

THE STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS.

HILLSBOROUGH COUNTY SUPERIOR COURT - NORTH

STATE OF NEW HAMPSHIRE

V.

ADAM MONTGOMERY

216-2022-CR-577

**OBJECTION TO STATE'S REPLY TO OBJECTION TO STATE'S MOTION IN
LIMINE TO ADMIT EVIDENCE OF PAST ABUSE BY THE DEFENDANT AGAINST
KAYLA MONTGOMERY**

NOW COMES the accused, Mr. Adam Montgomery, by and through counsel, Caroline L. Smith, Public Defender, and respectfully requests this Honorable Court deny the State's Motion *In Limine* to Admit Evidence of Past Abuse by the defendant against Kayla Montgomery. In Objection to the State's Reply to Defendant's original Objection, the defendant states as follows:

1. On March 15, 2022, Kayla Montgomery met with police without her attorney. At that time, she was incarcerated pre-trial on a felony charge of theft. She advised the police that she was familiar with the guns and that her attorney had informed her that the police wanted to speak to her about missing guns. She advised police that she was aware of the guns they were seeking information on based on information from her attorney. She stated she remembered the situation when it happened with Chris and Kim (Frain). She then gave a statement implicating, in vague terms, Adam Montgomery, as well as "Ish Garcia" and "Manny" and trying to insulate herself from criminal liability. (See attached Exhibit B: Report dated March 15, 2022).

2. Kayla efforts to insulate herself from criminal liability for the missing guns did not work. On April 13, 2022, Kayla Montgomery was charged by complaint with two counts of receiving stolen property - the guns at issue in the charges against Mr. Montgomery.
3. On May 20, 2022, Kayla Montgomery was called to the Grand Jury to testify. She was represented by counsel. At the Grand Jury, she was not questioned by the State regarding the Frain missing firearms; however, she was asked by a Grand Juror whether her husband kept guns, to which she responded “not in the house, no, not that I knew of. But I’ve just been finding out a lot of things that he kept behind my back, so like...” (See attached Exhibit C: page 72 of May 20 Grand Jury testimony).
4. Kayla Montgomery was also questioned about abuse during her Grand Jury testimony. She gave the responses provided in Attachment A of the defendant’s original objection.
5. After Kayla’s Grand Jury testimony, she was charged on June 6, 2022 with two counts of perjury, one count regarding her Grand Jury testimony about her date of employment and the other about her time of employment. These charges came after she provided a proffer to the State on June 3, 2022 regarding the allegations in this case. Kayla spoke to law enforcement again on June 23, 2022 and on March 11, 2023.
6. In its Reply to Defendant’s Objection, the State asserts that Kayla’s report of domestic violence perpetrated upon her by the defendant was directly linked to his fear that she would provide inculpatory testimony against him. The State goes on to assert that the “**violence and conditioning immediately preceded** her statements to law enforcement and to the Grand Jury.” This simply is not true. Kayla Montgomery has made no allegations of ongoing violence or threats of violence, nor of ongoing fear of violence by the defendant

after she left him in March 2021, one year prior to her initial statement to the police regarding the firearms and over one year before her Grand Jury testimony.

7. The State further asserted that it “anticipates that Kayla will testify that she was conditioned against providing inculpatory evidence against the defendant through threats, physical abuse and deprivation of her ability to move freely” by the defendant. Tellingly, the State has had the opportunity to explore such “anticipated” testimony during the questioning of Kayla on March 16, 2023, portions of which were provided as Exhibits to its Reply to Defendant’s Objection. This questioning occurred after the State had withdrawn a similar motion to admit allegations of prior abuse.
8. In the March 16, 2023 interview, portions of which are attached to the State’s Motion, the issue of abuse was extensively explored. Kayla stated to the detectives that Mr. Montgomery was violent towards her for over a year, ending when she left him. She alleged that the violence was triggered by his drug influenced belief that she was cheating on him, she was telling on him, and that she was trying to kill him. She testified that Mr. Montgomery’s behavior stopped when she left him. She made no connection between the allegations of a tumultuous and sometimes violent relationship with Adam Montgomery and her March 15, 2022 statements to police or her Grand Jury testimony.
9. The State has not and, based on the evidence presented, cannot make the nexus between Kayla Montgomery’s allegations of prior abuse, abuse which caused her to leave Mr. Montgomery, and her testimony to the police and Grand Jury.
10. The State begins its Reply to Defendant’ Objection by asserting that cross examination of Kayla Montgomery regarding then pending and subsequent charges and convictions, all of which are legitimate fodder for cross examination, “**creates the nexus**” opening the door to

