Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D74038
A/htr

_____AD3d_____ Argued January 16, 2024

FRANCESCA E. CONNOLLY, J.P.
CHERYL E. CHAMBERS
BARRY E. WARHIT
LOURDES M. VENTURA, JJ.

2021 05206 DECISION & ORDER

The People, etc., respondent,
v Timothy Alexander, appellant.

(Ind. No. 21/19)

Kelley M. Enderley, Poughkeepsie, NY, for appellant.

Anthony P. Parisi, District Attorney, Poughkeepsie, NY (Kirsten A. Rappleyea of counsel), for respondent.

Appeal by the defendant from a judgment of the County Court, Dutchess County (Jessica Segal, J.), rendered June 28, 2021, convicting him of murder in the second degree, upon a jury verdict, and imposing sentence. The appeal brings up for review the denial, after a hearing (Peter M. Forman, J.), of that branch of the defendant s omnibus motion which was to suppress physical evidence.

ORDERED that the judgment is affirmed.

On November 15, 2018, at approximately 11:30 p.m., law enforcement officials began investigating the death of Terrie DeGelormo (hereinafter the victim), who was found with puncture wounds in the driveway of her home. Neighbors told the police that they had observed a silver Jeep in the neighborhood earlier that evening. On the morning of November 16, 2018, the police went to the home of the defendant, who was the victim s former husband, where they observed a silver Jeep parked in the driveway. Thereafter, the police spoke with the defendant and he made certain inculpatory statements, some of which led the police to Lake Oniad, where the police recovered two boots, fabric, gloves, and a knife.

After a hearing, the County Court granted that branch of the defendant s omnibus

motion which was to suppress certain statements the defendant made to law enforcement officials as violating his Fifth Amendment right to remain silent. However, the court, inter alia, denied that branch of the defendant s omnibus motion which was to suppress physical evidence that the police recovered by and in the lake as fruits of the defendant s illegally obtained statement. The court held that the defendant lacked standing to contest the seizure of the items discarded in the lake, and that, in any event, the People met their burden of establishing that the evidence recovered by and in the lake would have been discovered through typical search techniques utilized by law enforcement in a homicide investigation. After a jury trial, the defendant was convicted of murder in the second degree.

Contrary to the People s contention, the defendant s purported lack of standing to contest the seizure of the evidence recovered by and in the lake was not relevant to his contention that this evidence should be suppressed as fruits of his statements, which the County Court had determined were obtained in violation of the defendant s Fifth Amendment right to remain silent (*see generally People v Fitzpatrick*, 32 NY2d 499, 506; *United States v Olivares Rangel*, 458 F3d 1104, 1117 [10th Cir]). However, [e]vidence obtained as a result of information derived from an unlawful search or other illegal police conduct is not inadmissible under the fruit of the poisonous tree doctrine where the normal course of police investigation would, in any case, even absent the illicit conduct, have inevitably led to such evidence (*People v Fitzpatrick*, 32 NY2d at 506). In applying the inevitable discovery exception, the People must demonstrate a very high degree of probability that normal police procedures would have uncovered the challenged evidence independently of [a] tainted source (*People v Turriago*, 90 NY2d 77, 86 [internal quotation marks omitted]; *see People v Watson*, 188 AD2d 501, 501). As a matter of New York constitutional law, primary evidence, i.e., the very evidence . . . obtained during or as the immediate consequence of the illegal conduct, is still subject to exclusion even if it would most likely have been discovered in the course of routine police procedures (*People v Stith*, 69 NY2d 313, 318; *see People v Turriago*, 90 NY2d at 86). However, the inevitable discovery exception can validly apply to permit the use of secondary evidence, obtained as a result of information gleaned from or by other exploitation of, the tainted primary evidence (*People v Turriago*, 90 NY2d at 86).

Here, contrary to the defendant s contention, the physical evidence recovered by and in the lake was not primary evidence, i.e., the very evidence obtained during or as the immediate consequence of the police s illegal conduct to which the inevitable discovery exception does not apply (*see People v Stith*, 69 NY2d at 318; *People v Fitzpatrick*, 32 NY2d at 506 507; *People v Watson*, 188 AD2d at 501). Contrary to the defendant s further contention, the People established with a very high degree of probability that normal police procedures would have inevitably led to the discovery of the evidence by and in the lake independent of the tainted source (*see People v Hunter*, 56 AD3d 684; *People v Brown*, 259 AD2d 985, 985; *People v Watson*, 188 AD2d at 501; *People v Dempsey*, 177 AD2d 1018, 1019). Accordingly, the County Court properly denied that branch of the defendant s motion which was to suppress the physical evidence that the police recovered by and in the lake.

