

THE STATE OF NEW HAMPSHIRE  
SUPERIOR COURT

HILLSBOROUGH, SS.  
SOUTHERN DISTRICT

APRIL TERM 2024

STATE OF NEW HAMPSHIRE  
V.  
DANIELLE DAUPHINAIS

226-2021-CR-0944

**STATE'S MOTION IN LIMINE #6 TO ADMIT CONTENTS  
OF FACEBOOK RECORDS INCLUDING FACEBOOK MESSAGES (FACEBOOK)**

NOW COMES the State of New Hampshire, by and through the Office of the Attorney General, and respectfully requests that this Honorable Court enter an order *in limine* allowing the State to admit as substantive evidence at trial in the above-captioned matter various contents of Facebook Records and accounts for the defendant and Stapf, referred to herein as Dauphinais FB and Stapf FB, recovered during the investigation to include, as detailed *infra*: (1) statements of a party opponent about or concerning E.L. and/or J.S., and (2) statements of co-conspirators about or concerning E.L., and/or J.S.

Specifically, the State seeks to admit in its case-in-chief all statements, images and videos concerning E.L. made, received, or sent by the defendant as a party opponent and between the defendant and Stapf as co-conspirators. The State also seeks to admit in its case-in-chief statements, images and videos concerning J.S. made or sent by the defendant as a party opponent and between the defendant and Stapf as co-conspirators. In support of this request, the State submits that:

## I. RELEVANT FACTS<sup>1</sup>

1. The defendant is currently charged with first-degree murder and related charges for killing E.L. (Age 5) in or around September of 2021 in Merrimack, New Hampshire. The murder charge alleges that Dauphinais did on or between September 27, 2020, through September 24, 2021, commit the crime of first-degree murder by purposely causing the death of E.L. The defendant is also charged with three class B felony counts of tampering with witnesses, and two misdemeanor counts of endangering the welfare of a child for other conduct taken before and after the murder.

2. By way of background, on October 14, 2021, the Merrimack Police Department began an investigation into the whereabouts of E.L., a missing child. E.L. was last known to be in the custody of his mother, Danielle Dauphinais (the defendant), and her boyfriend, Joseph Stapf (Stapf). Based on the investigation, E.L. arrived in New Hampshire in May of 2020, and had resided with the defendant and Stapf in the basement of 7 Sunset Drive in Merrimack, New Hampshire since that time. Stapf's mother, Joanne Stapf occupied the first floor of the home. The defendant and Stapf had a child together, J.S. (DOB: 07-08-2019) who also resided in the basement apartment.

3. From May 2020, through October 2021, the defendant and Stapf each had a cellular phone with active service. The defendant's phone was assigned a phone number of 603-759-4953 (Dauphinais phone 1), while Stapf's phone was assigned a phone number of 603-661-7094 (Stapf phone 1). They utilized their phones over the time period of the charged conduct in order to exchange messages on several topics including to discuss E.L.

4. Based, in part, on the communications between Dauphinais phone 1 and Stapf phone 1, investigators believe that E.L. died on or about September 24, 2021<sup>2</sup>. That morning, the following text message conversation took place between the defendant and Stapf over those devices:

9:34:47 A.M. Stapf phone 1: Lol so much! Ugh I feel like a whole load of bricks just was removed off my chest..

---

<sup>1</sup> The facts are derived from the Probable Cause Affidavit and other discovery materials provided to defense counsel. The facts included are those relevant to the evidence that is the subject of the State's Motion.

<sup>2</sup> On September 21, 2021, E.L. was mentioned for the last time during a text message conversation between the defendant and Stapf. At approximately 6:29 A.M. that day, the defendant told Stapf to be quiet when he returned to the basement apartment because J.S. was asleep and didn't feel well. She then sent Stapf a message stating "[d]oesn't help that [E.L.] kept waking her up".

