

THE STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS.

HILLSBOROUGH COUNTY SUPERIOR COURT - NORTH
STATE OF NEW HAMPSHIRE

V.

ADAM MONTGOMERY

216-2022-CR-20

REDACTED

MOTION TO SEVER/OBJECTION TO JOINDER

NOW COMES the defendant, Adam Montgomery, by and through counsel, Caroline L. Smith, Esq. and Paige Pihl Buckley, Esq., and respectfully requests that this Honorable Court order that the felony charge of Second Degree Assault be severed and tried separately from the two charges of Endangering the Welfare of a Child or Incompetent and the charge of Interference with Custody.

Mr. Montgomery's severance request is based on his fundamental constitutional rights to due process and a fair trial under the United States and New Hampshire Constitutions. U.S. Constitution, Fifth and Fourteenth Amendments New Hampshire Constitution, Part 1, Article 15.

In support of this Motion, the following is stated:

1. The defendant is charged with one felony count of Second Degree Assault alleged to have occurred between July 1 and July 22, 2019, two misdemeanor counts of Endangering the Welfare of a Child Or Incompetent alleged to have occurred on or about December 31, 2021; Endangering the Welfare of a Child or Incompetent alleged to have occurred between November, 2019 and January 4, 2022 and one misdemeanor count of Interference with Custody alleged to have occurred on December 31, 2021. The Second Degree Assault charge was handed down by the Grand Jury on March 21, 2022. The misdemeanor complaints were filed January 5, 2022. The State has not filed to join any of the charges.
2. The defendant is scheduled for a Dispositional Conference on June 28, 2022.
3. NH Rule of Criminal Procedure 20 governs joinder of offenses. The Rule distinguishes between related and unrelated offenses. If either party moves for joinder of *related* offenses, the

charges shall be joined unless the trial judge determines that joinder is not in the best interest of justice. NH Rules of Criminal Procedure 20(a)(2).

4. Mr. Montgomery concedes that the misdemeanor charges are related to each other. In fact, it appears the charges may be alternatives to each other. The misdemeanor charges are not, however, related to the felony charge.

5. NH Rule of Criminal Procedure 20(a)(2) defines a related offense:

Two or more offenses are related if they:

- (i) are alleged to have occurred during a single criminal episode; or
- (ii) constitute parts of a common scheme or plan; or
- (iii) are alleged to have occurred during separate criminal episodes, but nonetheless, are logically and factually connected in a manner that does not solely demonstrate that the accused has a propensity to engage in criminal conduct.

6. The felony charge of Second Degree Assault is not related to the misdemeanor charges under any of the definitions provided under the Rule. The felony charge alleges a single discrete act of striking Harmony in the face. It does not allege ongoing conduct and is completely different in character than the subsequent allegations involving custody of the child or her whereabouts. In addition, the time period alleged in the felony indictment does not overlap with that alleged in the misdemeanor charges.

7. No common scheme or plan is alleged nor does discovery intimate a common scheme or plan. Rather, discovery reveals that in the summer of 2019, XXXXXX XXXXXXXXXXXX alleged that Mr. Montgomery made statements admitting to causing injury to Harmony Montgomery. A representative from DCYF investigated and obtained statements from those involved, including Harmony Montgomery, and determined that the allegations were unfounded. The agency closed the matter as unfounded. Mr. Montgomery's defense in this matter is that he did not cause the injury to Harmony.

8. The misdemeanor allegations are not logically or factually connected to the allegations in the felony charge. The allegations in the felony charge were made and investigated in the summer of 2019. The investigation was completed and the case closed by September 2019.

9. The allegations in the misdemeanor charges arose after the assault investigation was closed. In late November, just prior to Thanksgiving, Mr. Montgomery and his wife Kayla, were evicted from their residence on Gilford Avenue because the owner(s) of the home, Helen Montgomery and /or Christina DeGirolamo, failed to make mortgage payments. Upon eviction,

the family was forced to live in their car with three children, including Harmony Montgomery, as they looked for more permanent housing. The misdemeanor allegations involve actions post-eviction. Mr. Montgomery's defense includes his statements advising DCYF as early as January 2020 that Harmony was with her mother, Crystal Sorey, and potentially his statement to Manchester Police Department advising them as well.

10. Unrelated charges may be joined only upon the request of the defendant or with his consent, and "upon a showing that failure to try the charges together would constitute harassment or unduly consume the time or resources of the parties" NH Rules of Criminal Procedure 20(a)(3). If the defendant requests and/or consents, and this showing is made, then joinder of unrelated offenses is required unless "joinder is not in the best interest of justice." Id.

11. Mr. Montgomery neither requests nor consents to joinder of the felony charge with the misdemeanor charges. Further, joinder of the felony to the misdemeanors would create extreme prejudice to both cases. Each set of charges would constitute other bad acts evidence and be precluded under NH Rule of Evidence 403 and 404(b). Further, because the felony charge is not related to the misdemeanor charges and the defense to the felony charge is entirely different and unrelated to the defense to the misdemeanor charges, joinder would cause confusion of the issues and potentially mislead the jury.

WHEREFORE, counsel for Mr. Montgomery requests this Court:

- A. Sever the felony charge of Second Degree Assault (Charge ID: 1937947C) from the misdemeanor charges (Charge IDs: 1937948C, 1937949C, and 1937950C);
- B. Maintain this Motion under seal as it references to protected Department of Children and Families records;
- C. If this Court is not inclined to grant this Motion, schedule a hearing for the Parties to be heard; and
- D. Grant any other relief in favor of the defendant that the Court deems just and equitable.

Respectfully submitted,

/s/ Caroline Smith
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CERTIFICATE OF SERVICE:

I hereby certify that a copy of this MOTION has been forwarded to the Office of the Attorney General on this 17th day of June 2022.

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

/s/ Paige Pihl Buckley
Paige Pihl Buckley, Esq.