

**THE STATE OF NEW HAMPSHIRE  
JUDICIAL BRANCH**

<http://www.courts.state.nh.us>

**RULE 7 NOTICE OF MANDATORY APPEAL**

This form should be used for an appeal from a final decision on the merits issued by a superior court or circuit court except for a decision from: (1) a post-conviction review proceeding; (2) a proceeding involving a collateral challenge to a conviction or sentence; (3) a sentence modification or suspension proceeding; (4) an imposition of sentence proceeding; (5) a parole revocation proceeding; (6) a probation revocation proceeding; (7) a landlord/tenant action or a possessory action filed under RSA chapter 540; (8) an order denying a motion to intervene; or (9) a domestic relations matter filed under RSA chapters 457 to 461-A other than an appeal from the first final order. (An appeal from the first final order issued in a domestic relations matter filed under RSA chapters 457 to 461-A should be filed on this form.)

1. COMPLETE CASE TITLE AND CASE NUMBERS IN TRIAL COURT

**State v. Adam Montgomery  
216-2022-CR-577**

2. COURT APPEALED FROM AND NAME OF JUDGE(S) WHO ISSUED DECISION(S)

**Hillsboro County Superior Court - North  
Hon. Amy Messer**

3A. APPEALING PARTY: NAME, MAILING ADDRESS, E-MAIL ADDRESS, AND TELEPHONE NUMBER.

**Adam Montgomery  
NH State Prison (#66018)  
PO Box 14  
Concord, NH 03301**

E-Mail address: \_\_\_\_\_

Telephone number: \_\_\_\_\_

3B. APPEALING PARTY'S COUNSEL: NAME, BAR ID NUMBER, FIRM NAME, MAILING ADDRESS, E-MAIL ADDRESS, AND TELEPHONE NUMBER.

**Caroline Smith, Esq. #5992  
Robin Davis, Esq. #13788**

**NH Public Defender  
408 Union Ave  
Laconia, NH 03246**

E-Mail address: **csmith@nhpd.org**

Telephone number: **(603) 524-1831 ext 1413**

4A. OPPOSING PARTY: NAME, MAILING ADDRESS, E-MAIL ADDRESS, AND TELEPHONE NUMBER.

\_\_\_\_\_  
**State of New Hampshire**

E-Mail address: \_\_\_\_\_

Telephone number: \_\_\_\_\_

4B. OPPOSING PARTY'S COUNSEL: NAME, BAR ID NUMBER, FIRM NAME, MAILING ADDRESS, E-MAIL ADDRESS, AND TELEPHONE NUMBER.

**Benjamin Agati (#16161)  
R. Christopher Knowles (#276524)**

**Office of Attorney General  
30 Capitol St.  
Concord, NH**

E-Mail address: **benjamin.j.agati@doj.nh.gov**

Telephone number: **(603) 271-1276 ext**

**RULE 7 NOTICE OF MANDATORY APPEAL**

5. NAMES OF ALL OTHER PARTIES AND COUNSEL IN TRIAL COURT

n/a

6. DATE OF CLERK'S NOTICE OF DECISION OR SENTENCING. ATTACH OR INCLUDE COPY OF NOTICE AND DECISION.

**08/07/2023**

DATE OF CLERK'S NOTICE OF DECISION ON POST-TRIAL MOTION, IF ANY. ATTACH OR INCLUDE COPY OF NOTICE AND DECISION.

\_\_\_\_\_

7. CRIMINAL CASES: DEFENDANT'S SENTENCE AND BAIL STATUS

**Currently incarcerated  
15-30, 15-30 consecutive  
7.5-15 consecutive with 5 years suspended**

8. APPELLATE DEFENDER REQUESTED?

YES or NO: Yes

IF YOUR ANSWER IS YES, YOU MUST CITE STATUTE OR OTHER LEGAL AUTHORITY UPON WHICH CRIMINAL LIABILITY WAS BASED AND SUBMIT A CURRENT REQUEST FOR A LAWYER FORM (FINANCIAL STATEMENT). SEE SUPREME COURT RULE 32(4).

**Criminal conviction (RSA 159:3-a, RSA 637:3)**

9. IS ANY PART OF CASE CONFIDENTIAL?

YES or NO: No

IF SO, IDENTIFY WHICH PART AND CITE AUTHORITY FOR CONFIDENTIALITY. SEE SUPREME COURT RULE 12.

\_\_\_\_\_

\_\_\_\_\_

10. IF ANY PARTY IS A CORPORATION, LIST THE NAMES OF PARENTS, SUBSIDIARIES AND AFFILIATES.

n/a

11. DO YOU KNOW OF ANY REASON WHY ONE OR MORE OF THE SUPREME COURT JUSTICES WOULD BE DISQUALIFIED FROM THIS CASE?

YES or NO: No

IF YOUR ANSWER IS YES, YOU MUST FILE A MOTION FOR RECUSAL IN ACCORDANCE WITH SUPREME COURT RULE 21A.

12. IS A TRANSCRIPT OF TRIAL COURT PROCEEDINGS NECESSARY FOR THIS APPEAL? SEE SUPREME COURT RULE 15, COMMENT.

YES or NO: Yes

IF YOUR ANSWER IS YES, YOU MUST COMPLETE THE TRANSCRIPT ORDER FORM ON PAGE 4 OF THIS FORM.

**RULE 7 NOTICE OF MANDATORY APPEAL**

13. LIST SPECIFIC QUESTIONS TO BE RAISED ON APPEAL, EXPRESSED IN TERMS AND CIRCUMSTANCES OF THE CASE, BUT WITHOUT UNNECESSARY DETAIL. STATE EACH QUESTION IN A SEPARATELY NUMBERED PARAGRAPH.

1. Did the Court err in denying Defendant's Motion to Preclude Testimony of Kayla Montgomery?
2. Did the Court err in permitting Kimberly Frain to testify about rumors that the defendant stole the guns?
3. Did the Court err in refusing to strike portions of the ATM video referencing character evidence?
4. Did the Court err in permitting testimony regarding the defendant's phone number being included on the contact list of John Sargent?

14. CERTIFICATIONS

I hereby certify that every issue specifically raised has been presented to the court below and has been properly preserved for appellate review by a contemporaneous objection or, where appropriate, by a properly filed pleading. To the extent that an unpreserved issue is raised as plain error, I hereby certify that I have specifically identified that issue as plain error in section 13.

/s/ Caroline Smith, Esq.  
Appealing Party or Counsel

I hereby certify that on or before the date below, copies of this notice of appeal were served on all parties to the case and were filed with the clerk of the court from which the appeal is taken in accordance with Supreme Court Rules 5(1) and 26(2) and with Rule 18 of the Supplemental Rules of the Supreme Court.

