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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SNOHOMISH

8 The State of Washington,

9
10 Plaintiff,
vs.

No. 13-1-01546-8

11 ALAN J. SMITH

State's Trial Memorandum

12 Defendant.

13 In addition to the anticipated facts outlined in the State's certificate of probable cause
14 and previous pleadings, the State expects the following to facts to be elicited during the course
15 of the trial.

16

17 1. Homicide Scene and Autopsy Photos necessary to explain what occurred to

18 Susann Smith

19 Police located the body of Susann Smith at approximately 10:30 a.m. on the 12th of
20 February, 2013, in the bathtub of her home in Bothell. During their initial sweep of the home,
21 the responding officers took several hurried photos of the scene, then backed out and awaited a
22 search warrant. The Crime Scene Response Team (CSRT) from the Washington State Patrol
23 arrived to serve the warrant at approximately 8:00 p.m. the evening of February 12, and worked
24 thru the next several days in processing the death scene.

25 The assault on Susann started in her bedroom. She was bludgeoned on her bed, the
26 floor, and then dragged to the bathroom and placed in the bathtub. Susann ultimately drowned

1 in the tub. The blood spatter in the bedroom, hallway, and bathroom was extensive.
2 Throughout the blood stains in the hallway there were a number of both footwear impressions
3 and footprint impressions. The bloody footwear/footprint impressions led into the kitchen area
4 of the house, and through the front living room towards the front door. There were several very
5 clear footprint impressions and footwear impressions left in the blood matrix in several locations
6 in the house.

7 The scene was processed methodically by the CSRT. Blood spatter, blood cast off, and
8 other types of blood evidence were documented, both as found initially, and then as various
9 pieces of furniture were removed to more fully reveal the blood evidence. A number of
10 photographs were also taken of the bloody footprints. The CSRT took a large number of swabs
11 from various bloody areas of the home, and took a number of physical items into evidence.

12 Kris Kern of the WSP, an expert in crime scene reconstruction and bloodstain pattern
13 analysis, led the team that processed the home. Kern also authored a detailed report outlining
14 the sequencing of the brutal assault on Susann, the dynamic nature of the assault, and the
15 dragging of Susann's body to the bathtub. Steve Stone, a forensic scientist at WSP, examined
16 some of the footwear impressions left in blood. A type of shoe that police documented the
17 defendant purchasing on February 12 was "consistent" with leaving some of the prints at the
18 scene. Mr. Stone also examined some bloodstain impressions on the bathtub. Stone found
19 that the impressions in blood on the tub were "consistent" with a coverall type of suit that the
20 police were able to document the defendant buying on October 27, 2012, and February 12,
21 2013.

22 Sergeant Shelley Massey of the Royal Canadian Mounted Police (RCMP) was
23 consulted by the Bothell Police Department in regards to the bloody footprints. Sergeant
24 Massey is an expert on "foot morphology". Sergeant Massey examined photos of the bloody
25 footprints, and compared them to known impressions of the defendant's feet, and found
26 "support" for the hypothesis that defendant left the bloody footprints. Sergeant Massey's

1 findings and methodology was the subject of a previous hearing to determine the need for a
2 Frye hearing.

3 Dr. Stanley Adams, assistant medical examiner for Snohomish County responded to
4 Susann's home, and examined the body in situ prior to it being removed to the medical
5 examiner's office. During autopsy, Dr. Adams documented 12 sharp force injuries and 10 blunt
6 force injuries to Susann's head, face and neck. Dr. Adams also documented a number of
7 injuries to both of Susann's arms that he termed "defensive wounds". The injuries were photo
8 documented per the usual protocol at autopsy. The significance of Dr. Adams' findings was,
9 among other things, that two different weapons were used to kill Susann. Dr. Adams was
10 shown a type of mallet that the police were able to document defendant purchasing on October
11 27, 2012. Dr. Adams opined that this type of weapon would match both the wound patterns
12 documented photographically, and the nature of the blunt force injuries suffered by Susann.
13 Kathy Geil, forensic scientist at WSP, also examined photographs of the injuries and the mallet,
14 and indicated the mallet was "consistent" with the wound patterns documented on autopsy
15 photos. It is also apparent from looking at the location of the various wounds on Susann
16 Smith's body that the sole intent of her assailant was to kill her.

