

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-577

MOTION TO SUPPRESS STATEMENTS FROM JANUARY 4, 2022

NOW COMES the defendant, Adam Montgomery, by and through counsel, Caroline L. Smith, Esq., and respectfully requests this Honorable Court suppress from use at trial all statements he made to law enforcement on January 4, 2022 from the time he asserted his right to silence. The statements should be suppressed because law enforcement failed to honor Mr. Montgomery's assertion to his right to silence.

All requests in this motion are based on Part 1, Articles 15 and 19 of the New Hampshire Constitution and the Fourth, Fifth, Sixth and Fourteenth Amendments of the United States Constitution support of this request, undersigned counsel, asserts as follows:

1. The defendant is charged in docket 216-2022-CR-20 with Second Degree Assault, Endangering The Welfare Of Child Or Incompetent, Endangering The Welfare Of Child Or Incompetent, Interference With Custody. In a separate docket, 216-2022-CR-577, he is charged with two counts of Armed Career Criminal, with two lesser included charges of Felon in Possession, two counts of Theft and two counts of Receiving Stolen Property.
2. On January 4, 2022 Adam Montgomery was arrested on the charge of Second Degree Assault, as well as the Endangering and Interference charges, and brought to the Manchester Police Department. From the booking room, Montgomery was brought to an interrogation room by Det. Dunleavy and Det. Riley. Montgomery was advised that he was being recorded. Montgomery reviewed aloud a Miranda form, initialed each of the rights and signed the waiver.
3. Several minutes into the interrogation, Montgomery was asked about the Second Degree assault charge. After Det. Dunleavy stated that marks on Harmony, while they lived on Gilford

St., were left on her by him (Adam), Montgomery stated "absolutely not". He then stated "I have nothing else to say."

4. As Montgomery asserted his right to silence, he crossed his arms over his stomach and stared straight ahead. The two detectives stared in silence at Montgomery. After about 8 seconds, Montgomery shrugged and at the same time, Det. Dunleavy began to speak, saying "like I'm..." and Montgomery shrugged again saying "no". Then the following exchange occurred:

Det. Dunleavy: "We've talked about how we're worried about your daughter the other day"

Montgomery: "ok"

Det. Dunleavy: "do you remember that conversation."

Montgomery: "I remember that conversation..but right off the brick, but the way you were approaching that conversation--you guys were completely out of line, so..."

Det. Dunleavy:"Me?"

Montgomery: "Yeah"

Det. Dunleavy: "In the time that you've known me."

Montgomery: "What you just said to me, you guys were completely out of line."

Det. Dunleavy: "Ok, but, so explain to me, how were we out of line?"

Montgomery: "I have nothing to explain."

Det. Dunleavy: "But wouldn't you rather explain it so we can make sense of it, rather than just have other peoples side of the story. Like you want to defend yourself and like this picture that people are painting of you--now's your chance man--defend your...(Montgomery speaks over)

Montgomery: "Whose side of the story. Whose telling you these things."

5. Det. Dunleavy continues on and successfully got Montgomery to answer questions. Montgomery asserted his right to silence a couple of more times, which assertions were also ignored by the detectives. According to Det. Dunleavy's report the interrogation ended after Adam wanted a lawyer. This portion of the interrogation was not captured on the video provided in discovery.

**LAW ENFORCEMENT FAILED TO HONOR HIS ASSERTION OF HIS RIGHT
AGAINST SELF INCRIMINATION**

6. If any time before or during interrogation, the defendant asserts the right to remain silent, the police must cease all questioning. Miranda v. Arizona, 384 U.S. 436 473-74 (1966); State v. Laurie, 135 N.H. 438 (1992)(whenever a suspect in custody exercises his option to cut off questioning, the police must scrupulously honor the suspect's desire to remain silent).

7. When a defendant requests counsel after *Miranda* warnings have been given or after the interrogation has begun, there is "an irrebuttable presumption" that the defendant asked for the assistance of counsel for the purpose of having counsel present during any further questioning, and the police cannot re-initiate questioning until counsel is present. State v. Grant-Chase, 140 N.H. 264, 267 (1995) The Court has extended these principles to the invocation of the right to remain silent. State v. Lynch, 169 N.H. 689, 698(2017); See Berghuis v. Thompkins, 560 U.S. 370, 381, 130 S.Ct. 2250, 176 L.Ed.2d 1098 (2010) (stating that "there is no principled reason to adopt different standards for determining when an accused has invoked the Miranda right to remain silent and the Miranda right to counsel.")

8. Here, after initially waiving his *Miranda* rights, Montgomery subsequently unambiguously asserted his right to silence in stating "I have nothing else to say". Det. Dunleavy honored that right for about 8 seconds before pressing Montgomery and deflecting him from his assertion. The detectives failed to honor subsequent assertions as well.

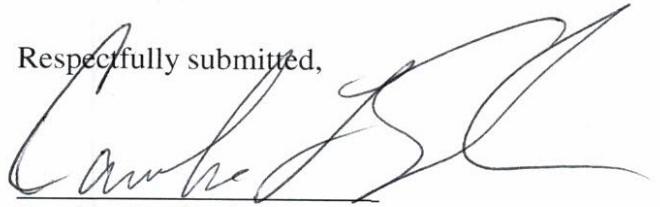
9. Det. Dunleavy had engaged in similar conduct when he spoke to Montgomery several days earlier December 31, 2021. (That conduct was the subject of a Motion to Suppress Statements from December 31, 2021 incorporated herein as if fully stated).

10. Mr. Montgomery's statements to police must be suppressed after he asserted his right to silence by stating "I have nothing else to say".

Wherefore, Adam Montgomery requests that this Honorable Court:

- A. Grant a hearing on this motion and suppress the statements that he made to law enforcement on January 4, 2022 after he asserted his right to silence; and
- B. Grant such further relief as justice requires.

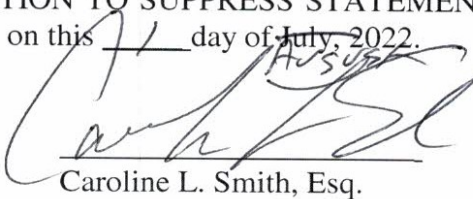
Respectfully submitted,



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CERTIFICATE OF SERVICE:

I hereby certify that a copy of this MOTION TO SUPPRESS STATEMENTS has been forwarded to the Office of the Attorney General on this 7 day of ~~July~~ ^{August}, 2022.



Caroline L. Smith, Esq.

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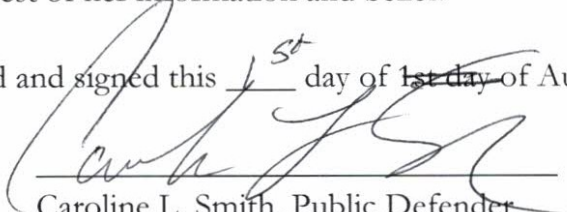
AFFIDAVIT

BEFORE ME, the undersigned Notary Public/Justice of the Peace, personally came and appeared:

CAROLINE L. SMITH, NH PUBLIC DEFENDER

who after being sworn by me to tell the truth, did state that she is a Public Defender representing Adam Montgomery, that all facts alleged in the foregoing motion are based on (1) the police reports and other discovery provided by the prosecution and (2) the recordings provided by the prosecution, and that the statements of fact in the motion are true and correct to best of her information and belief.

Read and signed this 1st day of ~~1st~~ day of August, 2022 at Laconia, NH.



Caroline L. Smith, Public Defender

Read, affirmed and signed before me at the time and place described.



Notary Public/Justice of the Peace