9:36:59 A.M. Dauphinais phone 1: Seriously, like i can breathe and be free. I was a prisoner for so long baby. It was hell, it wasn't how I wanted [J.S.] to be raised. She deserves the whole world. We deserve nothing but happiness and health. Time to kick ass and make moves. Time to create a life our beautiful children deserve.

9:41:02 A.M. Dauphinais phone 1: I can't wait to go places with you babe.

5. On October 14, 2021, when questioned about E.L.'s whereabouts, the defendant and Stapf fled New Hampshire, travelling through various cities in Massachusetts including, as relevant to the instant Motion, the cities of Burlington, Ayer, and Abington. At the time that they fled, the defendant and Stapf took their cellular phones, Dauphinais phone 1 and Stapf phone 1 with them.

6. Upon leaving New Hampshire, Dauphinais and Stapf stopped at the Target store, located at 34 Cambridge Street, Suite 145, in Burlington, Massachusetts. There, they purchased and activated two SimpleMobile prepaid cellular phones. Those phones were assigned phone numbers of 603-233-0827 and 603-233-0548.

7. On October 16, 2021, at approximately 12:32 P.M., an exigency location ping was reported to cellular phone Stapf phone 1. The location ping indicated that the phone was near 5 Littleton Road in Ayer, Massachusetts. Officers from the Ayer Police Department responded to that area and conducted a search for Dauphinais, Stapf, and E.L., with no success. While officers were conducting the search in the area of Littleton Road, the Ayer Police Department received a 911 call reporting that a cellular phone had been found in the water of a local pond. The cellular phone was recovered by the Ayer Police Department and then turned over to investigators with the New Hampshire State Police where it was assigned evidence number TLH-1. The phone was searched pursuant to a warrant and was identified as Stapf phone 1.<sup>3</sup>

---

<sup>3</sup> The State notes that an extensive search was conducted of Sandy Pond and the surrounding area for Dauphinais phone 1, however, that phone was not recovered. In a recorded call on November 4, 2021, at 1:33 P.M., Dauphinais told a person believed to be her sister-in-law, Crystal Dauphinais, that she "doesn't have her phone because she chucked it in the river because she didn't want to be tracked."

8. On the morning of Sunday, October 17, 2021, Dauphinais and Stapf were located in Bronx, New York; E.L. was not with them. At the time that they were located, officers found them to be in possession of the two SimpleMobile prepaid cellular phones purchased at the Target store in Burlington, Massachusetts. The phone numbers assigned to those phones were identified as 603-233-0827 (Dauphinais phone 2) and 603-233-0548 (Stapf phone 2).

9. In addition to warrants for the search of the recovered cellular phones, investigators obtained warrants for cell site location and google location data for the phones.

10. Location data for Dauphinais phone 2 and Stapf phone 2 placed those phones in that area of 585 Chestnut Street in Abington, Massachusetts on October 14, 2021, at 11:00 P.M. until October 15, 2021, at 12:52 A.M.

11. On or about October 23, 2021, investigators located E.L.'s body buried in a roughly dug, shallow hole in a wooded area in Abington, Massachusetts. The location was in the woods near an apartment complex, located at 585 Chestnut Street, and was consistent with the area where location data placed Dauphinais phone 2 and Stapf phone 2 on October 14, 2021, at 11:00 P.M. until October 15, 2021, at 12:52 A.M.

12. An autopsy of E.L.'s body was performed by Dr. Richard M. Atkinson of the Massachusetts Office of the Chief Medical Examiner. E.L. was found to weigh 19 pounds and to be 3 feet tall. Following the autopsy, Dr. Atkinson determined that the manner of E.L.'s death was homicide, and the cause was violence and neglect, including facial and scalp injuries, acute fentanyl intoxication, malnourishment, and pressure ulcers.

13. During the course of the investigation, investigators learned that the defendant and Stapf each had an active Facebook account. Dauphinais' Facebook account had a username of Dee.Dauphinais (Dauphinais FB), while Stapf used a Facebook account under the username Jo Stapf (Stapf FB). Pursuant to a warrant, investigators obtained records for these accounts.

