

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 #7 TO ADMIT EVIDENCE OF  
CONSCIOUSNESS OF GUILT**

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 evidence of the defendant's consciousness of guilt. The State seeks to admit evidence of (1) the defendant's lack of report related to the death of E.L., and (2) the secretion of E.L.'s body on the property at 7 Sunset Drive.

Further, the State seeks to admit evidence of the defendant's flight following the initiation of an investigation into the whereabouts of E.L. which includes her travel from New Hampshire to New York, as well as, the transport of E.L.'s body to Massachusetts, the purchase and activation of a new cellular phone under a false name in Burlington, Massachusetts, the burial of E.L.'s body in Abington, Massachusetts, discarding her old cellular phone in Ayer, Massachusetts, researching the U.S. Marshall's Most Wanted List while in Uncasville, Connecticut, and her false statement to investigators after being taken into custody in Bronx, New York. The defendant's actions demonstrate her guilty knowledge. 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. Specifically, this 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 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 (defendant), and her boyfriend, Joseph Stapf (Stapf). Based on the investigation, E.L. arrived in New Hampshire in May of 2020, and resided with the defendant and Stapf in a basement apartment at 7 Sunset Drive in Merrimack, New Hampshire from that time until the time of his death. Stapf's mother, Joanne Stapf owned the home and occupied the first floor. The defendant and Stapf had a child together, J.S. (DOB: 07-08-2019) who also resided in the basement apartment. On October 7, 2021, the defendant gave birth to another mutual child, D.S. (DOB: 10-07-2021).

3. From May 2020, through October 2021, Dauphinais and Stapf each had a cellular phone with active service. Dauphinais' phone number was 603-759-4953 (Dauphinais phone 1), while Stapf's phone number was 603-661-7094 (Stapf phone 1). They utilized these phones over the period of the charged conduct with such usage pre-dating E.L.'s arrival in New Hampshire and ending on or about October 15, 2021, when they purchased and activated new phones as discussed *supra*.

4. Based, in part, on cellular phone communications between Dauphinais and Stapf, investigators believe that E.L. died between September 21 and September 24, 2021<sup>2</sup>. The investigation found that following E.L.'s death, Stapf placed E.L. into a black trash bag, placed the trash bag into a gray plastic tote box and removed E.L. from the basement apartment, storing

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<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".

his body on the property of 7 Sunset Drive in Merrimack. On the morning of September 24, 2021, the following text message conversation took place between Dauphinais phone 1 and Stapf phone 1:

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..

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.

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

5. On October 14, 2021, at approximately 8:00 A.M., authorities began asking the defendant and Stapf about E.L.'s whereabouts. The defendant first told authorities that E.L. was with her sister, Tracy Dauphinais (Tracy), in California. At approximately 12:45 P.M., investigators spoke with Tracy who said that defendant contacted her that same day to ask her to tell authorities that E.L. was living in California when he was not. Tracy told investigators that she had never had E.L. 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.

6. Authorities attempted to reach the defendant on October 14, 2021, at approximately 1:10 P.M. but she did not answer her phone. 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 a contact identified as Bruce 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."

7. At approximately 1:30 P.M., the defendant contacted authorities and was confronted again with questions about E.L.'s whereabouts. At that time, she told authorities that E.L. was with her "brother," Bruce Roland, in Texas but she did not know an address. She told authorities that E.L. had been with Roland since September 9 or September 10. Authorities were able to identify Bruce Rolland as Bruce Scherzer (Scherzer). 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.”

8. After being confronted with questions about E.L.’s whereabouts, and the false information about E.L. being in California and Texas - the defendant and Stapf fled New Hampshire. When they fled, the defendant and Stapf took the plastic tote that held E.L.’s body, some of E.L.’s personal possessions (such as toys and books) and their cellular phones, Dauphinais phone 1 and Stapf phone 1 with them. They left their minor children J.S. (DOB: 07-08-2019) and D.S. (10-07-2021). They fled first to Massachusetts before driving into Connecticut and then travelling on to New York.

9. On October 14, 2021, at approximately 3:20 P.M., the defendant and Stapf stopped at the DCU bank, located at 379 Amherst Street in Nashua, New Hampshire. At that location, Stapf used Joanne Stapf’s DCU bank debit card to withdraw a total of \$1,000 from Joanne Stapf’s checking account. Video surveillance showed the defendant on the phone in the passenger seat of Stapf’s red 2007 Toyota Tundra pickup truck (NH registration JOJOD78) while Stapf was in the driver seat.