17 The photographs of the autopsy are probative and helpful in illustrating the ferocity of the
18 attack on Susann Smith, the nature of the injuries inflicted on her, in helping identify at least one
19 of the weapons likely used to kill her, and the intent of her attacker. ER 403 allows the
20 exclusion of otherwise relevant evidence if its probative value is substantially outweighed by
21 unfair prejudice. Case law is clear, however, that photographs that are probative, show injury
22 and help explain testimony and the findings of a pathologist are admissible. State v Lord, 117
23 Wn2d 829 (1991), adhered to 123 Wn2d 296 (1992) opinion clarified 123 Wn2d 737 (1994).
24 "(P)hotographs have probative value where they are used to illustrate or explain the testimony
25 of the pathologist performing the autopsy." Additionally, as has been stated time and again
26 when the appellate courts have taken up this issue: "We adhere to our previous statement

1 '(a)bloody brutal crime cannot be explained to a jury in a lily-white manner." State v Crenshaw,
2 98 Wn2d 789 (1983).

3 The photographs of the death scene at Susann's home are likewise necessary for the
4 various experts to fully explain their findings regarding the sequencing of the attack, the various
5 foot impressions in blood, and the fabric impression in blood on the bathtub. As the court stated
6 in State v Pirtle, 127 Wn2d 628 (1995), in admitting autopsy and crime scene photographs that
7 were "disturbing": "This was a gruesome and horrible crime. It simply cannot be presented in a
8 way that glosses over that fact."

9 The State has taken great pains to limit the number of photos of both the body and the
10 scene to what is necessary. However, both the body and the death scene contain significant
11 evidence and some such photos are necessary.

12

13 2. Selected Portions of Divorce File Relevant

14 Defendant and Susann were going thru dissolution proceedings that were becoming
15 increasingly acrimonious by the late fall of 2012, into the early portion of 2013. Defendant and
16 Susann initially separated in November 2011. Susann was represented by John Ely in these
17 proceedings. Ely was initially retained by Susann in May, 2012. Defendant was initially
18 represented by Lori Ummel, then Sabrina Layman, and finally Brook Goddard. The State has
19 endorsed Mr. Ely as a witness, and the entire divorce file has been made part of discovery.

20 While the State does not wish to litigate the dissolution and custodial issues, some of the
21 documents filed, and orders entered both by Commissioner Brudvik and Judge Fair are
22 necessary to place Susann's murder in context, to show the increasing animosity of defendant
23 towards his wife, and to show the financial difficulties the defendant was laboring under due to
24 child support payments, attorneys fee's (both to his own lawyer and to Susann's attorney), and
25 the potential for maintenance to be re-established after falling off in November of 2012.

26

1 Temporary orders were signed by Commissioner Brudvik on August 3, 2012. In these
2 orders Susann remained the custodial parent, defendant was ordered to pay child support of
3 \$1128 a month, maintenance of \$600 a month that would terminate in November 2012 (the
4 month trial was initially scheduled for), and attorney fees for Susann of \$2000.

5 Shortly after these orders were filed, attorney Ummel withdrew from representing
6 defendant. Given how the Notice of Withdrawal was filed, and the timing of the NOW, attorney
7 Ely opined it is indicative of a client firing his lawyer, as opposed to a lawyer "firing her client".
8 Sabrina Layman entered a Notice of Appearance on August 15, 2012. On November 8, 2012
9 Layman withdrew, and Brook Goddard entered a Notice of Appearance. Again, based on the
10 manner of the withdrawal this was likely the result of the defendant firing his lawyer according to
11 Ely. It is shortly after Goddard's appearance that defendant for the first time mentions any
12 concern regarding Susann's fitness as a parent (Motion and Declaration for Appointment of a
13 GAL, filed November 19, 2012), and his concern that Susann might relocate to Germany with
14 the children. The motion for appointment of a GAL was denied by Commissioner Brudvik
15 December 3, 2012, and defendant was assessed \$500 in attorney's fee's for Susann.
16 Defendant filed a motion for reconsideration on December 13, 2012, and for the first time raises
17 concerns that Susann is sexually abusing Noelani, the six year old daughter. This motion for
18 reconsideration was denied by Commissioner Brudvik January 3, 2013. Defendant filed a
19 Motion for Revision of Brudvik's order, which was denied January 25, 2013 by Judge Fair.
20 Susann Smith was dead 17 days later.