14. Following a review of the Facebook accounts Dauphinais FB and Stapf FB, investigators found that the defendant and Stapf utilized their accounts for, among other purposes, sending each other messages using Facebook Messenger and calling each other over Facebook. Specifically, the records showed multiple messages that discussed E.L., and/or J.S. These conversations discussed, among other topics, E.L.'s treatment including nourishment. In several messages, the defendant sent photographs or videos to Stapf showing E.L., and she also sent photographs or videos to her sister showing E.L.; these images appear to be taken not face-

to-face with E.L. but of E.L. through a camera or baby monitor. Examples of these messages include:

April 15, 2021:<sup>4</sup>

11:04:16 P.M. Dauphinais FB: Omg he just picked something off the floor by the door and ate it.

11:04:58 P.M. Stapf FB: Wtf is wrong with him. Ugh so aggravated. And awwh that's cute lol.

11:06:59 P.M. Stapf FB: Why the fuck is he walking around the room? N to the desk?!?

11:07:16 P.M. Stapf FB: To wtf. Kid

11:07:23 P.M. Dauphinais FB: Ok he's getting more old fucking yogurt.

11:07:30 P.M. Dauphinais FB: That shit is 3 days old.

11:07:35 P.M. Dauphinais FB: I hope he gets sick

11:08:26 P.M. Dauphinais FB: He ain't eating shit today. He had plenty buggers and crusty moldy yogurt.

11:08:50 P.M. Dauphinais FB: Not a damn case in the world this fucking piece of shit.

11:09:21 P.M. Dauphinais FB: Little does he know ive been watching him. I'm gonna go in there and ask him if he moved or anything. Oh get a yummy drink.

11:12:07 P.M. Stapf FB: Be rite there. Wait till he hears me pull in

11:12:09 P.M. Stapf FB: Lmao

11:12:13 P.M. Stapf FB: He gunna run

April 20, 2021:

10:18:29 P.M. Dauphinais FB: And all this kid does is cry because he's fucking hungry.

10:18:28 P.M. Dauphinais FB: I gave him a small bowl of cereal so he would shut the fuck up but that wasn't enough. He said he wants food and he wants me to stop starving him because it's not nice.

---

<sup>4</sup> This conversation included five videos and two photographs of E.L. taken over a camera or baby monitor. He is alone in a room believed to be his bedroom and is eating from a yogurt container. Based on a review of the images, he appears to have at least one black eye.

10:20:02 P.M. Dauphinais FB: I told him to go fuck himself. Shitting and pissing on my floors is fair for me. I told he he don't know shit about fairness. Just selfishness.

10:20:45 P.M. Stapf FB: Did he really say that. Wtf?

10:20:48 P.M. Stapf FB: He got balls.

15. On September 29, 2022, Stapf pled guilty to several charges related to his role in the death of E.L. Those charges included Manslaughter, Falsifying Physical Evidence, Tampering with Witnesses and Second-Degree Assault of E.L.

## **II. LEGAL ANALYSIS**

16. As indicated *supra*, the State intends to introduce various statements of the defendant (as party opponent) related to E.L. and/or J.S. and of Stapf, the defendant's co-conspirator, made during and in furtherance of the conspiracy. The statements that the State seeks to admit consist of Facebook messages, as well as several photographs and videos contained in the Facebook account records of Dauphinais FB and Stapf FB which are discussed in the fact section above and referenced *supra* and include statements made by the defendant in conversations with co-conspirator, Stapf. The statements at issue in the current Motion specifically relate to the content of communications between the defendant and Stapf utilizing their Facebook account, Dauphinais FB and Stapf FB between September 27, 2020, and October 15, 2021.

### **A. The defendant's statements are admissible statements of a party opponent.**

17. All statements of the defendant contained in the Facebook records of the defendant and Stapf as admissions of a party-opponent. The statements sought to be admitted include messages, videos and photographs. N.H. R. Evid. 801(d)(2) provides that a prior, out-of-court statement is not hearsay where it was made by the opposing party.

