

THE STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS.

HILLSBOROUGH COUNTY SUPERIOR COURT - NORTH
STATE OF NEW HAMPSHIRE

V.

ADAM MONTGOMERY

216-2022-CR-577

**DEFENDANT'S MOTION TO ADMIT IMPEACHMENT EVIDENCE PURSUANT TO
NEW HAMPSHIRE RULE OF EVIDENCE 401, 402, 403 and 404B
re: Kimberly Frain**

NOW COMES the accused, Mr. Adam Montgomery, by and through counsel, Caroline L. Smith and Paige Pihl Buckley, Public Defenders, and respectfully requests this Honorable Court admit impeachment evidence of Kimberly Frain's pending charges at the time she cooperated with police pursuant to New Hampshire Rule of Evidence 401, 402, 403 and 404(b).

In support of this Motion, it is stated:

1. Mr. Adam Montgomery is scheduled for a November 9, 2022, jury selection on multiple charges of Armed Career Criminal, Felon in Possession, Theft, and Receiving Stolen Property.
2. Kimberly Frain is a potential witness in this matter.
3. Based upon a preliminary criminal record search the defense believes that Ms. Kimberly Frain had charges pending when she spoke to the police, as well as charges immediately following her discussion with police, which the defense would seek to admit for impeachment purposes should Ms. Frain testify at the upcoming trial:
 - a. 12/19/2019: Sale of Controlled Drug: 216-2019-CR-02161
4. Ms. Frain has not been convicted of the above-referenced charges.

5. Mr. Montgomery asserts that the charges pending at the time Ms. Frain spoke to the police about this case gave motive for her to curry favor with the police.
6. The jury should hear of Ms. Frain's motive to curry favor with the police in order to better assess her credibility. Thus, while not resulting in conviction, the charges pending are admissible pursuant to NHRE 401, 402, 403 and 404(B)

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

- A. Grant the Defendant's *Motion in Limine* to admit evidence of pending charges against Ms. Frain at trial;
- 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
Caroline L. Smith, Esq.
N.H. Bar #5992
Paige Buckley, Esq.
NH Bar #272328
N.H. Public Defender
408 Union Avenue
Laconia, NH 03246
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CERTIFICATE OF SERVICE:

I hereby certify that a copy of this MOTION TO ADMIT IMPEACHMENT EVIDENCE has been forwarded to the Office of the Attorney General on this 12th day of October 2022.

/s/ Caroline L. Smith
Caroline L. Smith, Esq.