21 ER 902 states that domestic public documents under seal or certified copies of public
22 documents are self-authenticating. The State will be offering selected certified documents of
23 the divorce file thru John Ely. The statements and claims by defendant in the divorce pleadings
24 are not hearsay by definition, as they are statements of a party opponent. ER 801(d)(2)(i).
25 Neither is the variety of pleadings filed by defendant's three different lawyers in the divorce file
26 hearsay, as they are authorized by defendant or made by his speaking agent. ER

1 801(d)(2)(iii)and (iv). Additionally, none of the various statements or claims made by defendant
2 and/or his lawyer regarding Susann's fitness as a parent is being offered for the truth of the
3 matter asserted, but to show defendant's state of mind and his animus towards Susann Smith.

4

5 3. Evidence of Defendant's Animus towards Susann Relevant and Admissible

6 A number of witnesses who were in defendant's presence in the months, weeks, and
7 days preceding Susann's murder heard him make a variety of either threatening or derogatory
8 statements towards her. A number of people who worked with defendant at Boeing will
9 describe defendant as constantly talking about his divorce, complaining about the money, the
10 unfairness of the system towards men, how he would not allow Susann to take the children to
11 Germany, that she was a "monster", and that the process was bankrupting him. Beginning on
12 February 4, 2013, and ending with defendant's return on February 9, 2013, defendant was on a
13 business trip to Ireland with co-workers, Mathew Pierce and Collin Warner. During this trip they
14 reported that defendant constantly talked about his divorce, that he was "losing", that Susann
15 was a "psychopath", "pure evil", was corrupting the children against him, and was planning on
16 taking the children to Germany when the divorce was final. It is approximately a day and a half
17 after defendant's return to the United States that Susann was murdered.

18 In October of 2012 defendant became involved with a young woman named Rachel
19 Amrine. During the course of their relationship (which lasted from mid-September thru
20 November of 2012) defendant "ranted and raved" about the divorce proceedings and Susann on
21 a regular basis. Amrine also described a conversation with defendant where he inquired how
22 he could get rid of someone without anyone knowing, which led to Amrine to jokingly describe
23 the use of Potassium Chloride inserted rectally as a undetectable manner in which to kill
24 someone. The conversation turned to the use of phone books as weapons leaving no
25 observable injuries, to which defendant indicated he heard a mallet would do also. Amrine
26 helped defendant move from his Ravenna apartment in November 2012 to the Bothell

1 apartment he lived in when Susann was murdered. During this move, Ms. Amrine helped pack
2 a large rubber mallet that police were never able to locate during their several searches of
3 defendant's apartment. This same type of mallet is the mallet that both Dr. Adams and Kathy
4 Geil indicate is consistent with the wound patterns of the blunt force injuries suffered by Susann.

5 On August 3, 2012, John Ely, Susann Smith, lawyer Ummel and defendant were
6 completing the temporary order paperwork as ordered by Commissioner Brudvik. While this
7 was occurring Susann and defendant disagreed with some portion of the paperwork relating to
8 time with the children during the summer. According to Ely defendant turned on Susann and
9 fixed her with a "menacing glare", the likes of which he had never previously seen in some 16
10 years of practice. The glare was so concerning to Ely that he mentioned it to both Susann
11 ("that's just Alan being Alan"), and to his staff.

