

HILLSBOROUGH, SS.
Northern District

THE STATE OF NEW HAMPSHIRE

SUPERIOR COURT

***** REDACTED FOR PUBLIC ACCESS *****

State of New Hampshire

v.

Adam Montgomery

Case No. 216-2022-CR-00577

**STATE'S AMENDED RESPONSE IN PARTIAL OBJECTION TO DEFENDANT'S
MOTION IN LIMINE: EVIDENCE OF OTHER FIREARMS**

NOW COMES the State of New Hampshire, by and through its attorneys, the Office of the Attorney General, and hereby responds to the Defendant's Motion in Limine: Evidence of Other Firearms ("Def.'s Mot."). In his Motion, the Defendant asks this Court to preclude evidence regarding an AK-47 sold to the Defendant by "Britney" and obtained by her from Sean Yule. (*Id.* ¶ 2.). He also asks this Court to preclude evidence of a Hi-Point firearm the Defendant obtained from **M.R.** Finally, he asks this Court to preclude evidence of the Defendant's involvement with other firearms. The State notes that it does not intend to present evidence of the AK-47 sold to the Defendant by "Britney" in its case-in-chief; however, for the reasons set forth below, the Defendant's motion must be denied with respect to his other requests.

FACTS

1. The Defendant is charged with two counts of armed career criminal ("ACC"), two counts of felon in possession of a firearm ("FIP"), two counts of theft by unauthorized taking ("theft"), and two counts of receiving stolen property ("RSP"). The charges stem from the October 2019 theft of two firearms. At trial, the State will present evidence that will show that the

Defendant stole a shotgun and a rifle, which he then maintained in his possession for some time, all while having the requisite prior convictions for the ACC and FIP charges. Evidence will show that the days following the theft of the firearms, the Defendant contacted several witnesses in an effort to trade the guns for illegal drugs and money. One individual the Defendant contacted was **M.R.**

2. On March 1, 2022, Manchester Police Detective Jack Dunleavy and Deputy Tufts with the United States Marshals Service met with M.R. at the NH State Prison. M.R. told the investigators that the Defendant reached out to him on Facebook Messenger randomly in July 2019. The Defendant told M.R. that they went to high school together. M.R. said that he met with the Defendant following his message and the Defendant gave him drugs to sell. M.R. reported that the drugs included meth, dope, and Xanax.

3. M.R. described meeting with the Defendant on several occasions and attempting to sell drugs with him and purchase drugs from him. M.R. said that on one occasion, the Defendant tried to sell M.R. firearms. M.R. said that he believed the firearms to be stolen. He said that he would communicate with the Defendant through Facebook Messenger, and he consented to the search of his phone and Facebook account.

4. Law enforcement obtained M.R.'s cell phone and accessed his Facebook account. During the execution of the search, law enforcement identified one conversation of interest. The conversation took place between M.R.'s account and an account that was no longer active. While there were no account identifiers, investigators believe the account to be the Defendant's based on the information he provided while communicating with M.R. On July 5, 2019, the Defendant stated that his address was 77 Gilford Street in Manchester, and on July 15, 2019 he provided his phone

number. Both the address and phone number provided by the Defendant were known to be associated with him.

5. On October 3, 2019, the day after the firearms were stolen, the Defendant messaged M.R. asking him to get ahold of him “ASAP.” He said that M.R. was going to miss out if he did not get ahold of him right away. The Defendant then sent M.R. his wife’s number and told him to call him. The following exchange then occurred over Facebook Messenger:

M.R.: Yo if it’s metal I want it
Defendant: Itisbro the bigbois
M.R.: How much
Defendant: Icant holdit firstcomefirstserve
M.R.: Dam bro

The Defendant then sent three images that were marked as unsent. The conversation continued:

M.R.: How much I want
Defendant: Which one do you want both of them or which one
M.R.: I want the 12 guage but I have don’t got 3v Cuz 8 gitapick
up and down
Defendant: Illtake it
M.R.: How much
Defendant: I’ll take a stick for the pump But I also need like 80 bucks
cash

The Defendant continued to message M.R. that he needed an answer right away because he was going to be evicted from his home. The Defendant then told M.R. that he missed out.