09/06/2023  
Date

/s/ Caroline Smith, Esq.  
Appealing Party or Counsel

**RULE 7 NOTICE OF MANDATORY APPEAL****TRANSCRIPT ORDER FORM**

## INSTRUCTIONS:

1. If a transcript is necessary for your appeal, you must complete this form.
2. List each portion of the proceedings that must be transcribed for appeal, e.g., entire trial (see Supreme Court Rule 15(3)), motion to suppress hearing, jury charge, etc., and provide information requested.
3. Determine the amount of deposit required for each portion of the proceedings and the total deposit required for all portions listed. Do not send the deposit to the Supreme Court. You will receive an order from the Supreme Court notifying you of the deadline for paying the deposit amount to the court transcriber. Failure to pay the deposit by the deadline may result in the dismissal of your appeal.
4. The transcriber will produce a digitally-signed electronic version of the transcript for the Supreme Court, which will be the official record of the transcribed proceedings. Parties will be provided with an electronic copy of the transcript in PDF-A format. A paper copy of the transcript may also be prepared for the court.

**PROCEEDINGS TO BE TRANSCRIBED**

PROCEEDING DATE (List each day separately, e.g. 5/1/11; 5/2/11; 6/30/11)	TYPE OF PROCEEDING (Motion hearing, opening statement, trial day 2, etc.)	NAME OF JUDGE	LENGTH OF PROCEEDING (in .5 hour segments, e.g., 1.5 hours, 8 hours)	RATE (standard rate unless ordered by Supreme Court)	DEPOSIT
10/27/2022	Final Pretrial	Messer	.5	X \$137.50	\$
05/16/2023	Final Pretrial	Messer	2	X \$137.50	\$
05/23/2023	Motion hearing	Messer	2	X \$137.50	\$
05/31/2023	Jury selection	Messer	1	X \$137.50	\$
06/01/2023	Jury Trial	Messer	7	X \$137.50	\$
06/02/2023	Jury Trial	Messer	7	X \$137.50	\$
06/05/2023	Jury Trial	Messer	7	X \$137.50	\$
06/07/2023	Jury Trial	Messer	7	X \$137.50	\$
06/08/2023	Verdict	Messer	2	X \$137.50	\$
				X \$137.50	\$
				<b>TOTAL DEPOSIT</b>	<b>\$</b>

**PROCEEDINGS PREVIOUSLY TRANSCRIBED**

PROCEEDING DATE (List date of each transcript volume)	TYPE OF PROCEEDING (Motion hearing, opening statement, trial day 2, etc.)	NAME OF JUDGE	NAME OF TRANSCRIBER	DO ALL PARTIES HAVE COPY (YES OR NO)	DEPOSIT FOR ADDITIONAL COPIES
					TBD
					TBD
					TBD

**NOTE:** The deposit is an estimate of the transcript cost. After the transcript has been completed, you will be required to pay an additional amount if the final cost of the transcript exceeds the deposit. Any amount paid as a deposit in excess of the final cost will be refunded. The transcript will not be released to the parties until the final cost of the transcript is paid in full.

THE STATE OF NEW HAMPSHIRE  
JUDICIAL BRANCH  
SUPERIOR COURT

Hillsborough Superior Court Northern District  
300 Chestnut Street  
Manchester NH 03101

Telephone: 1-855-212-1234  
TTY/TDD Relay: (800) 735-2964  
http://www.courts.state.nh.us

RETURN FROM SUPERIOR COURT – STATE PRISON SENTENCE

Case Name: **State v. Adam Montgomery**

Case Number: **216-2022-CR-00577**

Name: **Adam Montgomery, 479 Donald Street Manchester NH 03103**

DOB: **January 22, 1990**

Charging document: Indictment

Offense:	GOC:	Charge ID:	RSA:	Date of Offense:
Theft by Unauthd Taking		1964098C	637:3	September 29, 2019
Theft by Unauthd Taking		1964099C	637:3	September 29, 2019

Disposition: Guilty/Chargeable By: Jury

**A finding of GUILTY/CHARGEABLE is entered.**

Conviction: Felony

Sentence: see attached

August 07, 2023  
Date

Hon. Amy B. Messer  
Presiding Justice

W. Michael Scanlon  
Clerk of Court

MITTIMUS

In accordance with this sentence, the Sheriff is ordered to deliver the defendant to the **New Hampshire State Prison**. Said institution is required to receive the Defendant and detain him/her until the Term of Confinement has expired or s/he is otherwise discharged by due course of law.

Attest: \_\_\_\_\_  
Clerk of Court

SHERIFF'S RETURN

I delivered the defendant to the **New Hampshire State Prison** and gave a copy of this order to the Warden.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Sheriff

J-ONE:  State Police  DMV

C:  Dept. of Corrections  Offender Records  Sheriff  Office of Cost Containment  
 Prosecutor R Christopher Knowles, ESQ; Jesse J O'Neill, ESQ; Benjamin J. Agati, ESQ  Defendant  Defense  
Attorney Caroline L. Smith, ESQ  
 Sentence Review Board  Sex Offender Registry  Other Jailer  \_\_\_\_\_ Dist Div. \_\_\_\_\_

**THE STATE OF NEW HAMPSHIRE  
JUDICIAL BRANCH**  
https://www.courts.nh.gov

Court Name: Hillsborough Superior Court Northern District  
Case Name: State v. Adam Montgomery  
Case Number: 216-2022-CR-00577 Charge ID Number: 1964098C  
(if known)

**STATE PRISON SENTENCE**

Plea/Verdict: <b>Guilty</b>	
Crime: <b>Theft by Unauthorized Taking</b>	Date of Crime: <b>09/29/2019</b>

A finding of GUILTY/TRUE is entered.

**CONVICTION AND CONFINEMENT**

- A. The defendant has been convicted of Domestic Violence contrary to RSA 631:2-b or of an offense recorded as Domestic Violence. See attached Domestic Violence Sentencing Addendum.
- B. The defendant is sentenced to the New Hampshire State Prison for not more than 15 years, nor less than 7.5 years  
There is added to the minimum sentence a disciplinary period equal to 150 days for each year of the minimum term of the defendant's sentence, to be prorated for any part of the year.  
Pretrial confinement credit: 0 days.
- C. This sentence is to be served as follows:
  - Stand committed  Commencing \_\_\_\_\_
  - 5 of the minimum sentence and none of the maximum sentence is suspended.

Suspensions are conditioned upon good behavior and compliance with all of the terms of this order. Any suspended sentence may be imposed after a hearing at the request of the State. The suspended sentence begins today and ends 15 years from  today or  release on 1964099C  
 \_\_\_\_\_ of the sentence is deferred for a period of \_\_\_\_\_ year(s). The Court retains jurisdiction up to and after the deferred period to impose or terminate the sentence or to suspend or further defer the sentence for an additional period of \_\_\_\_\_ year(s). Thirty (30) days prior to the expiration of the deferred period, the defendant may petition the Court to show cause why the deferred commitment should not be imposed, suspended and/or further deferred. Failure to petition within the prescribed time will result in the immediate issuance of a warrant for your arrest.
- D. The sentence is
  - consecutive to case number and charge ID 2008743C, 2008742C
  - concurrent with case number and charge ID ~~1964100C, 1964101C~~, 1964099C
- E. See Addendum to State Prison Sentence Sexual Offender Assessment and Treatment.
- F. See Addendum to State Prison Sentence Substance Use Disorder Assessment and Treatment.
- G. The Court recommends to the Department of Corrections:
  - Screen and/or assess for drug and alcohol treatment needs.
  - Sentence to be served at House of Corrections
  - \_\_\_\_\_

Case Name: State v. Adam Montgomery

Case Number: 216-2022-CR-00577

**STATE PRISON SENTENCE**

If required by statute or Department of Corrections policies and procedures, the defendant shall provide a sample for DNA analysis.

