

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 PRECLUDE “EXPERT” TESTIMONY OF SERGEANT TARA
ELSEMILLER

NOW COMES Eric Sweeney, by and through defense counsel, Lauren Prusiner and Morgan Taggart-Hampton, and respectfully moves to preclude the testimony of Sergeant Tara Elsemiller at the trial in the above cited matter. Based on documentation provided to Mr. Sweeney in discovery and further information gleaned from a deposition of Sergeant Elsemiller, defense counsel believes that Sergeant Elsemiller plans to testify regarding shooting reconstruction. While the State has informed Mr. Sweeney that it does not consider this testimony to require an expert witness, it also states that Sergeant Elsemiller has been qualified as an expert previously in shooting reconstruction. This purported testimony is not the product of reliable methods and is therefore inadmissible under the New Hampshire Rules of Evidence 403, 701, 702, 703, RSA 516:29-a, and Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1973). Accordingly, admission of this testimony at trial would violate Mr. Sweeney’s rights to due process and a fair trial. N.H. Const. pt. I, art. 15; U.S. Const. Amends. V, VI, and XIV.

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 requested the response of the

New Hampshire State Police Major Crimes Unit.

8. As part of the investigation into this matter, Trooper, now Sergeant, Tara Elsemiller participated in a process of “shooting reconstruction,” which she described as “Just documenting, preserving and trying to just collect what you can on scene because we don’t go back there, right, so we just want to make sure we have all the information based on trying to put, like, where someone was standing possible or what – it’s kind of to collaborate the investigation part, right. So this is what we have at the scene. Does it go with or against whatever other people are saying, witnesses, stuff like that.”
9. Sergeant Elsemiller did an assessment of bullet paths and defects, and opined about the location of the shooter at the times of the deaths.
10. According to its expert disclosure, that State has indicated that Sergeant Elsemiller would testify about her review of the scene including shooting evidence, bullet defects, and bullet flight paths to reconstruct the shooting scene. The State has indicated that Sergeant Elsemiller has been previously qualified as an expert witness in shooting reconstruction, but that they do not believe that this purported testimony requires an expert witness. Mr. Sweeney respectfully requests that this Court preclude Sergeant Elsemiller from testifying regarding her “shooting reconstruction” in this matter.

LEGAL ARGUMENT

11. Sergeant Elsemiller’s potential testimony in this matter is inadmissible for multiple reasons. First, Sergeant Elsemiller is not an expert witness and her methods fail to meet the requirements under Daubert. Additionally, given her

employment as a law enforcement officer, Sergeant Elsemiller's testimony would have a substantial prejudicial effect, which outweighs its minimal probative value.

Sergeant Elsemiller's methods do not meet the standard under Daubert, and she should not be considered an "expert witness," nor should her testimony be allowed.

12. 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. Baker Valley Lumber, Inc. v. Ingersoll-Rand Co., 148 N.H. 609, 615 (2012).

13. In this matter, the State has not shown the reliability of the methods of "shooting reconstruction" done by this witness.

14. The testimony that the defense believes Sergeant Elsemiller would offer in this matter should be done by an expert witness and through a proper, scientifically-vetted process. 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 to determine a fact in issue." From documentation provided to defense counsel,

defense counsel believes that the State will attempt to use Sergeant Elsemiller's testimony to identify the location of the purported shooter and the paths of the bullets. This is expert testimony, and therefore Sergeant Elsemiller's methods are subject to Daubert. As the party offering the 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).

15. The methods of the expert must be reliable to be admissible. 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 (2002) (citing Daubert).
16. The State has not established that the techniques Sergeant Elsemiller utilized in this matter have been or can be tested.
17. The State has not established that this method has been peer reviewed nor published.
18. In a deposition of Sergeant Elsemiller in this matter, she was unable to identify if her work had been "peer reviewed" beyond a standard review done of all police reports prior to publishing. She described a process of peer review that can generally happen with these kinds of reports, specifically, that an intellectual discussion can happen between law enforcement officers, no matter what rank or certification they hold, where officers can disagree. When asked about what happens if two officers disagree about their conclusions, Sergeant Elsemiller repeatedly stated "It's not that deep." This clearly does not rise to the level of standardized peer review that is required for scientific methods to be presented to

a jury.

19. The State has not established a known or potential rate of error of these methods.
20. Finally, the State has not established if these methods are accepted in the appropriate literature.
21. Sergeant Elsemiller's purported testimony fails all four factors required under Daubert.
22. Under N.H. Evid. R. 702, Sergeant Elsemiller cannot be qualified as an expert, and therefore, the Court must next look to Rule 701.

Sergeant Elsemiller's potential testimony regarding shooting reconstruction is not admissible under Rule 701 as it is based on scientific, technical or other specialized knowledge within the scope of Rule 702 and must be excluded.

23. Under Rule 701, if a witness is not testifying as an expert, testimony in the form of an opinion is limited to one that is rationally based on the witness's perception; helpful to clearly understanding the witness's testimony or to determining a fact in issue; and not based on scientific, technical or other specialized knowledge within the scope of Rule 702.
24. A lay witness must confine their testimony "to personal observations which any lay person would be capable of making." State v. Martin, 142 N.H. 63 (1997). Testimony about bullet travel paths, defects, reconstruction of those paths, and opinions about where a shooter was encompasses specialized knowledge beyond the ability of an average person to understand.
25. The State has indicated that it does not consider this purported testimony to require an expert witness, pursuant to State v. DePaula. Mr. Sweeney disagrees. In DePaula, the Court upheld the admission of evidence pertaining to a cell phone

tower's operation, specifically that of the maximum radius of cell phone towers. State v. DePaula, 170 N.H. 139 (2017). The Court held that the custodians of cell phone records could testify as lay witnesses because they had sufficient personal knowledge to generally discuss the means by which cell phones connect to the closest cell phone tower and ranges. Additionally, the Court discussed that because cell phones and cell towers are common in society, the average juror would understand the elementary concepts underlying interactions between the two. Id.

26. The same cannot be said for shooting reconstruction, bullet paths and defects, and opinion regarding the location of a purported shooter. The specialized knowledge to do so is far beyond the ken of the average juror and is therefore inadmissible testimony under Rule 701.

Sergeant Elsemiller's purported testimony is also inadmissible under Rule 403, as it is unfairly prejudicial and that prejudice outweighs its minimal probative value.

27. Sergeant Elsemiller's opinion and methods of shooting reconstruction will not assist the jury. Her non-scientific opinion represents only one possible explanation among multiple explanations, not based on any principled determination or scientific analysis that is recognized or reliable. Unsubstantiated speculation does not have a 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. Evid. R. 401. This potential testimony is therefore irrelevant and inadmissible. N.H.R. Ev. 402.
28. Even if the Court were to determine that this potential evidence is relevant, it

should not be admitted based on Rule 403 given the highly and unfairly prejudicial nature of these unscientific observations. Evidence is unfairly prejudicial if it tends to induce a decision...on some improper basis, commonly one that is emotionally charged.” State v. Willis, 165 N.H. 206, 216 (2013). The unsubstantiated opinions of Sergeant Elsemiller are particularly dangerous given the credibility that many jurors would assign simply as her role as a law enforcement officer.

29. Mr. Sweeney respectfully requests that the Court preclude the State from offering any testimony from non-expert Sergeant Tara Elsemiller regarding shooting reconstruction. Her opinion in this realm is irrelevant and inadmissible.

WHEREFORE, Mr. Sweeney respectfully requests this Court to:

- a. Preclude Sergeant Tara Elsemiller from testifying regarding shooting reconstruction; 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