18. In this evidentiary context, the defendant's statements during E.L.'s life where she communicated with Stapf about E.L.'s behavior, nutrition, condition and treatment constitute statements of a party opponent. These statements will be "offered against the party," and thus would not constitute hearsay under the pertinent rules of evidence. N.H. R. Evid. 801(d)(2); *State v. Belonga*, 163 N.H. 343, 359 (2012).

19. To the extent that statements related to treatment, nutrition, condition or behavior of E.L. constitute separate criminal acts from the murder of E.L., these acts are intrinsic to the charged offense of murder. E.L. weighed only 19 pounds when he was located. The medical examiner opined that E.L.'s body showed a marked loss of skeletal muscle and of subcutaneous fat. E.L. was observed to have injuries to his face and scalp at the time of his death in addition to blunt force injuries, pressure ulcers on his back and heels, and evidence that he had suffered hypothermia. In the instant case, E.L. died as a result of physical abuse and malnourishment which took place over a lengthy period of time; this lengthy period of time is evidenced by the time period of the charged conduct. Further, many of the defendant's statements refer to her feelings towards E.L. and her treatment of him which are relevant and probative to the charged conduct.

20. The New Hampshire Supreme Court discussed intrinsic evidence in *State v. Papillon*, 173 N.H. 13 (2020). In that case, the Court held that other act evidence is intrinsic when the evidence of the other act and the evidence of the crime charged are inextricably intertwined." *Id.* at 25 (internal quotations omitted). The Court stated that "[t]ypically, such evidence is a prelude to the charged offense, is directly probative of the charge offense, arises from the same events as the charged offense, forms an integral part of a witness's testimony, or completes the story of the charged offense." *Id.* at 25-26 (internal quotations and citations omitted). *See also State v. Wells*, 166 N.H. 73 (2014); *see also United States v. Hardy*, 228 F. 3d 745 (6<sup>th</sup> Cir. 2000).

21. In this instance, the defendant's statements as well as the videos and photographs that she sent to Stapf and to her sister, Tracy Dauphinais, concern her feelings towards E.L., and discuss E.L.'s condition, nutrition, and treatment. These statements constitute intrinsic evidence and show the jury the complete story of the charged offense. The evidence of these statements as contained in the Facebook records of the defendant and Stapf are thereby intrinsic and "admissible under the rationale that events do not occur in a vacuum, and the jury has a right to hear what occurred immediately prior to and subsequent to the commission of the charged act so that it may realistically evaluate the evidence." *Id.* (internal quotations and citations omitted); *see also Wells*, 166 N.H. 73, 77-78 (2014).

**B. Stapf's statements are admissible as co-conspirator statements.**

22. At trial, the State will introduce conversations between the defendant and Stapf through their Facebook account records which took place during the period of time relevant to the charged conduct, or between September 27, 2020, and October 15, 2021.

23. All of the statements contained in these conversations between the defendant and Stapf are admissible pursuant to Rule 801(d)(2)(E) of the New Hampshire Rules of Evidence. That Rule provides that a statement is not hearsay if it is offered against a party and is a statement by a co-conspirator of a party during the course and in furtherance of the conspiracy.

24. To establish the fact that the defendant and Stapf were co-conspirators at trial, the State intends present the content of the text message conversations between the defendant and Stapf through the content of cellular phones including Stapf phone 1, Dauphinis phone 2, and Stapf phone 2, with corroboration by cellular location, google location data, and internet search history. This fact will further be established by witness testimony, the social media account records and through video surveillance showing the defendant and Stapf's activities as described *infra* and otherwise showing their joint flight from the State of New Hampshire.<sup>5</sup>