The defendant contends that the County Court should not have denied his request for the Criminal Jury Instruction circumstantial evidence charge, as the People s evidence in this case was entirely circumstantial. Contrary to the People s contention, this was not a case where both

direct and circumstantial evidence were employed to demonstrate the defendant s culpability, thereby negating the need for the requested charge (*see People v James*, 147 AD3d 1211, 1213). Although the People s witnesses testified that the victim s DNA was recovered from the gloves, and that her DNA and the defendant s DNA were recovered from inside the silver Jeep, this evidence was circumstantial (*see People v Jones*, 105 AD3d 1059, 1060; *People v Taylor*, 6 AD3d 556, 557; *see also People v James*, 147 AD3d at 1213). Accordingly, upon the defendant s request, the court was required to give the circumstantial evidence charge (*see People v Hardy*, 26 NY3d 245, 249).

Although the County Court did give a modified circumstantial evidence charge to the jury, we reject the People s contention that the circumstantial evidence charge actually given by the court was sufficient (*see People v James*, 147 AD3d at 1214; *cf. People v Wlasiuk*, 136 AD3d 1101, 1104). In its charge to the jury, the court failed to inform the jury that the evidence presented to establish the defendant s guilt was solely circumstantial (*see People v Taylor*, 6 AD3d at 557; *People v Lynch*, 309 AD2d 878, 878). Accordingly, the jury was not aware of its duty to apply the circumstantial evidence standard to the People s entire case (*see People v Sanchez*, 61 NY2d 1022; *People v Taylor*, 6 AD3d at 557; *People v Lynch*, 309 AD2d at 878). Nevertheless, this error was harmless, as there was overwhelming evidence of the defendant s guilt and there is no significant probability that the error contributed to his conviction (*see People v Brian*, 84 NY2d 887, 889; *People v Crimmins*, 36 NY2d 230, 242; *People v Cuevas*, 207 AD3d 557, 559).

The defendant s remaining contention is without merit.

The sentence imposed was not excessive (*see People v Suitte*, 90 AD2d 80).

CONNOLLY, J.P., CHAMBERS, WARHIT and VENTURA, JJ., concur.

ENTER:

Darrell M. Joseph
Clerk of the Court

STATE OF NEW YORK: COUNTY OF DUTCHESS
COUNTY COURT

THE PEOPLE OF THE STATE OF NEW YORK - against - TIMOTHY ALEXANDER, Defendant.	DECISION & ORDER Indictment No.: 21/2019 William Grady District Attorney By: Kristine Whelan, Esq. Lindsey Richards, Esq. Thomas Vasti, Esq. Anthony DeFazio, Esq. Attorneys for Defendant

Defendant stands accused by the Grand Jury of the County of Dutchess of one count of Murder in the Second Degree, a Class A-1 Felony, in violation of §125.25(1) of the Penal Law.

Defendant has moved to suppress the statements made by him and identified in a notice served by the People upon the defendant pursuant to CPL §710.30. Defendant also alleged that those statements should be suppressed because they were the product of an unlawful search and seizure by law enforcement.

Defendant also moved to suppress any evidence recovered as a result of his involuntary statements and his arrest, which is alleged to have been made without probable cause. Additionally, defendant sought suppression of any evidence seized as a result of search warrants issued in reliance upon his involuntary statements.

Accordingly, the court held a *Huntley* hearing prior to trial [CPL §710.60(4); *People v. Huntley*, 15 NY2d 72 (1965)]. The Court also held a *Mapp/Dunaway* hearing at the same time to deal with probable cause issues raised by defendant's motion papers [*Mapp v. Ohio*, 367 US 643 (1961); *Dunaway v. New York*, 422 US 200 (1979); *People v. Burton*, 6 NY3d 584 (2006)]. These combined hearings were held before the Court on August 20, 21, 22, and 23, 2019.

The People called eight law enforcement officers to testify at the hearing: from the New York State Police – Sgt. Richard Weatherwax, Inv. Joshua Dubois, Trooper Joseph Benzinger, Inv. Chelsea Gagliardi, Inv. James Sawner, Inv. Noreen Winterfeldt, and Inv. Eugene Donnelly. In addition, Sgt. Anthony Pico testified as a member of the Dutchess County Sheriff's Office.