**PROBATION**

A. The defendant is placed on probation for a period of \_\_\_\_\_ year(s), upon the usual terms of probation and any special terms of probation determined by the Probation/Parole Officer.

Effective:  Forthwith  Upon release from \_\_\_\_\_

The defendant is ordered to report immediately, or immediately upon release, to the nearest Probation/Parole Office.

B. Subject to the provisions of RSA 504-A:4, III, the probation/parole officer is granted the authority to impose a jail sentence of 1 to 7 days in response to a violation of a condition of probation, not to exceed a total of 30 days during the probationary period.

**Violation of probation or any of the terms of this sentence may result in revocation of probation and imposition of any sentence within the legal limits for the underlying offense.**

**FINANCIAL OBLIGATIONS**

A. **Fines and Fees:**

Fine of \$ \_\_\_\_\_, plus a statutory penalty assessment of \$ 0.00 to be paid:

Today

By \_\_\_\_\_

Through the Correctional Facility or Department of Corrections as directed by the Probation/Parole Officer. A 10 % service charge is assessed by DOC for the collection of fines and fees, other than supervision fees.

\$ \_\_\_\_\_ of the fine and \$ \_\_\_\_\_ of the penalty assessment is suspended for \_\_\_\_\_ year(s).

**A \$25.00 fee is assessed in each case file when a fine is paid on a date later than sentencing.**

B. **Restitution:**

The defendant shall pay restitution of \$ \_\_\_\_\_ to \_\_\_\_\_

Restitution shall be paid through the Correctional Facility or Department of Corrections as directed by the Probation/Parole Officer. A 17% administrative fee is assessed for the collection of restitution.

At the request of the defendant or the Department of Corrections, a hearing may be scheduled on the amount or method of payment of restitution.

Restitution is not ordered because: \_\_\_\_\_

C. **Appointed Counsel: NOTE:** Financial Obligations, Section C is NOT a term and condition of the sentence.

The Court finds that the defendant has the ability to pay:

counsel fees and expenses in the amount of \$ \_\_\_\_\_

payable through \_\_\_\_\_ in the amount of \$ \_\_\_\_\_ per month.

The Court order for repayment is suspended until the time of the defendant's release from state prison.

The Court finds that the defendant has no ability to pay counsel fees and expenses.

\_\_\_\_\_  
\_\_\_\_\_

Case Name: State v. Adam Montgomery

Case Number: 216-2022-CR-00577

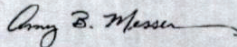
**STATE PRISON SENTENCE**

**OTHER CONDITIONS**

- A. The defendant is to participate meaningfully in and complete any counseling, treatment and educational programs as directed by the correctional authority or Probation/Parole Officer.
- B. Subject to the provisions of RSA 651-A:22-a, the Department of Corrections shall have the authority to award the defendant earned time reductions against the minimum and maximum sentences for successful completion of programming while incarcerated.
- C. Under the direction of the Probation/Parole Officer, the defendant shall tour the  
 New Hampshire State Prison       House of Corrections
- D. The defendant shall perform \_\_\_\_\_ hours of community service and provide proof to \_\_\_\_\_ within \_\_\_\_\_ of today's date.
- E. The defendant is ordered to have no contact with Christopher or Kimberly Frain either directly or indirectly, including but not limited to contact in-person, by mail, phone, email, text message, social networking sites or through third parties.
- F. Law enforcement agencies may  destroy the evidence  return evidence to its rightful owner.
- G. The defendant and the State have waived sentence review in writing or on the record.
- H. The defendant is ordered to be of good behavior and comply with all the terms of this sentence.
- I. Other:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

For Court Use Only

  
Honorable Amy B. Messer  
August 7, 2023

**THE STATE OF NEW HAMPSHIRE**  
**JUDICIAL BRANCH**  
https://www.courts.nh.gov

Clear Form  
Lock & Save Form

Court Name: Hillsborough Superior Court Northern District  
Case Name: State v. Adam Montgomery  
Case Number: 216-2022-CR-00577 Charge ID Number: 1964099C  
(if known)

**STATE PRISON SENTENCE**

Plea/Verdict: <b>Guilty</b>	
Crime: <b>Theft by Unauthorized Taking</b>	Date of Crime: <b>09/29/2019</b>

A finding of GUILTY/TRUE is entered.

**CONVICTION AND CONFINEMENT**

- A. The defendant has been convicted of Domestic Violence contrary to RSA 631:2-b or of an offense recorded as Domestic Violence. See attached Domestic Violence Sentencing Addendum.
- B. The defendant is sentenced to the New Hampshire State Prison for not more than 15 years, nor less than 7.5 years

There is added to the minimum sentence a disciplinary period equal to 150 days for each year of the minimum term of the defendant's sentence, to be prorated for any part of the year.

Pretrial confinement credit: 0 days.

- C. This sentence is to be served as follows:
  - Stand committed  Commencing \_\_\_\_\_
  - 5 years of the minimum sentence and none of the maximum sentence is suspended.

Suspensions are conditioned upon good behavior and compliance with all of the terms of this order. Any suspended sentence may be imposed after a hearing at the request of the State. The suspended sentence begins today and ends 15 years from  today or  release on 1964099C  
 \_\_\_\_\_ of the sentence is deferred for a period of \_\_\_\_\_ year(s). The Court retains jurisdiction up to and after the deferred period to impose or terminate the sentence or to suspend or further defer the sentence for an additional period of \_\_\_\_\_ year(s). Thirty (30) days prior to the expiration of the deferred period, the defendant may petition the Court to show cause why the deferred commitment should not be imposed, suspended and/or further deferred. Failure to petition within the prescribed time will result in the immediate issuance of a warrant for your arrest.

- D. The sentence is
  - consecutive to case number and charge ID 2008743C, 2008742C
  - concurrent with case number and charge ID ~~1964109C, 1964101C, 1964098C~~
- E. See Addendum to State Prison Sentence Sexual Offender Assessment and Treatment.
- F. See Addendum to State Prison Sentence Substance Use Disorder Assessment and Treatment.
- G. The Court recommends to the Department of Corrections:
  - Screen and/or assess for drug and alcohol treatment needs.
  - Sentence to be served at House of Corrections
  - \_\_\_\_\_

Case Name: State v. Adam Montgomery

Case Number: 216-2022-CR-00577

**STATE PRISON SENTENCE**

If required by statute or Department of Corrections policies and procedures, the defendant shall provide a sample for DNA analysis.

**PROBATION**

A. The defendant is placed on probation for a period of \_\_\_\_\_ year(s), upon the usual terms of probation and any special terms of probation determined by the Probation/Parole Officer.

