

THE STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS.

HILLSBOROUGH COUNTY SUPERIOR COURT - NORTH
STATE OF NEW HAMPSHIRE

V.

ADAM MONTGOMERY

216-2022-CR-577

MOTION FOR A VIEW

NOW COMES the defendant, Adam Montgomery, by and through counsel, Caroline L. Smith, Esq., and Paige Buckley and respectfully requests this Honorable Court authorize a view in this matter if the State calls Michael Harju as a witness. In support of the request, the following is stated:

1. The defendant is charged with Armed Career Criminals, Armed Career Criminals, Receiving Stolen Property, Receiving Stolen Property, Theft By Unauthorized Taking Or Transfer, Theft By Unauthorized Taking Or Transfer, Possession Of Weapon By Felon, Possession Of Weapon By Felon.
2. The defendant is scheduled for a Final Pre-Trial Conference on May 16, 2023.
3. On April 25, 2023, the State provided a CD of an interview with Michael Harju, an inmate at the Hillsborough County House of Corrections. The State then included Mr. Harju on an Amended Witness list filed April 26, 2023.
4. Mr. Harju statements to law enforcement as captured on the recording included purported statements by Adam Montgomery while they were housed in the same unit at the Hillsborough County House of Correction. Generally Mr. Harju claimed he did not really know much but after the detectives conducting the interview provided some details claimed by Kayla Montgomery regarding the death of Adam's daughter, Harmony, Mr. Harju attempted to provide more information, in an apparent attempt to be more helpful to law enforcement. He essentially embellished what he had already stated.

5. Adam Montgomery vigorously disputes the allegations by Kayla Montgomery regarding the death of Harmony and will address those allegations in a later trial. However, it appears the police were using the emotional impact of the allegations to prompt a witness to provide damaging information regarding Adam Montgomery.

6. When Mr. Montgomery and Mr. Haju were housed in the same unit, they were not in a situation that allowed for private communications. Upon information and belief, they were not on the same tier, nor physically together. Thus, the circumstances of their detention and housing provides vital information to jurors regarding the credibility of Mr. Harju's claims.

7. In order for the jury to appropriately evaluate the testimony and have all the tools necessary to judge the credibility and accuracy of competing testimony, and to fully understand the housing circumstances upon which Mr. Harju claims certain statements were made by Adam Montgomery, a view of the cell block is necessary.

8. The within counsel will be seeking photographs and video of the area to present to a jury, however, the mere fact that a premise is documented by photographs and does not obviate the need for, nor reduce the value of a view. Nor does the fact those changes to the premises, as in this case, the removal of the complainants personal items, render a view less crucial. See State v. Osborne, 119 N.H. 427 (N.H. 1979):

Even though the scene at the time of trial was not identical in appearance to its condition at the time of the crime "[w]hether to allow a view is by statute within the 'discretion' of the trial court (RSA 519:21), and its ruling will not be disturbed unless plainly wrong." State v. Booton, 114 N.H. at 757, 329 A.2d at 382 (citations omitted). The jury had access to numerous photographs of the scene taken on the day of the assault and could make its own evaluation of any changes.

9. The discovery regarding Mr. Harju was only recently provided to the defendant and defense counsel has not begun efforts to arrange for photographs or to inspect the cellblock to fully understand whether photographs and video could adequately capture the circumstances of the unit and its effect on private conversation. Because trial is fast approaching and the motions deadline is imminent, this motion is being filed now to facilitate access to the Hillsborough County House of Corrections, if needed, and to notice the Court that the defendant reserves the right to a view.

WHEREFORE, Adam Montgomery respectfully requests this Honorable Court approve a view of the Hillsborough County House of Corrections, Unit, and such other relief as the Court deems just.

Respectfully submitted,

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 FOR A VIEW has been forwarded to the Office of the Attorney General on this _____ day of May, 2023.

Caroline L. Smith, Esq.