The Court finds that the testimony from these officers was reliable and credible in all respects. The Court also reviewed the entire video-taped interview of the Defendant [People's Exhibit 2], as well as the audio recording of the discussion between the Defendant and State Troopers in the car at 8:15 a.m. on November 16, 2018 [Defendant's Exhibit M]. Based on the evidence introduced during the hearing, I make the following findings of fact and conclusions of law:

On the evening of November 15, 2018, in the middle of a snowstorm, Sgt. Richard Weatherwax responded to a call from 161 Cider Mill Loop in the Town of Wappinger regarding an unresponsive female lying in the driveway at that address. He arrived at approximately 11:30 p.m. EMS attempted to perform CPR on the woman, but she was pronounced dead at the scene. The victim's name was Terrie DeGelormo. She resided at that address with her mother (Emma Smith). The medical examiner would identify 43 stab wounds to the victim in the autopsy report.

Sgt. Weatherwax observed a lot of blood around the victim's body and secured the area as a crime scene, including the perimeter of the property. He also noticed footprints in the newly-fallen snow leading to the backyard of 161 Cider Mill Loop – which led to a development known locally as Sherwood Heights. After determining that none of the law enforcement team or members of the EMS detail had walked into the back yard, he photographed the footprints and the backyard area of the victim's home. He also directed Trooper Weglinski to track the footprints using a NYSP canine trained for that purpose.

Inv. Joshua Dubois arrived at the scene at 12:30 a.m. on November 16, 2018 and interviewed the decedent's mother, her boyfriend, and various neighbors. One neighbor related that the victim had been observed shoveling the snow in the driveway at about 10:00 p.m. and that Emma Smith's screams were heard about 10:45 p.m. A resident at 71 Sherwood Heights (which is directly behind the decedent's home) advised the State Police that he saw a silver Jeep parked the wrong way on his street, and that after hearing the screaming, the vehicle was gone. Another neighbor had observed a silver Jeep in the neighborhood between 8:30 – 9:00 p.m. that night.

It was determined that decedent's ex-husband, Timothy Alexander, lived less than 10 miles away in a house located at 150 Wilbur Boulevard in the City of Poughkeepsie. Inv. Dubois, who was the lead investigator on the case, directed that video footage be obtained from various residences (Ring doorbells) and businesses along the route of travel from 161 Cider Mill Loop to 150 Wilbur Blvd. Several of these videos showed a silver Jeep Liberty pass various locations along this route of travel between the hours of 8:30 – 10:45 p.m. on November 15, 2018. In fact, a video from a neighboring residence, 146 Wilbur Blvd., showed a Jeep Liberty pulling into 150 Wilbur Blvd at 10:54 p.m.

Statements Made by the Defendant

Investigators James Sawner and Stephen Schmoke arrived in a parking lot across the street from the defendant's residence on Wilbur Boulevard at approximately 1:30-2:00 a.m. and watched the house throughout the early morning hours of November 16, 2018. Inv. Sawner had worked with the defendant as a fellow corrections officer at the Dutchess County Jail from 2009-13. In fact, the two of them attended the New York State Police Academy together in 2012 but had not socialized since. Inv. Sawner observed that the Jeep had very little accumulated snow on it, but that the other vehicle in the driveway at 150 Wilbur Boulevard was fully covered with snow. He checked the

registration of the Jeep Liberty and it came back to Shalane Alexander, the defendant's wife. Blood was observed on the exterior of the Jeep Liberty and photographs of the vehicle were taken from the street.

At approximately 8:15 am on November 16th, the defendant exited the house at 150 Wilbur Boulevard with his wife and two children. He was approached by Investigator Sawner and the defendant agreed to speak with him outside of the presence of his wife and children (who returned to the house). When the investigators pulled up to the defendant's residence, they did not block his driveway with their unmarked vehicle. The investigators and the defendant entered their police vehicle and their conversation was audio recorded [People's Exhibit 1]. The defendant was not placed under arrest or handcuffed during the course of this conversation, but the investigators did ask him to turn over the keys to the Jeep Liberty prior to commencing the ride to the State Police barracks in the Town of Wappinger.

