

THE STATE OF NEW HAMPSHIRE
SUPERIOR COURT

COÖS, SS.

FEBRUARY TERM, 2021

The State of New Hampshire

v.

Britany Barron

214-2020-CR-00134

STATE'S OBJECTION TO DEFENDANT'S MOTION FOR BAIL

NOW COMES, the State of New Hampshire, by and through its attorneys, the Office of the Attorney General, who respectfully requests that this Honorable Court deny the defendant's motion for bail. In support thereof, the State submits the following:

I. Background

1. In the late hours of September 19, 2020, into the early morning hours of September 20, 2020, Jonathan Amerault was lured to a secluded state park, where he was violently assaulted and murdered. His body was then driven over four hours north, almost the entire length of the state, deep into the Great North Woods, where his car was concealed; his personal belongings were burned; he was decapitated, with his head buried in a muddy wet grave; and his body was wrapped in a tarp, dragged deeper into the woods, and dumped into a shallow brook.

2. On Friday, September 25, 2020, the defendant was arrested and charged with three counts of falsifying physical evidence, pursuant to RSA 641:6, related to the murder of

Jonathan Amerault. On January 24, 2021, the defendant filed a motion requesting to be released from pretrial detention on personal recognizance with certain conditions.

3. The State objects to the defendant's request for several reasons. First, the defendant's charged conduct was not the result of duress. It is doubtful the defendant could even satisfy her burden to receive a duress jury instruction. Additionally, the facts surrounding Jonathan's murder, combined with the defendant's destruction of evidence and desecration of his corpse, demonstrate the significant danger she poses to the general public. Based upon the crimes she committed in effort to avoid prosecution, her lack of ties to the community, and her cross-country connections, there are reasonable concerns that the defendant could flee from prosecution.

4. The State notes that the parties have agreed to proceed on the defendant's motion via offers of proof, rather than through live testimony.

II. Relevant Factual Background¹

5. On September 19, 2021, the defendant's husband, Armando Barron, discovered evidence on the defendant's cell phone of an apparent extramarital relationship between the defendant and Jonathan, her co-worker. Enraged, Mr. Barron violently attacked and assaulted her.² Using the defendant's phone to pretend that he was the defendant, he then lured Jonathan to Annette Wayside Park.

6. Jonathan arrived at the park at approximately 11:40 p.m. The defendant was seated in the driver's side of her vehicle and Mr. Barron, armed with a gun and a machete,

¹ This not an exhaustive recitation of the facts. Rather, this is a summary of the facts the State believes to be most relevant to the defendant's current motion.

² Any discussion of charges and allegations against Mr. Barron are merely accusations, and he is presumed innocent unless and until proven guilty.

was hiding behind their car. As Jonathan approached her vehicle, the defendant and Jonathan looked at each other. According to the defendant, Jonathan saw her face and “definitely knew something was wrong.”³ There is no evidence that the defendant made any attempt to alert Jonathan of the impending danger.

7. When Jonathan got closer, Mr. Barron came around the car and pointed a gun at him. The defendant told investigators that “[Jonathan] obviously was pleading for his life.” According to the defendant, Mr. Barron then violently assaulted Jonathan, she said:

[Mr. Barron] beat the hell out of this kid . . . He punched him. [Jonathan] fell. And then he just started kicking him and kicking him and kicking him . . . In his back. In his – Anywhere. Anywhere. He didn’t care. He was just kicking this guy. He stomped on his face.

At one point during the assault, Mr. Barron ordered the defendant to shoot Jonathan, but she refused. When told to, however, she stood on Jonathan’s throat. She explained that she stood on Jonathan’s throat with her “full body weight” for a long time, “for so long.” When standing on his throat did not kill him, Mr. Barron ordered Jonathan at gunpoint into the hatchback of his car. Jonathan begged for his life. Mr. Barron gave the defendant a small knife⁴ and told her to “slit his wrist.” The defendant then cut both of Jonathan’s wrists in a downward fashion. The defendant also told investigators that she believed Mr. Barron also struck Jonathan with the machete. Throughout the assaults, the attempted strangulation, and the cutting of his wrists, Jonathan never lost consciousness. According to the defendant, “That’s the worst part. Like, he was awake for everything.”

³ There are several recorded interviews with the defendant. The two most substantive interviews occurred on September 22, 2020, and September 23, 2020, which are approximately 8.5 hours and 12 hours long respectively. Both parties have a transcript of the September 22, 2020 interview, but are waiting on the remaining transcripts.

⁴ The small knife was an attached accessory to the machete.

