

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 l 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 l. d., l. 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 l. d. and l. 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