The investigators then transported the defendant, with his consent, to the State Police barracks in the Town of Wappinger on Old Hopewell Road. The defendant sat in the front passenger seat. A discussion took place during this ride in the police vehicle that was audio-recorded [People's Exhibit 1]. No *Miranda* warnings were administered at any point during this period of time. The defendant was not in handcuffs while he rode in the police vehicle, or at any time during his interview at the barracks. He entered the police vehicle of his own volition. During this discussion, the defendant was advised that his ex-wife, Terrie DeGelormo, was found deceased and the defendant agreed to assist them in conducting their investigation.

When they arrived at the NYSP barracks in Wappinger, the investigators asked the defendant to empty his pockets (which he did), he was patted down, and they then entered an interview room. The door to that room remained unlocked throughout the interview. Investigators Sawner and

Donnelly primarily conducted the interview, which was recorded on video [Exhibit 2]. The interview began at 9:15 a.m. at the State Police Wappinger barracks. Upon request, the defendant voluntarily signed a consent to search and examine his cell phone [Exhibit 8]. The defendant also signed two voluntary consent forms to search the Jeep Liberty, including event data recorders [Exhibits 6 & 7]. In addition, the defendant signed a voluntary consent form to retrieve a DNA sample [Exhibit 5] and administered the swab to the inside of his mouth himself. The defendant appeared to be fully cooperative with the investigators during the initial portion of the interview.

The defendant initially advised the investigators that he only left the house once that night (November 15) to shovel the driveway and to remove snow from the Jeep Liberty. He was given 5-6 glasses of water and offered a slice of pizza during the course of the interview (which lasted approximately 7 ½ hours). The investigators, at one point, advised the defendant that they observed a video which showed his vehicle pulling into the driveway shortly before 11:00 pm. The defendant's demeanor then changed; he no longer made eye contact with the investigators from that point forward. At approximately 10:00 a.m. he agreed to take his hat and jacket off and allowed the investigators to take photos of him and examine his arms. The defendant states, "I feel like it's turning toward me," but then quickly apologizes [Transcript of Interview, Defendant's Exhibit N, p 72].

At 12:20 p.m., the investigators leave him in the room alone for a few minutes and then Inv. Sawner and Inv. Winn resumed questioning. During the morning hours, the defendant also inquired, twice, at 10:00 a.m. and 11:00 a.m. about the status of his phone. At approximately 12:30 p.m., the defendant again expressed a desire to "just see Ryan and the boys" [*id.* at p 272].

At approximately 1:00 p.m., Inv. Winn offered to get the defendant a slice of pizza, which the defendant declined. Twenty minutes later, Inv. Sawner administered *Miranda* warnings to the defendant, for the first time, in the presence of Inv. Winn and Inv. Donnelly [*id.*, p 279]. The

defendant acknowledged that he understood his rights and stated, "I just don't want to talk anymore. I don't know what else to say. I'm just so confused. I'm just completely out of it at the moment. I don't want to talk about it anymore. I don't want to think of... it's not something I want to think about. It's not something I want to go into my head. I don't want to think of it." [*id.*, p 281].

Inv. Donnelly than asked the defendant "do you feel guilty?" The defendant responded "no, I don't ...no." Inv. Donnelly continued to ask him why he didn't want to think about it. The defendant interrupted him, saying "because I don't want to think about the mother of my son dead. I don't want to think about my ex-wife dead" [*id*].

After a further colloquy with Investigators Donnelly and Winn about the event not going away and the need to clear some issues up, Inv. Winn asked the defendant if he would want an attorney before answering questions [*id.*, pp 281-82]. The defendant responded "I don't want to answer anything else right now." The investigators say "ok" – "we'll be back in a few minutes." The defendant responded "so am I not going to see my boys now?" Inv. Donnelly replied "just give me a few minutes, all right? Just give me a few minutes." The defendant then stated "I just want to see them" [*id.*, p 282]. All three investigators then left the room for three minutes, while the defendant waited in the room alone.

By this point in time, the defendant had expressed to the investigators on six separate occasions a desire to: "just go home" [*id.*, p 87 - 10:20 a.m.], "see Ryan soon" [*id.*, p 99 - 10:40 a.m.], "just see my family" [*id.*, p 101 - 10:40 a.m.], "just ... go home...please" [*id.*, p 117 - 10:50 a.m.], "just ... go home and hug Ryan" [*id.*, p 141 - 11:00 a.m.].

After administering *Miranda* warnings, the investigators re-entered the room with Inv. Winn bringing the defendant a slice of pizza, which the defendant ignored. When questioning resumed, the

defendant stated "I just don't want to think about this at all." Inv. Winn responded in part that "we have to talk about it." (p. 289-1:30 p.m.)