Effective:  Forthwith  Upon release from \_\_\_\_\_

The defendant is ordered to report immediately, or immediately upon release, to the nearest Probation/Parole Office.

B. Subject to the provisions of RSA 504-A:4, III, the probation/parole officer is granted the authority to impose a jail sentence of 1 to 7 days in response to a violation of a condition of probation, not to exceed a total of 30 days during the probationary period.

**Violation of probation or any of the terms of this sentence may result in revocation of probation and imposition of any sentence within the legal limits for the underlying offense.**

**FINANCIAL OBLIGATIONS**

A. **Fines and Fees:**

Fine of \$ \_\_\_\_\_, plus a statutory penalty assessment of \$ 0.00 to be paid:

Today

By \_\_\_\_\_

Through the Correctional Facility or Department of Corrections as directed by the Probation/Parole Officer. A 10 % service charge is assessed by DOC for the collection of fines and fees, other than supervision fees.

\$ \_\_\_\_\_ of the fine and \$ \_\_\_\_\_ of the penalty assessment is suspended for \_\_\_\_\_ year(s).

**A \$25.00 fee is assessed in each case file when a fine is paid on a date later than sentencing.**

B. **Restitution:**

The defendant shall pay restitution of \$ \_\_\_\_\_ to \_\_\_\_\_

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At the request of the defendant or the Department of Corrections, a hearing may be scheduled on the amount or method of payment of restitution.

Restitution is not ordered because: \_\_\_\_\_

C. **Appointed Counsel: NOTE:** Financial Obligations, Section C is NOT a term and condition of the sentence.

The Court finds that the defendant has the ability to pay:

counsel fees and expenses in the amount of \$ \_\_\_\_\_

payable through \_\_\_\_\_ in the amount of \$ \_\_\_\_\_ per month.

The Court order for repayment is suspended until the time of the defendant's release from state prison.

The Court finds that the defendant has no ability to pay counsel fees and expenses.

\_\_\_\_\_  
\_\_\_\_\_

Case Name: State v. Adam Montgomery

Case Number: 216-2022-CR-00577

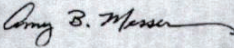
**STATE PRISON SENTENCE**

**OTHER CONDITIONS**

- A. The defendant is to participate meaningfully in and complete any counseling, treatment and educational programs as directed by the correctional authority or Probation/Parole Officer.
- B. Subject to the provisions of RSA 651-A:22-a, the Department of Corrections shall have the authority to award the defendant earned time reductions against the minimum and maximum sentences for successful completion of programming while incarcerated.
- C. Under the direction of the Probation/Parole Officer, the defendant shall tour the  
 New Hampshire State Prison                       House of Corrections
- D. The defendant shall perform \_\_\_\_\_ hours of community service and provide proof to \_\_\_\_\_ within \_\_\_\_\_ of today's date.
- E. The defendant is ordered to have no contact with Christopher or Kimberly Frain either directly or indirectly, including but not limited to contact in-person, by mail, phone, email, text message, social networking sites or through third parties.
- F. Law enforcement agencies may  destroy the evidence  return evidence to its rightful owner.
- G. The defendant and the State have waived sentence review in writing or on the record.
- H. The defendant is ordered to be of good behavior and comply with all the terms of this sentence.
- I. Other:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

For Court Use Only

<p> Honorable Amy B. Messer August 7, 2023</p>	
---	--

**THE STATE OF NEW HAMPSHIRE**

HILLSBOROUGH, SS  
Northern District

SUPERIOR COURT

**INDICTMENT**

At the Superior Court, holden at Manchester, within and for the County of Hillsborough aforesaid, on the 20th day of June in the year of our Lord two thousand and twenty-two,

THE GRAND JURORS FOR THE STATE OF NEW HAMPSHIRE, upon oath, present that

**ADAM MONTGOMERY**  
DOB: 01/22/1990


HNSC #216	<u>2022</u> CR	<u>577</u>
CHG ID#	<u>1964098C</u>	

of or formerly of 445 Willow Street, Manchester, in the State of New Hampshire, between approximately September 29, 2019, and October 3, 2019, at Manchester in the County of Hillsborough aforesaid, did commit the crime of

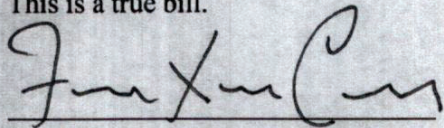
**THEFT BY UNAUTHORIZED TAKING OR TRANSFER**  
(RSA 637:3, I)

in that Adam Montgomery purposely obtained or exercised unauthorized control over the property of another, to wit, Montgomery stole a rifle (firearm) from C.F.'s residence, with a purpose to deprive C.F. thereof

Said acts being contrary to the form of the Statute, in such case made and provided, and against the peace and dignity of the State.

  
\_\_\_\_\_  
Jesse O'Neill, NH Bar #20723  
Senior Assistant Attorney General

This is a true bill.



Foreperson

Francis X. Cummings

Name: Adam Montgomery  
 DOB: 01/22/1990  
 Address: Hillsborough County House of Corrections  
 RSA: 637:3, I  
 Offense Level: Class A Felony; 7½-15 years NHSP, \$4,000 fine, or both  
 Case Number: 216-2022-CR-00577  
 Charge ID: 1964098C

Verdict: Guilty  
Entered June 8, 2023

Susan Corcoran, Admin Court Assistant

**THE STATE OF NEW HAMPSHIRE**

HILLSBOROUGH, SS  
Northern District

SUPERIOR COURT

**INDICTMENT**

At the Superior Court, holden at Manchester, within and for the County of Hillsborough aforesaid, on the 20th day of June in the year of our Lord two thousand and twenty-two,

THE GRAND JURORS FOR THE STATE OF NEW HAMPSHIRE, upon oath, present that

**ADAM MONTGOMERY**  
DOB: 01/22/1990


HNSC #216 2022 CR 577  
CHG ID# 1964099C

of or formerly of 445 Willow Street, Manchester, in the State of New Hampshire, between approximately September 29, 2019, and October 3, 2019, at Manchester in the County of Hillsborough aforesaid, did commit the crime of

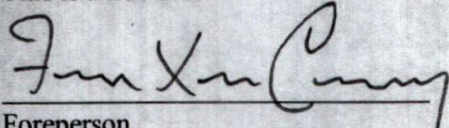
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(RSA 637:3, I)

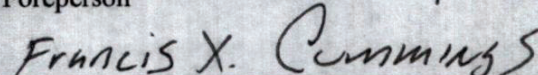
in that Adam Montgomery purposely obtained or exercised unauthorized control over the property of another, to wit, Montgomery stole a shotgun (firearm) from C.F.'s residence, with a purpose to deprive C.F. thereof

Said acts being contrary to the form of the Statute, in such case made and provided, and against the peace and dignity of the State.

  
\_\_\_\_\_  
Jesse O'Neill, NH Bar #20723  
Senior Assistant Attorney General

This is a true bill.

