

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 609**

**re: Kevin Labelle**

NOW COMES the accused, Mr. Adam Montgomery, by and through counsel, Caroline L. Smith and Paige Buckley, Public Defenders, and respectfully requests this Honorable Court to admit impeachment evidence of the Kevin Labelle's prior felony convictions and/or any prior convictions for crimes requiring proof of a dishonest act or false statement, as well as any charges pending at the time they cooperated with police and/or testify at trial, pursuant to New Hampshire Rule of Evidence 609, should he testify at the upcoming trial. 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 Carreer Criminal, Felon in Possess, Theft and Receiving Stolen Property.
2. Kevin Labelle is a potential witness in this matter.
3. Based upon a preliminary criminal record search the defense believes that Mr. Kevin Labelle has been convicted of the following qualifying offenses which it would seek to admit for impeachment purposes should Mr. Labelle testify at the upcoming trial:
  - a. 3/19/2013: Receving Stolen Property: 216-2012-CR-1172
  - b. 2/17/15: Duty to Inform: 216-2014-CR-1090
  - c. False Report to Law Enforcement: 456-2016-CR-2662



- d. 3/18/19: Habitual Offender and Disobeying a police officer (if the disobeying was in reference to giving a false name): 216-2018-CR-2372
  - e. 7/10/2020: Reg. Sex Offender:Duty to report: 216-2019-CR-877
4. Certified records of the above convictions will be supplied to the State prior to the final pre-trial conference.
  5. Mr. Montgomery reserves the right to supplement this request upon receipt of the criminal records check to be provided by the State pursuant to NH Rules of Criminal Procedure, Rule 12(4)(A)
  6. New Hampshire Rule of Evidence 609 allows for either party to attack a witness' character for truthfulness by evidence of a criminal conviction when the crime that, in the convicting jurisdiction, was punishable by death or by imprisonment for more than one year, subject to Rule 403. See N.H. R. Evid. 609(a)(1)(A).
  7. Furthermore, the same Rule of Evidence permits a party to attack a witness' credibility for truthfulness by evidence of a criminal conviction for any crime, regardless of punishment, when "the Court can readily determine that establishing the elements of the crime required proving – or the witness's admitting – a dishonest act or false statement." See N.H. R. Evid. 609(a)(2).
  8. Although New Hampshire Rule of Evidence 609(b) generally imposes a ten-year limitation for use of such prior convictions referenced in New Hampshire Rule of Evidence 609(a), convictions older than ten years are still admissible if:
    - a. One, the "probative value, supported by specific facts and circumstances, substantially outweighs its prejudicial effect,"; and



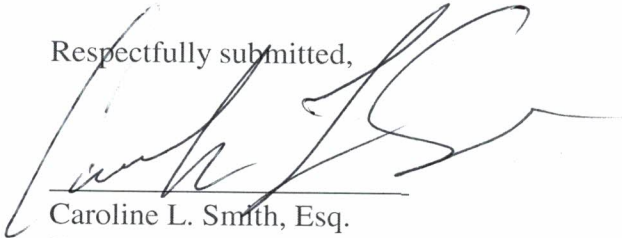
b. Two, “the proponent gives an adverse party reasonable written notice of the intent to use it so that the party has a fair opportunity to contest its use.”

N.H. R. Evid. 609(b)(1)–(2). The ten-year window runs from date of conviction or from date of release from confinement, whichever date occurs later. See N.H. R. Evid. 609(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 Mr. Kevin Labelle's prior convictions outlined in paragraph 3, *supra*;
- 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.

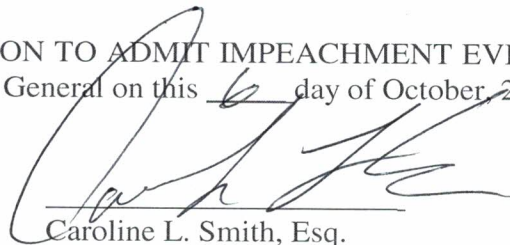
Respectfully submitted,



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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 6 day of October, 2022.



Caroline L. Smith, Esq.