After this exchange, the questioning continued for another hour and one half when the defendant made an inculpatory statement to Inv. Noreen Winterfeldt, confessing to stabbing his ex-wife in her driveway while she was shoveling snow. He described the fatal act in detail and established his route home. Along this route (Kent Road to Meyers Corners Road to Route 9 North to Poughkeepsie), he stopped at Lake Oniad which is approximately ½ mile from the murder scene. He removed his boots and threw them into the lake along with the murder weapon (a switchblade knife that has a sheriff's office seal on the handle) before he resumed his trip home.

Between 1:30 p.m. and the time he gives the confession, he, again, stated a desire to "go home" or a desire not to think "about it" on seventeen (17) separate occasions. He also interspersed apologies, "I'm sorry," on several occasions when he was not asking to see his children or family. At one point he asked "how long am I going to be sitting here?" (p. 297-1:40 p.m.).

In *People v. King*, 222 AD2d 699 (2d Dept. 1995), the Appellate Division, Second Department re-stated the standard by which hearing courts are to decide whether a suspect was in custody at a specific time: "what a reasonable person, innocent of any crime, would have thought had he been in the defendant's position" [*King, supra* at 699, citing *People v. Yukl*, 25 NY2d 585, 589 (1969), *cert denied* 400 US 851 (1970)]. In making that determination, the court in *King* laid out six factors for hearing courts to consider when evaluating when a defendant was "in custody" at a specific time: 1) the length of time the defendant spent with the police, 2) whether his ability to act freely was significantly restricted, 3) the location and atmosphere in which the defendant was questioned, 4) how cooperative the defendant was, 5) whether he was apprised of his constitutional rights and 6) whether the questions posed were investigatory or accusatory in nature [*id.* at 700].

Applying these factors to the case at hand leads this Court to find that the defendant was in custody when he was administered his *Miranda* warnings at 1:20 p.m. By that time, he had been talking to the investigators for approximately 5 hours, either in their police vehicle or in the State Police barracks. While he was very cooperative at first, he clearly became less talkative as the tone of the questioning became more accusatory. The Court has taken into consideration that the defendant was, at the time of his arrest, an 11-year veteran of the Corrections Department of the Dutchess County Sheriff's office and had received training about the legal ramifications of the *Miranda* decision and how to administer the *Miranda* warnings in a jail setting. It was established during the hearing that the defendant was responsible, as a disciplinary hearing officer, for advising inmates at the jail of their *Miranda* rights at the commencement of each hearing.

A confession or admission is admissible at trial in this state only if its voluntariness has been established by the People beyond a reasonable doubt [*People v. Huntley*, 15 NY2d 72 (1965); *People v. Capela*, 97 AD3d 760 (2d Dept. 2012); *People v. Griffin*, 81 AD3d 743 (2d Dept. 2011)]. I find that the People have satisfied their burden of demonstrating beyond a reasonable doubt that all of the statements the defendant provided to law enforcement officials were voluntary.

The 5th Amendment to the U.S. Constitution also affords a citizen the right to be informed, prior to custodial interrogation that "he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to an attorney, and the if he cannot afford an attorney, one will be appointed for him prior to any questioning, if he so desires [*Miranda v. Arizona*, 384 US 436, 479 (1966)]. "In the absence of proof that a defendant was given the so-called *Miranda* warnings and he knowingly and intelligently waived them, 'no evidence obtained as a result of a custodial interrogation can be used against him'" [*People v. Rodney*, 85 NY2d 289, 292 (1995) quoting *Miranda v. Arizona*, 384 US at 479].