  
\_\_\_\_\_  
Foreperson

  
\_\_\_\_\_  
Francis X. Cummings

Name: Adam Montgomery  
DOB: 01/22/1990  
Address: Hillsborough County House of Corrections  
RSA: 637:3, I  
Offense Level: Class A Felony; 7½-15 years NHSP, \$4,000 fine, or both  
Case Number: 216-2022-CR-00577  
Charge ID: 1964099C

Verdict: Guilty  
Entered June 8, 2023

Susan Corcoran, Admin Court Assistant

Scanned to NHSP, cellblock and  
HOC w/ sentencing sheet 8/7/23

THE STATE OF NEW HAMPSHIRE  
JUDICIAL BRANCH  
SUPERIOR COURT

Hillsborough Superior Court Northern District  
300 Chestnut Street  
Manchester NH 03101

Telephone: 1-855-212-1234  
TTY/TDD Relay: (800) 735-2964  
http://www.courts.state.nh.us

RETURN FROM SUPERIOR COURT – STATE PRISON SENTENCE

Case Name: **State v. Adam Montgomery**

Case Number: **216-2022-CR-00577**

Name: **Adam Montgomery, 479 Donald Street Manchester NH 03103**

DOB: **January 22, 1990**

Charging document: Indictment

Offense:	GOC:	Charge ID:	RSA:	Date of Offense:
Hand Guns Armed Career Criminal		2008742C	159:3-a	September 29, 2019
Hand Guns Armed Career Criminal		2008743C	159:3-a	September 29, 2019

Disposition: Guilty/Chargeable By: Jury

**A finding of GUILTY/CHARGEABLE is entered.**

Conviction: Felony

Sentence: see attached

August 07, 2023  
Date

Hon. Amy B. Messer  
Presiding Justice

W. Michael Scanlon  
Clerk of Court

MITTIMUS

In accordance with this sentence, the Sheriff is ordered to deliver the defendant to the **New Hampshire State Prison**. Said institution is required to receive the Defendant and detain him/her until the Term of Confinement has expired or s/he is otherwise discharged by due course of law.

Attest: \_\_\_\_\_  
Clerk of Court

SHERIFF'S RETURN

I delivered the defendant to the **New Hampshire State Prison** and gave a copy of this order to the Warden.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Sheriff

J-ONE:  State Police  DMV

C:  Dept. of Corrections  Offender Records  Sheriff  Office of Cost Containment  
 Prosecutor R Christopher Knowles, ESQ; Jesse J O'Neill, ESQ; Benjamin J. Agati, ESQ  Defendant  Defense  
Attorney Caroline L. Smith, ESQ  
 Sentence Review Board  Sex Offender Registry  Other Jailer  \_\_\_\_\_ Dist Div. \_\_\_\_\_

**THE STATE OF NEW HAMPSHIRE  
JUDICIAL BRANCH**  
https://www.courts.nh.gov

Court Name: Hillsborough Superior Court Northern District  
Case Name: State of New Hampshire v. Adam Montgomery  
Case Number: 216-2022-CR-00577 Charge ID Number: 2008742C  
(if known)

**STATE PRISON SENTENCE**

Plea/Verdict: <b>Guilty</b>	
Crime: <b>Armed Career Criminal</b>	Date of Crime:

A finding of GUILTY/TRUE is entered.

**CONVICTION AND CONFINEMENT**

- A. The defendant has been convicted of Domestic Violence contrary to RSA 631:2-b or of an offense recorded as Domestic Violence. See attached Domestic Violence Sentencing Addendum.
- B. The defendant is sentenced to the New Hampshire State Prison for not more than 30, nor less than 15

There is added to the minimum sentence a disciplinary period equal to 150 days for each year of the minimum term of the defendant's sentence, to be prorated for any part of the year.

Pretrial confinement credit:      days.

- C. This sentence is to be served as follows:
  - Stand committed  Commencing
  - of the minimum sentence and                      of the maximum sentence is suspended.

Suspensions are conditioned upon good behavior and compliance with all of the terms of this order. Any suspended sentence may be imposed after a hearing at the request of the State. The suspended sentence begins today and ends      years from  today or  release on                       
                      of the sentence is deferred for a period of      year(s). The Court retains jurisdiction up to and after the deferred period to impose or terminate the sentence or to suspend or further defer the sentence for an additional period of      year(s). Thirty (30) days prior to the expiration of the deferred period, the defendant may petition the Court to show cause why the deferred commitment should not be imposed, suspended and/or further deferred. Failure to petition within the prescribed time will result in the immediate issuance of a warrant for your arrest.

- D. The sentence is  consecutive to case number and charge ID 2008743C  
 concurrent with case number and charge ID
- E. See Addendum to State Prison Sentence Sexual Offender Assessment and Treatment.
- F. See Addendum to State Prison Sentence Substance Use Disorder Assessment and Treatment.
- G. The Court recommends to the Department of Corrections:
  - Screen and/or assess for drug and alcohol treatment needs.
  - Sentence to be served at House of Corrections
  -

Case Name: State of New Hampshire v. Adam Montgomery

Case Number: 216-2022-CR-00577

**STATE PRISON SENTENCE**

If required by statute or Department of Corrections policies and procedures, the defendant shall provide a sample for DNA analysis.

**PROBATION**

A. The defendant is placed on probation for a period of \_\_\_\_\_ year(s), upon the usual terms of probation and any special terms of probation determined by the Probation/Parole Officer.

Effective:  Forthwith  Upon release from \_\_\_\_\_

The defendant is ordered to report immediately, or immediately upon release, to the nearest Probation/Parole Office.

B. Subject to the provisions of RSA 504-A:4, III, the probation/parole officer is granted the authority to impose a jail sentence of 1 to 7 days in response to a violation of a condition of probation, not to exceed a total of 30 days during the probationary period.

**Violation of probation or any of the terms of this sentence may result in revocation of probation and imposition of any sentence within the legal limits for the underlying offense.**

**FINANCIAL OBLIGATIONS**

A. **Fines and Fees:**

Fine of \$ \_\_\_\_\_, plus a statutory penalty assessment of \$ 0.00 to be paid:

Today

By \_\_\_\_\_

Through the Correctional Facility or Department of Corrections as directed by the Probation/Parole Officer. A 10 % service charge is assessed by DOC for the collection of fines and fees, other than supervision fees.

\$ \_\_\_\_\_ of the fine and \$ \_\_\_\_\_ of the penalty assessment is suspended for \_\_\_\_\_ year(s).

**A \$25.00 fee is assessed in each case file when a fine is paid on a date later than sentencing.**

B. **Restitution:**

The defendant shall pay restitution of \$ \_\_\_\_\_ to \_\_\_\_\_

Restitution shall be paid through the Correctional Facility or Department of Corrections as directed by the Probation/Parole Officer. A 17% administrative fee is assessed for the collection of restitution.

At the request of the defendant or the Department of Corrections, a hearing may be scheduled on the amount or method of payment of restitution.

Restitution is not ordered because: \_\_\_\_\_

C. **Appointed Counsel: NOTE:** Financial Obligations, Section C is NOT a term and condition of the sentence.

The Court finds that the defendant has the ability to pay:

counsel fees and expenses in the amount of \$ \_\_\_\_\_

payable through \_\_\_\_\_ in the amount of \$ \_\_\_\_\_ per month.