25. A person is guilty of conspiracy if, with a purpose that a crime defined by statute be committed, he agrees with one or more persons to commit or cause the commission of such crime, and an overt act is committed by one of the conspirators in furtherance of the conspiracy.” RSA 629:3, *State v. Gonzalez*, 136 N.H. 354, 356 (1992). The heart of the conspiracy is the agreement among the co-conspirators to commit a crime. Proving that agreement is rarely done with direct evidence of an explicit, spoken agreement or written contract. *See State v. Theodore*, 118 N.H. 548, 551 (1978). The crime of conspiracy at “its very essence is secrecy and concealment and the state [is] entitled to rely on inferences drawn from the course of conduct of the alleged conspirators” to prove its existence. *State v. Gilbert*, 115 N.H. 665, 667 (1975). “To establish a prima facie case of conspiracy, the State is not required to demonstrate an explicit agreement among the conspirators.” *Id.* “A tacit understanding between the parties to cooperate in an illegal course of conduct will warrant a conviction for conspiracy.” *Id.*

26. “The State must also show that one of the conspirators has performed an overt act in furtherance of the conspiracy.” *State v. Kilgus*, 128 N.H. 577, 586-587 (1986) (internal

---

<sup>5</sup> In addition, the State has filed a separate Motion seeking to utilize a proffered statement of the defendant from October 21, 2021.

citations and quotations omitted). “The overt act in furtherance of the conspiracy need not be criminal in character, so long as it shows that the conspiracy is at work.” *Id.*

27. The essence of a conspiracy is an agreement, express or tacit, between two or more people to do or cause to be done something the law forbids. *United States v. Rivera-Santiago*, 872 F.2d 1073, 1079 (1st Cir. 1989). “[A] common purpose and plan may be inferred from a development and collection of circumstances.” *Glasser v. United States*, 315 U.S. 60, 80 (1942). The actions, as well as the words of the defendants, are evidence of the existence and scope of a conspiracy. *See Rivera-Santiago*, 872 F.2d at 1079 (citing *United States v. Glenn*, 828 F.2d 855, 857 (1st Cir. 1987)).

a. There is Sufficient Independent Evidence of a Conspiracy.

28. Rule 801(d)(2)(E) allows the admission of out-of-court statements of co-conspirators as non-hearsay statements if “[t]he statement is offered against a party and is . . . a statement made by a co-conspirator of a party during the course and in furtherance of the conspiracy.” This was also the law prior to the adoption of the New Hampshire Rules of Evidence in 1985. *See State v. Colby*, 116 N.H. 791, 793-794 (1976).
29. Under the Rule, Co-conspirator statements may be admitted if the court determines that the evidence meets three conditions: (1) there must be independent evidence establishing the existence of the conspiracy; (2) the statement must have been made in furtherance of the conspiracy; and (3) the statement must have been made during the course of the conspiracy. *See Gonzalez*, 136 N.H. at 356 (citing *State v. Gilbert*, 21 N.H. 305, 311 (1981)). In making this determination, the court may consider “any evidence which is otherwise admissible.” *State v. Gibney*, 133 N.H. 890, 897 (1991). Co-conspirator statements can be considered, but do not alone establish the existence of a conspiracy. N.H.R. Evid. 801(d)(2). The proof of the existence of the conspiracy that is required is that of a *prima facie* case. *Gonzalez*, 136 N.H. at 356.
30. In this case, there is independent evidence establishing the existence of a conspiracy and the defendant’s connection to it. As relevant to the current Motion, the conspiracy between the defendant and Stapf’s was ongoing and comprised of their joint efforts.
31. The State intends to introduce evidence of the murder contained in the defendant’s statements related to E.L. located in Stapf phone 1, in her statements related to E.L.

located in the Facebook account records, and in her statements contained in Stapf phone 2 and Dauphinais phone 2. Further, the State intends to introduce evidence as discussed *infra* of video surveillance showing the defendant and Stapf's joint flight from the State of New Hampshire including their withdrawal of money, purchase of new phones, and their efforts to avoid detection by law enforcement. The State will show that the defendant intended to avoid authorities by her own statement to her sister-in-law in a recorded call where she stated that she discarded her phone to avoid being tracked.

