

THE STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS.

HILLSBOROUGH COUNTY SUPERIOR COURT - NORTH
STATE OF NEW HAMPSHIRE

V.

ADAM MONTGOMERY

216-2022-CR-577

MOTION IN LIMINE

MARITAL PRIVILEGE

NOW COMES the defendant, Adam Montgomery, by and through counsel, Caroline L. Smith, Esq., and Paige Buckley, Esq., respectfully requests this Honorable Court order that statements, conversations, letters, text or Facebook Messenger messages or any other communications made to the other, or to any other person regarding those communications are marital confidences are precluded from trial unless and until the State identifies specific statements it intends to introduce and obtains a pretrial ruling regarding the admissibility. In support of this request, the following is stated:

1. The defendant is charged with two counts of Armed Career Criminals, with lesser included offenses of Felon in Possession, two counts of Receiving Stolen Property with alternate charges of Theft.
2. The defendant is scheduled for a Final Pre-Trial Conference on May 16, 2023.
3. The indictment alleged a time period of October, 2022. In October, 2022, Kayla Montgomery was married to Adam Montgomery and they continued to be married at the time Mr. Montgomery was charged with these offenses. Kayla Montgomery has made numerous statements regarding the charges in this matter as well as other matters that occurred during the course of their marriage. Kayla Montgomery has given statements to law enforcement, to the Grand Jury and to police and prosecutors combined. Some of the statements she gave describe statements or conversations between the two in private during the course of the marriage. These statements and conversations are confidential and subject to the marital privilege. In addition, law enforcement

has obtained a multitude of message exchanges between the two that were not public. These communications are also confidential and subject to the marital privilege.

4. Pursuant to NHRE Rule 504, regarding communications between a husband and wife, “neither shall be allowed to testify against the other as to any statement, conversation, letter or other communication made to the other or to another person...” Mr. Montgomery asserts his marital privilege with regard to communications between he and his wife.

5. “The party offering evidence generally bears the burden of demonstrating its admissibility.” State v. Waite, No. 2016-0233, 2018 WL 1190684, at *1 (N.H. Mar. 8, 2018). If the State seeks to admit communications in violation of the marital confidence or claim that the marital confidence does not apply to particular communications made solely between husband and wife, the State should be required to identify those communications and obtain a pre-trial ruling on each communication..

WHEREFORE, Adam Montgomery respectfully requests this Honorable Court issue an order:

- A) Precluding the introduction statements, conversations, letters, text or Facebook Messenger messages or any other communications made to the other in private, or to any other person regarding those private communications because admission would violate the marital privilege; or,
- B) Order the State to identify communications made in private during the marriage that it seeks to introduce at trial and obtain a pre-trial ruling regarding admissibility, and,
- C) For such other relief as the Court deems just.

Respectfully submitted,

/s/ Caroline L. Smith

Caroline L. Smith, Esq.
N.H. Bar #5992
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 IN LIMINE has been forwarded to the Office of the Attorney General on this 1st day of May, 2023.

/s/ Caroline L. Smith

Caroline L. Smith, Esq.