

THE STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS.

HILLSBOROUGH COUNTY SUPERIOR COURT - NORTH

STATE OF NEW HAMPSHIRE

V.

ADAM MONTGOMERY

216-2022-CR-577

MOTION IN LIMINE: EVIDENCE OF OTHER FIREARMS

NOW COMES the defendant, Adam Montgomery, by and through counsel, Caroline L. Smith, Esq., and respectfully requests this Honorable Court to issue an order precluding the State from introducing evidence of other alleged bad acts, specifically, evidence of alleged possession of firearms other than those alleged in the indictments. This motion is made pursuant to NHRE 402, 403 and 404(b).

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. Discovery provided by the State includes allegations that Mr. Montgomery purchased, possessed and/or sold firearms other than those specified in the indictments, including but not limited to, an inoperable firearm allegedly obtained from Mark Reed, and an AK-47 sold to Mr. Montgomery by "Britney" and obtained by her from Sean Houle. Discovery also contained more general allegations of being involved with firearms.
3. "The purpose of Rule 404(b) in a criminal trial is to ensure that the defendant is tried on the merits of the crime as charged and to prevent a conviction based on evidence of other crimes or wrongs. Evidence of other wrongs is inherently prejudicial and increases the likelihood that a jury will decide the case on an improper basis. The concern that a defendant might be convicted because of his character is the gravamen of Rule 404(b)." State v. McGlew, 139 N.H. 505

(1995)(citations omitted). For such evidence to be admitted, the proponent of the evidence must show that (a) the evidence is relevant for purposes other than proving character or disposition; (b) there is clear proof the evidence is true; and (c) the probative value of the evidence must not be substantially outweighed by its prejudice to the defendant. Id. at 507. Bad act evidence includes acts prior to, and subsequent to, the charged acts. See, State v. Richardson, 138 N.H. 162 (1993).

4. “The State must state the specific purpose for which the evidence is offered and must articulate the precise chain of reasoning by which the offered evidence will tend to prove or disprove an issue actually in dispute, without relying upon forbidden inferences of predisposition, character, or propensity.” McGlew at 509-510. In articulating the State’s burden, the Supreme Court stated that the proponent of such evidence cannot simply give a mechanical recitation of 404(b) as a basis for admissibility. The State may not merely parrot the grounds set forth in the rule. Rather, it must articulate precisely how the fact of consequence may be inferred from the evidence sought to be admitted. Id. at 509.

5. In addition to proving an issue without relying on the prohibited character inferences, the evidence sought to be introduced must relate to an issue that is actually disputed. Specifically, the State must articulate how the evidence will tend to prove an issue in dispute without relying upon “forbidden inferences of predisposition, character or propensity.” Id. at 510. Thus, evidence tending only to prove an issue not actually in dispute is irrelevant and inadmissible under rule 402. Id.

6. If the State meets its burden, the Court must then balance the probative value against the prejudice admitting such evidence has to the defendant. Id. “Evidence is unfairly prejudicial if its primary purpose or effect is to appeal to a jury's sympathies, arouse its sense of horror, provoke its instinct to punish, or trigger other mainsprings of human action that may cause a jury

to base its decision on something other than the established propositions in the case.” Id.
(citations omitted).

7. The State has not filed a motion to present evidence of other gun purchases, possessions and/or sales, however, the deadline for such motion is October 12, 2022. It is in the interest of caution that this motion is filed.

WHEREFORE, Adam Montgomery respectfully requests this Honorable Court,

- A. Preclude evidence of other alleged firearm possession; or
- B. Hold a hearing on this Motion; and
- C. Grant any other relief the Court deems just and proper.

Respectfully submitted,

/s/ Caroline L. Smith
Caroline L. Smith, Esq.
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CERTIFICATE OF SERVICE:

I hereby certify that a copy of this Motion in Limine - Evidence of Other Firearms has been forwarded to the Office of the Attorney General on this 11th day of October, 2022.

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