

THE STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS.
DOCKET NO. 216-2022-CR-03011

SUPERIOR COURT
NORTHERN DISTRICT

STATE OF NEW HAMPSHIRE

v.

ALEXANDRA ECKERSLEY

SUPPLEMENT TO STATE'S MOTION TO EXCLUDE
TESTIMONY OF DR. MATHILDE PELAPRAT

NOW COMES, the State of New Hampshire, by and through the Hillsborough County Attorney's Office, Shawn P. Sweeney, Esq. with the State's supplement to its motion to exclude the testimony of Doctor Mathilde Pelaprat, stating in support as follows:

1. On 12/26/2022, at about 12:30 a.m., EMT Lauren Barry responded to a call regarding concern for a woman who was bleeding after just having given birth. Upon arrival at the defendant's location, Ms. Barry saw George Theberge walking into woods and the defendant seated on the ground next to the rail trail at the bridge near West Side Ice Arena.

2. The defendant immediately began fabricating stories. The defendant informed EMTs and police that she gave birth to two babies while walking back from a store on the east side of Manchester. When asked about the location of the infants, the defendant was vague and continuously changed details about where she left the infants.

3. After approximately one hour of leading rescuers around various areas adjacent to the ice arena in temperatures below 20 degrees, the defendant was taken back to the ambulance so she could warm up.

4. After warming up in the ambulance, the defendant told rescuers that she knew where she left the newborn. The defendant blamed George Theberge for her ongoing efforts to deceive rescuers about the location of the infant she left in the freezing temperatures.

5. The defendant then led rescuers directly to the sight where she left the newborn laying on the floor of tent. Rescuers described the discarded infant's skin as "white and purple/blue still wet from birth with an unclamped umbilical cord. Ineffectively breathing with minimal chest rise."

6. An EMT rapidly began infant CPR while vigorously rubbing the infant to warm him and keep him alive. The EMT ran out of the woods with the newborn while continuing CPR. The EMT called for an ambulance to meet them at a closer location. There was no ambulance when rescuers came out of the woods, so the EMT boarded a fire truck to transport the infant to the hospital because of the urgency.

7. Based on the above facts, the defendant was charged with the following charges and factual allegations:

- a. Second Degree Assault (2045609c) – Eckersley recklessly caused respiratory distress to her newborn infant when she abandoned the newborn infant where the ambient temperature was extremely cold.
- b. Second Degree Asssault (2054510c) - Eckersley recklessly caused hypothermia to her newborn infant when she abandoned the newborn infant where the ambient temperature was extremely cold.
- c. Reckless Conduct (2045612c) – Eckersley recklessly abandoned her newborn infant where the ambient temperature extremely cold.
- d. Falsifying Physical Evidence (2045614c) - Eckersley, believing that investigation was about to be instituted, concealed the location of her newborn infant, with the purpose to impair its availability in such investigation.
- e. Endangering the Welfare of a Child (2045633c) - Eckersley knowingly abandoned the

newborn infant in a tent without heat or proper clothing in the woods when the outside temperature was approximately 15 degrees Fahrenheit and failed to immediately seek medical assistance for over an hour.

f. Reckless Conduct (2045612c) - Eckersley recklessly abandoned her prematurely newborn infant in a tent without heat or proper clothing in the woods when the outside temperature was approximately 15 degrees Fahrenheit.

8. On January 2, 2024, the defendant notified the State of her intent to present Dr. Mathilde Pelaprat by listing her on their witness list less than three (3) weeks prior to the January 22, 2024 Jury Selection.

9. At no time did the defendant give notice of her intent to present Dr. Pelaprat as an expert witness. The only previous mention of Dr. Pelaprat was a report the defendant provided two (2) weeks prior to the Final Pre-Trial Conference for a separate proceeding with no indication that the defendant intended for Dr. Pelaprat to testify at trial.

