

THE STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS.
DOCKET NO. 226-2019-CR-00814

SUPERIOR COURT
SOUTHERN DISTRICT

STATE OF NEW HAMPSHIRE

v.

DALE HOLLOWAY

**STATE'S MOTION IN LIMINE TO EXCLUDE EVIDENCE OF DEFENDANT'S
PORNOGRAPHY AND MUSICAL ENDEAVORS IN GUILT PHASE OF TRIAL**

NOW COMES the State of New Hampshire, by and through the Hillsborough County Attorney's Office, and moves in *limine* to exclude evidence regarding the defendant's endeavors related to pornography and music in the guilt phase of trial, stating in support as follows:

1. The defendant, Dale Holloway, is charged in the above-captioned docket number with attempted murder, First Degree Assault, Second Degree Assault, Felon in Possession of a Deadly Weapon, and Simple Assault.

2. Jury Selection in this matter is presently scheduled for October 30, 2023, with a Trial Management Conference scheduled for October 19, 2023.

3. The State now moves, in *limine*, to exclude evidence of the defendant's pornography and music endeavors during the guilt phase of trial pursuant to New Hampshire Rules of Evidence 401, 402, and 403, whether through testimonial evidence or through any potential exhibits related to the defendant's pornography or music activity that he may seek to introduce during trial.¹

4. The State files this Motion in *Limine*, as it reasonably anticipates the defendant

¹ This would include, but not limited to, lyrics to any of the defendant's music, videos, or other information related to the defendant's music and pornographic undertakings.

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Granted The State and the defendant agree that this evidence should be excluded from the trial. See record of September 28, 2023 Hearing.



Honorable Charles S. Temple
September 29, 2023

Clerk's Notice of Decision
Document Sent to Parties
on 09/29/2023

may seek introduction of said evidence at trial.

RELEVANT FACTS 2

5. On October 12, 2019, the wedding of C.M. and M.C. took place at the New England Pentecostal Church (hereinafter “the church”) in Pelham, New Hampshire. Bishop S.C. performed the wedding ceremonies, with a gathering of other individuals present for the wedding. At the conclusion of the wedding vows, an individual later identified as the defendant approached the altar area of the church. Upon approaching the altar area, the defendant fired multiple shots, shooting Bishop S.C. and C.M. In an ensuing fracas, the defendant pistol-whipped M.C. after defendant’s gun apparently malfunctioned. Subsequently, some churchgoers tackled the defendant and held him on the ground.

6. At approximately 10:12 a.m., the Pelham Police Department received a report at that an individual had been shot at the church. Upon responding to the scene, police observed people inside the church crying, yelling, and screaming for help. Police also observed a male, later identified as the defendant, lying face down with multiple people on top of him, close to the raised platform that held the altar. Lieutenant Anne Perriello of Pelham Police Department immediately obtained the defendant’s weapon, a .380 silver and black pistol, and secured it.

7. Upon securing the scene, police located Bishop S.C. lying on his back with a gunshot wound to his neck area. C.M., the bride, had also been shot in the arm and M.C., the groom, had a large cut on his head.

8. Multiple witnesses saw defendant enter the church wearing black clothing and appearing out of place for the ceremony. Witnesses recounted that the defendant briefly sat

² The factual recitation in this Motion in *Limine* is not an exhaustive list of facts pertinent to the case, but rather a recitation intended to convey relevant factual considerations pertinent to the arguments in this Motion.

several pews back from the altar, until the end of the ceremony when he stood up and rapidly approached the altar raising his right arm holding something before shooting.

9. During their investigation, police observed surveillance footage from the exterior of the church. The footage depicts the defendant arriving at the church at approximately 10:09 a.m. The defendant is depicted standing outside the church smoking a cigarette before entering the church approximately a minute later. Various wedding guests are depicted on the footage as fleeing the church at approximately 10:13 a.m. Surveillance video also captured a BMW SUV vehicle enter the church parking lot from the south and the defendant exit from it. The footage further depicted the SUV backing up and leaving the area upon guests fleeing the church.

10. While reviewing the defendant's jail calls during his incarceration at Hillsborough County House of Corrections following his arrest, Hillsborough County Attorney's Office Investigator Peter Theriault discovered five calls by the defendant to an unknown individual on October 20, 2019. During the calls, the defendant converses regarding his music career, as well as his pornography endeavors. Investigator Theriault conducted research as to the defendant's music and pornography endeavors, summarizing his findings in an investigative report.³

11. On November 18, 2019, New Hampshire State Police interviewed Kimberly Woodbury, a female acquaintance of the defendant, via phone. During the interview, Ms. Woodbury reported that she had met the defendant on two different applications as well as a couple of times face-to-face. Ms. Woodbury recounted that the defendant told her that he makes money by doing/recording pornography of women.

12. The defendant filed a Request for Subpoena that was received or processed on or around August 24, 2023. See Def. Request for Subpoena For Third Party Records (Court Index

³ This information is contained on discovery pages 1173-1174, which has been provided in discovery.

#354). In his pleading, he requested that the Court subpoena a variety of social media accounts. Some of the accounts appear, based upon information and belief, related to the defendant's music endeavors. On the sixth page of the defendant's Request, he seeks to "inspect, copy, or share [the records associated with accounts he desires to be subpoenaed] as relevant evidence at trial," further asserting that such information "consist of photos, videos, comments or statements that can or will be used during cross-examination of witnesses." See p. 6 Def. Request for Subpoena For Third Party Records.