10. Phone records from Dauphinais phone 1 and reports from the Merrimack Police Department showed that at approximately 3:20 P.M., the defendant spoke with Officer Amanda Groves of the Merrimack Police Department. During that conversation which occurred at approximately 3:20 P.M., the defendant told Officer Groves that she and Stapf would be at the police department by 4:30 P.M.

11. Upon leaving the State of New Hampshire, the defendant and Stapf stopped at the Target store, located at 34 Cambridge Street in Burlington, Massachusetts. Video surveillance confirmed their presence at that location beginning at approximately 4:29 P.M. At approximately 4:45 P.M. on October 14, 2021, a debit card belonging to Joanne Stapf was used at the Target store in an attempt to purchase two prepaid cellular phones. The debit card transaction was declined. The defendant and Stapf then paid for and activated two SimpleMobile prepaid cellular phones with cash and merchandise cards. Video surveillance showed the defendant and Stapf making the purchase. The investigation found that, upon being

activated, the SimpleMobile prepaid phones were assigned phone numbers of 603-233-0827 and 603-233-0548.

12. On October 16, 2021, at approximately 12:32 P.M., an exigency location ping was reported showing a possible location for 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 the defendant, Stapf, and E.L. with no success.

13. While officers were conducting the search in the area of Littleton Road, the Ayer Police Department received a 911 call reporting that two juveniles had been fishing at Sandy Pond on Snake Hill Road<sup>3</sup> in Ayer when they found a cellular phone in the water. One of the juveniles turned the phone on, saw the last name “Stapf” in the contents of the phone and contacted police when a Google search of Stapf’s name showed a news article about the search for E.L. The cellular phone was recovered by the Ayer Police Department and turned over to investigators with the New Hampshire State Police where it was assigned evidence number TJH-1. The phone was searched pursuant to a warrant and found to have active service with an assigned phone number of 603-661-7094, identifying it as Stapf phone 1. In the contact list of the phone, investigators located an entry for “My Wife Boober” with cellular phone number 603-759-4953 (Dauphinais phone 1).<sup>4</sup>

14. Investigators obtained a recording of a phone call made by the defendant on November 4, 2021, at 1:33 P.M. In that call, the defendant 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.” On the morning of Sunday, October 17, 2021, the defendant and Stapf were found 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 two cellular phones. The phones were turned over to the New Hampshire State Police and were searched pursuant to warrants. The search of the phones allowed investigators to identify them as the two SimpleMobile prepaid cellular phones purchased at the Target store in Burlington, Massachusetts. Consistent with that

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<sup>3</sup> Snake Hill Road intersects with Littleton Road.

<sup>4</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.

determination, the phone numbers assigned to those phones were confirmed to be 603-233-0827 and 603-233-0548.

- A. The phone with number 603-233-0827 was assigned evidence number TJH-3. A review of the contents of that device showed that the phone was registered to the name Samantha Housen, with a Google e-mail account of samhousen7819@gmail.com. The phone had only one saved contact which was named “My world, My Love;” the phone number for that contact was 603-233-0548 (the other recovered phone).
  - B. The phone number 603-233-0548 was assigned evidence number TJH-2. A review of the contents of that device showed that there was no user registration information entered. Further, the phone number 603-233-0827 (the other recovered phone) was saved as a contact under the name “Baby Girl.” A second contact “Lawtown Pizza” was saved to this phone with the phone number 617-797-4951.<sup>5</sup> On October 14, 2021, at approximately 5:50 P.M., a text message was sent from the device to Lawtown Pizza which stated, “Yo it’s Joe new number”. Lawtown Pizza replied “Who” and the device responded with “the silver civic and red truck.”<sup>6</sup>
  - C. Based on the above information as well as text message communications between the two phones, 603-233-0827 was identified as the cellular phone used by the defendant (Dauphinais phone 2) while 603-233-0548 was identified as the cellular phone used by Stapf (Stapf phone 2).
15. In addition to warrants for the search of the content of the recovered cellular phones, investigators obtained warrants for cell site location and google location data.