10. At the Final Pre-Trial Conference held on January 10, 2024, the parties discussed with this Honorable Court the State's objection to Dr. Pelaprat's testimony. The crux of the State's argument was that a review of the reports provided by the defendant revealed no evidence that would have any tendency to make a fact in dispute more or less probable under New Hampshire Rule of Evidence 401. In addition, the State argued that irrelevant evidence is inadmissible under Rule 402. The State also argued that disclosure of Dr. Pelaprat's expected testimony was untimely.

11. Following this discussion, this Court continued jury selection and ordered the parties to file supplemental briefs supporting their respective positions. This Court granted the State's motion and ordered the State to file its supplement within ten (10) days following the

deposition. The deposition was conducted on February 7, 2024.

12. During the deposition, Dr. Pelaprat testified to a number of different areas based on her report and evaluation of the defendant. Dr. Pelaprat noted that when it came to discussing the events in this matter, the defendant was overwhelmed and distressed, and that her answers were vague at the beginning.

13. In another section of the discussion, Dr. Pelaprat noted that there was no evidence the defendant presented with a thought disorder; nor did she show evidence of bizarre or odd thinking. Instead, Dr. Pelaprat noted that the defendant was in an elevated and manic state. Some of the causes of the defendant's behaviors could be traced back to her childhood bipolar disorder, being in shock from having given birth, and her immaturity. Of note, Dr. Pelaprat was unsure if the defendant acted with intent or malice.

14. "[T]he party offering a witness as an expert has the burden of establishing the witness' qualifications.' *State v. Coleman*, 133 N.H. 713, 715 (1990); *State v. Surprenant*, 2022-0038 (N.H. Aug 17, 2023). The proponent of an expert witness must first establish that the witness is qualified as an expert by the proponent. *Pepin v. PC Connection, Inc.*, No. 08-C-470 (N.H. Super. Jun 14, 2010). The State does not contest that Dr. Pelaprat is qualified based on her knowledge, experience, and education to offer an opinion on the defendant's mental health status during the times that the defendant was being observed in therapy or counseling.

15. However, if Dr. Pelaprat offers an opinion or conclusion about the defendant's mental state at the time of the charged offenses, the lack of sufficient facts or data render such a conclusion speculative. See NH R. Evid. 702(b); NH RSA 516:29-a(a). The testimony of an expert must be based upon sufficient facts. *State v. Langill*, 945 A.2d 1, 157 N.H. 77 (N.H. 2008). Dr. Pelaprat indicated during deposition that she reviewed police reports, a 911 call,

treatment/behavioral history, and the defendant's statements with the purpose of piecing together the facts that she would rely on to draw her conclusions regarding the defendant's mental state on the night of the charged acts. Citations to the transcript are not available in time for the time requirements of this supplement.

16. "The overall purpose of Rule 702 and RSA 516:29-a is to ensure that a fact-finder is presented with reliable and relevant evidence..." *Vt. Tel. Co. v. FirstLight Fiber, Inc.*, 216-2020-CV-00312 (N.H. Super. Sep 05, 2023)(Quoting *Szewczyk v. Cont' Paving, Inc.*, ___ N.H. ___, ___ (decided August 16, 2023) (slip op. at 8)). "Expert testimony which does not relate to any issue in the case is not relevant and, ergo, non-helpful." *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 591, 113 S.Ct. 2786, 125 L.Ed.2d 469 (1993)..." *State v. Gay*, 169 N.H. 232, 145 A.3d 1066, No. 2015-0174 (N.H. Jul 27, 2016).

17. New Hampshire Rule of Evidence 402 requires the exclusion of irrelevant evidence. New Hampshire Evidence Rule 401 states that "[r]elevant evidence means evidence having any tendency to make the existence of any fact *that is of consequence to the determination of the action* more probable or less probable than it would be without the evidence." N.H. R. Ev. 401 (emphasis added). *State v. Caplin*, 134 N.H. 302, 592 A.2d 188 (N.H. 1991); *State v. Gay*, 169 N.H. 232, 145 A.3d 1066, No. 2015-0174 (N.H. Jul 27, 2016).