6. During M.R.’s interview with Detective Dunleavy and Deputy Tufts, he reported that shortly after he met the Defendant, the Defendant asked him if he could find him a firearm. M.R. stated that he had a Hi-Point pistol that had been taken apart and he traded it because it had a missing firing pin. M.R. believed that the Defendant traded marijuana, Xanax, and possibly money for the firearm. M.R. stated that he brought the firearm to the Defendant’s house in Manchester. M.R. stated that the Defendant’s wife, Kayla Montgomery (“Kayla”), was in the home during the transaction. M.R. said that when he arrived at the home, the Defendant was not there yet so he waited inside with Kayla. He said that he placed the gun in a safe on the sofa beside him

with the clip and ammo removed until the Defendant arrived and purchased the gun. The Defendant is currently charged one count of ACC and one count of FIP for this conduct in case no. 216-2023-CR-507.

7. M.R.'s account was corroborated by Kayla who said that the event stood out to her because it was a "bad situation." She described M.R. waiting in her home with a firearm in a lockbox. She said that once the Defendant arrived, he purchased the firearm from M.R..

8. On July 15, 2019, M.R. sent the Defendant the following message: "U want the piece." The Defendant confirmed that he wanted the gun, and they coordinated a meeting time and location for the sale. The next day, the Defendant sent M.R. a message stating that the "clip" won't stay in the gun. The Defendant also sent two videos of himself holding a black pistol while attempting to engage the trigger. He can be heard stating the trigger would not squeeze. The Defendant later stated that he was able to clean the gun and the trigger was now working. The Defendant said that he just needed a "clip pin" for the firearm. On July 17, 2019, the Defendant asked M.R. if the gun was "clean" because he planned to call Hi-Point for a replacement. The Defendant said that he did not want to call Hi-Point if the gun was "hot." M.R. then told the Defendant that the gun was clean and not stolen. The Defendant thanked M.R. and told him that Hi-Point Firearms had placed a replacement part for the gun in the mail. Following the messages related to the Hi-Point firearm, M.R. and Montgomery begin discussing the sale of the stolen Frain firearms.

9. As mentioned, the Facebook account has since been deleted. The video depicts an individual holding the Hi-Point firearm. The individual is heard speaking and his forearm tattoos are visible. As referenced above, the Facebook Messenger account was deleted and does not contain identifying information. The video, on the other hand, does.

10. The Manchester Police Department confirmed with Hi-Point Firearms that the company sent a “mag catch assembly” to a “M.R.” at 77 Gilford Street in Manchester on July 17, 2019. As noted above, 77 Gilford Street was the Defendant’s home address.

Law and Analysis

A. The M.R. Firearm Exchange

11. The admissibility of evidence of other bad acts is governed by Rule 404 of the New Hampshire Rules of Evidence. In essence, Rule 404 generally prohibits evidence of prior bad acts when it is being offered as nothing more than character evidence; however, under Rule 404(b) evidence of other crimes, wrongs, or acts may be admissible for other purposes “such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.”

12. Under Rule 404(b)(2), evidence of other crimes, wrongs, or acts is admissible only if:

- (A) it is relevant for a purpose other than proving the person’s character or disposition;
- (B) there is clear proof, meaning that there is sufficient evidence to support a finding by the fact-finder that the other crimes, wrongs or acts occurred and that the person committed them; and
- (C) the probative value of the evidence is not substantially outweighed by the danger of unfair prejudice.

13. The evidence may be used for a non-propensity purpose. Here, the State asserts that the non-propensity purpose the evidence would be offered for is to show identity (of the Facebook Messenger account holder).

