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STATE OF MAINE  
CUMBERLAND, ss

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CLERK'S OFFICE

SUPERIOR COURT  
CR-16-488

2016 FEB 18 PM 1 50

STATE OF MAINE

v.

NOAH GASTON

**ORDER ON STATE'S MOTION FOR JUDICIAL  
DETERMINATION OF PROBABLE CAUSE**

**BACKGROUND**

Before the Court is a motion brought by the State of Maine to extinguish Noah Gaston's right to pre-conviction bail pursuant to 15 MRS 1027. Defendant is charged with intentionally or knowingly causing the death of his wife, Alicia Gaston, on January 14, 2016. The State is represented in this matter by Deputy Assistant Attorney General and Assistant Attorney General Deborah Cashman. Defendant Noah Gaston is represented by Attorneys Luke Rioux and Temma Donahue.

On February 8, 2016 the Court conducted a view of the scene at the Gaston home in Windham. On that same day the Court heard testimony from Detective Chris Farley who is an Evidence Response Technician for the Maine State Police (MSP). On February 9, 2016 the Court heard testimony from Detective Ethel Ross from the MSP who is the primary investigator in this case. The State also submitted 13 photographs in evidence, as well as an audio recording of an interview conducted of the Defendant's 8 year old

daughter just a few hours after her mother's death. The Defense did not call any witnesses.

The parties agree that Mrs. Gaston died from a shotgun wound to her abdomen that severed her aorta, and that Mr. Gaston caused her death. The State urges the Court to find probable cause that he committed the offense of intentional or knowing murder, while the Defense characterizes her death as an accident, or at most the crime of manslaughter based on the doctrine of "imperfect" self defense. While the Defense seems to concede that Mr. Gaston acted intentionally or knowingly in causing his wife's death, they argue that he mistakenly believed at the moment he shot her that she was an intruder. The Defense actually argues in the alternative: first, that the State has not established probable cause that any crime has been committed; alternatively, that he subjectively believed his wife was an intruder, and that he had to use deadly force to protect himself and/or his children, and at most his use of deadly force was reckless as defined under Maine law.

### **FINDINGS**

In making these findings, the Court would emphasize that, as the parties know, the State's investigation is not complete, the Defense has had virtually no time to conduct any investigation, and neither party has had an opportunity to review the extensive forensic evidence which will likely be produced by the State. These findings, therefore, are quite different from the conclusions that might be made by other factfinders, whether that be a Justice of the Superior Court or a Cumberland County jury.

The Court finds based on the view conducted, as well as the testimony of Detective Farley, that Mrs. Gaston was ascending a 12-step stairway to the second floor of the family home just after 6:00 a.m. on January 14, 2016. Based upon the presence of red-brown stains and the presumptive presence of lead on the left wall (looking up the stairs), Mrs. Gaston was shot on the 9<sup>th</sup> or 10th stair, after which she fell to the bottom of the stairs where she died after attempts to revive her by Mr. Gaston and first responders were unsuccessful.<sup>1</sup>

The parties agree that it was still quite dark outside at the time of the shooting, although the State claims that there would have been considerable moonlight on that date. No meteorological data was admitted, and the view was conducted at 10:00 am in early February, making it impossible for the Court to draw any independent conclusion about the lighting at the top of the stairs, which is where Mr. Gaston stood when he shot his wife. While the State claims that there would have been some light at the foot of the stairway from a light recessed in a “media stand” in the living room, that stand is around the corner from the bottom of the stairs and there is a solid wall between the stand and the stairway. Detective Ross testified that the media stand light provided some light at the bottom of the stairs but conceded that the middle of the stairway would be darker than the bottom. The overhead light at the bottom of the stairs was out, as was the light at the top of the stairs. Mrs. Gaston was wearing dark clothes as she ascended the stairs. The Defendant wears glasses, although Detective Ross testified that he does not require corrective lenses to operate a motor vehicle as a condition of his license.

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<sup>1</sup> The State makes much of the fact that the Defendant apparently made different estimates of where on the stairway his wife was when he fired the shotgun. This, the State claims, is evidence that he is not being honest about his motives. However, the Court would note that the Defendant provided an estimate of the distance between him and his wife when he fired of 4-6 feet. The State not only relied upon this distance in doing their reconstruction of the incident with the forensic dummy, but the Defendant’s estimate turns out to be very close to what the State believes was the distance, namely 4 feet.

The stairs end at a relatively small platform (5.5' X 3.2') where three rooms come together: a bathroom directly at the top of the stairs, and two bedrooms on either side of the bathroom. The bathroom had a curtain on a window that might have let in some moonlight, but the bathroom door was closed. The door to the left, which leads to the bedroom of the Defendant's 8 and 9 year old daughters, was also closed. The glass-paned door to the right which leads to the master bedroom was open, and the parties agree that this bedroom likely was lit by some moonlight that came in from windows that look out to the back yard, as well as a floodlight that was on in the back yard.

The State attempted a reenactment of this shooting on January 15, 2016, with a volunteer State Trooper ascending the stairway as Mrs. Gaston had, at the same time of day when the shooting occurred. Det. Ross was at the top of the stairs with another Trooper who was operating a camera. Det. Ross testified that when the volunteer Trooper was standing on the top three steps, she could see the facial features of the volunteer. The video recording of this event, however, did not capture any such level of detail, and the State did not admit the recording. The State claims that this was due to the limitations of the camera which was not able to "see" what could be seen by a human eye.