8. Eventually, the defendant and Mr. Barron got into the front seats of Jonathan's car, the defendant in the driver's seat and Mr. Barron in the passenger seat. Mr. Barron put the machete down in the car and then got out for the car. When Mr. Barron left the defendant and Jonathan alone in the car, Jonathan pleaded for the defendant to "pick up the machete and kill him [referring to Mr. Barron]." Jonathan told her, "Just pick up the machete and kill him." Britany told Jonathan, "You don't understand, man. I'm not going to kill him with that blow, and we're both going to die in this car."

9. Mr. Barron got back into the car, pointed his handgun at Jonathan, and shot him multiple times. After shooting him, Mr. Barron ordered the defendant to drive Jonathan's car back to their home in Jaffrey so they could pack camping gear. While the defendant was packing, Mr. Barron packed the handgun that he had used to shoot Jonathan into her backpack and said, "Take this with you." While loading the camping gear into the car, the defendant heard Jonathan moaning in the back of his car. According to the defendant, "He was just going, 'Ugh, Ugh, Ugh,' over and over again."

10. After packing, Mr. Barron told the defendant they were going to drive north, to Errol. The defendant set the "GPS on [her] phone" and they began the nearly four hour drive north, with Mr. Barron driving their Jeep and the defendant driving Jonathan's car, with Jonathan in the back. Before leaving Jaffrey, Mr. Barron stopped at "Mr. Mike's" for gas. Mr. Barron had the defendant park down the road at a park. After getting gas, they drove north to Errol. When asked if Jonathan was still making noises during the drive, the defendant said, "No, not really. It kind of stopped by the time I got in the car."

11. Throughout the drive to Errol, the defendant and Mr. Barron spoke on the phone. The defendant said at one point, Mr. Barron said, "Listen, I'm asking you all this now

because once sunlight hits, I forgive you. Like, it's done." He went on to tell the defendant that he "decided to forgive [her]" and that "[e]ven after all this," that he was still in love with her.

12. After arriving in Errol, Mr. Barron went into L.L. Cote's General Store. He had the defendant park at the Lake Umbagog canoe launch, which based upon the use of maps.google.com is approximately seven miles from L.L. Cote's General Store. The defendant waited there. After making several purchases, Mr. Barron returned and they drove in tandem further north, ultimately driving up a logging road off of Abbott Brook Road in Atkinson and Gilmanton Academy Grant, where they setup camp and began destroying evidence.

13. While it is still not clear, it appears that once at the campsite, Mr. Barron may have provided the defendant with the only other firearm, a loaded 9mm handgun, which conservation officers found her wearing on September 22, 2020. She explained in an interview that Mr. Barron was reluctant to do so, even asking her if she was going to shoot him in the back after he gave the 9mm handgun to her. She told investigators that the plan after arriving at the campsite was that Mr. Barron was going to return home, while the defendant would have to stay and destroy all of the remaining evidence, including Jonathan's body. Mr. Barron would then return on Friday, to ensure the evidence was destroyed.

14. Mr. Barron provided the defendant a list of evidence destruction tasks to complete. Some of those tasks the defendant did in his presence, such as decapitating Jonathan, placing his head in a hole Mr. Barron had dug to bury it separate from Jonathan's body, disposing of his cell phone, and burning his personal belongings, including "anything that had his name on it." Some tasks, such as further dismembering Jonathan's body, the

defendant refused to do. Other tasks the defendant did while Mr. Barron was hours away, and while she was left with cell phones and was armed with two handguns. Notably, Mr. Barron was hours away when the defendant hid and camouflaged Jonathan's car, wrapped Jonathan's body in a tarp with a rope, dragged his body into the woods, dumped his body into a brook, and "popped a hole" in the tarp because she saw it was "puffing up" with air when she pushed him into the water.

15. On September 20, 2020, the day the defendant and Mr. Barron arrived at the campsite, a member of a group of bear hunters came across the defendant and Mr. Barron, who were driving Jonathan's Subaru and their Jeep on the logging road. The hunter had a short conversation with Mr. Barron. The next morning, the group of hunters went back to the area to see if the Jeep and Subaru were still there. When they arrived, they saw that the Jeep was facing out from a camping area, but could not see the Subaru. Later that day, at approximately 10:00 p.m., two of the hunters drove back to the site to see if the Jeep was still there and to get its license plate number. When they got there, the Jeep was gone, but there was a tent, camp chairs, and a small shovel outside of the tent. The hunters did not believe anyone else was there.

