a bag which has the same SKU as the one purchased create a sufficient nexus to the defendant for a finding of relevancy. The challenges that the defendant points out as undermining the nexus of these items with the defendant are all proper fodder for cross-examination. To the extent


that the defendant seeks to present evidence that the cash withdrawal was for drugs or guns, he may seek a limiting instruction from the court to avoid this information being used for an improper purpose. Such evidence is relevant to the charges brought in this matter and there is adequate evidence of a nexus between the purchase of the items and the defendant. Based on the foregoing, the motion to exclude is **DENIED**.

V. State's Motion *in Limine* to Preclude the Defendant's Use of His Own Statements (Doc. 81); Defendant's Response (Doc. 91)

After review and consideration of the State's motion, (Doc. 81), and the defendant's response, (Doc. 91), the motion is **GRANTED**. The defendant is not permitted to introduce evidence of his own statements absent a showing of an exception to the rule against admission of hearsay or other non-hearsay rule.

SO ORDERED.

January 25, 2024
Date



Amy B. Messer
Presiding Justice

Clerk's Notice of Decision
Document Sent to Parties
on 01/25/2024

THE STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS.

HILLSBOROUGH COUNTY SUPERIOR COURT - NORTH
STATE OF NEW HAMPSHIRE

V.

ADAM MONTGOMERY

216-2022-CR-20

216-2022-CR- 2372

MOTION TO RECONSIDER

Now comes Adam Montgomery, by and through his Public Defenders, Caroline L. Smith, Esq., and James T. Brooks, Esq., and hereby moves this Honorable Court to reconsider four of its rulings in the Omnibus Order issued on January 25, 2024.

As grounds for this motion, the follow is stated:

1. Adam Montgomery is scheduled for a February 6, jury selection on charges of second degree assault and second degree murder as well as other charges relating to the death of Harmony Montgomery.
2. On January 25, 2024, this Court issued an Omnibus Order addressing the various motions *in limine* filed in this case. The Court issued the order without first granting and conducting the evidentiary hearings requested by the defense. For purposes of this motion to reconsider, the Court made the following rulings: (1) that evidence of domestic abuse allegedly perpetrated by Adam Montgomery against Kayla Montgomery between December 7, 2019 and January 4, 2022 would be admissible regardless of any apparent connection to the witness tampering charge; (2) that the State may introduce evidence of Adam Montgomery's drug use to "explain[] the circumstances leading to the Montgomery family moving from location to location as well as the period during which they were living in their car;" (3) that Montgomery's "conduct with respect to communications or acts related to Crystal Sorey as she attempted to be in contact with Harmony are inextricably intertwined with the charged conduct.;" and (4) the Court denied without prejudice Montgomery's request to exclude pursuant to Rule of Evidence 404(b) evidence of other assaults or assaultive behavior alleged perpetrated by Montgomery against individuals other than

Harmony or Kayla Montgomery, including but not limited to allegations of an assault on Corey Watts.

3. In filing the instant motion, Montgomery maintains and preserves all his previous arguments, incorporating them herein, and does not accede to any adverse ruling made by the Court in its Omnibus Order. The purpose of this pleading, while preserving his prior positions and requests for relief, is simply to further address the four rulings by the Court described above.

4. The first ruling this motion seeks to further address is the Court's ruling that evidence of domestic abuse allegedly perpetrated against Kayla Montgomery by Adam Montgomery is "limited to conduct occurring on or between December 7, 2019 and January 4, 2022." See Omnibus Order at 4. Though imposing a temporal limitation on the introduction of such evidence, the Court appears to impose no other. In speaking with the police, however, Kayla attributed some of the purported domestic abuse to factors unrelated to alleged witness tampering, the basis for which the Court deems the evidence admissible as "direct evidence" of one of the crimes charged. According to Kayla, Adam would not only become aggressive out of alleged fear that Kayla had informed about Harmony but also because he thought she was either cheating on him or trying to poison him. See Bates Stamp 1205. Kayla said that after the family moved to Lake Avenue, Adam "slowly started getting nuts." See id. at 1208. When he would use drugs, he would become paranoid and accuse her of "trying to kill him," I was telling about Harmony, or I was cheating on him, or all three." See id. at 1205. Then, when sober, he would apologize. See id. at 1209.

