

HILLSBOROUGH, SS.
Northern District

THE STATE OF NEW HAMPSHIRE

SUPERIOR COURT

State of New Hampshire

v.

Adam Montgomery

Case Nos. 216-2022-CR-00020
216-2022-CR-00577

**STATE'S OBJECTION TO DEFENDANT'S MOTION TO SUPPRESS STATEMENTS
FROM JANUARY 4, 2022**

NOW COMES the State of New Hampshire, by and through its attorneys, the Office of the Attorney General, and hereby objects to the defendant's Motion to Suppress Statements from January 4, 2022. As grounds therefore, the State submits as follows:

1. On January 4, 2022, the defendant was arrested in Manchester on charges of second degree assault, endangering the welfare of a child (two charges), and interference with custody. All of the charges related to his daughter, Harmony Montgomery.
2. Following his arrest, the defendant was transported to the Manchester Police Department, where he was interviewed by Detectives Dunleavy and Riley. The interview was audio and video recorded with the defendant's knowledge and assent.
3. At the beginning of the interview, Det. Dunleavy reviewed with the defendant his *Miranda* rights using a written form. The defendant read the form out loud and verbally indicated that he understood his rights; he then initialed each of the rights on the form, marked the form to indicate that he understood each of the rights and that he was willing to waive each of the rights and answer questions, and signed the form.

4. The defendant was provided with cigarettes at his request, which he was allowed to smoke during the interview. He was also offered water, which he refused at first but later accepted.

5. After the defendant waived *Miranda*, the detectives began to speak with him about the events of his arrest and his current charges. Beginning at approximately the 7:40 mark on the recording, the following exchange took place:

Det. Dunleavy: You understand what the charges are, right?

Defendant: Second degree assault, right?

Det. Dunleavy: Yup.

Defendant: OK.

Det. Dunleavy: There's also an endangering the welfare charge.

Defendant: OK.

Det. Dunleavy: And interference with custody. OK, so—

Defendant: So how did I interfere with custody?

Det. Dunleavy: So that paperwork that we served you the other day, remember that?

Defendant: OK.

Det. Dunleavy: When you were in the alleyway, remember? Outside of Lake Ave?

Defendant: Yup.

Det. Dunleavy: There's paperwork that you have to comply with. You understand that, right? We had that conversation, did we not? Right? So that's what that's all about—

Defendant: So, second degree assault charge. What is this referring to?

Det. Dunleavy: That what we want to talk to you about.

Defendant: Explain to me. If I'm being charged with it, what the hell am I being charged with it for?

Det. Dunleavy: Well, your daughter had some injuries.

Defendant: When?

Det. Dunleavy: That you know about when you lived on Gilford Street.

Defendant: No, I do not. What are you referring to?

Det. Dunleavy: Well, you were there, I wasn't, right?

Defendant: What are you referring to?

Det. Dunleavy: I'm referring to her having some good marks.

Defendant: What are you referring to?

Det. Dunleavy: Marks that were left on her by you.

Defendant: Absolutely not. I have nothing else to say.¹

Defendant: (Unintelligible)—²

Det. Dunleavy: Like I'm—

Defendant: No.

Det. Dunleavy: We talked about how we were worried about your daughter the other day, right?

Defendant: OK.

Det. Dunleavy: You remember that conversation?

Defendant: I remember that conversation, but right off the rip, with the way you're approaching the conversation you guys are completely out of line, so—

Det. Dunleavy: Me?

Defendant: Yeah.

Det. Dunleavy: Do I—in the time that you've known me—

Defendant: What you just said to me, you guys are completely out of line.

Det. Dunleavy: OK, but tell, so explain to me, how are we out of line?

¹ This statement is at approximately 8:49 on the recording.

² The defendant next begins to speak at approximately 9:05 on the recording. The State is not able to discern what he attempts to say, as Det. Dunleavy begins speaking at almost the exact same time.

Defendant: I have nothing to explain.

Det. Dunleavy: OK, but wouldn't you rather explain it so you, we can make sense of it than just have other people's side of the story? Like, you want to defend yourself, and like, this picture people are painting of you? Now's your chance, man. Defend your—

Defendant: Whose side of the story? Who's telling you these things?

