

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 FOR A JURY VIEW**

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 for a View (“Def.’s Mot.”) pursuant to N.H. RSA 519:21. The defendant seeks to take the jury to the Hillsborough County House of Corrections (the “jail”) so that the jury can understand the “circumstances of the unit and its effect on private conversations.” (Def.’s Mot. ¶ 9.) A jury view of the jail is irrelevant and unduly prejudicial to the defendant and should be excluded under New Hampshire Rules of Evidence 401, 402 and 403. Taking the jury to the jail is unnecessary to “aid the jury in understanding the testimony.” RSA 519:21. Thus, the Court should exercise its discretion and deny the defendant’s motion. In further support of this motion, the State says as follows:

1. On April 17, 2023, Detective Rahill and Detective Dunleavy with the Manchester Police Department interviewed Michael Harju (“Harju”), “an inmate known to communicate with [the defendant].” See Exhibit 1 – Redacted Incident Report of John Dunleavy 4/21/2023. The interview lasted for approximately 9 minutes. During the interview, Harju reported that he was on the same unit as the defendant for 30 days. Harju said that the defendant would speak to other inmates through the door of his cell. Harju said that depending

on the corrections officer on duty, inmates would be told to get away from the defendant's door.

2. Harju reported that he did not know the defendant, but that the defendant had essentially bragged to him about selling guns. Harju said that “[he] just met the kid and he’s already talking about guns. He said he was selling guns. He had guns and sold guns.” Towards the end of the interview, officers discussed the allegations related to the murder of Harmony Montgomery and their desire to find her body and “bring her home.” Guns were not discussed following the detective’s comment concerning the defendant murdering Harmony Montgomery, concealing her corpse, and secreting it away. The allegation that Harju “embellished what he had already stated” (Def.’s Mot. ¶ 4) is unsupported by the record.

3. On May 10, 2023, Detective Dunleavy interviewed Corrections Officer Juan Franco (“CO Franco”) with the Hillsborough County Department of Corrections. CO Franco corroborated Harju’s account of inmates speaking to the defendant through the door of his cell. *See* Exhibit 2 – Redacted Incident Report of John Dunleavy 5/10/23. CO Franco described Harju leaving his cell and going up to the defendant’s cell to speak with him. *Id.* CO Franco reported that Harju approached the defendant’s cell “almost every time he is out.”

4. The testimony from Harju and CO Franco is not difficult for a jury to understand. A view of the jail is thus, unnecessary to assist the jury in this case.

5. A view is evidence in a case. *State v. Gilbert*, 121 N.H. 305 (1981). Relevant evidence is any evidence that has “any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would

be without the evidence.” N.H. R. Evid. 401. Under New Hampshire Rule of Evidence 402, evidence that is not relevant is not admissible at trial. N.H. R. Evid. 402.

6. New Hampshire Rule of Evidence 403 further provides that evidence, though relevant, may nevertheless be excluded “if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.” N.H. R. Evid. 403. Whether evidence meets these evidentiary thresholds is within the discretion of the trial court to determine. *State v. Pelkey*, 145 N.H. 133, 135-36 (2000).

7. Evidence is unfairly prejudicial if its primary purpose or effect is to appeal to a jury’s sympathies, arouse its sense of horror, provoke its instinct to punish, or trigger other mainsprings of human action that may cause a jury to base its decision on something other than the established propositions in the case. *Id.*

8. “The presumption of innocence, although not articulated in the Constitution, is a basic component of a fair trial under our system of criminal justice. Long ago this Court stated:

‘The principle that there is a presumption of innocence in favor of the accused is the undoubted law, axiomatic and elementary, and its enforcement lies at the foundation of the administration of our criminal law.’”

*Estelle v. Williams*, 425 U.S. 501, 503 (1976). *Quoting Coffin v. United States*, 156 U.S. 432, 453 (1895). In *Estelle*, the defendant was compelled to attend trial in jail garb. The defendant appealed following his conviction. The Court, in reversing *Estelle*’s conviction, reasoned that

“The potential effects of presenting an accused before the jury in prison attire need not, however, be measured in the abstract. Courts have, with few exceptions, determined that an accused should not be compelled to go to trial in prison or jail clothing because of the possible impairment of the presumption so basic to the adversary system.” *Id.* at 504.

9. The defendant’s request for a view of the jail, and his current living situation, may be viewed as a reminder to jurors of his custodial status. This may be equivalent in seriousness to having the defendant dressed in jail garb. Based on its potential for unfair prejudice, and the lack of a compelling, relevant basis for the view, the defendant’s request for a view at the jail should be denied. If the Court does not deny the defendant’s request for a view, a waiver colloquy or hearing is needed so that this Court can determine that the defendant is making this decision knowingly, voluntarily, and intelligently.

