

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: Todd Bernatchez**

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 Todd Bernatchez'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 he cooperated with police and/or testified 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 Career Criminal, Felon in Possession, Theft, and Receiving Stolen Property.
2. Todd Bernatchez is a potential witness in this matter.
3. Based upon a preliminary criminal record search the defense believes that Mr. Todd Bernatchez has been convicted of the following qualifying offenses which it would seek to admit for impeachment purposes should Mr. Bernatchez testify at the upcoming trial:
  - a. 1/23/21: Controlled Drug: 216-2021-CR-00911
  - b. 11/23/21: Controlled Drug: 216-2021-CR-00351
  - c. 8/25/20: Controlled Drug: 216-2020-CR-00092

- d. 28/24/20: Controlled Drug: 216-2020-CR-01083
  - e. 6/2/16: Reckless Conduct - deadly weapon: 216-2016-CR-00062
  - f. 3/3/15: Reckless Conduct - deadly weapon: 216-2014-CR-0681
4. Certified records of the above convictions will be supplied to the State prior to the final pre-trial conference.
  5. New Hampshire Rule of Evidence 609 allows for either party to attack a witness's character for truthfulness by evidence of a criminal conviction when the crime was, in the convicting jurisdiction, punishable by death or by imprisonment for more than one year, subject to Rule 403. See N.H. R. Evid. 609(a)(1)(A).
  6. Furthermore, the same Rule of Evidence permits a party to attack a witness's 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).
  7. 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. Todd Bernatchez'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,

/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  
(603) 524-1831

**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.