The Defendant told the MSP that his wife was 4-6 feet away from him when he shot her. The State claims that she was only approximately 4 feet away and bases this on the Defendant's statement as well as measurements taken with the use of a "forensic dummy" and information from the State's Medical Examiner about the path of the shotgun pellets that killed Mrs. Gaston. The State's conclusion fails to take into account the fact that Mrs. Gaston was likely in motion when she was shot, which means that evidence before the Court is currently insufficient to support any precise conclusion as to

distance. However, the Court would note that the Defendant and the State seem to agree that Mr. and Mrs. Gaston were fairly close to one another when the fatal shot was discharged, if for no other reason but that the platform at the top of the stairs is so small and the stains on the wall suggest that the fatal wound was inflicted when she was near the top of the stairway.

At the conclusion of the hearing, AAG Cashman urged the Court to give considerable weight to the statement of the Defendant's eight year old daughter who was interviewed by Detective Corey Pike several hours after the death of her mother. It is not clear from the interview if the minor child had been told about her mother's death, but she spoke freely with Detective Pike about what she remembered.

Contrary to what is suggested in the affidavit of Det. Ross, and contrary to what the State argued at the conclusion of the evidence, the Court cannot reasonably infer from the recording that she heard any argument between her parents before the shotgun went off. The child makes statements about hearing her parents' voices at two separate times in the interview. During the first part, she describes her parents as "yelling or something" and then she hears what she believes to be a baby gate falling,<sup>2</sup> followed by more yelling and something "tumbling and falling" down the stairs. She then reports hearing her mother crying. She explains that she thought at one point it was her two-year old brother who fell down the stairs but later learned it was her mother.

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<sup>2</sup> The State asserts that there no baby gate was involved in this incident as law enforcement located two such gates in upstairs rooms but not at the bottom of the stairs. The Defense surmises that what the child heard was not a baby gate falling, but was instead the sound of the Defendant dropping his gun, which the parties seem to agree happened just after the shooting. The child reported seeing the gun at the top of the stairs, and it was found there by law enforcement.

She then says she “peeked out” and saw a gun at the top of the stairs. She tried to keep her brother in the room but reports that later she had to go down and get her brother who apparently had gone down to be with his parents.

She is asked by Detective Pike about the yelling, and she says that she didn’t know what they were saying but they were saying “Ahhh! as if they were scared. She is asked if she ever had heard her parents yelling on other occasions and she explains only when they are arguing. She again says that this time she did not hear words as with other arguments, just sounds like, “Ahhh...” Her voice trails off with, “ I don’t know....”

Importantly, a few minutes later, she is asked if she had ever heard the gun being fired before and she says “Yup, a ton.” She then spontaneously states, “But I didn’t hear the gun get fired .... Actually I didn’t, I don’t know if I heard if fired first and then I heard the gates and stuff...and also I was having a weirdish dream, but a good one... so maybe it was a part of my dream, like maybe a party firework.” Detective Pike agrees that it is weird how dreams sometimes work “like that.”

The only inference the Court can draw from this last part of the interview was that the minor child did not hear any argument between her parents before being awakened by the gun firing. Her description of the sounds being made by her parents which she characterizes as them being “scared” are not entirely consistent with the State’s theory that the Defendant intentionally or knowingly shot his wife, knowing it was his wife.

However, the standard for what constitutes probable cause is, as the parties know, a relatively low one, notwithstanding the language in Article I Section X of the Maine Constitution which requires that “proof is evident or the presumption great” before a Defendant’s right to bail can be extinguished. The Law Court in *Harnish v. State*, 531

A.2d 1264 (Me. 1987) clarified that the standard of proof required to hold a Defendant without bail was not clear and convincing evidence, but rather probable cause. However, it also held that the fact that a Defendant had been indicted for murder did not eliminate a Defendant's right to have judicial determination of probable cause. As noted in *Harnish*, "probable cause" in this context requires proof by "facts and circumstances..sufficient to warrant a prudent man in believing that the (accused) committed or was committing an offense." *Id.*, 1266.

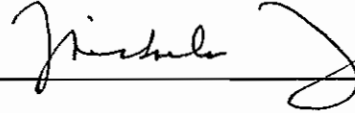
In this case, given the close range (4-6 feet) at which the gun appears to have been fired, the fact Mrs. Gaston was on one of the top stairs of the stairway, together with Mr. Gaston's knowledge that his wife tended to be awake and downstairs before anyone else in the house, the Court concludes that a reasonable person could believe that he was aware that it was his wife he was shooting on the date in question, and not an intruder.

Again, the Court would emphasize that both parties have had little opportunity to complete their investigations and obtain results of forensic tests, and the Defendant will have an opportunity to generate and assert defenses at trial, including the defense of self or others, and so-called imperfect self defense. On the record before the Court, however, sufficient facts and circumstances have been produced to establish probable cause that the Defendant committed the offense of intentional or knowing murder.

The entry will be: Probable cause is found that the Defendant committed the offense of intentional or knowing murder. The Clerk will set a time for the parties to be heard as to whether bail should be set as a matter of discretion by the Court.

2/16/11

DATE



SUPERIOR COURT JUSTICE