5. Gratuitous or extraneous violence alleged to have been perpetrated does not constitute direct evidence of witness tampering. Instead, it is impermissible character evidence prohibited by New Hampshire Rule of Evidence 404(b). Accordingly, Montgomery requests this Court reconsider its prior ruling and restrict allegations of domestic abuse to only that which is directly connected to the underlying rationale for admissibility – actions constituting direct evidence of witness tampering.

6. The second ruling this motion addresses is the Court's ruling that Montgomery's drug use "explains the circumstances leading to the Montgomery family moving from location to location as well as the period during which they were living in the car" and is therefore "inextricably intertwined with the charged conduct" See Omnibus Order at 9. The import of this ruling is that it appears to allow the State to introduce evidence of Montgomery's drug use prior to eviction from the Gilford Street residence to explain why the Montgomery's became homeless. If the

defense's understanding of the Court's ruling is correct, the defense disagrees with the ruling for two reasons. First, the circumstances giving rise to the Montgomery family becoming homeless is not "inextricably intertwined" with the charged events because it is unnecessary to complete the story of the charged acts, render testimony intelligible, or otherwise prevent a vacuum in the narrative. See State v. Rouleau, slip op. at 5 (N.H. 2024). Indeed, the fact that the Montgomery family was evicted from the Gilford Street residence is uncontested. Second, Montgomery's drug use was not the basis for the family being rendered homeless. Instead, it was the foreclosure on the home, owned by both Adam's grandmother, Helen Montgomery, and his uncle's partner, Christina Digirolamo, that resulted in the Montgomery family's eviction. See Bates Stamp 641-642. The owners of the residence had fallen behind on mortgage payments in September 2017, before Adam and his family had even moved to the house. See id. The owners continued to fall behind on the mortgage after moving to Florida, ultimately ending up approximately \$30,000 in arrears. See id.

7. It is also uncontested that after becoming homeless, the Montgomery family went from living out of a Chrysler Sebring and an Audi to staying with Kayla's mother before then moving to Families in Transition on Lake Avenue and ultimately to an apartment at Union Street. The family did move from "location to location." And though where the family moved is admittedly relevant, the reason why is not. Homelessness after Harmony's death is not relevant to the charges in this case. Montgomery, therefore, respectfully requests the Court reconsider its ruling and preclude the State from introducing evidence of Montgomery's drug use for purposes of explaining "the circumstances leading to the Montgomery family moving from location to location as well as the period during which they were living in their car."

8. The third ruling this motion addresses is the Court's ruling that Montgomery's "conduct with respect to communications or acts related to Crystal Sorey as she attempted to be in contact with Harmony are inextricably intertwined with the charged conduct[]" and therefore admissible. See Omnibus Order at 10-11. Crystal Sorey's parental rights were at least in the process of being terminated and she was not entitled to visitation when Adam ceased communicating with her in April 2019, approximately eight months prior to Harmony's death. Moreover, Crystal or a surrogate did not reach out to the authorities regarding Harmony's welfare until September 7, 2021 - roughly two and a half years later - when her therapist contacted New Hampshire DCYF. See Bates Stamp at 1297. Part of the overall abuse Harmony experienced in her lifetime was the here

today but gone tomorrow nature of Harmony's relationship with her mother. The fact that Adam ceased communication with Sorey in April 2019 does not fill what would otherwise constitute a vacuum in the narrative or render testimony intelligible where it otherwise would not. Absent evidence that Adam in April 2019 was planning eviction, living in a car, and Harmony's death eight months later, of which there is none, the cessation of contact in April 2019 fails to meet Rule 404(b)'s "inextricably intertwined" exception. See Rouleau, slip op. at 5 ("Typically, such evidence is a prelude to the charged offense, is directly probative of the charged offense, arises from the same events as the charged offense, forms an integral part of a witness's testimony, or completes the story of the charged offense."). Montgomery thus asks this Court to reconsider its ruling admitting evidence of Montgomery's cessation of contact with Sorey.

9. The fourth and final ruling addressed by this motion is the Court's denial without prejudice of Montgomery's request to exclude evidence of other assaultive behavior allegedly perpetrated by Montgomery against individuals other than Harmony or Kayla Montgomery. See Omnibus Order at 9. Montgomery maintains that evidence of any assaultive behavior perpetrated against individuals other than Kayla or Harmony, including, but not limited to, Corey Watts, is inadmissible, and as the Court itself observes, the State has not proven otherwise. It is not the defense's burden to prove such evidence's inadmissibility. Instead, it is the burden of the evidence's proponent, in this case, the State, to establish the evidence's admissibility. See State v. McGlew, 139 N.H. 505, 509 (1995).

