

THE STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS.

HILLSBOROUGH COUNTY SUPERIOR COURT - NORTH
STATE OF NEW HAMPSHIRE

V.

ADAM MONTGOMERY

216-2022-CR-20

216-2022-CR- 2372

MOTION IN LIMINE

RE: ALLEGATIONS OF PRIOR or SUBSEQUENT BAD ACTS

Now comes Adam Montgomery, by and through his Public Defenders, Caroline L. Smith, Esq., and James T. Brooks, Esq., and respectfully moves this Honorable Court to exclude evidence of any crimes, wrongs, or acts allegedly committed by him other than those alleged in the above-referenced charging documents. This motion is based on New Hampshire Rules of Evidence 401, 402, 403, and 404 as well as the rights to due process and a fair trial as guaranteed by the New Hampshire and United States Constitutions.

As grounds for this motion, the following is stated:

1. Mr. Adam Montgomery is scheduled for a February 6, 2024 jury selection on charges of second degree assault and second degree murder as well as other charges related to the death of Harmony Montgomery.
2. The State has not noticed its intent to introduce evidence of other bad acts pursuant to New Hampshire Rule of Evidence 404(b). Out of an abundance of caution, however, Mr. Montgomery seeks to preclude evidence of the following categories of uncharged conduct:
 - a. Allegations of conduct underlying the charges in 216-2022-CR-507, 509, and 577 and any other allegations that Mr. Montgomery sold or possessed firearms;
 - b. Allegations of domestic abuse purportedly against Kayla Montgomery;

- c. Allegations of neglect in caring for Harmony Montgomery and any assaults or assaultive behavior against Harmony Montgomery other than the charged second degree assault and the conduct on or about December 7, 2019 alleged by Kayla Montgomery that purportedly lead to Harmony Montgomery's death;
- d. Allegations of assaults and/or other assaultive behavior; against others, including, but not limited to, allegations of an assault on Corey Watts;
- e. Allegations that Mr. Montgomery sold illegal drugs;
- f. Allegations that Mr. Montgomery used illegal drugs, including, but not limited to, experiencing episodes of paranoia due to illegal drug use;
- g. Allegations of theft;
- h. Allegations of domestic abuse against Crystal Sorey or prohibiting Sorey from seeing Harmony Montgomery;
- i. Allegations of any wrongdoing in obtaining custody of Harmony Montgomery;
- j. Evidence that Mr. Montgomery was formerly a resident of the Youth Development Center ("YDC");
- k. Evidence of prior convictions, unless Mr. Montgomery testifies, then only prior convictions that are admissible pursuant to New Hampshire Rule of Evidence 609.

3. "The purpose of Rule 404(b) in a criminal trial is to ensure that the defendant is tried on the merits of the crime as charged and to prevent a conviction based on evidence of other crimes or wrongs." State v. McGlew, 139 N.H. 505, 509 (1995)(citations and quotation omitted). Mr. Montgomery asserts that the above enumerated allegations and evidence reflect the very type of allegations and behavior that give rise to the danger that even when the State fails to prove charges beyond a reasonable doubt, a defendant risks conviction based on evidence or allegations of other crimes or wrongs if that type of evidence is admitted.

4. "Evidence of other wrongs is inherently prejudicial and increases the likelihood that a jury will decide the case on an improper basis. The concern that a defendant might be convicted because of his character is the gravamen of Rule 404(b)." Id. For such evidence to be admitted, the proponent of the evidence must show that a) the evidence is relevant for purposes other than proving character or disposition; b) there is clear proof the evidence is true; and c) the probative value of the evidence is not substantially outweighed by its prejudice to the defendant. See id. at 507. Effective January 1, 2019, NHRE 404(b) has been amended to specifically incorporate McGlew's three-pronged test. See N.H. R. Ev. 404(b)(2).

5. In offering evidence of other wrongs under Rule 404(b), the State "must [first] state the specific purpose for which the evidence is offered and ... articulate the precise chain of reasoning

by which the offered evidence will tend to prove or disprove an issue actually in dispute, without relying upon forbidden inferences of predisposition, character, or propensity.” McGlew at 509-10 (citations omitted). The proponent of such evidence cannot simply give a mechanical recitation of 404(b) as a basis for admissibility or merely parrot the grounds set forth in the rule. See id. at 508. Instead, it must articulate precisely how the fact of consequence may be inferred from the evidence sought to be admitted. See id. at 509-10. “Evidence tending to prove or disprove an issue not actually in dispute is irrelevant and inadmissible under Rule 402.” Id. at 510 (citation omitted).

6. Second, the State must provide “clear proof” of the other wrong it seeks to introduce. To satisfy its burden, the State must present evidence “firmly establishing that the defendant, and not some other person, committed the ... act.” State v. Michaud, 135 N.H. 723, 727 (1992).

7. Third, the Court must balance the evidence’s probative value against the danger of unfair prejudice. See McGlew, 139 N.H. at 510. “Evidence is unfairly prejudicial if its primary purpose *or effect* is to appeal to a jury's sympathies, arouse its sense of horror, provoke its instinct to punish, or trigger other mainsprings of human action that may cause a jury to base its decision on something other than the established propositions in the case.” Id. (citation omitted)(emphasis in original).

8. In conducting this balancing, the probative value of the other bad act evidence must be considered in the context of its incremental value. See State v. Watkins, 148 N.H. 760, 768 (2002)(quotation omitted). In other words, admissibility turns on the “extent to which the issue is established by other evidence, stipulation or inference.” Id. (quotation omitted). Thus, in Watkins, on the issue of the defendant’s knowledge of his habitual offender status, his prior conviction for driving after certification was inadmissible considering less prejudicial evidence establishing the same fact. See id.

9. Should the State seek to introduce any bad acts evidence, it should be required to state with specificity the evidence it seeks to introduce and satisfy the McGlew and Rule 404(b) criteria for admissibility.

10. All allegations of other bad act conduct not specifically determined admissible by the Court must be precluded at trial pursuant to New Hampshire Rules of Evidence 401, 402, 403 and 404(b), and the rights to due process and a fair trial as guaranteed by Part 1, Article 15 of the New

Hampshire Constitution and the Sixth and Fourteenth Amendments of the United States Constitution.

WHEREFORE, Adam Montgomery respectfully requests this Honorable Court preclude all evidence of prior, subsequent, and other allegations of bad acts other than those alleged in the charging documents.

Respectfully submitted,

/s/ Caroline L. Smith
Caroline L. Smith, Esq.
NH Bar #5992
NH Public Defender
408 Union Avenue
Laconia, NH 03246
(603) 524-1831

/s/ James T. Brooks
James T. Brooks, Esq.
NH Bar #14876
NH Public Defender
27 John Stark Highway
Newport, NH 03773
(603) 865-1460

CERTIFICATE OF SERVICE:

I hereby certify that a copy of this MOTION IN LIMINE has been forwarded to Senior Assistant Attorney General Benjamin J. Agati and Assistant Attorney General R. Christopher Knowles on this 21st day of December 2023.

/s/ Caroline L. Smith
Caroline L. Smith, Esq.