

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

**DEFENDANT’S RESPONSE TO STATE’S OPPOSITION TO MOTION *IN LIMINE***

**RE: HOME DEPOT PURCHASES**

Now comes Adam Montgomery, by and through his Public Defenders, Caroline L. Smith, Esq., and James T. Brooks, Esq., and hereby responds to the State’s opposition to Mr. Montgomery’s motion *in limine* to exclude evidence of a February 15, 2020 purchase of pelletized limestone from the 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.

As grounds for this response, the following is stated:

1. Adam Montgomery is scheduled for a February 6, 2024 jury selection on charges of second degree assault and second degree murder as well as other charges related to the death of Harmony Montgomery.
2. The defense has moved *in limine* to exclude evidence of a February 15, 2020 purchase of pelletized limestone from the 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. The requested relief is based on New Hampshire Rules of Evidence 401, 402, and 403.
3. The State objects, asserting that “[t]he purchases provide circumstantial [evidence] establishing Kayla Montgomery’s credibility that the defendant obtained the items and lime during the relevant three-day time period that he then used to further destroy/alter Harmony’s corpse with

criminal purpose.” See State’s Opposition to Motion in Limine Re: Home Depot Purchases (hereinafter “State’s HD objection) at ¶ 13. In support of this assertion, the State has offered an unsworn affidavit from Manchester Police detective Max Rahill. See Exhibit 1 from State’s HD objection (hereinafter “State’s HD objection, exhibit 1”).

4. The State’s assertion is factually incorrect, as Kayla Montgomery has never suggested that Mr. Montgomery obtained a metal cutting diamond blade or fuel grinder, much less that he used them in tampering with Harmony’s remains. Kayla Montgomery gave three separate proffers – the first on June 3, 2022, a second on June 23, 2023, and a third on March 16, 2023 – and Detective Rahill was present for all three. During each of these three proffers, Kayla denied observing the use of any power tools in the tampering with Harmony’s remains.

5. Kayla Montgomery is the sole witness regarding the alleged tampering with Harmony’s remains. She also admits her active participation in the crimes of falsifying physical evidence and abuse of a corpse. See Transcript of 6/23/22 proffer at 86, 92. In his affidavit, Detective Rahill strives to portray Kayla as a passive and innocent bystander. See State’s HD objection, exhibit 1 at ¶ 3. He claims that Kayla was unaware as to whether Adam used any tools on Harmony because she left the bathroom when she ‘couldn’t deal’ with what Adam was doing (though the activity she described involved no saw, blade, grinder, or battery). See id. However, as described below, Detective Rahill was present during all three proffer sessions and his affidavit misrepresents the totality of Kayla’s descriptions. Rather than being a passive and innocent bystander, Kayla actively assisted with the manipulation of Harmony’s remains and, as such, knew full well no saw, blade, grinder, or battery was used.

6. During the June 3, 2022 proffer, Kayla denied seeing Adam use any power tools in tampering with Harmony’s remains. See Transcript of 1<sup>st</sup> half of 6/3/22 proffer at p. 83. Then, when asked, “you’re one hundred [percent] sure that you never heard any tools going or anything like that,” Kayla replied, “I didn’t. See Transcript of 2<sup>nd</sup> half of 6/3/22 proffer at pp. 16-18.

7. Twenty days later, at the June 23, 2022 proffer, Kayla stated that she was present in the Union Street bathroom for “most” of the tampering process. See Transcript of 6/23/22 proffer at 86. Indeed, Kayla declared that she assisted in tampering with Harmony’s remains, including the removal of clothing. See id. at 86, 92. When asked about tools, Kayla mentioned only scissors. See id. at 88. She made no reference to a saw, fuel grinder, or other power tool. Kayla said that lime was used to try to further decompose the remains but did not know how or from where Adam

obtained it. See id. at 87. She described the bag in which it came as “white and gray” in color. See id.

8. At the March 16, 2023 proffer, Kayla reaffirmed that she was unaware of any power tools being used in tampering with Harmony’s remains. See State’s Partial Objection to Defendant’s Motion In Limine – Allegations of Prior or Subsequent Bad Acts Exhibit 1 (hereinafter “State’s 404 objection, exhibit 1”) at 8480-8481. She neither recalled Adam purchasing any tools during the relevant time period nor recognized the saw that was the subject of the February 26 Home Depot purchase. See id. at 8481 (“No, I never seen that. I haven’t seen that.”). Though Kayla remembered Adam once having a saw, it was “old” and she remembered it being used only after Harmony’s remains were removed from the house. See id. at 8484-8485.

