

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
SUPERIOR COURT

Hillsborough County

Hillsborough Superior Court Northern District

State v. Adam Montgomery

216-2022-CR-02372

ORDER ON DEFENDANT'S MOTION FOR RELIEF (Doc. 148): STATE'S OBJECTION
(Doc. 149)

Defendant has moved for relief to address what defendant asserts is the State's improper conduct in apprising Kayla Montgomery's attorney that in opening statement the defense argued that Harmony was discovered dead in the middle of the night, behind Colonial Village, after Adam Montgomery returned to the car. (Doc. 148 ¶ 2.) When the State challenged the evidentiary basis for this statement, the defense responded that they anticipated they would get that information through Kayla Montgomery. (Id. ¶ 3.)

After opening statements, the State spoke to Kayla Montgomery's attorney, Paul Garrity, and informed him that the defense contended during opening statements that Harmony died while alone with Kayla and that this would be an area of inquiry during cross-examination. The State requested that counsel discuss this with Kayla and apprise her of this information. (Id. ¶ 4) The next morning, prior to Kayla taking the stand, Paul Garrity met with Kayla in the courthouse and spoke to her about this information. The defense learned of the State's communication with Attorney Garrity, and Attorney Garrity's subsequent discussion with Kayla Montgomery, during the State's redirect examination of Kayla Montgomery.

The defense argues that the State's actions both violated the sequestration order and the defendant's right to exculpatory evidence. With respect to sequestration, New Hampshire Rule of Evidence 615 represents a codification of "a well-established common law tradition of

sequestering a witness as a means of discouraging and exposing fabrication, inaccuracy, and collusion.” State v. Guild, 163 N.H. 475, 477-78 (2012) (quotation and citation omitted). Rule of Evidence 615(a) provides, in pertinent part, that “[a]t a party’s request, the court must order witnesses excluded so that they cannot hear other witnesses’ testimony.” (emphasis added). First, as the Court stated in its initial oral order on this issue, there was no violation of the sequestration rule as it pertains to the plain language of the rule which prohibits a witness from hearing another witness’s testimony. The sequestration order of the Court, proposed by the defendant, does not expand this relevant language. The defendant argues that even if not violating the express language of the rule or order, the State’s conduct violates the spirit of the obligation of sequestration. (Doc. 148 ¶ 18.) An important point overlooked by the defendant, however, is that there was no exchange of information regarding any other witness’s testimony. Instead, it was an assertion by the defendant of statements he hoped he could get from the witness herself. The defense did not assert any statements or evidence from any other witness. See State v. Giordano, 138 N.H. 90 (1993). The Court does not find a violation of sequestration where a witness’s lawyer, the State, or defense counsel is preparing a witness for trial with respect to the witness’s own statements or knowledge.

The defendant also argues that the State failed to comply with its obligation to disclose exculpatory evidence. As the Court reads the defendant’s assertion, the State was obligated to disclose to the defendant that they had apprised the witness of the defendant’s contention that she was the last person with Harmony before Harmony was discovered dead. The defendant argues that if the State is going to prepare a witness for certain testimony or cross examination they have “a duty to tell the defense that the witness was forewarned so that the defense may impeach the witness.” (Doc. 148 ¶ 23.) First, as noted by the State, it was evident by both parties that the defendant might well argue that Kayla Montgomery was the perpetrator of the murder of Harmony. Defendant contends it is the detail disclosed during opening statement that she was the last one in the car with Harmony that tips the scales in terms of preparing her


for cross-examination that she otherwise would not have been prepared to meet. The Court is unpersuaded that the information constitutes a Brady violation. However, even if it could be construed as such, the defendant was afforded an opportunity to question Kayla Montgomery on the witness stand and to elicit from her that she had received information from her attorney regarding opening statements. The defense was able to elicit that she had an opportunity to consider her answers to questions on cross-examination. The defendant has not shown that the information provided had any effect on her testimony. There is no suggestion that it was altered to comport to the testimony of others or as a change to anything she had said previously. The Court permitted the defendant to engage in rigorous cross-examination of the witness on the issue raised and the defendant has not shown prejudice.

Based on the foregoing, the defendant's motion is DENIED.

So Ordered.

February 21, 2024

Date


Amy B. Messer
Presiding Justice

Clerk's Notice of Decision
Document Sent to Parties
on 02/21/2024