

THE STATE OF NEW HAMPSHIRE

COÖS, SS

OCTOBER TERM, 2025

STATE OF NEW HAMPSHIRE

v.

DUSTIN MARK DUREN

DOCKET NO: 214-2024-CR-00028

**STATE'S RESPONSE TO DEFENDANT'S LATE FILED MOTION IN LIMINE:
EXCLUDE AMBER ALERT EVIDENCE**

NOW COMES the State of New Hampshire, by and through its attorneys, the Office of the Attorney General, and files this Response to the Defendant's Late Filed Motion in Limine: Exclude Amber Alert Evidence. The defendant's motion is untimely and should be denied.

In support of this pleading, the State provides as follows:

1. The defendant is charged with alternative charges of knowing and reckless second-degree murder for killing Caitlyn Naffziger on February 29, 2024, in Berlin, New Hampshire. The defendant is further charged with reckless conduct with a deadly weapon and child endangerment related to his actions in the homicide.
2. Following the murder of Caitlyn Naffziger, the whereabouts and condition of the defendant and the two young children shared by the defendant and Ms. Naffziger were unknown. Authorities searching for the defendant and the children made multiple efforts to locate them including the use of cellphone location data, the activation of license plate readers, the broadcast of a "Be on the Lookout" (BOLO) to law enforcement officers, and the activation of the Amber Alert system to enlist the assistance of the public. The Amber Alert was sent to cellular phones across the State of New Hampshire and adjoining states. It contained a description of the

defendant, his vehicle, and the two children. The alert advised citizens in the community to be on the lookout and to contact police if they saw anything. A press release provided photographs of the defendant, his vehicle type, license plate number, and the two children.

3. On March 1, 2024, a citizen who received the alert was driving near Keene, New Hampshire and observed the defendant's vehicle.¹ She recognized it as the vehicle from the Amber Alert and saw that it had the same license plate. She called 911 and then followed the defendant's vehicle as he drove through Keene, reporting his location and path of travel to the 911 dispatcher. As a direct result of the Amber Alert and the resulting citizen's phone call, the defendant was apprehended, the two children were located, and the murder weapon was recovered from the defendant's vehicle.

4. On May 20, 2024, the State provided the NH Amber Alert packet and press release in discovery.² (Bates 247-262). On June 19, 2024, the State provided a report authored by Trooper Justin Rowe related to the Amber Alert Activation, and other related documents. (Bates 712, 713-730, and 731).

5. The defendant was indicted on June 21, 2024, on charges of second-degree murder, reckless, and reckless conduct with a deadly weapon and a criminal complaint was filed charging him with child endangerment.

6. On July 9, 2025, the State provided a copy of the Amber Alert worksheet in discovery. (Bates 809).

¹ The citizen who called 911 was a passenger in a vehicle driven by her daughter.

² Information concerning the citizen's call to 911 as a result of the Amber Alert was provided in discovery on March 14, 2024. (Bates 116-119). A recorded interview with the 911 caller was provided on May 20, 2024. (CD# 22). A report describing the 911 call was provided on July 9, 2024 (Bates 743-744). The 911 recordings were provided on February 19, 2025 (CD# 84).

7. On August 16, 2024, an additional indictment was filed which added the charge of second-degree murder, knowing.

8. On October 3, 2024, the Court granted an assented-to structuring proposal which established deadlines for the case including for the filing of motions and defenses. The deadlines were established with input from both parties including amendments that were requested by defense counsel. The Court's Order established a deadline of April 30, 2025, for motions *in limine*.³

9. On April 28, 2025, the defendant, through counsel, filed just one motion – seeking to preclude 404B evidence. At that time, the defendant had been in possession of information concerning the Amber Alert including the names of potential witnesses and the fact that the Amber Alert was instrumental in the defendant being taken into custody for over a year. Yet, the defendant filed no motions related to the Amber Alert.

10. On May 19, 2025, the Court issued an additional Order as to deadlines in this case. Specifically, the Court indicated that it did not agree with the defense that the deadlines established on October 3, 2024, were automatically altered by the change that was made to the trial schedule (moving it from July to October). The Court stated that, “if the defendant seeks any relief from any of the other existing deadlines, the defendant shall file a specific motion seeking such relief (stating the grounds therefor).” *See* Court Order, May 19, 2025.

11. Following the Court's Order, the defendant took no action and did not seek to extend any pre-existing deadlines.

³ The State recognizes that it filed its September 17, 2025, Motion to Preclude Testimony of Brenda Plamondon and Shannon Spurgeon after the April 30, 2025, deadline. However, that Motion was filed immediately after the State received notice that these potential hearsay witnesses had been subpoenaed to testify by the defense. The defendant filed a Motion to Redact the Defendant's Statement on September 25, 2025. That Motion was filed due to discussions between the State and Defense related to potential use of the statement at trial and, as such, the State did not object. With respect to the issues raised in the current motion, the defendant has had discovery related to the Amber Alert for well over sixteen months and has provided no reason for the late-filing of this Motion to Preclude.