14. In the instant case, the Defendant communicated with M.R. via a deleted Facebook Messenger account to purchase a Hi-Point firearm and to sell the stolen firearms. The conversation surrounding the Hi-Point firearms contains video of an individual holding a firearm and attempting to pull through on the trigger. The footage contains portions of tattoos as well as the voice of the individual depicted. This evidence tends to prove identity of the Defendant as the account holder and would be admissible for purposes other than proving the Defendant's character or disposition. Therefore, Rule 404(b)(2)(A) would be satisfied.

15. As to Rule 404(b)(2)(B), the video would provide the clear proof required by the rule. Specifically, the video would be "sufficient evidence to support a finding by the fact-finder" that the possession of the Hi-Point occurred and that the Defendant possessed it.

16. Finally, as to Rule 404(b)(2)(C), the probative value of the evidence would not be substantially outweighed by the danger of unfair prejudice. Any evidence of the identity of the individual engaged in transactions with M.R. will be highly relevant and, as this Court recognized in its *Order on State's Motion to Join*, the videos could be "sanitized, either through redaction, editing, or jury instruction, to remove reference to the circumstances of Defendant's possession of the Hi-Point pistol while still serving to identify the Defendant as the owner of the Facebook account."

B. Defendant's Involvement with Firearms

17. The Defendant makes a nebulous reference to the fact that "[d]iscovery also contained more general allegations of being involved with firearms." (Def.'s Mot. ¶ A.) While not repeated in the prayers for relief, to the extent the Defendant seeks to preclude the State from admitting relevant, direct evidence of the Defendant's possession of firearms, the State objects.

18. The State anticipates that at least two witnesses will testify to statements the Defendant made about past sales of firearms. One witness, Joshua Zimmerman, is expected to testify that in approximately 2021, the Defendant bragged about selling firearms. To Zimmerman, it sounded like the Defendant was referencing past sales. While Zimmerman did recall the Defendant talking specifically about an AK-47, it is important to note that the Defendant bragged about selling firearms in the plural; i.e., more than just the AK-47. While the specific evidence about the AK-47 is not evidence the State intends to introduce in its case-in-chief, the Defendant's admission to selling firearms in general is direct evidence of the Defendant possessing firearms, which is relevant to all of the charges in the instant case.

19. The second witness, Tarah Hilbert, is expected to testify that on approximately three occasions between February 2020 and summer 2020, the Defendant bragged to her about having sold firearms at his house, which Hilbert believed to be 77 Gilford Street in Manchester. 77 Gilford Street is where the Defendant was living at the time of the theft in September/October 2019 that gave rise to the instant charges. Hilbert is also expected to testify that one of the firearms the Defendant bragged about was an AR-15, which is consistent with the type of rifle charged in the instant case. The Defendant's admission to selling firearms—especially an AR-15—is direct evidence of the Defendant possessing firearms, which is again highly relevant to all of the charges in the instant case.

20. The anticipated testimony of Zimmerman and Hilbert is not other acts evidence that would be covered by Rule 404(b) of the New Hampshire Rules of Evidence. Instead, the Defendant's admissions to Zimmerman and Hilbert are direct evidence that the Defendant was in possession of firearms that he was attempting to sell, which is in turn direct evidence of the conduct

comprising the charges the Defendant is currently facing. Therefore, such evidence should not be precluded.

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

(A) Grant the Defendant’s motion with respect to the AK-47 sold to the Defendant by “Britney” and obtained by her from Sean Yule;

(B) Deny the Defendant’s motion with respect to the video of the Hi-Point firearm the Defendant obtained from **M.R.**;

(C) Deny the Defendant’s motion to the extent it seeks to preclude relevant, direct evidence of the instant charges, including the anticipated testimony of Zimmerman and Hilbert; and

(D) Grant such further relief as may be deemed just and proper.

Respectfully submitted,

THE STATE OF NEW HAMPSHIRE

JOHN M. FORMELLA
ATTORNEY GENERAL

Date: April 28, 2023

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was sent via the State of New Hampshire e-filing system to Carrie Smith, Esq., counsel of record in this matter.

/s/ R. Christopher Knowles
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