12 Evidence of a defendant's motive is relevant in a murder prosecution. State v Osborne,
13 18 WnApp 318, 325 (1977). Case law is clear that evidence of quarrels and ill feelings may be
14 admissible to show motive, and evidence of prior threats is admissible to show motive or malice.
15 State v Powell, 126 Wn2d 244, 260 (1995), and State v Stenson, 132 Wn2d 668 (1997). In
16 Stenson the Court explained that: "Evidence of previous disputes or quarrels between the
17 accused and deceased are generally admissible in murder cases, and such evidence tends to
18 show the relationship of the parties and their feelings one toward the other and often bears
19 directly upon the state of mind of the accused with consequent bearing upon the question of
20 malice or premeditation." Stenson at 702.

21

22 4. Defendant's Confession

23 On the evening of June 23, 2013 the defendant confessed to the murder of his wife to
24 Wendell Morris ("I did it to her."). Morris was an acquaintance from church. During the course
25 of the conversation between Morris and defendant there was discussion about defendant's need
26 to admit his actions to the police, and Morris' willingness to support him. Over the course of the

1 next several days defendant and Morris texted back and forth, discussing the fact of their
2 conversation, the subsequent baptism of defendant by Morris at Alki beach, and their mutual
3 desire to get together again and talk. When it became apparent to Morris that defendant had
4 changed his mind about turning himself in to the civil authorities Morris called the Bothell Police
5 and told them of defendant's confession. Detectives interviewed Morris on tape to document his
6 description of events. The detectives also photographed the text message string between
7 defendant and Morris to document the subsequent conversation. The testimony regarding this
8 confession to murder was the subject of a previous hearing regarding whether the priest-
9 penitent privilege applied.

10 The text messages between defendant and Morris are not hearsay by definition. They
11 are statements of the defendant (admission by party opponent), being offered against him. ER
12 801(d)(2). The photographs of the text messages will be initially authenticated by the detective
13 who took them, and then the manner in which they were sent and received will be described by
14 Morris. Morris' end of the conversation is not hearsay either, being a prior statement by an in-
15 court witness. ER 801(d)(1).

16

17 5. Expected Length of trial

18 The State anticipates the trial to last three weeks. The State's witness list consists of
19 some 50 witnesses. The parties have endeavored to reach agreed stipulations as to
20 foundational witnesses to streamline the presentation of evidence. To date, the parties have
21 agreed to stipulate to the testimony of the following foundational witnesses: 1)Birdie Winger,
22 foundational witness for surveillance video from US Bank, 2)Jim Bloodgood, foundational
23 witness from Snohomish County DOT for surveillance video from a traffic camera located at the
24 intersection of the Bothell-Everett Hwy and 240th ST., 3)Veronica Mayorga, foundational
25 witness for financial records relating to defendant's Visa Signature credit card, 4)Amber
26 Massert, Loss Prevention Manager from Home Depot, and foundational witness for surveillance

1 video and receipts from Home Depot, 5)Sue Johnson, foundational witness for the T-Mobile
2 USA phone records relating to defendant's cell phone, 6)Megan Wilson, Asset Protection
3 Associate at Walmart, and foundational witness for surveillance video and receipts from
4 Walmart. There is a pending stipulation as to testimony regarding Y-STR DNA evidence, and
5 the findings of forensic scientist Lisa Yoshida. These Y-STR stipulations are not complete yet,
6 but the State and defense have reached agreements and just need to finalize the specifics.
7 Based on the above agreed stipulations the State has called off these witnesses.

8 The State is flying in witnesses from both out of the State and out of the Country. The
9 State is bringing Rachel Amrine in on January 21 from Louisiana, Sgt. Shelley Massey on
10 January 23 from British Columbia, Jay Dee Krull on January 26 from Kansas, Ronald Drose
11 January 26 from California, and Kristine Henschel from Germany. The presentation of
12 witnesses will be as chronological as possible, but given time constraints due to flight
13 reservations the State may need to alter its order of witnesses. If the State believes that it will
14 need to take witnesses significantly out of logical order it will advise the Court and defense.

15 DATED this 12 day of January, 2015.

16 Respectfully submitted,

17 MARK K. ROE
18 Prosecuting Attorney

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21 CRAIG MATHESON, #18556
Deputy Prosecuting Attorney

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