

STATE OF NEW HAMPSHIRE

HILLSBOROUGH COUNTY
NORTHERN DISTRICT

SUPERIOR COURT

STATE OF NEW HAMPSHIRE

v.

ALEXANDRA ECKERSLEY

216-2022-CR-3011

OBJECTION TO STATE'S MOTION TO EXCLUDE EXPERT
TESTIMONY

Alexandra Eckersley, through counsel, Kimberly A. Kossick and Jordan Strand, OBJECTS to the State's Motion to Exclude the testimony of the defense's expert witness Mathilde Pelapat. This objection is grounded in Ms. Eckersley's rights to due process, all proofs favorable, and effective assistance of counsel pursuant to the United States and New Hampshire constitutions.

In support, Ms. Eckersley offers the following:

Procedural Posture

1. Ms. Eckersley is charged with reckless conduct, second degree assault, and endangering the welfare of a child.
2. This matter is scheduled for a final pretrial conference on July 10, 2024, and jury selection on July 22, 2024
3. The defense disclosed a report from Dr. Mathilde Pelapat as part of a mediation memo on December 15, 2023. The defense sent Dr. Pelapat's CV to the State on December 19, 2023. The defense received an out of office reply from ACA Shawn Sweeney in response to that email, so it is possible Attorney Sweeney did not see the CV on that date.
4. The State objected to Dr. Pelapat's testimony on January 4, 2024.

5. The final pretrial took place on January 10, 2024. Because of the competing motions to exclude experts, the Court (Messer, J.) continued the matter, and set deadlines, to allow both parties to file motions and conduct depositions.
6. The defense agreed to extend the State's deadline to object until ten days after the conclusion of the State's deposition of Dr. Pelaprat.
7. The State deposed Dr. Pelaprat on February 7, 2024. The State filed its objection on February 16, 2024.
8. As of this writing, the stenographer has not produced a transcript of the deposition to the defense.

Response

9. Over the course of this matter, the State's version of events has consistently omitted the fact that Ms. Eckersley spent approximately twelve minutes on the phone with the 911 operator.
10. While on that call, Ms. Eckersley told the operator the location of the tent where she had given birth. She told the operator that she did not know she was pregnant and that she did not believe the baby had a pulse. The operator instructed Ms. Eckersley to leave "the fetus where it is." The 911 operator gave Ms. Eckersley instructions on how to engage in self-care to control her post-partum bleeding. Ms. Eckersley followed the instructions of the operator to the best of her ability.
11. The 911 call ended when George Theberge took his phone away from Ms. Eckersley and fled the scene.
12. The State's reiteration of its version of the facts shows it believes that Ms. Eckersley acted, from the beginning of this event, with a purpose to deceive the police.
13. The State's questioning of Dr. Pelaprat followed this belief.

14. Dr. Pelaprat derived her report from voluminous treatment records spanning the first twenty years of Ms. Eckersley's life.
15. The State's questioning of Dr. Pelaprat focused on three main questions:
 - i. How much was Dr. Pelaprat paid for her consultation?
 - ii. Is Ms. Eckersley "mean"?
 - iii. Could Ms. Eckersley form the required mental state, i.e. recklessness?
16. The State's objection focuses: 1) on the supposition that the defense will ask Dr. Pelaprat to opine on the ultimate issue of Ms. Eckersley's formation of the requisite mental state and 2) on the supposition that the defense will argue insanity at the trial.
17. Neither of the State's suppositions are accurate.
18. The State draws its first supposition from the defense's inelegant statement about Dr. Pelaprat's testimony being relevant to Ms. Eckersley's "mental state." It would have been more accurate to say that the testimony would be relevant to Ms. Eckersley's mental condition on the night in question.
19. Over the defense's objections, the State asked Dr. Pelaprat multiple questions about Ms. Eckersley's ability to form the requisite mental State. These included asking Dr. Pelaprat whether she believed Ms. Eckersley's actions were reckless on their face and asking directly whether Ms. Eckersley could form the requisite mental state.
20. The State represents in its motion that Dr. Pelaprat responded to the "mental state" inquiries that she did not feel comfortable offering an opinion on the matter. The State omits that Dr. Pelaprat said she did not feel comfortable offering what amounted to a legal conclusion.
21. The State also omits that it continued to press Dr. Pelaprat on the issue.

