

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 TO PRECLUDE DEFENDANT'S ENCOUNTER WITH LAW
ENFORCEMENT DECEMBER 31, 2021**

NOW COMES the defendant, Adam Montgomery, by and through counsel, Caroline L. Smith, Esq., and James T. Brooks, Esq., and respectfully requests this Honorable Court preclude all evidence of Mr. Montgomery's encounter with law enforcement on the morning of December 31, 2021 during the State's case-in-chief.

All requests in this motion are based on Part 1, Article 15 of the New Hampshire Constitution and the Fifth and Fourteenth Amendments of the United States Constitution. In support of this request, undersigned counsel asserts as follows:

1. Adam Montgomery is charged in docket 216-2022-CR-20 with, in pertinent part, Second Degree Assault against Harmony Montgomery, and in docket 216-2022-CR-2372 with Second degree murder and related offenses in the death of Harmony Montgomery.
2. Prior to the indictment for murder, this Court held hearings on several Motions to Suppress statements made by Adam Montgomery to law enforcement.
3. The Court granted defendant's motion to suppress statements made to law enforcement the morning of December 31, 2021, subject to discussions on the record regarding when such statements might become admissible. (The Motion to Suppress, hearing and ruling are incorporated herein by reference.) By this Motion, the defendant seeks to preclude the introduction of evidence of the entire encounter with law enforcement that morning, including that Mr.

Montgomery would not answer questions or cooperate with law enforcement, during the State's case-in-chief.

4. A defendant's pre-arrest silence may be used to impeach his credibility, but the use of pre-arrest silence in the State's case-in-chief is unconstitutional. State v. Remick, 149 N.H. 745, 747 (2003); State v. Reid, 161 N.H. 569, 576 (2011)

5. In this matter, the defendant asserted his right to silence to Officer Stanzel when law enforcement first encountered him at the parking lot on Harvill St. in Manchester on the morning of December 31, 2021. He was advised he was being held until Det. Dunleavy arrived to speak to him. Mr. Montgomery asserted his right to silence to Detective Dunleavy when the detective approached him. Mr. Montgomery's statements to law enforcement have been suppressed.

6. However, since the entire encounter was about attempting to speak to Mr. Montgomery, evidence of the entire encounter should be precluded. Evidence that there was an encounter, with the substance of the encounter not admitted, merely raises questions and causes the jury to speculate and is therefore prejudicial. Because Mr. Montgomery's assertion to his right to refuse to speak to law enforcement is inadmissible, any probative value in the encounter is far outweighed by the prejudicial impact and therefore the encounter should be precluded pursuant to Part 1, Article of the New Hampshire Constitution and the Fifth and Fourteenth Amendments of the United States Constitution as well as NHRE 401, 402 and 403.

WHEREFORE, Adam Montgomery respectfully requests respectfully requests this Honorable Court preclude evidence of an encounter between Mr. Montgomery and law enforcement the morning of December 31, 2021 during the State's case-in-chief.

Respectfully submitted,

/s/ Caroline L. Smith

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CERTIFICATE OF SERVICE:

I hereby certify that a copy of this MOTION TO PRECLUDE DEFENDANT'S ENCOUNTER WITH LAW ENFORCEMENT DECEMBER 31, 2021 has been forwarded to the Office of the Attorney General on this 13th day of December 2023.

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