

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 REQUEST TO RECONSIDER ORDER ON DEFENDANT'S 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 requests this Honorable Court reconsider its pretrial ruling on the Defendant's Motion in Limine re: Home Depot Purchases in light of testimony at trial.

As grounds for this request, the following is stated:

1. Adam Montgomery filed pretrial motions in accordance with the scheduling deadlines. The State responded, submitting an unsigned affidavit prepared by Detective Rahill.
2. The Court ruled, without hearing, that the evidence could be admitted at trial.
3. Kayla Montgomery has testified, as well as her mother, Christina Lubin. In light of their testimony, the defendant requests this Court reconsider its ruling.
4. The Home Depot purchases at issue is a sale on February 26, 2020 by an unknown purchaser of a forty-pound bag of lime for \$4.37, a Milwaukee M18 Fuel 18V Brushless Cordless "fuel grinder", a 4.5 Diablo blade and M18 battery, totaling \$396.35. The purchase was made by payment of four-hundred dollars cash from the Manchester Home Depot. The State tried to connect this purchase to Adam Montgomery based on a withdrawal of \$500.00 from Citizens Bank and the timing of the cash purchase at Home Depot twenty-two minutes later and approximately 0.4 miles away from Citizen Bank.

For the reasons stated on the record, the motion is DENIED.

  
Honorable Amy B. Messer  
February 15, 2024

5. The State attempts to connect the events in the shower at Union Avenue and surmise they occurred on February 26, 2020, the date of the Home Depot purchase, based a call for service to snake the drain of the bath tub at the apartment on February 27, 2020.

6. In the unsigned affidavit, Det. Rahill asserted the following pertinent statements allegedly made by Kayla Montgomery:

- a. Adam removed his daughter from a bag where he stored her remains and attempted to “squish” and “bend” it into the back and create additional space to add lime.
- b. Kayla alleged that Adam got lime because he thought that lime would help decompose her body “even “more” so that “it couldn’t get found”, though she did not know where he got the lime.
- c. While Kayla was not aware of whether Adam used any tools on Harmony, she said that Adam told her that “he was going to try and like put her in pieces.” She left the bathroom because she “couldn’t deal” with what Adam was doing. She was unable to see or hear what he was doing during the process.
- d. During Kayla’s proffer on March 16, 2023, she was shown several pictures of saws, including one similar to the saw purchased on February 26, 2022, and was unable to identify the saw that the defendant had.

7. Kayla has testified at trial. Her testimony differs substantially from the representations in the unsigned affidavit provided to the Court as a proffer regarding evidence. Specifically:

- a. Kayla testified she did not know why Adam used lime. She identified a bag of lime in a photograph as looking most like the bag that she saw. She did not testify that the bag she saw was a 40lb. bag.
- b. Kayla testified that she was present when Adam took Harmony’s body into the shower and helped him unclothe her by cutting off Harmony’s hoodie while Adam cut off her leggings. Scissors were the only tools she was aware of. The bathroom was very small. She did not see any tools other than the scissors they used.
- c. Kayla testified that Adam placed Harmony’s body in a trash bag on the floor of the bathroom, lime was placed inside the bag, and Harmony’s body was placed inside the big trash bag with the lime.

- d. Kayla testified that she was present as Mr. Montgomery tried to close the bag and she assisted him in zipping it up. She never saw tools in the bathroom, nor did she see tools outside the bathroom door.
- e. She did not hear any power tools being used in the bathroom, though the neighbor had his music up loud.
- f. Kayla testified that she was aware of a power tool in the apartment though did not know the name of it. She had seen the power saw at the apartment, and it was an old tool in a big box kept under the counter. She recalls one time Adam pulled it out from under the counter breaking a bit of the counter. That event was not related to Harmony's body in the shower. She did look at photos of tools during her March 16, 2023 proffer and identified the circular saw as the tool most like the one the defendant had. She recalled that the circular saw was corded. She recalls that the tool was not the other photo she was shown at the time. She identified the other photo of a mitre saw as the other photo she was shown. (In Det. Rahill's affidavit, it was represented that she was shown a tool similar to the fuel grinder purchased at Home Depot. It is not yet known by defense counsel if she was also shown a photo of a fuel grinder during the March interview or if the photo was of the mitre saw).
- g. She never saw any new tools in the bathroom. There was no testimony that she saw blades or batteries. The apartment was a small one bedroom apartment.
- h. She did testify that when she and Adam were staying at her mother's apartment, in December of 2019, Adam contemplated stealing her mother's power tool – identifying a photo of a Milwaukee M18 Fuel 18V Brushless Cordless “fuel grinder” as her mother's tool in question and using it on Harmony's body. She talked him out of stealing the fuel grinder from her mother. On cross examination, she admitted that she made this statement in a trial prep session, probably December 23, 2024, which is also when she was shown the photo of the fuel grinder and initialed the photo.
- i. Kayla provided no testimony regarding the call for service to snake the tub relative to the timing of the events described with Harmony's body in the shower.

j. Kayla provided no testimony regarding whether she or Adam withdrew \$500 from Citizens Bank on or about February 26, 2020.

8. In addition, Harmony's mother, Christina Lubin has testified. She directly contradicts Kayla's testimony by stating unequivocally that she did not have, and does not have, a "grinder". Lubin was shown what Kayla testified was a picture of the same tool Kayla claimed Adam contemplating stealing from her and reiterated unequivocally that she never had such a tool.

9. While not yet established in testimony, on information and belief, Home Depot is well over a mile from the Union St. apartment and there is and will be testimony that other people gave them rides during the time they lived at Union St.. There has been no identification in discovery that anyone gave Adam a ride to or from Home Depot with a 40lb bag of lime, a box with a power tool and other assorted items. Nor has there been any identification in discovery of any person who observed Mr. Montgomery walking with a 40 lb bag of lime, a box with a power tool and other related items. There has been testimony of a multitude of tips on the crime line and interviews of multiple past acquaintances of the Montgomerys.

10. Mr. Montgomery asserts that in light of the testimony at trial, the evidence does not support the State's argument for introduction of the Home Depot purchase. He incorporates all of his prior arguments as if fully stated herein.

WHEREFORE, Adam Montgomery respectfully requests this Honorable Court reconsider its prior ruling, preclude all evidence of the Home Depot purchases subject of Montgomery's initial pleading, and grant such other and further 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 MOTION TO RECONSIDER has been forwarded to Senior Assistant Attorney General Benjamin J. Agati and Assistant Attorney General R. Christopher Knowles on this 15th day of February 2024.

/s/ Caroline Smith  
Caroline Smith, Esq.