

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 DECEMBER 31, 2021

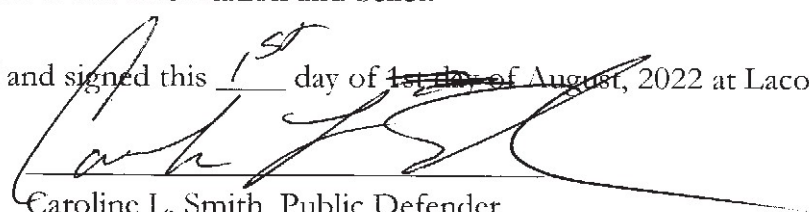
AFFIDAVIT

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

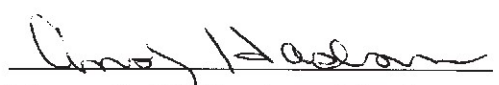
CAROLINE L. SMITH, NH PUBLIC DEFENDER

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



Clerk's Notice of Decision
Document Sent to Parties
on 09/13/2022

After review and consideration of the motion and response, and as discussed on the record at the hearing held on September 7, 2022, the motion is GRANTED as to statements made by the defendant to law enforcement on the morning of Dec. 31, 2021. SO ORDERED.


Honorable Amy B. Messer
September 13, 2022



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HILLSBOROUGH, SS.

HILLSBOROUGH COUNTY SUPERIOR COURT - NORTH
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216-2022-CR-20

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MOTION TO SUPPRESS STATEMENTS FROM DECEMBER 31, 2021

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 December 31, 2021 because a) law enforcement failed to advise Mr. Montgomery of his Miranda rights prior to commencing questioning and b) 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 December 31, 2021, Officer Stanzel saw a Blue 2006 Pont Grant Prix in a parking lot on Harvill St., Manchester. He had been advised during roll call to be on the look out for that car and apparently had checked several places before finding it. He confirmed the plate of the vehicle through dispatch and called for additional units. Once the additional units arrived, Office Stanzel approached the vehicle and made contact with Adam Montgomery. Officer Stanzel knocked on the window, told Montgomery to keep his hands where he could see them, and to get out of the car. At the same time, Montgomery's passenger, Kelsey Small was removed from the

car as well. When Montgomery got out of the car, Officer Stanzel patted him down for weapons. The officer then informed Montgomery that he was being detained and that the police wanted to check on Harmony. Montgomery stated that "he did not want to speak to Officers". On information and belief, there were at least 2-3 law enforcement officers present when Officer Stanzel detained Montgomery.

3. When Kelsey Small was removed from the car, she was taken to one of the nearby cruisers and remained under watch.

4. Shortly after Montgomery was detained Det. Dunleavy arrived with two other detectives. Montgomery asked if he was under arrest and Det. Dunleavy said that he was not, that there were no warrants or anything. Montgomery then stated that he "had nothing to say then". Throughout the subsequent encounter Det. Dunleavy continually ignored Montgomery's assertions and questioned Montgomery. On his part, Montgomery asserted his right to silence several more times, sometimes answering a question before reiterating his assertion, though he eventually succumbed to questioning.

5. Throughout the encounter with Det. Dunleavy, Montgomery remained under watch by Off. Stanzel. In addition, other first responding officers remained present and alert on Montgomery. At the end of the questioning, Det. Dunleavy stated "just give me a second, I'll try to get you out of here".

6. Det. Dunleavy spoke to Kelsey Small after he finished questioning Montgomery. Once he finished speaking to her, she was permitted to return to the car. Two uniformed officers remained with Montgomery while Det. Dunleavy spoke with Small.

7. According to Officer Stanzel, after Montgomery's interview, he was "cut loose".

8. At no time during the encounter with law enforcement that day was Montgomery given *Miranda* warnings.

THE DEFENDANT WAS IN CUSTODY AND ENTITLED TO MIRANDA WARNINGS

9. When a suspect is subjected to custodial questioning by police, his statements are inadmissible at trial unless the suspect has first been warned of and waived his Miranda rights. Miranda v. Arizona, 384 U.S. 436, 479 (1966); State v. Chrisicos, 148 N.H. 546 (2002); State v. Gullick, 118 N.H. 912 (1978); State v. Phinney, 117 N.H. 145 (1977).

10. The Court has identified factors which characterize “custody.”

Custody entitling a defendant to Miranda protections requires formal arrest or restraint on freedom of movement to the degree associated with formal arrest. State v. Turmel, 150 N.H. 377, 382-83 (2003) (citation omitted). In the absence of formal arrest, we must determine whether a suspect’s freedom of movement was sufficiently curtailed by considering how a reasonable person in the suspect's position would have understood the situation. Id. “The location of questioning is not, by itself, determinative: a defendant may be in custody in his own home but not in custody at a police station.” State v. Johnson, 140 N.H. 573, 578 (1995) (quotations and citations omitted).

State v. Jennings, 155 N.H. 768, 772 (2007). The trial court should consider the totality of the circumstances, including a) the suspect's familiarity with his surroundings, b) the number of officers present, c) the degree to which the suspect was physically restrained, and d) the interview's duration and character.

a) Surroundings:

11. Montgomery was detained in a parking area and the only others present appear to be law enforcement. It does not appear that any non-law enforcement people or vehicles entered or exited during the police encounter with Montgomery. His girlfriend is taken away to a police cruiser and an officer remains with her.

b) Number of officers present:

12. At the time of the questioning, it appears there were at least 6 law enforcement officers present in the parking lot, with 4-5 focused on Montgomery and one outside the cruiser where Small was detained. When Det. Dunleav and the two detectives approached Montgomery, Officer Stanzel remained close to Montgomery with his focus on Montgomery, with at least one of the back up officers keeping Montgomery in his line of sight.