12. The Court held motions hearings on April 10, 2025, July 10, 2025, and on October 7, 2025.⁴ Between October 6 and October 7, 2025, the parties selected a jury. On October 7, the State provided the defense with an anticipated list of evidence and provided pre-marked exhibits to the Court monitor; defense was given an opportunity to review these items.⁵

13. The defendant's Motion *in Limine*: Preclude Amber Alert Evidence was filed on October 10, 2025, at 1:47 P.M. This filing appears to indicate that it was triggered by the filing of the State's witness list which included the names of officers involved in the Amber Alert. Defendant's Motion, ¶ 2. Of import, the State's witness list was filed on August 27, 2025. The defendant was in possession of the State's witness list for forty-four days.

14. The defendant had ample opportunity to file a motion related to this evidence and did not, until now. There is no reason why the Court should accommodate this late-filed motion *in limine* when the defendant has informed the court on multiple previous occasions that they are ready for trial, when they have had the discovery related to this evidence for over sixteen months, and when they have had the knowledge of the related witnesses being named on the State's witness list for over forty-four days. The defendant has not offered any reason as to why his late filing is justified. The deadlines established by the parties and the Court matter, and the defendant's motion should be denied.

15. Notwithstanding the above, should the Court consider the merits of this late-filed motion, the State would submit that information related to the Amber Alert is relevant and admissible. Under the New Hampshire Rules of Evidence, "relevant evidence" is generally admissible at trial. *See* N.H. R. Evid. 402. Evidence is "relevant" if it "has any tendency to make a fact more or less probable than it would be without the evidence [and] the fact is of

⁴ *See* FN 3.

⁵ None of the pre-marked exhibits contained the Amber Alert release or any associated materials.

consequence in determining the action." N.H. R. Evid. 401. Once this low relevancy threshold has been crossed, a Court should exclude relevant evidence only "if its probative value is substantially outweighed by a danger of ... unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence." N.H. R. Evid. 403.

16. Here, following the murder of Caitlyn Naffziger, the defendant packed his vehicle, took the couple's children, and fled the area. He turned off his phone, "going dark" to avoid detection. The activation of the Amber Alert system directly led to a citizen's observation of the defendant's vehicle, which led to his being taken into custody and to the recovery of the pistol that he used to kill Caitlyn Naffziger. The Amber Alert therefore played a crucial role in the investigation and is a key part of the sequence of events that led to the defendant's apprehension. This evidence is necessary to help the jury understand the State's case. It is therefore relevant, admissible and probative.

17. As the New Hampshire Supreme Court has noted generally, "the jury may infer culpability from attempts to cover up involvement or mislead the police." *State v. Evans*, 134 N.H. 378,387 (2003); *see also State v. Laudarowicz*, 142 N.H. 1, 5 (1997); *State v. Duguay*, 142 N.H. 221,226 (1997). The New Hampshire Supreme Court has further held that "it is beyond dispute that evidence of post-offense flight is probative... of the defendant's consciousness of guilt." *State v. Fernandez*, 152 N.H. 233, 242 (2005) (citations omitted).

18. Consciousness of guilt can manifest itself in a wide assortment of actions and statements. "The kinds of behavior which may properly suggest such a cause [consciousness of guilt] are beyond enumeration; they are as various and as changeable as men's dispositions and emotions." 2 Wigmore § 273. The breadth of evidence that properly may fall under the

admissible mantle of "consciousness of guilt" evidence is reflected in New Hampshire jurisprudence. Over the years, our Supreme Court has recognized a variety of words and behaviors as constituting relevant and admissible consciousness of guilt evidence. See *State v. Papillon*, 173 N.H. 13, 29-30 (2020) (flight); *State v. Etienne*, 163 N.H. 57, 85 (2011) (witness tampering); *State v. Brown*, 128 N.H. 606, 615-16 (1986); (suicide attempt); *State v. Evans*, 150 N.H. 416, 420-21 (2003) false exculpatory statements). See generally 2 Wigmore § 276 ("It is universally conceded today that the fact of an accused's flight, escape from custody, resistance to arrest, concealment, assumption of a false name, and related conduct, are admissible as evidence of consciousness of guilt, and thus of guilt itself."); *State v. Barry*, 93 N.H. 10, 13 (1943) (quoting same).

19. Further, to the extent that the defendant may posit any alternative explanations for this consciousness of guilt evidence, such claims would not support preclusion at trial. After all, the fact that other explanations - whether contrived or valid - may exist only goes to the weight of the evidence, rather than its admissibility. See *State v. Cocomo*, 31 A.3d 1012, 1017 (Conn. 2012) ("Generally speaking, all that is required is that ... evidence [of consciousness of guilt] have relevance, and the fact that ambiguities or explanations may exist which tend to rebut an inference of guilt does not render [such] evidence ... the evidence might support an innocent explanation as well as an inference of a consciousness of guilt does not make [the admission of evidence of consciousness of guilt] erroneous.") (internal quotation marks omitted); *Commonwealth v. Sheriff*, 680 N.E.2d 75, 83 (Mass. 1997) ("[C]onsciousness of guilt evidence may be admitted even though the defendant presents plausible alternative explanations for the conduct that are consistent with innocence of the crime charged."); see also *State v. Torrence*, 134 N.H. 24, 27 (1991) ("Although flight motivated by fear of future criminal prosecution may

support a variety of inferences, it undeniably supports a reasonable inference that the defendant was aware of his guilt.").