32. Evidence of the conspiracy would also be established by evidence concerning the defendant and Stapf's efforts to tamper with witnesses related to the investigation into the whereabouts of E.L. Stapf pled guilty to tampering with a witness, namely Joanne Stapf. Meanwhile, the defendant told authorities conflicting stories about the whereabouts of E.L. and made efforts to provide authorities with witnesses who would confirm those stories.
33. The defendant first told authorities that E.L. was with her sister, Tracy Dauphinais (Tracy), in California. That same day, Tracy told investigators that the defendant contacted her and requested that she tell authorities that E.L. was living with her in California when he was not and had never been in her care. Phone records for Dauphinais phone 1 show that between 8:25 A.M. and 2:18 P.M. on October 14, 2021, there were 105 text messages and 21 outgoing calls of varying lengths between the defendant and Tracy.
34. The defendant then told authorities that E.L. was with her "friend," Bruce Rolland, in Arizona. Authorities were able to identify Bruce Rolland as Bruce Scherzer (Scherzer). Phone records for Dauphinais phone 1 show that between 1:12 P.M. and 3:53 P.M. on October 14, 2021, there were 6 text messages and 8 phone calls between the defendant and Scherzer. At 1:16:18 P.M., the defendant sent Scherzer a text message that said "September 10<sup>th</sup> Friday you came and got him You drove up and got him." At 2:30 P.M., Scherzer spoke with investigators and told them that E.L. was living with him. At 7:23 P.M., Scherzer sent a text message to the defendant stating, in part, "I can't lie to people and say I have your child". At 8:57 P.M., Scherzer contacted investigators and told them that he did not have E.L. and had said that he did because the defendant asked him to do so."

35. This evidence, considered together with the defendant's statements discussed herein and the co-conspirators' statements is more than sufficient to establish the existence of the conspiracy and the defendant's connection to it.

ii. The Co-conspirator Statements were Made During and in Furtherance of the Conspiracy.

36. The principal issue in determining if the statement was made in furtherance of the conspiracy is whether the statement promoted, or was intended to promote, the goals of the conspiracy. *United States v. Fields*, 871 F.2d 188, 194 (1st Cir. 1989) (“[t]he declaration[] must have advanced the objectives of the scheme, (citation omitted), but there is ‘no talismanic formula for ascertaining when a conspirator’s statements are “in furtherance” of the conspiracy’”), quoting *United States v. Reyes*, 798 F.2d 380, 384 (10th Cir. 1986); *United States v. Beech-Nut Nutrition Corp.*, 871 F.2d 1181, 1199 (2nd Cir. 1989). As one court concluded, “[i]t is enough that [the statements] be intended to promote the conspiratorial objectives,” not that the statements actually assisted the conspirators in achieving their objectives. *Reyes*, 798 F.2d at 384 (emphasis added). “Rule 801(d)(2)(E) explicitly says statements need to be ‘in furtherance of the conspiracy,’ not that they ‘further the conspiracy.’” *Id.* “To be deemed ‘in furtherance,’ a statement need not be necessary or even important to the conspiracy, or even made to a coconspirator, as long as it can be said to advance the goals of the conspiracy in some way.” *United States v. Ciresi*, 697 F.3d 19, 28 (1st Cir. 2012) (internal quotation omitted). With respect to whether the statements are made during the course of the conspiracy, the time at which a conspiracy ends depends upon the particular facts of the case. *United States v. Silverstein*, 737 F.2d 864, 867 (10th Cir. 1984); *Woodring v. United States*, 367 F.2d 968, 969 (10th Cir. 1966). “Generally, . . . a conspiracy terminates when its central criminal purposes have been attained.” *Krulewitch v. United States*, 336 U.S. 440, 442–43 (1949); *Silverstein*, 737 F.2d at 867; *Ammar*, 714 F.2d at 253 (a conspiracy is presumed to continue until its objective is achieved).