16. Again, on Tuesday, September 22, 2020, at approximately 8:00 a.m., two of the hunters drove a truck to the campsite to see if anyone was there. When they arrived, they blew the horn and the defendant came out of the tent with her small dog. The hunters had a brief conversation with her about her unauthorized camping. At no point—including when the defendant knew Mr. Barron was gone, believing him to be hours/hundreds of miles away—did the defendant make any effort to alert the hunters of what was happening, what Mr. Barron had done, or take any other lawful action. Instead, after the hunters left, she

continued attempting to cover up Jonathan's murder and destroy evidence. In fact, when later speaking to investigators, the defendant explained the frustration and difficulty of moving her camp further back into the woods to continue destroying evidence alone.

17. The defendant readily admitted to investigators that she was trying to destroy the evidence. She said, "I tried to do what he told me to do. I tried to follow the instructions I was given, but Fish and Game showed up. I had two guys in green shirts kneeling down looking at my dog and I had just put that body in the water. Like I had just flipped him in there" Still, even with the opportunity to report the crimes to—and with the protection of—two uniformed and armed conservation officers, the defendant continued to not alert them about the murder; not ask for help; not tell them that Mr. Barron committed a homicide and was driving across the State; and not tell them that Jonathan's head and body lay separate from one another, buried in the mud and dumped in the brook. As she later told investigators, "It's not like I went and told on him [Mr. Barron], ya know? Like, I didn't go out of my way to go, I mean, like they found me."

18. The defendant had an abundance of reasonable, and lawful alternative steps between Jaffrey and the Atkinson Grant that she could have safely chosen to avoid destroying evidence and desecrating Jonathan's body. She had opportunities where she was separate from Mr. Barron, armed with a loaded handgun, a working cell phone, and a car. She had opportunities to let bystanders, like the hunters, know that she needed help and that a crime had been committed. She had the opportunity to report to two uniformed and armed conservation officers of the defendant's crimes and that she needed help. At no point did she take any of those reasonable, lawful alternative steps.

III. Argument

19. The defendant is not charged with murdering Jonathan Amerault. The defendant is charged with falsifying physical evidence for her efforts in destroying, altering, or concealing Jonathan's car, body, and decapitated head, all of which was evidence of his murder. While she did not murder Jonathan, she desecrated his body and destroyed evidence—even when presented with a multitude of opportunities to make reasonable alternative choices that did not involve committing crimes or endangering her own safety. The defendant has demonstrated that she presents a significant threat to the public based upon the lengths she was willing to go to in order to conceal one of the most serious crimes in New Hampshire, the murder of another person.

20. At the outset, the State disagrees with the defendant's claim that she has a "very strong duress defense." Def.'s Mot., at ¶ 24. Duress is an affirmative defense. See State v. Daoud, 141 N.H. 142, 147 (1996). As detailed below, whether the defendant had moments of fear for her life, there were no imminent threats of death or serious bodily injury at the time she committed the charged conduct, and "fear—even great fear— . . . by the defendant is not all that is required to establish the defense of duress. In addition to being afraid, the fear must be of suffering *imminent* death or serious bodily injury." State v. Hayward, 166 N.H. 575, 590 (2014) (Lynn, J., dissenting) (emphasis in original). As the New Hampshire Supreme Court "recognized in State v. Daoud, one principle of the duress defense remains constant: if there is a reasonable, legal alternative to violating the law, a chance both to refuse to do the criminal act and also to avoid the threatened harm, the defense will fail." Id. (quotation and brackets omitted). Moreover, "because duress is an affirmative defense, it is the defendant, rather than the State, who bears the burden of proving by a preponderance of

evidence that no such alternative existed.” Id. It is unlikely that the defendant would satisfy that burden as the facts, detailed by her own admissions, do not justify a duress instruction. See Daoud, 141 N.H. at 147 (“When no reasonable juror could find that the defendant has met that burden, a trial court may withhold the defense from the jury.”).

21. The defendant’s request to be released on bail demonstrates an under appreciation for the seriousness of her actions, which leaves the State doubting the seriousness of which she would take any conditions of release. Furthermore, the defendant’s proposed restrictions do not prevent her from engaging in any further efforts to prevent Mr. Barron’s successful prosecution. The defendant’s ability and willingness to, *inter alia*, decapitate Jonathan and dispose of his body in the manner in which she reported, demonstrates the defendant’s extensive efforts she took to further an incredibly violent crime.

22. New Hampshire RSA 597:2, III(a) provides that:

When considering whether to release or detain a person, the court shall consider the following issues:

(a) Safety of the public or the defendant. If a person is charged with any criminal offense, an offense listed in RSA 173-B:1, I, or a violation of a protective order under RSA 458:16, III, or after arraignment, is charged with a violation of a protective order issued under RSA 173-B, the court may order preventive detention without bail, or, in the alternative, may order restrictive conditions including but not limited to electronic monitoring and supervision, only if the court determines by clear and convincing evidence that release will endanger the safety of that person or the public.

