

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

RE: ALLEGATIONS OF PRIOR or SUBSEQUENT BAD ACTS

Now comes Adam Montgomery, by and through his Public Defenders, Caroline L. Smith, and Paige Montgomery, and respectfully moves this Court to issue an order precluding the State from introducing evidence of other alleged bad acts by Montgomery. This motion is made pursuant to NHRE 402, 403 and 404(b) as well as his guarantees to due process and right to a fair trial pursuant to Part 1, Article 15 of the N.H. Constitution.

1. The defendant is charged with two counts of Armed Career Criminals, 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. By this motion, Mr. Montgomery seeks a pretrial ruling precluding the following specific allegations of other bad act conduct of alleged other bad act conduct:

- a. Allegations of conduct underlying the charges in 216-2022-CR-20 and 216-2022-CR-2372, as well as general allegations that Mr. Montgomery abused, misused, or caused harm to Harmony Montgomery;
- b. Allegations of conduct underlying the charges in 216-2023-CR- 507 and 216-2023-CR-509, as well as general allegations that Adam sold other guns or had guns other than the ones specifically alleged in the indictments in this case.
- c. Allegations of domestic violence;
- d. Allegations of assaults and/or other assaultive behavior; including allegations of an assault on Corey Watts;;
- e. Allegations that Mr. Montgomery sold illegal drugs;

- f. Allegations that Mr. Montgomery used illegal drugs (except as referenced in paragraph 4 below);
- g. Allegations of theft other than the charged offenses;
- h. Evidence of prior convictions, except the reference in jury instructions to the stipulation to the requisite convictions for the status offenses.

4. With regard to (f) above, Mr. Montgomery understands that there are admissible instances that implicate illegal drug use by Mr. Montgomery. Specifically, a message exchange between Adam Montgomery and Mark Reed that references a possible purchase price of a 12 gauge shotgun, presumably one of the guns at issue in these charges, in an amount of cash and drugs combined. However, this evidence does not open the door to other allegations of drug use. As per the *McGlew* standards set forth below, if the State seeks to introduce evidence of illegal drug use by Mr. Montgomery, it is required to set forth evidence it seeks to admit regarding illegal drug use by Mr. Montgomery, the proof of the evidence and the non-propensity purpose of the evidence for the Court to make pre-trial determination of admissibility.

5. “The purpose of Rule 404(b) in a criminal trial is to ensure that the defendant is tried on the merits of the crime as charged and to prevent a conviction based on evidence of other crimes or wrongs. Evidence of other wrongs is inherently prejudicial and increases the likelihood that a jury will decide the case on an improper basis. The concern that a defendant might be convicted because of his character is the gravamen of Rule 404(b). “ State v. McGlew, 139 N.H. 505 (1995)(citations omitted). For such evidence to be admitted, the proponent of the evidence must show that a) the evidence is relevant for purposes other than proving character or disposition; b) there is clear proof the evidence is true; and c) the probative value of the evidence must not be substantially outweighed by its prejudice to the defendant. Id. at 507. Bad act evidence includes acts prior to, and subsequent to, the charged acts. See, State v. Richardson, 138 N.H. 162 (1993).

6. “The State must state the specific purpose for which the evidence is offered and must articulate the precise chain of reasoning by which the offered evidence will tend to prove or disprove an issue actually in dispute, without relying upon forbidden inferences of predisposition, character, or propensity.” McGlew at 509-510. In articulating the State’s burden, the Supreme Court stated that the proponent of such evidence cannot simply give a mechanical recitation of 404(b) as a basis for admissibility. The State may not merely parrot the grounds set forth in the

rule. Rather, it must articulate precisely how the fact of consequence may be inferred from the evidence sought to be admitted. Id. at 509.

7. In addition to proving an issue without relying on the prohibited character inferences, the evidence sought to be introduced must relate to an issue that is actually disputed. Specifically, the State must articulate how the evidence will tend to prove an issue in dispute without relying upon “forbidden inferences of predisposition, character or propensity.” Id. at 510. Thus, evidence tending only to prove an issue not actually in dispute is irrelevant and inadmissible under rule 402. Id.

8. If the State meets its burden, the Court must then balance the probative value against the prejudice admitting such evidence has to the defendant. Id. “Evidence is unfairly prejudicial if its primary purpose or effect is to appeal to a jury's sympathies, arouse its sense of horror, provoke its instinct to punish, or trigger other mainsprings of human action that may cause a jury to base its decision on something other than the established propositions in the case.” Id. (citations omitted).

9. In this matter, the State clearly has not met the McGlew criteria, as it has not noticed an intent to introduce any other bad acts evidence pursuant to the Rule of Criminal Procedure 12(b)(1)(F), requiring notice 45 days after not guilty plea, nor can it meet its burden under any of the three factors necessary for admission. Thus all allegations of prior or subsequent bad acts must be precluded pursuant to NHRE 402, 403 and 404(b).

10. If the State should be seeking to introduce any bad acts evidence, it should be required to state with specificity the evidence it seeks to introduce and the McGlew criteria for admissibility as soon as possible so that the matters may be researched, investigated and challenged well in advance of trial.

11. All allegations of prior, subsequent or other bad act conduct, not specifically determined admissible by the Court must be precluded at trial pursuant to NHRE 402, 403 and 404(b), and the right to a fair trial and due process guaranteed by Part 1, Article 15 of the NH constitution.

WHEREFORE, Adam Montgomery respectfully requests this Honorable Court preclude all evidence of prior, subsequent and other allegations of bad acts other than those specifically determined admissible by the Court.

Respectfully submitted,

/s/ Caroline L. Smith

Caroline L. Smith, Esq.
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 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.