37. Here, the conspiracy between the defendant and Stapf was not only the death of E.L. but their efforts made to hide his death and their involvement in it. The conspiracy began during E.L.’s life as demonstrated by the defendant and Stapf’s conversations about his

treatment, nutrition and condition. The conspiracy continued through his death to their efforts to hide the death and there is no evidence to suggest that the conspiracy was terminated at any point prior to the arrest of the defendant and Stapf. See *United States v. Fields*, 871 D.2d 188 (1989); see also *United States v. Etheridge*, 424 F.2d 951 6<sup>th</sup> Cir. 1970). The co-conspirator statements that the State intends to introduce in this case were all made during the course of the charged conspiracy and in furtherance of the charged conspiracy.

iii. The Co-Conspirator Statements can be Conditionally Admitted by the Court.

38. While the State would argue that there is ample evidence presented herein to allow this Court to grant the instant Motion and allow the admission of the requested evidence at trial, the Court could choose to conditionally admit Stapf's statements contained in Stapf phone 1.
39. During trial, this Court can conditionally admit co-conspirator statements subject to a "Petrozziello determination" at the close of the evidence. *United States v. Ciampaglia*, 628 F.2d 632, 638 (1980). See *United States v. Petrozziello*, 548 F.2d 20, 23 (1st Cir. 1977) (courts should only admit co-conspirator statements if it is more likely than not the declarant and the defendant were members of a conspiracy when the hearsay statement was made, and that the statement was in furtherance of the conspiracy). As explained by the *Ciampaglia* court, (a decision which the New Hampshire Supreme Court found "well-reasoned," (*State v. Favreau*, 134 N.H. 336, 342 (1991))), the procedure for admitting co-conspirator statements is that:

the trial court, upon proper objection, may conditionally admit the declaration. If the declaration is conditionally admitted, the court should inform the parties on the record out of the hearing of the jury that (a) the prosecution will be required to prove by a preponderance of the evidence that a conspiracy existed, that the declarant and the defendant were members of it at the time that the declaration was made, and that the declaration was in furtherance of the conspiracy, (b) that at the close of all the evidence the court will make a final *Petrozziello* determination for the record, out of the hearing of the jury; and, (c) that if the determination is against admitting the declaration, the court will give a cautionary instruction to the jury, or upon an appropriate motion, declare a mistrial if the instruction will not suffice to cure any prejudice.

*Ciampaglia*, 628 F.2d at 638.

40. Put another way, *Petrozziello* and progeny explain that a court may admit, upon a proper objection, a co-conspirator statement subject to the statement being “connected up” or being “subject to tie up” at the end of the case. *U.S. v. Machor*, 879 F.2d 945, 950, 951 (1989).

WHEREFORE, the State respectfully requests that this Honorable Court:

- A. Grant the State’s Motion in Limine #6 to Admit the Content of Facebook Accounts (Dauphinais FB and Stapf FB);
- B. Hold a hearing on this issue; and/or:
- C. Grant such further relief as may be just and proper.

Respectfully submitted,

THE STATE OF NEW HAMPSHIRE

By its attorney

John M. Formella  
Attorney General

April 15, 2024

/s/ Bethany J. Durand

Bethany J. Durand, NH Bar ID #273943  
Assistant Attorney General  
New Hampshire Attorney General’s Office  
1 Granite Place, South  
Concord, New Hampshire 03301  
(603) 271-3671

/s/ Meghan C. Hagaman

Meghan C. Hagaman, NH Bar ID# 20804  
Senior Assistant Attorney General  
New Hampshire Attorney General’s Office  
1 Granite Place, South  
Concord, New Hampshire 03301  
(603) 271-3671

**CERTIFICATE OF SERVICE**

I certify that on this day I sent a copy of the foregoing to counsel for the defendant through the Court's e-filing system.

April 15, 2024

*/s/ Bethany J. Durand*

\_\_\_\_\_  
Bethany J. Durand, NH Bar ID #273943  
Assistant Attorney General