When asked repeatedly to answer the question regarding Ms. Eckersley's mental state, Dr. Pelaprat responded that she did not think Ms. Eckersley could have formed the requisite mental state on the night in question.

22. The State elicited an opinion that the defense has no intention of presenting.

23. In its objection, the State cites a Virginia statute that has no bearing on the proceedings in this matter and several Virginia cases addressing the statute. The defense asks the Court to disregard this statute and case law as it is not relevant to the Court's calculus.

24. In paragraph 21 of its motion, the State cites a Washington case, State v. Greene, 139 Wash.2d 64 (Wash. 1999). The State cites this case for the purpose of comparing one statement made by an expert: the defendant had become "overwhelmed and did not have the ability to independently determine what to do at the time of the crime" to a similar description of Ms. Eckersley the State cites Dr. Pelaprat as making.

25. The cite the State gives for this statement is "*Id.*" The nearest previous cite to this case does not contain this statement. A search of the entire document shows the case does not contain this statement.

26. It is unclear why the State includes this statement or Greene. The holding in Greene is specific to whether testimony about dissociative identity disorder was relevant to the specific facts of that case. 139 Wash.2d at 73. None of that is relevant to the inquiry here.

27. Notably, the State does not include any New Hampshire case law relevant to the admissibility of Dr. Pelaprat's testimony.

28. New Hampshire case law is clear that an expert may not opine on the "ultimate issue" as to whether a defendant could form the requisite mental state. See State v. St. Laurent, 138 NH 492, 494 (1994). As stated above,

the defense does not intend to elicit such an opinion from Dr. Pelaprat.

29. The inquiry for the Court is “whether the witness, by either study or experience has knowledge on the subject matter of his or her testimony so superior to that of people in general concerning it that his or her views will probably assist the triers of fact.” State v. Gourlay, 148 NH 75, 81 (NH 2002).
30. Courts admit expert testimony for a variety of reasons. In State v. Dow, the State was allowed to admit the testimony of Scott Hampton for the purposes of explaining why a domestic violence victim might act “counterintuitively.” 168 NH 492, 502 (2016). This type of evidence is presented by the State on a regular basis. The argument for its admissibility is that the defense would attack the credibility of a victim because they acted in an unexpected manner. Id. It allows the State to use a person’s past experiences to explain their actions at a different time.
31. Here, the State will be arguing that Ms. Eckersley acted the way she did on the night in question simply because she is a bad person, because she is mean. The State consistently argues that Ms. Eckersley was lying about everything from the outset. It goes out of its way to portray her as a thoughtless, intentionally cruel person.
32. Dr. Pelaprat reviewed records from approximately twenty years of Ms. Eckersley’s life and interviewed Ms. Eckersley in person. Dr. Pelaprat’s testimony about Ms. Eckersley’s complex mental health history and background will help the jury understand her behavior and decision making on the night in question.
33. Finally, the State’s supposition that the proffered evidence is an insanity defense is also incorrect. “A defendant may offer evidence as to whether he

possessed the requisite mens rea for the crimes charged without claiming to be insane.” State v. Hall, 148 N.H. 394, 400-01 (2002). “Just as insanity and mens rea can co-exist, so too can sanity and the lack of mens rea co-exist.” Id. at 401.

WHEREFORE, Alexandra Eckersley, through counsel, requests the Honorable Court:

1. Deny the State’s motion.
2. Grant other relief deemed equitable and just.

Respectfully submitted,

/s/ Kimberly A. Kossick
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CERTIFICATE OF SERVICE

I certify that this motion was served via electronic filing.

/s/ Kimberly A. Kossick
Kimberly A. Kossick