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<sup>5</sup> The phone number 617-797-4951 was also saved as a contact “Lawtown Pizza” in Stapf phone 1. Based on communications between Stapf and Lawtown Pizza, the individual associated with this number is the defendant and Stapf’s drug dealer who they would meet in Lawrence, Massachusetts. Dauphinais Phone 2 did not have this phone number saved as a contact but the phone log showed 6 outgoing calls from Dauphinais Phone 2 to 617-797-4951 on October 14, 2021, between 11:08 A.M. and 5:16 P.M.

<sup>6</sup> At the time that the defendant and Stapf fled New Hampshire, they were in Stapf’s red pickup truck. Stapf’s mother, Joanne Stapf owned and allowed Stapf to drive her silver 2020 Honda Civic (NH registration 4DREAMS). Additional messages between Lawtown Pizza and Stapf include a conversation on October 15, 2021, where at 9:03:35 A.M., Stapf writes “I’m in the truck” followed by a message at 9:12:57 A.M. where he writes “I have nh plates”. Location data for both Stapf phone 2 and Dauphinais phone 2 showed the two devices in Lawrence, Massachusetts between 9:15 A.M. and 9:18 A.M. on October 15, 2021.

16. Location data for Dauphinais phone 2 and Stapf phone 2 placed those phones in that area of 585 Chestnut Street in Abington, Massachusetts beginning at approximately 11:00 P.M. on October 14, 2021, until October 15, 2021, at 12:52 A.M. During the time the phones were in that location, investigators found text message communications between the two devices. In that communication, the defendant and Stapf discussed Stapf's efforts to dig a hole in which to bury E.L. and the defendant opined that it didn't have to be big or deep. Further, the defendant sent a message to Stapf phone 2 indicating "we gotta figure out where we're gonna go next." 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.

17. 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.

18. Location data placed Dauphinais Phone 2 and Stapf Phone 2 near 212 Snake Hill Road in Ayer, Massachusetts on October 15, 2021, at approximately 11:02 A.M. This location is consistent with the location of recovery of Stapf Phone 1, discussed *supra*.

19. On October 15, 2021, at 7:02 P.M., Stapf phone 2 accessed an internet blog post article on a website called VegasTripping.com entitled "Note to Self: Don't Sleep in Foxwoods Parking Garage When Being Hunted by FBI."<sup>7</sup>

20. On October 15, 2021, at approximately 7:44 P.M., video surveillance at the Mohegan Sun Casino in Uncasville, Connecticut showed the defendant and Stapf arrive in Stapf's red pickup truck and enter one of the Casino's parking garages. At 10:20 P.M., they parked the truck in a parking spot where it would later be found and recovered by police. Video surveillance showed that the occupants of the truck (the defendant and Stapf) remained inside of it until October 16, 2021, at approximately 11:25 A.M. At that time, the defendant and Stapf

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<sup>7</sup> The State notes that Foxwoods Casino is located in Ledyard, Connecticut approximately 20 minutes away from the Mohegan Sun Casino in Uncasville, Connecticut.

exited the truck, entered the casino, walked to the bus terminal before leaving on an 11:40 A.M. bus travelling towards New York City. Their movements were captured by video surveillance inside of the Casino and later on the bus in which they were travelling.

21. The content of Dauphinais Phone 2 shows that there was internet activity on that device while inside of the Casino parking garage. That activity consisted of web searches as follows:

8:47:12 A.M.	“us marshals most wanted”
8:47:39 A.M.	“us marshals most wanted”
8:47:39 A.M.	“U.S. Marshals warrant list”
8:47:43 A.M.	“U.S. Marshals warrant list”
8:48:57 A.M.	“How do you find out if someone is wanted by the US Marshals”
8:49:02 A.M.	“How do you find out if someone is wanted by the US Marshals”

Further, Dauphinais Phone 2 was used to view the U.S. Marshals Service, Fugitive Investigations Index (<https://www.usmarshals.gov/investigations/index/html>) on October 16, 2021, at 8:49:23 A.M.

22. During this same time period, Stapf Phone 2 showed activity which included multiple searches for “merrimack nh”<sup>8</sup> and the device was used to accessed multiple news outlet articles about the investigation. Beginning at 1:01 P.M., Stapf Phone 2 showed web searches for Ferries and Trains to New Jersey and New York, as follows:

1:01:53 P.M.	“ferry schedule new jersey”
1:01:53 P.M.	“feery”
101:54 P.M.	“ferry schedule new jersey”
101:54 P.M.	“feery”
1:02:35 P.M.	“train to new york”
1:02:37 P.M.	“train to new york”

Further, the phone showed that Stapf accessed websites related to travel including [www.nywaterway.com](http://www.nywaterway.com), [www.amtrak.com](http://www.amtrak.com), [www.greyhound.com](http://www.greyhound.com).