prior abuse. The State has failed to establish a nexus to Kayla Montgomery's prior inconsistent statements and her allegations of prior abuse. Legitimate cross examination through the use of then pending and subsequent charges and convictions of felony offenses does not create a nexus that has not been established.

11. In Beltran, relied on by the State, the violence to the witness was the cause of her assisting in the murder. Kayla makes no allegations that violence or threats caused her to do anything with relationship to the crimes alleged in the instant matter. Further, in Beltran, the witness testified to fear due to ongoing threats to both the witness and her family that the defendant threatened could be acted out by others even if the defendant himself could not. That was the going fear that was the nexus between the violence perpetrated by Beltran and the witness's prior inconsistent statements to police made even after Beltran was arrested and would seemingly, in most circumstances, no longer be a threat. None of that exists here.
12. The State cites to State v. Barr, 172, N.H. 681 in its reply for the proposition that when a party introduces admissible evidence that creates a misleading advantage for that party, the opposing party is then allowed to introduce previously suppressed or otherwise inadmissible evidence to counter the misleading advantage. In Barr, the State asserted in opening that the child victim of sexual abuse and pornography was "unsure of how to act, so [the defendant] made sure to tell her where and how to stand, what to wear, how to [perform fellatio], actions that were unnatural to [the minor] who was nearly half his age." *Id* at 683-682. The defendant asserted that this representation opened the door to the minor's two prior sexual relationships. The State countered that act was not natural for the minor because the minor had to be instructed by the defendant on what to do. The trial court ruled that while the word

“unnatural” was “loaded”, it did not represent the child as a sexual innocent and thus did not open the door. The trial court’s ruling was upheld.

13. Here, impeachment of Kayla Montgomery on charges pending at the time of her statements to police and Grand Jury do not create a misleading advantage – she was incarcerated at the time she made her statements to the police and had discussed her cooperation with her attorney. Felony convictions for lying to the Grand Jury do not create a misleading advantage. She has admitted to the Court under oath that she did so. That charges for receiving the stolen guns at issue in this case were dropped does not create a misleading advantage. It was part of a negotiated agreement with advice of counsel between her and the State in exchange for her plea. It creates no misleading impression creating a nexus between a tumultuous time in her relationship with Mr. Montgomery that she alleges included violence when he was on drugs, involving allegations that she was cheating on him, telling on him, and trying to kill him, but not when he wasn’t on drugs, that occurred after the events at issue in the charges and a year prior to her statements to police and the Grand Jury.

WHEREFORE, Mr. Adam Montgomery, by and through his undersigned defense counsel, respectfully requests that this Honorable Court:

- A. Deny the State's *Motion in Limine* to Admit Evidence of Past Abuse By the Defendant Against Kayla Montgomery;
- B. Schedule a hearing on this matter should the Court find it necessary; and,
- C. Grant such further relief as may be deemed just and proper.

Respectfully submitted,

/s/ Caroline L. Smith

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CERTIFICATE OF SERVICE:

I hereby certify that a copy of this OBJECTION TO STATE'S MOTION *IN LIMINE* TO ADMIT EVIDENCE OF PAST ABUSE BY THE DEFENDANT AGAINST KAYLA MONTGOMERY has been forwarded to the Office of the Attorney General on this 17th day of May, 2023.

/s/ Caroline L. Smith

Caroline L. Smith, Esq.