The Court order for repayment is suspended until the time of the defendant's release from state prison.

The Court finds that the defendant has no ability to pay counsel fees and expenses.

\_\_\_\_\_  
\_\_\_\_\_

Case Name: State of New Hampshire v. Adam Montgomery

Case Number: 216-2022-CR-00577

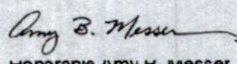
**STATE PRISON SENTENCE**

**OTHER CONDITIONS**

- A. The defendant is to participate meaningfully in and complete any counseling, treatment and educational programs as directed by the correctional authority or Probation/Parole Officer.
- B. Subject to the provisions of RSA 651-A:22-a, the Department of Corrections shall have the authority to award the defendant earned time reductions against the minimum and maximum sentences for successful completion of programming while incarcerated.
- C. Under the direction of the Probation/Parole Officer, the defendant shall tour the  
 New Hampshire State Prison                       House of Corrections
- D. The defendant shall perform \_\_\_\_\_ hours of community service and provide proof to \_\_\_\_\_ within \_\_\_\_\_ of today's date.
- E. The defendant is ordered to have no contact with **Christopher or Kimberly Frain** either directly or indirectly, including but not limited to contact in-person, by mail, phone, email, text message, social networking sites or through third parties.
- F. Law enforcement agencies may  destroy the evidence  return evidence to its rightful owner.
- G. The defendant and the State have waived sentence review in writing or on the record.
- H. The defendant is ordered to be of good behavior and comply with all the terms of this sentence.
- I. Other:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

For Court Use Only

  
HONORABLE Amy B. Messer  
August 7, 2023

**THE STATE OF NEW HAMPSHIRE**  
**JUDICIAL BRANCH**  
https://www.courts.nh.gov

Court Name: Hillsborough Superior Court Northern District

Case Name: State of New Hampshire v. Adam Montgomery

Case Number: 216-2022-CR-00577 Charge ID Number: 2008743C  
(if known)

**STATE PRISON SENTENCE**

Plea/Verdict: <b>Guilty</b>	
Crime: <b>Armed Career Criminal</b>	Date of Crime:

A finding of GUILTY/TRUE is entered.

**CONVICTION AND CONFINEMENT**

A. The defendant has been convicted of Domestic Violence contrary to RSA 631:2-b or of an offense recorded as Domestic Violence. See attached Domestic Violence Sentencing Addendum.

B. The defendant is sentenced to the New Hampshire State Prison for not more than 30, nor less than 15

There is added to the minimum sentence a disciplinary period equal to 150 days for each year of the minimum term of the defendant's sentence, to be prorated for any part of the year.

Pretrial confinement credit: 580 days.

C. This sentence is to be served as follows:

Stand committed  Commencing 8/7/2023

\_\_\_\_\_ of the minimum sentence and \_\_\_\_\_ of the maximum sentence is suspended.

Suspensions are conditioned upon good behavior and compliance with all of the terms of this order. Any suspended sentence may be imposed after a hearing at the request of the State. The suspended sentence begins today and ends \_\_\_\_\_ years from  today or  release on \_\_\_\_\_

\_\_\_\_\_ of the sentence is deferred for a period of \_\_\_\_\_ year(s). The Court retains jurisdiction up to and after the deferred period to impose or terminate the sentence or to suspend or further defer the sentence for an additional period of \_\_\_\_\_ year(s). Thirty (30) days prior to the expiration of the deferred period, the defendant may petition the Court to show cause why the deferred commitment should not be imposed, suspended and/or further deferred. Failure to petition within the prescribed time will result in the immediate issuance of a warrant for your arrest.

D. The sentence is  consecutive to case number and charge ID \_\_\_\_\_  
 concurrent with case number and charge ID \_\_\_\_\_

E. See Addendum to State Prison Sentence Sexual Offender Assessment and Treatment.

F. See Addendum to State Prison Sentence Substance Use Disorder Assessment and Treatment.

G. The Court recommends to the Department of Corrections:

Screen and/or assess for drug and alcohol treatment needs.

Sentence to be served at House of Corrections

\_\_\_\_\_

Scanned to cell block/VSJ/NHSP 8/7/23

Case Name: State of New Hampshire v. Adam Montgomery

Case Number: 216-2022-CR-00577

**STATE PRISON SENTENCE**

If required by statute or Department of Corrections policies and procedures, the defendant shall provide a sample for DNA analysis.

**PROBATION**

A. The defendant is placed on probation for a period of \_\_\_\_\_ year(s), upon the usual terms of probation and any special terms of probation determined by the Probation/Parole Officer.

Effective:  Forthwith  Upon release from \_\_\_\_\_

The defendant is ordered to report immediately, or immediately upon release, to the nearest Probation/Parole Office.

B. Subject to the provisions of RSA 504-A:4, III, the probation/parole officer is granted the authority to impose a jail sentence of 1 to 7 days in response to a violation of a condition of probation, not to exceed a total of 30 days during the probationary period.

**Violation of probation or any of the terms of this sentence may result in revocation of probation and imposition of any sentence within the legal limits for the underlying offense.**

**FINANCIAL OBLIGATIONS**

A. **Fines and Fees:**

Fine of \$ \_\_\_\_\_, plus a statutory penalty assessment of \$ 0.00 to be paid:

Today

By \_\_\_\_\_

Through the Correctional Facility or Department of Corrections as directed by the Probation/Parole Officer. A 10 % service charge is assessed by DOC for the collection of fines and fees, other than supervision fees.

\$ \_\_\_\_\_ of the fine and \$ \_\_\_\_\_ of the penalty assessment is suspended for \_\_\_\_\_ year(s).

**A \$25.00 fee is assessed in each case file when a fine is paid on a date later than sentencing.**

B. **Restitution:**

The defendant shall pay restitution of \$ To be determined to \_\_\_\_\_

Restitution shall be paid through the Correctional Facility or Department of Corrections as directed by the Probation/Parole Officer. A 17% administrative fee is assessed for the collection of restitution.

At the request of the defendant or the Department of Corrections, a hearing may be scheduled on the amount or method of payment of restitution. If the State seeks restitution a pleading must filed on

Restitution is not ordered because: \_\_\_\_\_ or before November 7, 2023

C. **Appointed Counsel: NOTE:** Financial Obligations, Section C is NOT a term and condition of the sentence.

The Court finds that the defendant has the ability to pay:

counsel fees and expenses in the amount of \$ \_\_\_\_\_

payable through \_\_\_\_\_ in the amount of \$ \_\_\_\_\_ per month.

The Court order for repayment is suspended until the time of the defendant's release from state prison.

The Court finds that the defendant has no ability to pay counsel fees and expenses.

