

THE STATE OF NEW HAMPSHIRE  
Merrimack County Superior Court

Merrimack, ss.

July Term, 2025

State of New Hampshire

v.

Eric Sweeney

Docket No. 217-2023-CR-721

MOTION IN LIMINE TO EXCLUDE GUNSHOT RESIDUE EVIDENCE

NOW COMES Eric Sweeney, by and through counsel, Lauren Prusiner and Morgan Taggart-Hampton, and respectfully requests this Honorable Court to exclude any evidence regarding gunshot residue in the above-captioned matter. Mr. Sweeney makes this request pursuant to New Hampshire Rules of Evidence 702, 703, and 403; N.H. RSA 516:29-a; Daubert v. Merrell Dow Pharmaceutical, 509 U.S. 579 (1993); Baker Valley Lumber, Inc. v. Ingersoll-Rand Co., 148 N.H. 609 (2012); the Fifth, Sixth and Fourteenth Amendments of the U.S. Constitution; and Part I, Article 15 of the New Hampshire Constitution.

As grounds for this Motion, the defense states:

FACTS

1. Mr. Sweeney stands before this Court charged with three counts of first degree murder and falsifying physical evidence.
2. Mr. Sweeney is alleged to have shot K.S., M.S., and B.S., killing them. He is additionally accused of altering, destroying, concealing, or removing a Taurus .40 caliber handgun.
3. The facts represented in this Motion come from discovery provided to the defense by the State. By including those facts within this Motion, Mr. Sweeney does not waive any constitutional or statutory protections that he may have, including the

presumption of innocence and the State's burden of proving each element of the alleged offenses beyond a reasonable doubt.

4. Mr. Sweeney is currently 18 years old. His birthdate is July 27, 2006.
5. At approximately 11:23am on August 3, 2022, Mr. Sweeney's older brother and guardian, Sean Sweeney, called 9-1-1 to request that the police respond to his home at 56 Wethersfield Drive in Northfield, New Hampshire. In this call, Mr. Sweeney informed the dispatcher that Eric had called him, reporting that someone had broken into the home and "killed them all." Sean Sweeney requested that Mr. Sweeney meet him in the parking lot of Winnisquam High School.
6. During and after Mr. Sweeney's call, law enforcement from multiple departments responded both to the home in Northfield and to the streets in Northfield in the surrounding towns to locate Eric, who Mr. Sweeney has indicated was likely driving a silver F-150 four door truck. Law enforcement issued a "Be on the Lookout" for the vehicle.
7. When law enforcement responded to the Northfield address and went inside, they found the bodies of Kassandra Sweeney (the wife of Sean Sweeney and other legal guardian of Eric) and their two children, Benjamin and Mason Sweeney. Upon finding their bodies, the police department requests the response of the New Hampshire State Police Major Crimes Unit.
8. At approximately 11:51am, Sean Sweeney arrived at the Northfield address in his work truck. Reports state that Eric Sweeney followed shortly behind in a silver F-150. Sean Sweeney reported to Officer Richard Paulhus that he had exited his work vehicle at the top of the home's driveway, gotten into the silver F-150, and

drove to the bottom of the driveway, leaving Eric at the top.

9. After brief conversation with those officers, those on scene began to alert that a person was at the top of the driveway, approaching. Sean Sweeney identified the person as Eric. In Officer Jordan Smith's body-worn camera footage, Sergeant Holly Harris of the Northfield Police Department is heard shouting "that's him," multiple times. Officer Smith unholstered his gun and pointed it in Eric's direction.
10. Additional officers from the Tilton, New Hampshire police department yelled directions at Eric. Eric was ordered to turn away from the officers, put his hands in the air, then behind his head, and get down on his knees in the driveway. Sergeant Harris approached Eric, took his hands in hers, placed them behind his back, and handcuffed him.
11. Three uniformed, armed officers – Officer Jordan Smith, Chief Abraham Gilam, and Sergeant Holly Harris – were involved in placing Eric in custody. Documents in discovery indicate that Eric was taken into custody at approximately 11:50am. He was placed in the back of a police car where he stayed until he was transported to the Tilton Police Department. Eric entered the interrogation room at approximately 1:07pm. Officer Paulhus undid his handcuffs and placed him in a chair at a desk inside the room, inside the police department. Officer Paulhus remained in the room with Eric until Trooper First Class Catherine Shackford and Detective Sergeant Justin Rowe entered the room, and interrogated Eric for approximately two and a half hours.
12. After law enforcement completed their interrogation of Eric, the officers executed

a body warrant. Eric's hands were never bagged to prevent contamination from other potential sources of gunshot residue. By the time Eric's hands were tested he had physically interacted with numerous uniformed and armed law enforcements officers, was handcuffed and placed both in the back of a police car and in an interrogation room.