In arguing that she is not a danger to the public, the defendant emphasizes that she is not charged with “a crime of violence.” Def.’s Mot., at ¶ 25. While many falsifying physical evidence charges may not involve violent acts, there is little doubt that the defendant’s actions at present were violent themselves, and were in furtherance of a violent murder. The

defendant's decapitation and callous dumping of Jonathan's body were violent acts. The fact that the defendant was deceased at that time does not diminish this violence. Furthermore, there is no *per se* requirement that a defendant be charged with a violent crime in order to be considered a danger to the community. Rather, "[i]n determining whether release will endanger the safety of that person or the public, the court may consider all relevant factors presented." RSA 597:2, III (a). Here, taking into account the totality of the circumstances surrounding her violent acts, the facts illustrate that the defendant is a danger to the public.

23. The defendant's lack of a criminal record does not diminish the violence or nature of her crimes. Likewise, the inexcusable assault she experienced before Jonathan's murder at the hands of Mr. Barron, does not lessen her potential for being a danger to others, as demonstrated by her subsequent criminal choices. Those facts may very well be mitigating sentencing factors, but they do not reduce her potential for being a danger to others.

24. The defendant argues in her pleading that the time she has been incarcerated since September is equivalent to a sentence she would likely receive, should she be found guilty of falsifying physical evidence after trial. This is not supported by recent criminal litigation in New Hampshire in other matters where a person other than the murder is convicted of falsifying physical evidence as part of the concealment of a murder. See, e.g., State v. Kat McDonough, Rockingham County Superior Court, sentencing on July 24, 2013 (where the codefendant pled to a state prison sentence of 1-3 years, stand committed, for helping dispose of a murder victim's body).

25. Finally, there is a legitimate concern of flight. The defendant's crimes alone demonstrate the vast efforts she was willing to take to avoid discovery of Mr. Barron's crimes and/or prosecution, either for herself or Mr. Barron. Taking into consideration the

steps the defendant took to further prevent apprehension and prosecution of a murderer, the defendant may easily continue to assist the defendant from being prosecuted. She herself expressed her guilt for cooperating with law enforcement, but also sympathy for Mr. Barron when she detailed her actions to investigators. After she was told that Mr. Barron was arrested, the defendant said, “Now my girls don’t have their dad . . . he’s so stupid.” While she expressed an intent to separate from Mr. Barron, she also noted, “Like, he’s all I have left. And like, he’s my best friend.” These factors raise a reasonable concern that the defendant could flee in an attempt to prevent either prosecution.

26. The concern of flight is further exacerbated by the defendant’s lack of ties to New Hampshire and her connections to New Mexico. It is the State’s understanding that the defendant’s children are currently in the custody of their grandmother, Marialena Robiedo. It is unclear whether Ms. Robiedo would maintain custody if the defendant were to be released pursuant to her proposed conditions. Other than her children, the State is unaware of any other family in the area or ties to the community. She is currently unemployed, and has familial ties to New Mexico. It is the State’s understanding that the defendant’s family, including her sister, are still in New Mexico. She also expressed fear about how those around her would feel here in New Hampshire; she said, “I’m scared everyone’s going to hate me.”

IV. Conclusion

27. There is little doubt that the defendant was assaulted and that certain actions were the result of duress. Based upon the forgoing, however, the defendant’s charged conduct demonstrates that she is a demonstrable threat to the public. Combined with the concerns of flight detailed above, the Court should deny the defendant’s request to be released on bail.

WHEREFORE, the State of New Hampshire respectfully requests that this Honorable Court:

- (A) Deny the defendant's request for bail;
- (B) Hold the defendant on preventative detention; and
- (B) Grant such further relief as may be deemed just and proper.

Respectfully submitted,

THE STATE OF NEW HAMPSHIRE

By its attorneys,

The Office of the Attorney General

February 17, 2021

/s/ Benjamin J. Agati

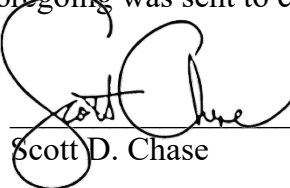
Benjamin J. Agati, Bar#16161
Senior Assistant Attorney General
Criminal Justice Bureau
33 Capitol Street
Concord, NH 03301-6397
(603) 271-2899
Benjamin.agati@doj.nh.gov



Scott D. Chase, Bar #268772
Assistant Attorney General
Criminal Justice Bureau
Scott.chase@doj.nh.gov

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was sent to counsel of record via the Court's electronic filing system.



Scott D. Chase