\_\_\_\_\_  
\_\_\_\_\_

Case Name: State of New Hampshire v. Adam Montgomery

Case Number: 216-2022-CR-00577

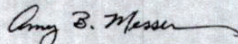
**STATE PRISON SENTENCE**

**OTHER CONDITIONS**

- A. The defendant is to participate meaningfully in and complete any counseling, treatment and educational programs as directed by the correctional authority or Probation/Parole Officer.
- B. Subject to the provisions of RSA 651-A:22-a, the Department of Corrections shall have the authority to award the defendant earned time reductions against the minimum and maximum sentences for successful completion of programming while incarcerated.
- C. Under the direction of the Probation/Parole Officer, the defendant shall tour the  
 New Hampshire State Prison                       House of Corrections
- D. The defendant shall perform \_\_\_\_\_ hours of community service and provide proof to \_\_\_\_\_ within \_\_\_\_\_ of today's date.
- E. The defendant is ordered to have no contact with Christopher or Kimberly Frain either directly or indirectly, including but not limited to contact in-person, by mail, phone, email, text message, social networking sites or through third parties.
- F. Law enforcement agencies may  destroy the evidence  return evidence to its rightful owner.
- G. The defendant and the State have waived sentence review in writing or on the record.
- H. The defendant is ordered to be of good behavior and comply with all the terms of this sentence.
- I. Other:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

For Court Use Only

  
HONORABLE Amy B. Messer  
August 7, 2023

HILLSBOROUGH, SS  
Northern District

**THE STATE OF NEW HAMPSHIRE**

SUPERIOR COURT

HNSC #216	2022	CR	577
CHG ID#	2008742C		

**INDICTMENT**

At the Superior Court, holden at Manchester, within and for the County of Hillsborough aforesaid, on the 18th day of August in the year of our Lord two thousand and twenty-two,

THE GRAND JURORS FOR THE STATE OF NEW HAMPSHIRE, upon oath, present that

**ADAM MONTGOMERY**

DOB: 01/22/1990

of or formerly of 445 Willow Street, Manchester, in the State of New Hampshire, between approximately September 29, 2019, and October 22, 2019, at Manchester in the County of Hillsborough aforesaid, did commit the crime of

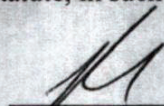
**ARMED CAREER CRIMINAL**

(RSA 159:3-a, I)

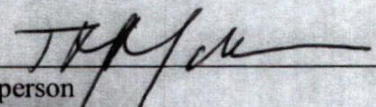
in that Adam Montgomery did knowingly have in his possession or under his control a shotgun, having been convicted of any combination of 3 or more felonies in this state or in any other state under homicide, assault, sexual assault, arson, burglary, robbery, extortion, child sexual abuse images, or controlled drug laws, to wit:

- first degree assault (felony), convicted on or about January 26, 2009, case number 08-S-1466, Hillsborough North New Hampshire Superior Court;
- armed robbery (felony), convicted on or about June 10, 2010, case number 0881CR00625, Middlesex Massachusetts Superior Court;
- assault and battery with a dangerous weapon (felony), convicted on or about June 10, 2010, case number 0881CR00625, Middlesex Massachusetts Superior Court;
- assault and battery with a dangerous weapon (felony), convicted on or about September 9, 2014, case number 1438CR000304, Haverhill Massachusetts District Court

Said acts being contrary to the form of the Statute, in such case made and provided, and against the peace and dignity of the State.

  
\_\_\_\_\_  
Jesse O'Neill, NH Bar #20723  
Senior Assistant Attorney General

This is a true bill.

  
\_\_\_\_\_  
Foreperson

Verdict: Guilty  
Entered June 8, 2023  
Susan Corcoran, Admin Court Assistant

CID 2008742C  
216-2022-CR-577

Name: Adam Montgomery  
DOB: 01/22/1990  
Address: Hillsborough County House of Corrections  
RSA: 159:3-a, I  
Offense Level: Special Felony; minimum mandatory term of 10 years imprisonment and a maximum term of imprisonment of not more than 40 years, and a fine of not more than \$25,000; neither the whole, nor any part of the minimum mandatory sentence shall be served concurrently with any other term, nor shall the whole or any part of such additional term of imprisonment be suspended or deferred; the provisions of RSA 651:20 relative to suspensions or the provisions of RSA 651-A relative to parole shall not apply to any sentence of imprisonment imposed

HILLSBOROUGH, SS  
Northern District

**THE STATE OF NEW HAMPSHIRE**

SUPERIOR COURT

**INDICTMENT**

HNSC #216 2022 CR 577  
CHG ID# 2008743C

At the Superior Court, holden at Manchester, within and for the County of Hillsborough aforesaid, on the 18th day of August in the year of our Lord two thousand and twenty-two,

THE GRAND JURORS FOR THE STATE OF NEW HAMPSHIRE, upon oath, present that

**ADAM MONTGOMERY**

DOB: 01/22/1990

of or formerly of 445 Willow Street, Manchester, in the State of New Hampshire, between approximately September 29, 2019, and October 22, 2019, at Manchester in the County of Hillsborough aforesaid, did commit the crime of

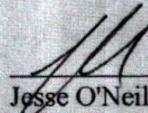
**ARMED CAREER CRIMINAL**

(RSA 159:3-a, I)

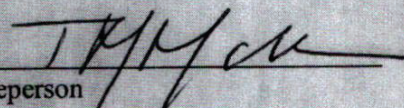
in that Adam Montgomery did knowingly have in his possession or under his control a rifle, having been convicted of any combination of 3 or more felonies in this state or in any other state under homicide, assault, sexual assault, arson, burglary, robbery, extortion, child sexual abuse images, or controlled drug laws, to wit:

- first degree assault (felony), convicted on or about January 26, 2009, case number 08-S-1466, Hillsborough North New Hampshire Superior Court;
- armed robbery (felony), convicted on or about June 10, 2010, case number 0881CR00625, Middlesex Massachusetts Superior Court;
- assault and battery with a dangerous weapon (felony), convicted on or about June 10, 2010, case number 0881CR00625, Middlesex Massachusetts Superior Court;
- assault and battery with a dangerous weapon (felony), convicted on or about September 9, 2014, case number 1438CR000304, Haverhill Massachusetts District Court

Said acts being contrary to the form of the Statute, in such case made and provided, and against the peace and dignity of the State.

  
\_\_\_\_\_  
Jesse O'Neill, NH Bar #20723  
Senior Assistant Attorney General

This is a true bill.

  
\_\_\_\_\_  
Foreperson

Verdict: Guilty  
Entered June 8, 2023  
Susan Corcoran, Admin Court Assistant

CID 2008743C  
216-2022-CR-577

Name: Adam Montgomery  
DOB: 01/22/1990  
Address: Hillsborough County House of Corrections  
RSA: 159:3-a, I  
Offense Level: Special Felony; minimum mandatory term of 10 years imprisonment and a maximum term of imprisonment of not more than 40 years, and a fine of not more than \$25,000; neither the whole, nor any part of the minimum mandatory sentence shall be served concurrently with any other term, nor shall the whole or any part of such additional term of imprisonment be suspended or deferred; the provisions of RSA 651:20 relative to suspensions or the provisions of RSA 651-A relative to parole shall not apply to any sentence of imprisonment imposed

**STATE OF NEW HAMPSHIRE**

**HILLSBOROUGH, SS.  
NORTHERN DISTRICT**

**SUPERIOR COURT**

State of New Hampshire

v.