13. During the execution of the body warrant, Detective Justin Rowe swabbed Eric's hands. This part of the body warrant was executed after about 9:15pm according to video footage from the police department, provided in discovery. Those swabs and the resulting gunshot residue kit were then collected and transported to the New Hampshire State Laboratory. After the lab sent the evidence through the mail, Jackson Dimalanta of the RJ Lee Group completed testing on those exhibits (JDR-1 – right hand, and JDR-2 – left hand).
14. In addition to swabs from Eric's hands, law enforcement took swabs from the steering wheel (TLE-45, top of steering wheel and TLE-45, bottom of steering wheel).
15. According to the report provided by and deposition of Jackson Dimalanta, particles can be "confirmed" as being characteristic of gunshot residue when three elements are present. Those elements are lead, antimony, and barium. Any particle with a combination of two of the three elements is classified as a "two component particle" and any particle with one of the three elements is classified as a "one component particle."
16. According to the report from Jackson Dimalanta, the steering wheel "top" sample contained no particles characteristic of gunshot residue or two component

particles.

17. According to that same report, the steering wheel “bottom” sample contained a particle characteristic of gunshot residue and two component particles.
18. The “right hand” sample contained a particle characteristic of gunshot residue and two component particles.
19. Finally, the “left hand” sample contained particles characteristic of gunshot residue and two component particles.
20. According to a report prepared for the defense by Dr. Jack Hietpas of JH Criminalistics, LLC, gunshot residue can be deposited both on the shooter of a firearm as well as people and objects near a firearm when it is discharged. Once this residue is deposited on an individual or a nearby surface it can be transferred to other people and objects.
21. As discussed above, there are three types of particles for this purpose – three component, two component, and one component, depending on the number of elements identified within the sample. According to Dr. Hietpas, three or “tri-component” particles provide the strongest support for the identification of gunshot residue, two or “bi-component” particles are associated with gunshot residue but provide less support, and one or “mono-component” particles are of “limited value.”
22. Gun shot residue testing in its current form cannot differentiate between three possible scenarios for exposure to gunshot residue – that the person discharged the firearm, that the person was in the environment in which a firearm was discharged, or that the person came into contact with an object that had gunshot

residue on it. In his own report, Mr. Dimalanta indicated that gunshot residue can be deposited by circumstances such as discharging a firearm, being in the proximity of a discharging firearm, or coming into contact with a surface or object that has gunshot residue on it. He also indicated that two and one component particles are found in gunshot residue but may also originate from other sources. Finally, he wrote that the absence of gunshot residue does not eliminate the possibility that the subject handled or discharged a firearm.

23. According to its expert disclosure, the State has indicated that it will seek to have Jackson Dimalanta testify as an expert witness, as he “performed an examination of several swabs recovered in this matter for the presence of gunshot residue evidence.” Mr. Sweeney respectfully requests this Court to exclude any evidence related to gunshot residue.

#### LEGAL ARGUMENT

24. Mr. Dimalanta’s potential testimony is inadmissible for multiple reasons. This potential testimony fails under Daubert. Additionally, it would have a substantial prejudicial effect, which outweighs its minimal probative value.

**Mr. Dimalanta’s potential testimony is inadmissible because it fails under Daubert.**

25. The Daubert standard is codified in RSA 516:29-a, which provides:

In evaluating the basis for proffered expert testimony, the court shall consider, if appropriate under the circumstances, whether the expert’s opinions were supported by theories or techniques that:

- 1) Have been or can be tested;
- 2) Have been subjected to peer review and publication;

- 3) Have a known or potential rate of error; and
- 4) Are generally accepted in the appropriate scientific literature. Id.

§ II(a)

In applying these factors, the court must focus on the reliability of the technique used to reach the expert's conclusion, not the conclusion itself. 148 N.H. at 615.

26. As the party offering expert testimony, the State bears the burden of establishing that it meets the Daubert standard. See State v. Hammond, 144 N.H. 401, 406 (1999).
27. In this matter, the State has not shown the reliability of the methods of the RJ Lee group under the factors cited above.
28. New Hampshire Rule of Evidence 702 allows an expert witness to “testify...in the form of an opinion or otherwise” if their “scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue.”
29. The methods of the expert must be reliable to be admissible.
30. The trial court must act as a gatekeeper, ensuring the reliability of an expert's methodology before permitting the jury to determine the weight and credibility to be afforded the expert's testimony. 148 N.H. at 616 (citing Daubert).
31. In his deposition, Mr. Dimalanta described, for example, the “review” process that the RJ Lee Group utilizes for its reports. Their review is a two part review, the first part of which is a “data review.” Mr. Dimalanta described this as “basically just my technical reviewer will look at the notes that I made on the particles, and basically, they will go and either confirm and have the same

conclusions as I do, or if they come to a different conclusion I have the chance to go back and relook at the particles and try to characterize it – or not characterize it a different way but try to show what I’m looking at, in a sense. So the data reviewer just basically goes through my notes and just confirms that my notes make sense and that the particles are characterized the way they should be.”