13. There is no doubt that the number of officers communicated that Montgomery was not free to leave. Their presence was abundantly clear. After Det. Dunleavey continued questioning despite Montgomery's assertion of his right to silence, Montgomery stated "if you're going to arrest me, arrest me" and when asked why he would be arrested stated that there were 6 cops around.

c) The degree restrained:

14. In this case, Montgomery was told he was being detained by Officer Stanzel, a uniformed officer, thus he was not free to leave. Nothing in the approach of Det. Dunleavy and the two detectives alleviated Montgomery from the order that he was detained--rather, law enforcement presence increased as none of the non-questioning law enforcement walked away when questioning began. Montgomery was not told he was free to leave or that he could end the encounter. Quite the contrary, when Montgomery made it clear he did not want to engage in the encounter, that he was asserting his right to silence, he was ignored and questioning intensified.

15. The State may argue that Det. Dunleavy told Montgomery that he was not under arrest, that there were no warrants and thus Montgomery was not in custody. Merely being advised he is not under arrest is not sufficient to alleviate the reasonable belief that he was not free to leave. See State v. McKenna, 166 N.H. 671 (2014)(custody where two police officers questioned the defendant on his own property after telling him he was not under arrest.)

16. Montgomery stated "if you're going to arrest me, arrest me." Implicit in that statement is "if you're not going to arrest me, let me go". He was not let go until the interrogation ended. Even then, Det. Dunleavy told him "just give me a second, I'll try to get you out of here" and he was subsequently "cut loose" by Officer Stanzel.

d) Interviews duration and character:

17. The character of the questioning is the important factor here. As stated above, when Montgomery made it clear he did not want to engage in the encounter, that he was asserting his right to silence, he was ignored and questioning intensified. Det. Dunleavy was combative and accusatory. At one point when Montgomery asserted his 5th amendment right, Det. Dunleavy asked why he was hesitant. At another, he asked why Montgomery "can't even be a man". When Montgomery explained that he had left Harmony with her mother around Thanksgiving, 2019 because they were living in a car, Det. Dunleavy confronted him with prior statements the detective interpreted as inconsistent. Most telling, however, was that time and time again Montgomery said he had nothing to say, that he had nothing else or nothing more to say, that he didn't want to say anymore, yet Det. Dunleavy continued to push--he would not allow Montgomery's assertions to end the interrogation.

18. Because Montgomery was "in custody" at the time he was interrogated, he was entitled to *Miranda* warnings. Failure to give the warnings and to obtain a waiver render the statements made on December 31, 2019 inadmissible.

**WHETHER OR NOT MONTGOMERY WAS IN CUSTODY, LAW ENFORCEMENT
FAILED TO HONOR HIS ASSERTION OF HIS RIGHT AGAINST SELF
INCRIMINATION**

19. 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).

20. The standards applicable to pre-Miranda non-custodial statements are the same as a post-Miranda custodial analysis. *State v. Pouliot*, 174 N.H. 15, (2021)("Therefore, applying the principles in our post-Miranda custodial interrogation cases, we proceed to examine the defendant's pre-Miranda non-custodial statements under the totality of the circumstances.) Thus, whether a defendant has asserted his right to silence is determined by whether, under the totality of the circumstances, the defendant made an express invocation.

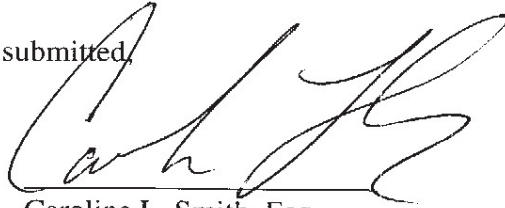
21. Here, Montgomery was detained for the purpose of interrogation. He advised the officer who initially detained him that he did not want to speak to law enforcement. When Det. Dunleavy approached Montgomery to question him, he asked if he was under arrest. When advised he was not, he immediately made it clear that he did not wish to speak to the detective - "I have nothing to say then". His assertion was not honored at all. Rather, Det. Dunleavy continued as if he said nothing. Further, Montgomery repeated the invocation several times. The words were clear and unambiguous ". "I have nothing to say ", "I have nothing else to say", "I have nothing more to say", "I don't want to say anymore",

22. In conclusion, Mr. Montgomery's statements to police must be suppressed for both reasons. First, they were the product of a custodial interrogation without being advised of his *Miranda* rights. Second, law enforcement failed to scrupulously honor Mr. Montgomery's assertion of his right to silence.

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 December 31, 2021; and
- B. Grant such further relief as justice requires.

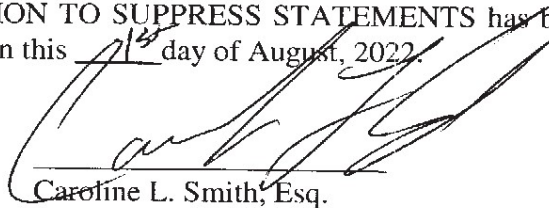
Respectfully submitted,



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N.H. Bar #5992
Paige Buckley
N.H. Bar #272328
N.H. Public Defender
408 Union Avenue
Laconia, NH 03246
(603) 524-1831

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 1st day of August, 2022.



Caroline L. Smith, Esq.