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

- (A) Deny the Defendant’s Motion for a View;
- (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 19, 2023

/s/ R. Christopher Knowles  
R. Christopher Knowles, Bar #276524  
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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

# EXHIBIT

1



**Title: Dunleavy-Michael Harju Interview**

**Officer(s):**

Officer: Dunleavy, John 100489	Involvement Date: 04/21/2023 17:12:00	Involvement Type: Reporting
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**Event Details:**

Date / Time Reported:	Start Date / Time:	End Date / Time:
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Location of Incident:  
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**Involved Person(s):**

<b>1</b>	<b>Other:</b> HARJU, MICHAEL	DOB: [REDACTED]	Age: [REDACTED]	Race: [REDACTED]	Sex: [REDACTED]	Hair: [REDACTED]	Eye: [REDACTED]	Height: [REDACTED]	Weight: [REDACTED]
Address: [REDACTED]		Phone 1: [REDACTED]	Phone 2:		Email:				
Employer: [REDACTED]		Occupation Type:			Work Phone:				

**Property:**

<b>1</b>	Description: JD10 Michael Harju Interview	Status: EVIDENCE	Make:	Model:	
Serial Number:	Year:	Color:	Quantity: 1.0000	Value: 0	Property Taken into Evidence? Yes

**Narrative**

**Dunleavy-Michael Harju Interview**

On April 17, 2023 Det. Rahill and I (Det. Dunleavy) went to the Hillsborough County Department of Corrections to speak with an inmate known to communicate with Adam Montgomery. This inmate is identified as:

(Involved Other)  
 Michael Harju  
 [REDACTED]  
 Hillsborough County Dept. of Corrections  
 Manchester, NH

We informed Harju that we were not here to talk about his current case and explained to him that he was not in trouble. We stated to him that we wanted to speak to him about an inmate in his pod



identified as Adam Montgomery. Lastly I told him that the interview was voluntary. Harju agreed to speak and had no objection to the interview being audio recorded. The interview started at 0955 hours.

The following is a synopsis of the interview intended to summarize the content of what was discussed. It is not verbatim nor is the information necessarily in the exact chronological order in which it was given. An audio recording of the interview was completed and a DVD-R copy of that recording was secured into evidence marked as item JD10.

Harju stated he is no longer on the unit with Montgomery. He stated he was on the unit with Montgomery for 30 days. He stated Adam had not really brought up his daughter but brought up guns. Harju later added that prior to jail, he didn't know Montgomery. Montgomery was telling him that he (Adam) keeps getting charged with armed career criminal. Montgomery is telling him that he is being charged based off what people are saying and that he was never caught with guns.

Montgomery also told him that his (Adam's) girlfriend had lied about some stuff. Montgomery told him that his girlfriend said something about cutting her up in a tub and that this was not true. I asked him if Montgomery said what was true and he said Adam didn't say anything. According to Montgomery, he said he takes care of his kids. Harju sensed that Montgomery is hiding something.

I explained to Harju that we had done some searches last week and asked if Montgomery had said anything about those searches and he stated he hadn't.

Harju stated Montgomery will talk to people through the door. He stated Montgomery is open to talking to people and stated he had just met Adam and he is already telling him about guns and robbing people. I asked him if Adam took any ownership of any of the gun stuff and he stated "yeah". Montgomery admitted to him that he had held guns and sold guns but nothing specific. Adam stated he hadn't been caught with guns but had them and sold them. He stated Adam would talk about robberies with guns but wasn't specific. He stated he recalled Adam saying they robbed someone and pistol whipped them. He stated Adam did not mention specific names.

I explained to him that if he heard anything to reach out to me whether its through the jail or an attorney. The interview concluded at 1004 hours.

JD/Case Continues

# EXHIBIT

2



**Title: Dunleavy-Follow up with Corrections Officer Franco of VSJ**

**Officer(s):**

Officer: Dunleavy, John 100489	Involvement Date: 05/10/2023 17:56:00	Involvement Type: Reporting
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**Event Details:**

Date / Time Reported:	Start Date / Time:	End Date / Time:
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Location of Incident:  
  
1 1

**Narrative**

**Dunleavy-Follow up with Corrections Officer Franco of VSJ**

On May 10, 2023 I (Det. Dunleavy) made contact with a corrections officer at the Hillsborough County Department of Corrections who was identified as:

(Involved Other)  
Juan Franco  
[REDACTED]

I explained to him that I was calling in reference to Michael Harju and Adam Montgomery having contact. Franco stated he could speak on that and stated he had worked at the jail for three years. He stated for the past two years he has worked primarily on the restricted housing unit (Max) where Harju and Montgomery were housed. He stated that when Harju would come out of his cell, he would go up to Montgomery's cell to speak with him. He stated he would tell him to move along because it is against the rules. He stated he is not aware of any write ups related to this and it is more of a verbal warning to move away from the cell. Franco stated he does not know if Montgomery approaches Harju's cell when he is out because he doesn't work that shift. I asked him if it is safe to say that Harju approaches Montgomery's cell almost every time he is out and he said yes. I thanked him for his time and ended the call.

JD/Case Continues