

THE STATE OF NEW HAMPSHIRE  
HILLSBOROUGH COUNTY SUPERIOR COURT – NORTHERN DISTRICT  
HILLSBOROUGH, SS. SEPTEMBER 2022

STATE OF NEW HAMPSHIRE

v.

ADAM MONTGOMERY  
216-2022-CR-577

**MOTION FOR GIGLIO MATERIAL**

NOW COMES the defendant, Adam Montgomery, by and through counsel, Paige Pihl Buckley, Esq. and Caroline L. Smith, Esq., and respectfully requests that this Honorable Court order the State turn over all *Giglio* material as it relates to State witnesses KF, OP, IG, MR, and MS. This Motion is grounded in Mr. Montgomery’s due process rights under Part I, Article 15 of the New Hampshire Constitution, and the Sixth and Fourteenth Amendments of the United States Constitution. In support of this Motion the following is stated:

1. The State has charged Mr. Montgomery with two counts of Armed Career Criminal, two lesser included counts of Felon in Possession, two counts of Receiving Stolen Property, and two alternative counts of Theft.
2. Mr. Montgomery is scheduled for a Scheduling Conference in the above-captioned matter on September 7, 2022. He is further scheduled for a Final Pretrial Conference on October 27, 2022, and tentatively scheduled for Jury Selection on November 7, 2022.
3. Discovery provided by the State includes reports by law enforcement regarding interviews with State witnesses KF, OP, IG, MR, and MS. Each witness shares information subjecting him or herself to potential criminal liability, and more than one witness is interviewed while incarcerated on other criminal matters.

This Motion will address each witness in turn:

**FACTS**

4. According to reports provided by the State, CF reported the past tense theft of firearms and other belongings from his home on October 3, 2019. Among those items were the

- firearms which Mr. Montgomery now stands accused of stealing. Initially, CF told police that he suspected his wife, KF, of the theft. KF denied the allegations. *Discovery 11-12.*
5. On December 19, 2019, KF was interviewed by police following her arrest for Possession of Crack Cocaine. It was not until this interaction, when KF herself faced criminal charges, that she mentioned Mr. Montgomery as a potential suspect. *Discovery 16-17.*
  6. On February 6, 2022, Manchester Police discovered that one of the stolen firearms, a Ruger 380, was recovered by Boston Police in March of 2021 following the arrest of OP and a search of 106 Brunswick Street, Apartment 3, in Dorchester, Massachusetts. Manchester Police later spoke to Assistant United States Attorney John Dawley and Federal Bureau of Investigation Agent Michael Little regarding OP. It was reported that OP had a “proffer meeting” with federal law enforcement in July 2021. At that meeting he indicated that he had received the firearm from IG. *Discovery 19.*
  7. A second proffer by OP occurred on March 8, 2022, at 1 Courthouse Way in Boston. It is noted that OP was incarcerated on federal charges at the time of the proffer, and present were Manchester Police Officer Max Rahill, Alcohol Tobacco and Firearms Agent John Forte, Assistant United States Attorney Anna Krasinski, and Attorney Mark Shea, counsel for OP. *Discovery 43-44.*
  8. On March 1, 2022, law enforcement interviewed MR at the New Hampshire State Prison where he was incarcerated. A police report reads, “We met with Reed in a private interview room and I advised him he was not in any trouble.” *Discovery 31-32.*
  9. On March 10, 2022, Alcohol Tobacco and Firearms Agent John Forte, Chief Parole and Probation Officer Boiselle, and Manchester Police Detective Max Rahill met with IG. *Discovery 48.*
  10. On March 31, 2022, MS was interviewed by Manchester Police. It is of particular import that MS signed a *Miranda* waiver, indicating that he was formally in police custody. *Discovery 71-72.*

### **LEGAL ARGUMENT**

11. In *Brady v. Maryland*, 373 U.S. 83, 87 (1963), the Court held that “the suppression by the prosecution of evidence favorable to the accused upon request violates due process where the evidence is material to guilt or punishment, irrespective of the good faith or bad faith

of the prosecution.” *See also Strickler v. Greene*, 527 U.S. 263, 288 (1999). ([U]nder *Brady* an inadvertent nondisclosure has the same impact on the fairness of the proceedings as deliberate concealment”).

12. Echoing *Brady*, the New Hampshire Supreme Court reiterated the proposition that the State is the State with its holding in *State v. Laurie* and *State v. Lucius*. 139 N.H. 325 (1995). 140 N.H. 60 (1995). In those cases, the Court granted each defendant a new trial despite the prosecution’s ignorance of the undisclosed exculpatory evidence.
13. The mandate of *Brady* was explicitly extended to evidence relevant to witness credibility in *Giglio v. United States*, 405 U.S. 150, 154-55 (1972). In that case, the State relied heavily on the testimony of a particular witness who was made promises by a State actor unbeknownst to the Defense. Given that his testimony was integral to the State’s case, the Court found that failure to disclose the promises made to that witness, even if they had not in fact come to fruition, warranted a new trial. *Id.*
14. Analogous to *Giglio*, the State’s case in the above-captioned matter relies heavily on the testimony of witnesses who likely received consideration from the State. In order to protect Mr. Montgomery’s due process rights, the State must disclose any consideration provided these witnesses, even if promises were not made by the prosecution itself. *Kyles v. Whitley*, 514 U.S. 419, 437 (1995).

### CONCLUSION

15. The facts outlined above indicate a likelihood that State witnesses KF, OP, IG, MR, and MS received consideration for their testimony, testimony on which the case against Mr. Montgomery is built.
16. To protect Mr. Montgomery’s due process rights as outlined in *Brady* and its progeny, the State must disclose to the defense any and all consideration provided these witnesses.

WHEREFORE, counsel for Mr. Montgomery requests this Court:

- A. Order that the State turn over all *Giglio* material as it relates to KF, OP, IG, MR, and MS; or
- B. Hold a Hearing on this Motion; and

C. Grant any other relief in favor of the defendant that the Court deems just and equitable.

Respectfully submitted,  
/s/ Paige Pihl Buckley  
Paige Pihl Buckley, Esq.  
N.H. Bar #272328  
N.H. Public Defender  
20 Merrimack Street  
Manchester, NH 03101  
(603)669-7888

/s/ Carline L. Smith  
Caroline L. Smith, Esq.  
N.H. Bar #5992  
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 has been forwarded to the Office of the Attorney General via e-filing on this 6<sup>th</sup> day of September 2022.

/s/ Paige Pihl Buckley  
Paige Pihl Buckley, Esq.