32. The second part of the of the “review” is the whole case file goes through a technical review process. The technical review reviewer makes sure “all the documentation is correct. That is there’s anything that needs to be changed, that it’s changed then. That all the documentation has our work number, our initials and date, and it’s paginated. Basically just kind of making sure all the documentation is good and ready to put through our administrative review.”
33. The State has not provided information regarding how widely accepted this kind of analysis is done, and if the review process is accepted amongst others in the field.
34. In his deposition, Mr. Dimalanta discussed the RJ Lee Group’s accepted methods of collecting samples, when they are requested to so. While they did not do so in this case, he discussed the precautions taken by their analysts when collecting data themselves. Those methods included, for example, wearing a fresh lab coat when collecting a sample to cut down on the possibility of contamination from another source. It discusses a specific way of holding a person’s arm to ensure that any gunshot residue that may be on the person collecting the evidence doesn’t then transfer to the person. He also discussed the purpose of “bagging” the person’s hands to minimize particle loss, and also contamination. Mr. Dimalanta

stated that “They could – if they’re put into a police car, they could be touching the seat of the police car. If they’re brought into the police department, they could touch the tables, they could touch other things and transfer off particles from hands.” In the instant matter, Eric’s hands were never “bagged.” These standards were not met in this matter, in turn making the analysis done after unreliable and irrelevant.

35. Over nine hours passed between the time that Eric Sweeney was placed in custody and when his hands were tested for gunshot residue. This is far outside the recommended time for sampling, making the testing done unreliable. While exact “cut off” times differ, at the FBI Laboratory’s Gunshot Residue Symposium in 2005, “All participants agreed that GSR sampling should be done at the scene, where permissible, and as expeditiously as possible.” Diana M. Wright & Michael A. Trimpe, Summary of the FBI Laboratory’s Gunshot Residue Symposium, May 31-June 3, 2005, 8 FORENSIC SCI. COMM’NS (2006), [https://archives.fbi.gov/archives/about-us/lab/forensic-science-communications/fsc/july2006/research/2006\\_07\\_research01.htm](https://archives.fbi.gov/archives/about-us/lab/forensic-science-communications/fsc/july2006/research/2006_07_research01.htm).
36. The FBI Laboratory used a cutoff of 5 hours, after which they would not accept a sample, though other labs accepted samples taken up to 12 hours after the incident. Id.
37. The gunshot residue collection in this matter does not satisfy the requirements found under Daubert and Baker Valley Lumber, Inc. Rule 702, and RSA 516:29-a. Therefore, the results are not admissible and must be excluded.

**Even if evidence regarding the gunshot residue test is found to conform to the requirements of expert testimony, it should not be admitted because its**

**probative value is substantially outweighed by the danger of unfair prejudice and the possibility that it would mislead the jury.**

38. Rule 403 provides that even relevant evidence may be excluded “if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury...” See also State v. Hall, 148 N.H. 671, 675, 812 A.2d 601 (2002). Prejudice is “an undue tendency to induce a decision against the defendant on some improper basis, commonly one that is emotionally charged. State v. Jordan, 148 N.H. 115, 117-18 (2002).
39. Here, the probative value of the testing done, based on improper procedures with a high amount of literal exposure of Eric Sweeney’s hands to potential sources of contamination, is minimal. For all the reasons noted above, the test does not reliably show that Eric Sweeney handled or discharged a firearm. Because his hands were not bagged and gunshot residue testing took place over nine hours after he was in custody, during which time he was exposed to numerous police officers who were armed and holding weapons, then placed in a police car, driven to a police station, and held there for hours, significantly reduces the probative value of the test.
40. There is also a strong danger in this matter of unfair prejudice and misleading the jury. Referring to the importance of ensuring expert testimony’s reliability, the New Hampshire Supreme Court noted that “a jury may attach extra importance to an expert’s opinion simply because it is given with the air of authority that commonly accompanies an expert’s testimony.” 137 N.H. at 405.
41. Mr. Dimalanta was clear both in his report and in his deposition that he is unable to opine where the particles he identified originated. In deposition, Mr. Dimalanta

stated

So our analysis will still be reliable in the sense we're still confirming gunshot residue particles, but our analysis can't say where these particles come from. So we can't sit there and say, Oh, this particle came from this discharge of this firearm. We don't know that. All particles essentially look the same. We're looking for lead, barium, and antimony. So there is the potential that all of these particles, even if they have lead, barium and antimony, they could have come (sic) from another discharge that happened or that occurred. We can't ever say what happened. Which is why those three conclusions are equally likely to happen at any given time.

42. This issue further limits any probative value that might exist for this evidence.
43. For the above cited reasons, Mr. Sweeney respectfully requests that the court exclude all evidence related to gunshot residue from trial in the above cited matter.

WHEREFORE, Mr. Sweeney respectfully requests this Court to:

- a. Find that no evidence of gunshot residue testing may be admitted; or
- b. If not inclined to grant this Motion on its face, hold an evidentiary hearing on this Motion;
- c. Make written findings of fact and law; and
- d. Grant all other relief as just and proper.

Dated this 22nd day of July, 2025.

Respectfully submitted,

**/s/ Morgan Taggart-Hampton**

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CERTIFICATE OF SERVICE

I, Morgan Taggart-Hampton, do hereby certify that a copy of the foregoing Motion has been forwarded this 22nd day of July, 2025 to Attorneys Bethany Durand and Peter Hinckley, for the State.

/s/ Morgan Taggart-Hampton  
Morgan Taggart-Hampton