13. On September 12, 2023, the defendant contacted the Hillsborough County Attorney's Office and spoke with the prosecution team. During the call, the defendant claimed that the New Hampshire State Prison was withholding some discovery material from him, citing some of the material related to the defendant's pornography and music production.⁴

LEGAL ARGUMENT

I. Evidence of the defendant's pornography and musical endeavors is irrelevant for purposes of trial in this matter.

14. Pursuant to New Hampshire Rule of Evidence 401, "Evidence is relevant if: (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action." N.H. R. Ev. 401. As the New Hampshire Supreme Court has decreed: "[a]dmissibility of evidence initially depends on relevancy alone." State v. Guyette, 139 N.H. 526, 529 (1995). See Welch v. Bergeron, 115 N.H. 179, 182 (1975) (noting that "[m]ateriality is a necessary aspect of relevancy: evidence offered to prove a fact that is not in issue is immaterial.") Rule of Evidence 402 explicitly dictates in part that "Irrelevant evidence is not admissible." N.H. R. Ev. 402.

⁴ This information is documented and contained on discovery page 1516 per a memorandum authored by Investigator Theriault, who was present for the call between the defendant and the prosecution team.

15. Evidence of the defendant’s pornography and musical endeavors is wholly irrelevant in the instant case. While it may be referenced in discovery, such evidence is irrelevant to the question for the jury as to whether the defendant is guilty of the crimes he is charged with. That the defendant has produced or appeared in pornography makes no fact of consequence in this matter more or less probable with its admission. That the defendant has produced or performed music does not make a fact of consequence more or less probable with its admission.

16. “Although a criminal defendant has a fundamental right to cross-examine prosecution witnesses, that right is not unfettered,” and “[t]rial courts have broad discretion to fix the limits of proper areas of cross-examination...” State v. McGill, 153 N.H. 813, 817 (2006) (citing State v. Spaulding, 147 N.H. 583, 588 (2002)). Notably, “[c]ross-examination eliciting irrelevant evidence is not a proper matter of inquiry, as the defendant ‘has no constitutional right to present irrelevant evidence.’” State v. Rice, 169 N.H. 783, 800 (2017) (quoting State v. Mitchell, 148 N.H. 293, 294 (2002)). Because evidence of the defendant’s pornographic and musical endeavors is irrelevant, the defendant should not be permitted to cross-examine witnesses about such evidence, should the Court grant this Motion excluding the evidence from the guilt phase of trial.

II. Even if the defendant’s pornographic and musical endeavors are somehow relevant under Rule 401, any probative value they possess is substantially outweighed by the danger of confusing the issues, misleading the jury, undue delay and wasting time.

17. As set forth in New Hampshire Rule of Evidence 403, “The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, undue delay, wasting time, or needlessly presenting cumulative evidence.” N.H. R. Ev. 403.

18. Even if the defendant's pornographic and musical endeavors are found to be relevant, any minimal probative value they have is substantially outweighed by the dangers of confusing the issues, misleading the jury, undue delay, and wasting time. In State v. Alexander, the New Hampshire Supreme Court held in part that the trial court did not abuse its discretion in prohibiting the defendant (convicted of arson) from introducing evidence that a witness accused another witness of various crimes as well as that one of the witnesses had a criminal charge pending against them on the day of the fire. State v. Alexander, 143 N.H. 216, 219-221 (1998).⁵ The Alexander court held that the "trial court apparently reasoned that the proffered evidence of motive and bias would tend to confuse and mislead the jury, and cause undue delay and waste time, especially given its remoteness and speculative nature. We find the trial court's decision to exclude it well within its discretion." Alexander, 143 N.H. at 222.

19. Here, the introduction of the defendant's pornographic and musical undertakings at trial would surely confuse and mislead the jury, inviting the potential for a "trial within a trial" depending on the method the defendant may seek introduction of the evidence. Given its remoteness to the facts of consequence in this case, the defendant's pornography and music reflect the quintessential type of evidence whose admission at trial would constitute undue delay and a waste of time consistent with Rule 403.

20. Therefore, for the reasons asserted in this Motion, the State respectfully requests that this Honorable Court exclude any evidence (or reference to) the defendant's musical and pornographic endeavors during the guilt phase of trial.

⁵ In Alexander, the defendant argued that cross-examination on these topics would present as evidence of "motive and bias." Alexander, 143 N.H. at 219, 221 ("the defendant asserted that this evidence suggested that Tassinari harbored a grudge against Andrews, and set the fire to punish her.).

WHEREFORE, the State respectfully requests that this Honorable Court:

- A. Grant the State's Motion in *Limine* to Exclude;
- B. Schedule a hearing thereon, if necessary; and
- C. Grant the State any such other relief as may be proper and just.

DATED: September 18, 2023

Respectfully Submitted,

/s/ Seth Dobieski

Seth S. Dobieski #273674

Assistant County Attorney

CERTIFICATION

I hereby certify that a copy of the foregoing pleading has this day been sent to the defendant via mail.

/s/ Seth Dobieski

Seth S. Dobieski