When the defendant here communicated to the investigators "I just don't want to talk anymore..." (p. 281) after being given *Miranda* warnings, he invoked his constitutional right to remain silent. That right, once invoked, must be "scrupulously honored" [*Miranda*, 384 US at 479; *Michigan v. Mosley*, 423 US 96, 103-104 (1975); *People v. Legere*, 81 AD3d 746, 748 (2d Dept. 2011); *People v. Douglas*, 8 AD3d 980 (4th Dept. 2004), *lv app denied* 3 NY3d 705 (2004)]. Because the investigators did not advise the defendant again of his *Miranda* rights prior to continuing their questioning, and because a significant period of time had not passed between the defendant's invocation of the right to remain silent and the continued interrogation, the defendant's incriminating statement subsequently obtained, must be suppressed [*see People v. Ferro*, 63 NY2d 316 (1984); *People v. Wisdom*, 164 AD3d 928, 929 (2d Dept. 2018), *lv app denied* 32 NY3d 1211 (2019)]. Moreover, the Court does not agree with the People that the defendant's statement invoking his right to remain silent was equivocal, especially given the context of his prior statements to the investigators prior to the administration of the *Miranda* warnings. As such, the continued interrogation of the defendant did not "scrupulously honor" the defendant's Fifth Amendment right to remain silent and the statements made in response to that continued interrogation must be suppressed [*Ferro, supra; People v. Jackson*, 103 AD3d 814, 816-817 (2d Dept. 2013); *People v. Ayeni*, 100 AD3d 228 (2d Dept. 2012); *People v. Kollar*, 305 AD2d 295 (1st Dept. 2003); *People v. Broadus*, 149 AD2d 602 (2d Dept. 1989), *lv app denied* 74 NY2d 661 (1989)].

Motion to Suppress Physical Evidence

The defendant argued that physical evidence recovered by law enforcement should be suppressed because he was arrested without probable cause and because the evidence was "fruit of the poisonous tree." The People opposed the defendant's motion, arguing that there was probable cause to arrest the defendant and, in the event the Court suppressed the defendant's statement, that

the physical evidence should be admissible pursuant to the doctrine of inevitable discovery. For the reasons set forth below, the defendant's motion to suppress physical evidence is denied.

There was testimony before the Court during the course of the hearing that members of the State Police noticed what appeared to be spots of blood on the outside of the defendant's gray Jeep Liberty when they approached his home on November 16 at 8:15 a.m. The police had also obtained statements from various witnesses that described a vehicle matching the description of that same Jeep Liberty (which was registered to the defendant's wife, Shalane Alexander) near the decedent's home on Cider Mill Loop shortly before the homicide. The State Police had also obtained a Ring doorbell home surveillance video showing the same vehicle driving through the decedent's neighborhood on the evening of the homicide.

The State Police also retrieved several video recordings of a vehicle matching the description of the defendant's Jeep Liberty just after the homicide traveling from the victim's neighborhood heading south on All Angels Hill Road in the Town of Wappinger, in the opposite direction of how the defendant would head to his home in Poughkeepsie. That same video showed the vehicle traveling at a high rate of speed, considering the snowy conditions, and then turning right onto Kent Road (where Lake Oniad is located) and then his vehicle is picked up 8 minutes later at the corner of Myers Corners Road at Route 9. Two additional videos subsequently show the vehicle heading north toward Poughkeepsie, where his neighbor's home video shows him pulling into his driveway eleven (11) minutes after he passed the Mobil Station at the corner of Route 9 and Myers Corners Road. The defendant also stated, during the initial portion of the interview with the detectives that he lived for a while with the decedent in the home at 161 Cider Mill Loop where she was murdered.

New York State Trooper Joseph Benzinger testified that he was in charge of the Troop K dive team, and that on November 16, 2018, in the late afternoon, he led a team of divers to search Lake

Oniad in the Town of Wappinger for items that may be relevant to the instant investigation. They located two boots floating on the surface of the lake together with a piece of cloth with a safety pin which was attached to one of the boots. The team returned to Lake Oniad the following day (November 17) and, using metal detectors, located a folding knife with the emblem of the Dutchess County Sheriff's Office on it. New York State Troopers had guarded the lake overnight from the conclusion of the initial search of the lake on November 16 until the dive team returned on November 17. The knife was found in shallow water (about 3 ½ feet deep) in an area proximate to the location of the boots. The search took place in the southeastern corner of the lake, which constitutes approximately 40 acres in total area. The dive team knew that the victim had died as a result of a stabbing when they were conducting the search of the lake.

In addition, Trooper Benzinger testified that his directions to search the lake had no connection to any statements made by the defendant on November 16, 2018. Inv. Joshua Dubois also described, during his testimony during the hearing, the nature of the search for evidence along Kent Road that the State Police had intended to undertake (a grid search) in the event no additional information had been forthcoming from the defendant's interview with the State Police investigators.

On November 16, 2018 at 6:20 p.m., this Court issued a search warrant for a 2010 Jeep Liberty, gray in color, bearing registration number 6CC-6113, registered to Shalane C. James (the defendant's wife). The State Police were directed to search for, and to seize, any and all biological evidence, including but not limited to blood, tissue or fibers, blood spatterings, hairs, fibers, latent fingerprint evidence, human excretions and any trace evidence relating to same. In addition, the police were authorized to search for any and all weapons such as knives, daggers or any other bladed instruments, and any and all digital infotainment system in the vehicle, such as the entertainment

system, navigation, recorded GPS locations, stored Bluetooth devices, wifi, together with any and all stand-alone and individual GPS or recording devices.

