

HILLSBOROUGH, SS.  
Northern District

THE STATE OF NEW HAMPSHIRE

SUPERIOR COURT

State of New Hampshire

v.

Adam Montgomery

Case No. 216-2022-CR-00577

**STATE’S OBJECTION TO DEFENDANT’S MOTION *IN LIMINE* –  
EVIDENCE REGARDING EXISTANCE OF INVESTIGATION INTO  
THE WHEREABOUTS OF HARMONY MONTGOMERY**

NOW COMES the State of New Hampshire, by and through its attorneys, the Office of the Attorney General, and hereby objects to the defendant’s Motion *in Limine* – Evidence Regarding Existence of Investigation into the Whereabouts of Harmony Montgomery (“Def.’s Mot.”). The defendant seeks a pretrial ruling from this Court that his reference to the existence of the investigation into the whereabouts of Harmony Montgomery does not open the door to the underlying facts of that investigation. The defendant submits that he is entitled to relief without advancing any supporting law or argument. Rather, the defendant provides notice that he intends to question several witnesses “regarding their own concerns that they may be implicated in the Harmony investigation and sought favor from the State by providing false information in the investigation gun investigation.”<sup>1</sup> Def.’s Mot. ¶ 6. The defendant seeks a *de*

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<sup>1</sup> This line of inquiry would violate the protective order the defendant has requested in his *Motion In Limine – Re: Allegations of Prior or Subsequent Bad Acts* (“Motion”) filed on May 1, 2023 at 5:46 pm wherein he requests an order prohibiting mention of “[a]llegations 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.” Motion ¶ 3(a).

*facto* order prohibiting the State from exploring this line of inquiry or rehabilitating the witnesses. The defendant is mistaken as to this premise and his motion must be denied.

1. “The intent behind the opening-the-door doctrine is to prevent prejudice,” *State v. Gaudet*, 166 NH 390, 396. The opening-the-door doctrine itself subsumes two distinct doctrines, the “curative admissibility” doctrine and the “specific contradiction” doctrine. *See State v. Barr*, 172 NH 681, 692. The curative admissibility doctrine applies when inadmissible, prejudicial evidence has been erroneously admitted, and the party prejudiced by the admission seeks to introduce other evidence to counter the prejudice. *Id.* The specific contradiction doctrine applies when a party introduces admissible evidence that creates a misleading advantage for that party, and the opposing party is then allowed to introduce previously suppressed or otherwise inadmissible evidence to counter the misleading advantage. *Id.* The two subsidiary doctrines are thus “invoked by different types of evidence — ‘curative admissibility’ is triggered by the erroneous prior admission of inadmissible evidence, while ‘specific contradiction’ is triggered by the introduction of misleading admissible evidence.” *State v. Morrill*, 154 NH 547, 550.

2. When a party presents inadmissible, prejudicial evidence or evidence that creates a misleading advantage, “the opposing party has a particularly strong interest in being able to refute such evidence.” *State v. Rasor*, 2020 N.H. LEXIS 220, \*7 (quoting *State v. DePaula*, 170 N.H. 139, 149 (discussing this strong interest, under the specific contradiction doctrine, in refuting admissible evidence that creates a misleading advantage). Rebuttal evidence sought to be admitted through the opening-the-door doctrine is evaluated, not by its relevance to the charged conduct, but by its ability, and whether it is necessary, to counter the

prejudice or misleading advantage created by the other party's opening of the door. *Id.* The rule, thus, prevents a party from successfully excluding evidence favorable to his opponent and then selectively introducing some of this evidence for his own advantage, without allowing the opponent to place the evidence in proper context. *State v. Wamala*, 158 N.H. 583, 589.

3. The defendant has asked this Court for an order precluding allegations of the conduct underlying the charges in case no. 216-2022-CR-0020 and 216-2022-CR-2372 as well as any allegations that “Mr. Montgomery abused, misused, or caused harm to Harmony Montgomery.” See Motion ¶ 3. In its partial opposition to the Motion, the State noted that it has no intention of using this evidence in its case-in-chief and does not object to the requested order. The defendant by way of Def.’s Mot. seeks to circumvent his own requested protective order by putting the allegations of the investigation into the disappearance of Harmony Montgomery before the jury and implicating the State’s witnesses in her disappearance and murder without allowing the State to disprove the defendant’s implications. This is the quintessential scenario in which the opening-the-door doctrine applies.

4. If this Court grants the assented to protective order regarding the allegations and investigation related to Harmony Montgomery’s murder, that order would apply to both parties, thereby prohibiting the defendant from making the tenuous and baseless argument that witnesses had “concerns that they may be implicated in the Harmony investigation and sought favor from the State by providing false information in the investigation gun investigation.” The curative admissibility doctrine would then apply should such a reference be made, and the State would be permitted to introduce other evidence to counter the prejudice caused by the inadmissible, prejudicial evidence that was erroneously admitted. Such evidence would be

used to demonstrate that the witnesses had no reason to fear implication in the disappearance and/or murder of Harmony Montgomery.

5. Should the Court find that the defendant's intended line of questioning is not within the scope of his requested order, and that the information is relevant, the specific contradiction doctrine applies and the State would be permitted to introduce previously suppressed or otherwise inadmissible evidence to counter the misleading advantage caused by the defendant inferring, or outright charging, witnesses with providing false information as a subterfuge to avoid being implicated in the disappearance and/or murder of Harmony Montgomery. *See Rasor*, 2020 N.H. LEXIS 220, \*7 (citing *Barr*, 172 NH at 693 – 94 (explaining that both subsidiary doctrines of the opening-the-door doctrine facilitate the admission of otherwise inadmissible evidence)).

6. In either scenario, the opening-the-door doctrine applies and allows the State to provide evidence to counter the defendant's assertions. The defendant's Motion in Limine – Evidence Regarding Existence of Investigation into the Whereabouts of Harmony Montgomery is not well taken. Because the defendant's intended questioning implicates the opening-the-door doctrine in any scenario it is respectfully submitted that the defendant's motion should be denied.

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

(A) Deny the defendant's Motion in Limine – Evidence Regarding Existence of Investigation into the Whereabouts of Harmony Montgomery; and

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

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Respectfully submitted,

THE STATE OF NEW HAMPSHIRE

JOHN M. FORMELLA  
ATTORNEY GENERAL

Date: May 10, 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  
R. Christopher Knowles