23. Investigators were able to track the movements of the defendant and Stapf from Mohegan Sun Casino to a SEAT bus and then to the Cross Island Ferry. On the morning of

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<sup>8</sup> Specifically, “merrimack nh” was searched fifty-two times between 8:39:51 A.M. and 8:40:48 A.M.

Sunday, October 17, 2021, authorities located the defendant and Stapf in the subway in Bronx, New York. Upon being taken into custody, the defendant was advised of and waived her Miranda Rights and agreed to speak with investigators. She knew that investigators were looking for E.L. and wanted to ask her questions about where he was. During that interview, the defendant told investigators that E.L. had wandered away from 7 Sunset Drive in the middle of the night at the end of September 2021. She told investigators that Stapf looked for E.L., but could not find him. She further told investigators that they continued to look for E.L., but had not found him.

## **II. LEGAL ANALYSIS**

24. As indicated, the State intends to introduce various statements and actions statements of the defendant as evidence of her consciousness of guilt. As outlined *supra*, the State seeks to admit evidence of (1) the defendant's lack of report related to the death of E.L., and (2) the secretion of E.L.'s body on the property at 7 Sunset Drive, (3) evidence of the defendant's flight following the initiation of an investigation into the whereabouts of E.L. which includes her travel from New Hampshire to New York, as well as, the transport of E.L.'s body to Massachusetts, the purchase and activation of a new cellular phone under a false name in Burlington, Massachusetts, the burial of E.L.'s body in Abington, Massachusetts, discarding her old cellular phone in Ayer, Massachusetts, researching the U.S. Marshall's Most Wanted List while in Uncasville, Connecticut, and her false statement to investigators after being taken into custody in Bronx, New York.

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

25. First, any statements of the defendant as described above are admissible as statements of a party opponent. 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. 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).

26. To the extent that the defendant's statements described *supra* constitute a separate criminal act from the murder of E.L., the act is intrinsic to the charged offense of the murder.

27. 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), and *United States v. Hardy*, 228 F. 3d 745 (6<sup>th</sup> Cir. 2000).

**B. The defendant’s statements and actions are evidence of her guilty mind.**

28. In the instant case, the defendant’s consciousness of guilt is demonstrated by, among other evidence, her efforts to have people tell authorities that E.L. was living with them, her flight from the State of New Hampshire, her purchase of a new cellular phone (Dauphinais phone 2), her statements and participation in the burial of E.L., her discard of her old cellular phone (Dauphinais phone 1) to avoid being tracked by authorities, her internet search history, and her false statements to law enforcement. This evidence of her consciousness of guilt is admissible because it is relevant to the charged conduct.

29. Evidence of the defendant’s consciousness of guilt is a classic form of inculpatory evidence that is presented in criminal trials. Consciousness of guilt is “[t]he awareness of an accused that he or she has engaged in blameworthy conduct, usually as demonstrated by evidence that the accused has tried to avoid the consequences of a crime.” Black’s Law Dictionary (10th Ed.). Such evidence plainly is relevant, probative, and admissible. “The commission of a crime leaves usually upon the consciousness a moral impression that is characteristic. The innocent man is without it; the guilty man usually has it. Its evidential value has never been doubted. The inference from consciousness of guilt to ‘guilty’ is always available in evidence.” 2 Wigmore on Evidence§ 173 (Chadbourn rev. 1979).

30. As the New Hampshire Supreme Court has noted generally, “the jury may infer culpability from attempts to cover up involvement or mislead the police.” *State v. Evans*, 134 N.H. 378,387 (2003); *see also State v. Laudarowicz*, 142 N.H. 1, 5 (1997); *State v. Duguay*, 142 N.H. 221,226 (1997). The New Hampshire Supreme Court has further held that “it is beyond dispute that evidence of post-offense flight is probative... of the defendant’s consciousness of guilt.” *State v. Fernandez*, 152 N.H. 233, 242 (2005) (citations omitted).

