

THE STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS.

HILLSBOROUGH COUNTY SUPERIOR COURT - NORTH  
STATE OF NEW HAMPSHIRE

V.

ADAM MONTGOMERY

216-2022-CR-577

**RESPONSE TO STATE'S PARTIAL OBJECTION TO MOTION IN LIMINE**  
**RE: ALLEGATIONS OF PRIOR or SUBSEQUENT BAD ACTS**

Now comes Adam Montgomery, by and through his Public Defender, Caroline L. Smith, Esq., and respectfully responds to the State's Partial Objection to Motion in *Limine* Re: Allegations of prior or Subsequent Bad Acts as follows:

1. By his motion, Mr. Montgomery sought a pretrial ruling precluding specific allegations of evidence of other alleged bad acts conducted by Mr. Montgomery at trial, listing specific categories (a) through (h).
  - 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 Cory Watts;
  - e. Allegations that Mr. Montgomery sold illegal drugs;
  - f. Allegations that Mr. Montgomery used illegal drugs (except as referenced in paragraph 4 of the motion);
  - 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.
  
2. It appears that the State does not intend to introduce evidence of conduct underlying other pending charges outlined in (a) and (b) unless the defendant opens the door. In addition, it is

anticipated that the parties will reach a stipulation that will take care of the State's concern regarding the predicate offenses necessarily a part of the offenses charged in this matter as well as a stipulation that Mark Reed was communicating with an e-mail address of the defendant's in discussing the purchase of a 12-gauge shotgun.

3. Regarding the issue of domestic violence referenced in (c), this issue is addressed fully in a separate pleading (State's Motion in Limine to Admit Past Abuse of the Defendant Against Kayla Montgomery) and various responses.

4. The State further indicates that it does not intend to introduce evidence of other assaultive behavior referenced in (d), with the anticipated stipulation regarding the predicate offenses resolving its objections.

5. The State does object to (e) regarding allegations that Mr. Montgomery sold illegal drugs, asserting that such evidence is intrinsic 'other acts evidence' not subject to Rule 404(b). However, the actual argument the State sets forth regarding evidence of Mr. Montgomery's involvement in illegal drugs centers around Mr. Montgomery's **use** of illegal drugs, not sale. The State does not put forth any intrinsic connection between allegations that Mr. Montgomery sold illegal drugs in the charged acts. Any allegations that Mr. Montgomery sold drugs must be subject to the Rule 404(b) analysis and the State has not met its burden in that regard for admissibility. It has set forth no facts regarding Mr. Montgomery selling drugs that it tends to introduce, the clear proof for those alleged facts, nor did the State set forth a precise chain of reasoning for introduction by which the evidence of sales of illegal drugs will tend to prove or disprove an issue actually in dispute, without relying upon forbidden inferences of predisposition or character, or propensity.

6. The State does make a general reference that it expects that the evidence at trial would be that the defendant, together with Kimberly Frain, Ismael Garcia, Michael Sullivan, and likely others, formed a loose association of friends/acquaintances/associates connected to each other by drug use and drugs sales. This vague reference to drug sales also does not satisfy the Rule 404(b) criteria to meet the State's burden for admission. In addition, the argument the State makes for this vague reference to drug use and sales is for context, a purpose the Court determined was prohibited in State v. Davidson, 163 N.H. 462 (2012) unless the State meets the Rule 404(b) criteria, which the State has not done here.

7. With regard to the defendant's alleged drug **use** referenced in (f), the State argues that drug use is also intertwined with charges in this matter and not subject to the Rule 404(b) analysis.

8. The defendant agrees that evidence that Mr. Montgomery purportedly sold or attempted to sell one or more of the guns at issue for drugs and money is admissible. In addition, evidence of Mr. Montgomery's purported purpose for going to or being at Kimberly Frain's house around the time the guns are alleged to have been stolen is admissible, provided the witness is testifying from direct knowledge and not rumor or hearsay. However, those admissible purposes do not open the door to general allegations of drug use or even other specific drug use unless the State meets the specific Rule 404(b) criteria. It has not done so. The State made reference to drug addiction as a motive to steal, however, did not set forth facts to support evidence of other drug use it intends to admit, the clear proof, nor the precise chain of reasoning for introduction by which the offered evidence will tend to prove motive.

9. The State also asserts that the evidence of narcotics crimes to be admitted goes directly to the relationship of the parties, the knowledge of the defendant concerning the victim and the circumstances surrounding the charged event – claiming it is intrinsic. Drug use or drug seeking as the purported reason for Mr. Montgomery went to Kimberly Frain's around the time the guns were purported to be stolen is intrinsic. The general relationship between witnesses, however, is context and prohibited unless and until the State's sets forward specific facts or evidence it seeks to introduce, the clear proof for those alleged facts, and the precise chain of reasoning for introduction by which the offered evidence will tend to prove or disprove an issue actually in dispute, without relying upon forbidden inferences of predisposition or character, or propensity. See Davidson, supra.

10. With regard to (g) allegations of theft other than the charged offenses and (h) prior convictions, again, the parties intend to file a stipulation regarding the predicate offenses that will resolve the State's objections.

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

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**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 17th day of May, 2023.

/s/ Caroline L. Smith

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