10. Here, the State did not file any notice of intention to introduce at trial Rule of Evidence 404(b) evidence as required by Rule of Criminal Procedure 12(b)(1)(F), much less a notice announcing an intention to introduce evidence of assaultive behavior against individuals other than Harmony or Kayla Montgomery. Then, in responding to the defense's motion to preclude such evidence, the State, as the Court itself found, failed to articulate the admissibility of any such evidence. Accordingly, the Court should reconsider its prior denial without prejudice and exclude any evidence of alleged assaults or assaultive behavior perpetrated by Montgomery against any individual other than Harmony or Kayla Montgomery.

WHEREFORE, Adam Montgomery respectfully requests this Honorable Court:

- (a) Reconsider its rulings as described above; and
- (b) Grant such other relief as deemed fair and just.

Respectfully submitted,

/s/ Caroline L. Smith
Caroline L. Smith, Esq.
NH Bar #5992
NH Public Defender
408 Union Avenue
Laconia, NH 03246
(603) 524-1831

/s/ James T. Brooks
James T. Brooks, Esq.
NH Bar #14876
NH Public Defender
27 John Stark Highway
Newport, NH 03773
(603) 865-1460

CERTIFICATE OF SERVICE:

I hereby certify that a copy of this pleading has been forwarded to Senior Assistant Attorney General Benjamin J. Agati and Assistant Attorney General R. Christopher Knowles on this 26th day of January 2024.

/s/ Caroline L. Smith
Caroline L. Smith, Esq.

The defendant has moved to reconsider four rulings in the Court's order of January 25, 2024. After review and consideration, the Court finds and rules as follows.

First, the defendant requests reconsideration of the Court's order that the State is permitted to admit evidence of domestic assaults between December 7, 2019 and January 4, 2022 without limiting such testimony to assaults that are direct evidence of witness tampering. The Court agrees that the testimony of assaults not related to witness tampering is inadmissible N.H. R. Ev. 404(b) evidence if admitted in the State's case in chief. However, if the defendant challenges Kayla Montgomery's disclosure to the State, and questions why she delayed disclosure or gave a different story to investigators initially, the defendant will have opened to the door to this additional assaultive conduct if Kayla testifies that she was fearful of the defendant because of his of assaults on her. Therefore, the Court GRANTS defendant's motion to the extent that assaults on Kayla Montgomery which are not evidence of his witness tampering are excluded in the State's case in chief. They may become admissible, however, if the defendant opens the door to them.

The defendant also challenges the Court's ruling as to the admissibility of the defendant's drug use. After consideration of the pleadings, arguments, and applicable law, the Court finds that evidence of drug use at the time of alleged homicide, as well as evidence of drug use as it relates to the charged conduct in the aftermath of the homicide, is admissible as it is inextricably intertwined with the charged conduct. Other drug use, however, including evidence that the defendant moved from location to location as a result of reported drug, is inadmissible. The Court finds it is not intrinsic to the crimes charged, and the probative value is substantially outweighed by the danger of unfair prejudice. Therefore, the defendant's request to exclude evidence of drug use is GRANTED in part and DENIED in part consistent with this ruling.


Third, the defendant seeks reconsideration of the admissibility of the defendant's efforts to block Crystal Sorey from having contact with Harmony. The defendant acknowledges that evidence of the defendant's efforts to block contact with Crystal on or after the time of Harmony's death is admissible. The defendant argues, however, that evidence prior to that time is not relevant. The Court disagrees. First, as noted in its original order on this, Crystal Sorey's efforts to have contact with Harmony beginning in April 2019 forms an "integral part of her testimony" and helps to "complete the story" of her reporting to law enforcement. *State v Rouleau*, slip op at 5 (NH. 2024). Additionally, evidence of the defendant's efforts to block Crystal Sorey from having contact with Harmony as early as April 2019 directly undermines the defendant's assertion that he dropped Harmony off with Crystal Sorey in November 2019. This evidence is intrinsic evidence and its probative value is not substantially outweighed by its prejudicial effect. For these reasons, the defendant's request to exclude testimony of his efforts to block Crystal Sorey's contact with Harmony is DENIED.

Finally, for the reasons stated on the record, the defendant's motion to exclude evidence of an assault on Corey Watts, and other assaultive conduct not already identified, is GRANTED.

SO ORDERED.

Clerk's Notice of Decision
Document Sent to Parties
on 02/05/2024

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Honorable Amy B. Messer
February 2, 2024

AD 101