20. Although the defendant argues that the introduction of evidence related to the Amber Alert would confuse the issues and mislead jurors, the opposite is in fact true. The Amber Alert is a significant and relevant part of the investigation that explains the defendant's actions and the sequence of events from the time of the murder, through his flight and ultimate apprehension.

21. After the police found Ms. Naffziger's body, they immediately began searching for the defendant and the children. The defendant had turned his phone off and could not be located via cellphone location information. The defendant had avoided major highways as he travelled out of the State of New Hampshire and was not located with license plate readers or through toll booth records. The BOLO sent to law enforcement officers in multiple states did not result in his apprehension. Without the Amber Alert, the police likely would not have found the defendant for a significant period of time, if at all. The Amber Alert is a therefore a significant and obviously relevant part of the investigation.

22. If evidence of the Amber Alert is deemed inadmissible, the jury will likely be confused. The evidence will establish that the defendant confessed to killing Ms. Naffziger, turned off his phone and fled the area with his two daughters. The jury would then learn that the defendant was in custody in Keene, New Hampshire, a completely different geographic area than the one where the crime occurred. This would lead them to question such a glaring hole in the story of the case, and cause confusion and speculation.

23. To further illustrate the potential for confusion – in his motion, the defendant challenges the testimony of two law enforcement witnesses associated with the New Hampshire

State Police related to the Amber Alert. The defendant does not mention, and therefore does not challenge, the testimony of the civilian witness who received the Amber Alert, observed the defendant's vehicle, recognized it and called the police to report it. The defendant's failure to challenge or even mention this testimony is telling, and inconsistent with his argument.

24. The defendant writes that the existence of an Amber Alert does not prove whether the defendant's actions were justified, and that such information is therefore irrelevant. Defendant's Motion, ¶ 5. First, this evidence is relevant to the defendant's justification defense as it shows consciousness of guilt. Second, even if this evidence does not relate to the defendant's justification defense – it is relevant evidence in the murder trial. Justification is not the only issue in the case. The State has the burden to prove each element of the charged offenses beyond a reasonable doubt. The Amber Alert evidence is relevant to proving that the defendant's actions knowingly and/or recklessly caused Ms. Naffziger's death because it is evidence of his flight and consciousness of guilt following the murder and provides the circumstances of his subsequent apprehension. The defendant's argument that evidence must be relevant to one particular aspect of the case to be relevant is erroneous and unsupported by any legal authority.

25. The defendant further argues that the evidence of the Amber Alert is cumulative because the State can introduce evidence of the "Be on the Lookout" (BOLO) that went out to police. Defendant's Motion, ¶ 7. This is false. The defendant was not apprehended as a result of the BOLO. Evidence of the BOLO would not provide the jury with the same information as the Amber Alert evidence and is thus not cumulative.

26. The defendant also argues that the Amber Alert evidence is inadmissible under Rule 403, because its probative value is substantially outweighed by the danger of unfair

prejudice, confusion, and misleading the jury. This is also false. Evidence that an Amber Alert went out will not be unduly prejudicial, or paint the defendant in an unfairly negative light, where the jury will also learn that the defendant had admitted to killing the mother of his children, told his parents that he was going dark, and fled the scene of the crime, taking his two young daughters with him. The fact that the police might use a tool such as an Amber Alert will not shock or surprise the jury or lead to any unfair inferences.

27. The defendant's claim that the Amber Alert evidence will suggest that the defendant did not have a legal right to custody of his children is wrong. The Amber Alert was activated because two children were missing following the murder of their mother; officers found her body in the defendant's home with a gunshot wound to the head. There was no sign of the children or their condition. The press release related to the alert contained information about the defendant, his vehicle and the two children and did not mention anything about custody of the children. The word custody did not appear anywhere in the press release, nor did the words kidnap or abduction. The defendant has not identified any specific evidence related to the Amber Alert materials that would support his argument, because there is none. The defendant merely argues, generally and without specificity, that the fact of an Amber Alert would lead jurors to draw unfair conclusions about him. In fact, the issuance of the Amber Alert is evidence of the defendant's flight and consciousness of guilt as discussed *supra*.

28. Any concern that the defendant has related to the language of the alert or the testimony of law enforcement witnesses can be addressed by competent counsel during cross-examination and argument. The defendant's motion should be denied.

WHEREFORE, the State respectfully requests that this Honorable Court:

- A. Deny the Defendant's late-filed Motion *in Limine*: Preclude Amber Alert; and/or:
- B. Grant such further relief as may be just and proper.

Respectfully submitted,

THE STATE OF NEW HAMPSHIRE

By its attorney

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Date: October 14, 2025

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was provided to counsel for the defendant, Hanna Kinne, Esq. and Margaret Kettles, Esq., through the Court's e-filing system.

October 14, 2025

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