31. Consciousness of guilt can manifest itself in a wide assortment of actions and statements. "The kinds of behavior which may properly suggest such a cause [consciousness of guilt] are beyond enumeration; they are as various and as changeable as men's dispositions and emotions." 2 Wigmore § 273. The breadth of evidence that properly may fall under the admissible mantle of "consciousness of guilt" evidence is reflected in New Hampshire jurisprudence. Over the years, our Supreme Court has recognized a variety of words and behaviors as constituting relevant and admissible consciousness of guilt evidence. See *State v. Papillon*, 173 N.H. 13, 29-30 (2020) (flight); *State v. Etienne*, 163 N.H. 57, 85 (2011) (witness tampering); *State v. Brown*, 128 N.H. 606, 615-16 (1986); (suicide attempt); *State v. Evans*, 150 N.H. 416, 420-21 (2003) false exculpatory statements). See generally 2 Wigmore § 276 ("It is universally conceded today that the fact of an accused's flight, escape from custody, resistance to arrest, concealment, assumption of a false name, and related conduct, are admissible as evidence of consciousness of guilt, and thus of guilt itself."); *State v. Barry*, 93 N.H. 10, 13 (1943) (quoting same).

32. Here, the evidence of the defendant's statements and her actions to flee New Hampshire as described *supra* constitute relevant and admissible consciousness of guilt evidence.<sup>9</sup> In that regard, the evidence reflects a noticeable and abrupt shift in behavior by the defendant after the victim's murder, and when confronted by investigators in connection with an active and ongoing missing person investigation, the subject of whom was that same victim. Whether viewed separately or together, this evidence fairly can reflect conduct by the defendant motivated by her burdened and guilty conscious. Specifically, the delineated conduct demonstrates the defendant's active attempts to avoid culpability for crimes known to have been committed, by escaping consequences through fleeing from what she knew to be the ongoing investigation into what happened to the victim.

33. Under the New Hampshire Rules of Evidence, "relevant evidence" is generally admissible at trial. See N.H. R. Evid. 402. Evidence is "relevant" if it "has any tendency to make a fact more or less probable than it would be without the evidence [ and] the fact is of

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<sup>9</sup> Although the State has endeavored to provide a complete list of evidence contained within Stapf phone 2 and Dauphinais phone 2 that fairly may be considered evidence of consciousness of guilt, and thus considered within the legal framework set forth *supra*, as noted the types of evidence that may be considered consciousness of guilt fall within a broad spectrum. To the extent the State has overlooked other content and/or statements that constitute consciousness of guilt, the State relies upon the filed motions for admission.

consequence in determining the action." N.H. R. Evid. 401. Once this low relevancy threshold has been crossed, a Court should exclude relevant evidence only "if its probative value is substantially outweighed by a danger of ... unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence." N.H. R. Evid. 403.

34. For these reasons, the proffered evidence is relevant and admissible at the defendant's trial as demonstrating her consciousness of guilt. Further, to the extent that the defendant may posit any alternative explanations for any of this delineated consciousness of guilt evidence, such claims would not support preclusion at trial. After all, the fact that other explanations - whether contrived or valid - may exist only goes to the weight of the evidence, rather than its admissibility. *See State v. Cocomo*, 31 A.3d 1012, 1017 (Conn. 2012) ("Generally speaking, all that is required is that ... evidence [of consciousness of guilt] have relevance, and the fact that ambiguities or explanations may exist which tend to rebut an inference of guilt does not render [such] evidence ... the evidence might support an innocent explanation as well as an inference of a consciousness of guilt does not make [the admission of evidence of consciousness of guilt] erroneous.") (internal quotation marks omitted); *Commonwealth v. Sheriff*, 680 N.E.2d 75, 83 (Mass. 1997) ("[C]onsciousness of guilt evidence may be admitted even though the defendant presents plausible alternative explanations for the conduct that are consistent with innocence of the crime charged."); *see also Torrence*, 134 N.H. at 27 ("Although flight motivated by fear of future criminal prosecution may support a variety of inferences, it undeniably supports a reasonable inference that the defendant was aware of his guilt.").

WHEREFORE, the State respectfully requests that this Honorable Court:

- A. Grant the State's Motion in Limine #7 to Admit Evidence of Consciousness of Guilt;
- 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

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April 15, 2024

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**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* \_\_\_\_\_

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