9. During the proffer, the police gave Kayla a lineup of limestone products. See id. at 8483. Instead of being presented to Kayla sequentially, they were all included on a single sheet of paper. See id. She was asked, “[d]o any of these look familiar or similar to the one that you remember seeing?” See id. Kayla replied, “I think this one. I think. I remember it was white.” See id. Instead of confirming whether the bag was indeed the same as the one Kayla claimed to have seen in the bathroom, the police asked, “[s]o, that’s like the most similar ... like the closest to what you remember seeing?” See id. When Kayla replied in the affirmative, Kayla was asked to circle and initial the bag, which she did. See id.

10. The lime bag Kayla circled was the same as the type of bag included in the February 15 and February 26, 2020 purchases. The bag – Pavestone Pelletized Lime – differs in description from the bag Kayla described during the June 23, 2022 proffer. Instead of being white and gray, it is white with green writing. See State’s HD objection, exhibit 1 at ¶ 7.

11. The above discrepancies are not the only flaws in connecting the Home Depot purchases to the actual lime used. There is nothing in the similarity of lime packaging to connect the tools purchased on February 26, 2020 to Adam or the events Kayla describes.

12. Police questioned Kayla about the five-hundred-dollar cash withdrawal from the Citizen’s Bank ATM on February 26, 2020. Kayla explained that she and Adam would “[m]ost of the time, only [take] cash out for drugs.” See State’s 404 objection, exhibit 1 at 8491. When asked, Kayla also agreed that the Citizen’s Bank transaction took place “around the time” Adam purchased a firearm. See id. at 8492. In addition, a witness, Travis Beach, told police that Britney Bedard sold an AK-47 to Adam for five-hundred fifty dollars while the Montgomerys lived at Union St.

and prior to a March 3, 2020 rental of a U-Haul. See State’s discovery at Bates stamp 5425. (Upon information and belief, this purported transaction is the subject of a pending indictment).

13. Mr. Montgomery recognizes the distinction between direct evidence and circumstance evidence. Nonetheless, “[t]he law makes no distinction between direct evidence of a fact and circumstances from which the existence of a fact may be inferred.” State v. Germain, 165 N.H. 350, 356-57 (2013)(citation omitted). Like direct evidence, circumstantial evidence must still be relevant to be admissible. See N.H. R. Ev. 401 & 402.

14. Here, the State’s relevance argument is predicated a nonexistent connection between the Home Depot purchases and Adam. Even if Adam made the ATM transaction, it is sheer speculation that the money withdrawn was used for a purchase at Home Depot. In addition, Kayla’s own statements, observations, and accounts refute even that speculative connection because she never saw the tools in her home or while participating in the tampering with Harmony’s body. Evidence that Adam made the cash withdrawal is too attenuated to its purported evidentiary purpose to be relevant.

15. The evidence is inadmissible not only pursuant to Rule of Evidence 401 but also Rule of Evidence 403. It creates an undue risk of confusing and misleading the jury, leaving them to speculate. State v. Perri, 164 N.H. 400, 409 (2012)(allowing reference to prior “trial” rather than “hearing” might have misled and confused jurors by inviting them to “speculate” as to prior trial’s outcome and prior jury’s deliberations).

16. Introduction of the evidence would also place Mr. Montgomery’s defense in an unfairly prejudicial predicament. By suggesting that the ATM withdrawal was for the purpose of making the later Home Depot purchase, the State would create a “misleading impression” that would allow the defense to introduce evidence placing that evidence in its proper context. See State v. Morrill, 154 N.H. 547, 550 (2006)(describing specific contradiction doctrine). The introduction of such evidence, however, i.e., that the withdrawal was instead used to purchase drugs or a firearm, would itself inject prejudice against Mr. Montgomery.

WHEREFORE, Adam Montgomery respectfully requests this Honorable Court:

- (a) schedule an evidentiary hearing in this matter;
- (b) preclude the State from introducing evidence of the February 15 and 26, 2020 purchases from Home Depot; or, in the alternative,
- (c) if evidence of the February 26, 2020 Home Depot purchase is deemed admissible, limit admissibility to the purchase of the lime only.

Respectfully submitted,

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**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 10th day of January 2024.

/s/ Caroline Smith  
Caroline Smith, Esq.