Adam Montgomery

Docket No. 216-2022-CR-00577


**ORDER**

The defendant was convicted after a jury trial of two count of armed career criminal, two counts of theft by unauthorized taking, and two counts of receiving stolen property. The defendant was sentenced on the theft and armed career criminal charges on today's date.

Because the receiving stolen property charges are based upon the same two firearms as are charged in the two counts of theft, at the request of the State, and without objection from the defendant, guilty findings are entered on the receiving stolen property charges (Charge IDs 1964100C and 1964101C) and sentences are held in abeyance.

**SO ORDERED.**

August 7, 2023  
Date

  
\_\_\_\_\_  
Amy B. Messer  
Presiding Justice

Clerk's Notice of Decision  
Document Sent to Parties  
on 08/09/2023

THE STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS.

HILLSBOROUGH COUNTY SUPERIOR COURT - NORTH  
STATE OF NEW HAMPSHIRE

V.

ADAM MONTGOMERY  
216-2022-CR-577

Clerk's Notice of Decision  
Document Sent to Parties  
on 10/27/2022

**MOTION TO PRECLUDE TESTIMONY OF KAYLA MONTGOMERY**

NOW COMES the defendant, Adam Montgomery, by and through counsel, Caroline L. Smith, Esq., and respectfully requests this Honorable Court preclude the testimony of Kayla Montgomery at trial as a remedy for the State's discovery violation. The delayed disclosure of statements in the State's possession for four months profoundly prejudices Mr. Montgomery and violates NH Rules of Criminal Procedure 12(b)(7) as well as Mr. Montgomery's right to a fair trial and due process guaranteed by Part 1, Article 15 of the New Hampshire Constitution.

1. Adam Montgomery is charged with multiple counts of Armed Career Criminal, with lesser included counts of Felon in Possession, as well as two counts of Receiving Stolen Property and alternative counts of Theft (hereinafter referred to as the gun charges).

2. Mr. Montgomery was originally charged by complaint on April 4, 2022. Counsel was appointed the following day. Mr. Montgomery was already facing charges in this Court for Second Degree Assault, Endangering the Welfare of a Child, and Interference with Custody from January 2022. The Second Degree Assault charge had been brought by complaint in January and was indicted in March 2022.

3. On or about April 21, 2022, the State provided defense counsel approximately 78 pages of discovery and numerous CDs of witness interviews and Facebook messages regarding the gun charges. This was in addition to hundreds of pages of discovery and multiple CDs received on the original January charges.

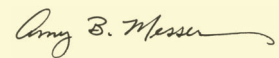
4. Mr. Montgomery was subsequently indicted on the gun charges on June 21, 2022.

5. A Dispositional Conference was held in both pending matters on June 28, 2022. At that time, the State elected to proceed to trial first on the gun charges. Jury Selection was scheduled for November 9, 2022, with the notation that trial was preferred the week of November 14, 2022.

A deadline of August 3, 2022 was set for Suppression issues on both the gun case and the January

For the reasons stated on the record, the motion to preclude the testimony of Kayla Montgomery at trial is denied. The Court grants the alternative relief of a continuance. A status hearing shall be held on November 22, 2022 at 8:45 a.m. **SO ORDERED.**

This is a Service Document For Case: 216-2022-CR-00577  
Hillsborough Superior Court Northern District  
10/27/2022 4:02 PM



Honorable Amy B. Messer  
October 27, 2022

charges. A Motion in Limine deadline for the gun charges was set for 15 days before the final pretrial conference scheduled for October 27, 2022.

6. The State sent additional discovery in the form of documents and CDs in July, August, and September.

7. Mr. Montgomery was again indicted on the Armed Career Criminal and Felon in Possession charges on August 22, 2022. The new indictments read the same as the prior indictments, except that the new ones included additional prior convictions to support the status element.

8. On September 7, 2022, a status conference was held which included discussion of the upcoming hearing on pending motions. While the defendant was not present at the conference, defense counsel asserted Mr. Montgomery's right to speedy trial with regard to the November trial. On September 28, 2022, a hearing was held on pending motions.

9. On Friday, October 7, 2022, the deadline for the State's witness list, the State sent defense counsel, at 4:48 p.m., criminal records for its witnesses and CD 27. The State's witness list was also filed that day.

10. Although Monday, October 10 was a holiday, both defense counsel were in the office working on the Motions in Limine due October 12, 2022. They were able to download the discovery sent by the State and listen to CD 27. The CD contained a new statement made by Kayla Montgomery on **June 3, 2022**.

11. Prior to receipt of CD 27, defense counsel had received statements and transcripts of Ms. Montgomery regarding her purported knowledge of the guns at issue in this case and were prepared to cross-examine her at trial. Her statements of June 3, 2022, however, completely changed the landscape of the gun cases.

12. The State had the June 3, 2022 statement at the time of the Dispositional Conference on June 26 when it requested that the gun charges be tried first and trial was scheduled for November 2022. However, they did not provide the statement to the defense.

13. Nor did the State take any action to disclose the June 3, 2022 statement at the Status Conference held September 7, 2022, where, in response to a question by the Court, defense counsel asserted speedy trial on behalf of the defendant and indicated that defense counsel intended to proceed with trial as scheduled. Nor was there a disclosure of the statement at the September 28, 2022 hearing.

14. It is true the State did not possess the June 3, 2022 statement when this case commenced and the original package of discovery was sent. However, NH Rule of Criminal Procedure 12(b)(7) provides for a continuing duty to disclose discovery information on a timely basis as material is generated.

15. The delayed disclosure of more than four months by the State and on the eve of the parties' deadline for Motions in Limine, a time when trial strategy has generally crystallized, is profoundly prejudicial and violates Mr. Montgomery's rights to due process and to a fair trial as guaranteed by Part 1, Article 15 of the NH Constitution.

16. The discovery rules outlined in the NH Rules of Criminal Procedure are set in part to ensure a fair trial and due process. The prejudice caused by the State's disregard for its discovery obligations cannot be overstated. This case is too close to trial to have the landscape change so dramatically when the State has had the statement for four months. The only appropriate remedy for this violation is to preclude Kayla Montgomery from testifying at the trial in the above-captioned matter. See State v. Cotell, 143 N.H. 275, 281-282 (1998) (While courts should refrain from dismissing charges for discovery violations, "they should not hesitate to impose proportionate and meaningful sanctions to remedy a prosecutor's failure to comply with a discovery order".)

WHEREFORE, Adam Montgomery respectfully requests this Honorable Court:

- A. Grant the defendant's request and preclude the testimony of Kayla Montgomery at trial;
- or
- B. Hold a hearing on this Motion if necessary; and
- C. Grant any other relief this Court deems just and proper.

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 has been forwarded to the Office of the Attorney General on this 14<sup>th</sup> day of October 2022.

/s/ Caroline L. Smith  
Caroline L. Smith, Esq.