Inv. Chelsea Gagliardi testified on behalf of the Troop K Forensic Identification Unit. She arrived at 150 Wilbur Blvd. at 9:45 am on November 16, 2018 and observed reddish brown stains on the exterior of the Jeep Liberty that had been secured in the driveway. She testified that these appeared to have been consistent with blood stains (on the front fender, driver's door, and on the rear passenger door). She took several photos of the stains before she swabbed them from 8 separate locations. The Jeep Liberty was taken by tow truck from the driveway by the State Police at 12:35 pm. Inv. Gagliardi also took additional swabs from the interior of the vehicle after the search warrant was issued by this Court at 6:20 pm on November 16, 2018. She also traveled to Lake Oniad at 4:00 pm on November 16 to take the boots and cloth into evidence after they were obtained by the dive team. The blood stains were initially observed by Lt. Hurley who was on the scene (150 Wilbur Blvd.) during the early morning hours of November 16, 2018 and he relayed the observation to Inv. Gagliardi when she arrived at 9:45 am.

On a motion to suppress physical evidence, the People have the burden in the first instance of going forward to show the legality of the police conduct [*People v. Baldwin*, 25 NY2d 66 (1969); *People v. Green*, 100 AD3d 654 (2d Dept. 2012); *People v. Leach*, 90 AD3d 1073 (2d Dept. 2011)]. Defendant, however, bears the ultimate burden of proving, by a preponderance of the evidence, that this evidence should be suppressed [*People v. Berries*, 28 NY2d 361 (1971); *People v. Cole*, 85 AD3d 1198 (2d Dept. 2011); *People v. Grant*, 83 AD3d 862 (2d Dept. 2011)]. The defendant has failed to meet this burden.

First, as to the knife and boots recovered from Lake Oniad, the defendant failed to establish his standing to contest the seizure of these items [*People v. Kluge*, 180 AD3d 705, 707 (2d Dept.

2020), citing *People v. Ramirez-Portoreal*, 88 NY2d 99 (1996)]. The evidence adduced at the hearing did not show that the defendant had a legitimate expectation of privacy in the knife and boots that had been thrown into Lake Oniad. Accordingly, the defendant's motion to suppress these items must be denied [*Kluge, supra; People v. Phipps*, 168 AD3d 881, 881 (2d Dept. 2019) (defendant lacked standing to contest search and seizure of bags that defendant had abandoned), *lv app denied* 33 NY3d 952 (2019), *cert. denied* 140 S Ct 245 (2019)].

Second, assuming *arguendo* that the defendant had established standing, his contention that the evidence must be suppressed because he was arrested without probable cause is without merit. "Probable cause does not require proof beyond a reasonable doubt, but, rather, requires the existence of facts and circumstances which, when viewed as a whole, would lead a reasonable person possessing the same expertise as the arresting officer to conclude that an offense has been or is being committed, and that the defendant committed or is committing that offense" [*Capela*, 97 AD3d at 760-761 (internal quotation marks and citations omitted)]. Based upon the evidence brought forth at the hearing, when viewed as a whole, "it was reasonable for the police to conclude that it was more probable than not that the defendant had killed his [ex-wife]" [*id.* at 761]. Because the Troopers had probable cause to arrest the defendant, his motion to suppress the knife, boots, and evidence recovered pursuant to the execution of the search warrants is denied.

Finally, the defendant's argument that all of the physical evidence should be suppressed as fruits of the poisonous tree – in this case the defendant's illegally-obtained confession – is likewise unavailing. The Court credits the People's argument that notwithstanding the initial police misconduct in taking the defendant's confession, the evidence in question would have been inevitably discovered in the normal course of the police investigation.

The doctrine of inevitable discovery is one of three general exceptions to the application of the exclusionary rule to "fruits of the poisonous tree," the others being attenuation and independent source [*People v. Turriago*, 90 NY 29 72, 85 (1997)]. In *People v. Fitzpatrick* [32 NY2d 499 (1973), *cert denied* 414 US 1033 (1973)], the Court of Appeals stated:

> evidence obtained as a result of information derived from an unlawful search or other illegal police conduct is not inadmissible under the fruit of the poisonous tree doctrine where the normal course of police investigation would, in any case, even absent the illicit conduct, have inevitably led to such evidence [32 NY2d at 506].

