

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 MOTION FOR RECONSIDERATION**


NOW COMES the State of New Hampshire, by and through its attorneys, the Office of the Attorney General, and hereby Motions this court for reconsideration of the Court's May 25, 2023, ruling that the testimony of Joshua Zimmerman ("Zimmerman") is precluded at trial. The court has overlooked facts which are relevant to a correct analysis when issuing the order.

1. N.H.R. Crim. P. 43 provides in relevant part as follows:

"A motion for reconsideration . . . shall be filed within ten days of the date on the clerk's written notice of the order or decision . . . The motion shall state, with particular clarity, points of law or fact that the court has overlooked or misapprehended."

2. The court ruled that Zimmerman's testimony is precluded pursuant to Rule 404(b)(2) as inadmissible propensity evidence. This court has overlooked points of fact in issuing its May 25, 2023, ruling. Specifically, the court has overlooked that Tarah Hilbert ("Hilbert") and her partner Zimmerman had a conversation with the defendant in which he bragged about the US Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF") being

A hearing was held and ruling made on the record.  
No further ruling is necessary. SO ORDERED.

  
Honorable Amy B. Messer

June 6, 2023

Clerk's Notice of Decision  
Document Sent to Parties  
on 06/12/2023

after him because he sold firearms. The State anticipates that at trial, Hilbert's testimony will be that, during this conversation, the defendant specifically bragged about having the "sickest AR-15" while living at 77 Gilford Street in Manchester. Zimmerman is expected to testify that he was present for the same conversation. Additionally, the State expects him to testify that the defendant may have referred to an AR-15, but that he is not sure. Zimmerman is expected to testify that he is not familiar with firearms and is not sure if the defendant referred to an AR-15 or an AK-47.

3. Zimmerman was party to the same conversation as Hilbert and is unsure whether the defendant referred to an AR-15 or an AK-47. The State notes that these firearms are remarkably similar and commonly mistaken. Several of the witnesses in this case have inadvertently referred to the stolen AR-15 as an AK-47 to include the gun owner.

4. Based on Zimmerman's anticipated testimony that the gun referred to by the defendant may have been an AR-15, this court should not preclude this relevant testimony as it relates the allegations in this case.

5. Additionally, Zimmerman's anticipated testimony regarding the defendant hiding firearms in his walls at his 77 Gilford Street address, selling firearms, and being fearful of the ATF because he sold firearms is directly related to the conduct at issue in this case and should not be precluded. The anticipated testimony of Zimmerman is not other acts evidence that would be covered by Rule 404(b) of the New Hampshire Rules of Evidence. Instead, the defendant's admissions to Zimmerman and his statements regarding the ATF are direct evidence that the defendant was in possession of firearms that he was attempting to sell, which

is in turn direct evidence of the conduct comprising the charges the defendant is currently facing. Therefore, such evidence should not be precluded.

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

- (A) Grant the State's Motion for Reconsideration regarding the testimony of Joshua Zimmerman;
- (B) Hold a hearing on this motion; and
- (C) Grant such further relief as may be deemed just and proper.

Respectfully submitted,

THE STATE OF NEW HAMPSHIRE

JOHN M. FORMELLA  
ATTORNEY GENERAL

Date: May 26, 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