Det. Dunleavy: People that were close to you.

Defendant: Obviously not.

Det. Dunleavy: Well, maybe at the time, maybe not anymore.

Subsequently, the interview continued. The interview lasted a total of approximately 35 minutes and 24 seconds.

6. The defendant argues that his statement “I have nothing else to say” was an assertion of his right against self-incrimination. The defendant does not challenge his initial waiver of his *Miranda* rights, nor does he challenge the voluntariness of his statements. He specifically asks the Court to suppress only those statements made after he said, “I have nothing else to say.” (Def.'s Mot. ¶ 10; prayer A.)

7. “To determine whether, after initially waiving his constitutional rights under *Miranda*, the defendant subsequently invoked those rights, we examine his statements under the totality of the circumstances.” *State v. Lynch*, 169 N.H. 689, 693 (2017). This determination is based on an objective inquiry. *Id.* at 694. The consideration is the same both as to the invocation of the right to remain silent as well as to the right to counsel. *Id.* at 695.

8. Importantly, a post-*Miranda* invocation of the right to remain silent (just like the right to counsel) must be unambiguous. *Id.* at 694–95. “[I]f a suspect makes a reference to an attorney that is ambiguous or equivocal in that a reasonable officer in light of the circumstances would have understood only that a suspect *might* be invoking the right to counsel, precedent does

not require the cessation of questioning.” *Id.* at 694 (internal quotations and citation omitted).

While it will often be good practice for interviewing officers to clarify an ambiguous request, “if the suspect’s statement is not an unambiguous or unequivocal request for counsel, the officers have no obligation to stop questioning him.” *Id.* at 695 (internal quotation and citation omitted).

9. Here, the defendant’s statement “I have nothing else to say,” when viewed under the totality of the circumstances, was not an unambiguous or unequivocal request for counsel; therefore, the detectives had no obligation to stop questioning him. At the time the defendant said he had nothing else to say, he and the detectives were discussing the charges for which he had just been arrested. The defendant first asked about the charge of interference with custody, and Det. Dunleavy explained the substance of that charge. The defendant then asked about the second degree assault charge, and it is after Det. Dunleavy explained that the charge was based on injuries to the defendant’s daughter and “marks that were left on her by you” that the defendant said, “Absolutely not. I have nothing else to say.” In this context, the statement “I have nothing else to say” is ambiguous as to its breadth. It would be unclear to a reasonable officer in that moment whether the defendant meant that his denial was all he had to say about the marks on his daughter, whether the defendant meant he had nothing more to say about the second degree assault charge and wanted to move on to discuss the charges of endangering the welfare of a child (which still had not been discussed), or whether the defendant wished to cease questioning completely.

10. While it may have been good practice for the detectives to clarify whether the defendant’s statement “I have nothing else to say” was an invocation of his right to remain silent, because his statement was not an unambiguous or unequivocal invocation they had no obligation to stop questioning him. *See Lynch*, 169 N.H. at 695.

11. The defendant claims that he subsequently asserted his right to silence “a couple more times,” and that the detectives failed to honor those additional assertions. (Def.’s Mot. ¶¶ 5, 8.) However, the defendant does not identify the “couple more times” he claims he asserted his right to silence. Because the analysis of these claimed assertions is based on the totality of the circumstances, including the context and nature of the questioning at the specific times the claimed assertions were made, the State is unable to respond to this point.

WHEREFORE, the State of New Hampshire respectfully requests that this Honorable Court:

- (A) Deny the defendant’s Motion to Suppress Statements from January 4, 2022; and
- (B) Grant such further relief as may be deemed just and proper.

Respectfully submitted,

THE STATE OF NEW HAMPSHIRE

By its attorneys,

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Date: August 25, 2022

/s/ Jesse O’Neill
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CERTIFICATE OF SERVICE

I hereby certify that on this date a copy of the foregoing was sent to counsel for the defendant via the electronic case filing system.

/s/ Jesse O’Neill
Jesse O’Neill