The U.S. Supreme Court also affirmed the application of this exception to the exclusionary rule in *Nix v. Williams* [467 US 431 (1984)]. In *Nix*, the Court stated that the inevitable discovery exception serves the balancing purpose of not over penalizing the prosecution by putting it in a worse position simply because of some earlier police error or misconduct [*id.* at 443].

In applying the inevitable discovery exception, the Court in *Turriago* required the prosecution to demonstrate a "very high degree of probability" that normal police procedures would have uncovered the challenged evidence "independently of a tainted source" [*Turriago*, 90 NY2d at 86; *see also People v. Payton*, 45 NY2d 300, *rev'd on other grounds* 445 US 573, *on remand* 51 NY2d 169 (1980); *People v. Trotter*, 74 AD3d 1107 (2d Dept. 2010)].

In *People v. Stith* [69 NY2d 313 (1987)], the Court of Appeals distinguished between primary and secondary evidence. It held that primary evidence - the "evidence illegally obtained during or as the immediate consequence of the challenged police conduct" - remained subject to exclusion [*id.* at 318]. Secondary evidence, however, which was obtained as a result of information gleaned from or by other exploitation of, the tainted primary evidence, could be admitted at trial pursuant to the inevitable discovery exception to the exclusionary rule [*id.* at 319].

Based on the substantial evidence before it, the Court is satisfied that the People have established that there is a very high degree of probability that the evidence found in the Jeep Liberty and in Lake Oniad would have been discovered through the typical search techniques utilized by the State Police in a homicide investigation. The Court also finds that this evidence is secondary evidence, i.e. evidence not obtained during or as the immediate consequence of the obtaining of the illegal statement from the defendant on November 16, 2018 [*Stith, supra*; *Turriago, supra*; *People v. Hardy*, 5 AD3d 792 (2d Dept. 2004); *People v. Binns*, 299 AD2d 651 (3d Dept. 2002), *lv app denied* 99 NY2d 612 (2003); *People v. Watson*, 188 AD2d 501 (2d Dept. 1992)].

Based upon the foregoing, it is

ORDERED, that the defendant's motion to suppress the inculpatory statements made by the defendant after being administered the *Miranda* warnings is granted, and it is further

ORDERED, that the defendant's motion to suppress physical evidence recovered by law enforcement in this matter is denied.

The foregoing constitutes the Decision and Order of the Court.

Dated: June 3, 2020
Poughkeepsie, New York

Peter M. Forman

HON. PETER M. FORMAN
County Court Judge

To: Thomas Vasti, Esq.
Anthony DeFazio, Esq.
Attorneys for the defendant

Office of the District Attorney
By: Kristine Whelan, Esq.
Lindsey Richards, Esq.

State of New York
Court of Appeals

BEFORE: HON. JENNY RIVERA, Associate Judge

THE PEOPLE OF THE STATE OF NEW YORK,

Respondent,

-against-

ORDER DENYING LEAVE

TIMOTHY ALEXANDER,

Appellant.

Appellant having applied for leave to appeal to this Court pursuant to Criminal Procedure Law § 460.20 from an order in the above-captioned case;*

UPON the papers filed and due deliberation, it is

ORDERED that the application is denied.

Dated: August 7, 2024

Associate Judge

*Description of Order: Order of the Appellate Division, Second Department, entered April 24, 2024, affirming a judgment of the County Court, Dutchess County, rendered June 28, 2021.

State of New York
Court of Appeals

BEFORE: HON. JENNY RIVERA, Associate Judge

THE PEOPLE OF THE STATE OF NEW YORK,

Respondent,

-against-

TIMOTHY ALEXANDER,

Appellant.

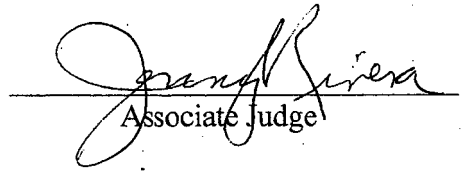
ORDER DENYING RECONSIDERATION

Appellant having moved for reconsideration in the above-captioned case of an application for leave to appeal denied by order dated August 7, 2024;

UPON the papers filed and due deliberation, it is

ORDERED that the motion for reconsideration is denied.

Dated: May 29, 2025



Associate Judge

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