18. Even if the Court finds that the testimony about the defendant's entire behavioral history is relevant to a fact of consequence at trial, the court may, nonetheless, exclude such evidence if its probative value is substantially outweighed by a danger of confusing the issues. N.H. R. Ev. 403. Defense counsel represented that Dr. Pelaprat's testimony would be offered to address the defendant's mental state. However, when asked about the defendant's mental state during a deposition, Dr. Pelaprat stated that she did not feel comfortable offering an opinion on

the matter.

19. In Virginia, a recent statute provides: “In any criminal case, evidence offered by the defendant concerning the defendant’s mental condition at the time of the alleged offense, including expert testimony, is relevant, is not evidence concerning an ultimate issue of fact, and shall be admitted if such evidence (i) tends to show the defendant did not have the intent required for the offense charged and (ii) is otherwise admissible pursuant to the general rules of evidence” VA Code § 19.2-271.6 (2021), Code § 19.2-271.6(B). However, courts have continued to exclude the testimony of psychologists offering evidence of *mens rea* as irrelevant in the absence of an insanity defense. *Stamper v. Commonwealth*, 228 Va. 707, 324 S.E.2d 682 (1985); *Calokoh v. Commonwealth*, 76 Va. App. 717, 731-32, 883 S.E.2d 674 (2023). In *Stamper* the Virginia Supreme Court found such evidence “an invasion, by expert opinion on the ultimate fact in issue, of the province of the factfinder.” *Id.*

20. To be helpful to the fact finder, “it is not enough that ... a defendant may be diagnosed as suffering from a particular mental condition.” *State v. Greene*, 139 Wash.2d 64, 984 P.2d 1024, 1026, 1029 (1999). “The diagnosis must ... be capable of forensic application... to help the trier of fact assess the defendant’s mental state at the time of the crime.” *Id.* With those background principles in mind, the Virginia Supreme Court found no error in the trial court’s decision to exclude the testimony of the psychologist. *State v. Greene*, 139 Wash.2d 64, 984 P.2d 1024, 1026, 1029 (1999).

21. In *Greene*, the psychologist described the defendant as having impaired judgment or impaired reasoning. Not that the defendant had a psychotic break during the commission of the crime, but that “he had a historical pattern of becoming overwhelmed and thus functioning poorly in a crisis.” She thought it highly likely that the defendant had become “overwhelmed and

did not have the ability to independently determine what to do at the time of the crime.” *Id.* The previous statement is strikingly similar to Dr. Pelaprat’s representations both in her written report and subsequent deposition.

22. What the defendant seems to be describing as the relevance of Dr. Pelaprat’s testimony in counsel’s extremely brief description of its relevance, “goes to her mental state”, is that the defendant is not criminally responsible for her conduct as she was not sane at the time that she committed the acts.

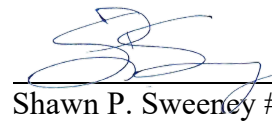
23. If that is the defendant’s purpose for presenting Dr. Pelaprat’s testimony, then time has well passed for notice of such a defense. N.H. RSA 628:2, III. Where the defendant has not given timely notice of the defense of insanity, “[e]vidence of insanity is not admissible” unless the defendant can show good cause for failure to notify the Court and State of her purpose to rely on such a defense in a timely manner. *Id.*

WHEREFORE, the State respectfully requests that this Honorable Court:

- A. Grant the State’s Motion to Exclude Dr. Pelaprat’s testimony at trial;
- B. Schedule a hearing thereon, if necessary; and
- C. Grant the State any such other relief as may be proper and just.

DATED: February 16, 2024

Respectfully Submitted,



Shawn P. Sweeney #14940

CERTIFICATION

I hereby certify that the foregoing motion has been filed in accordance with efile and serve rules.



Shawn P. Sweeney