

THE STATE OF NEW HAMPSHIRE
HILLSBOROUGH, SS. HILLSBOROUGH COUNTY SUPERIOR COURT NORTH
STATE OF NEW HAMPSHIRE

V.

ADAM MONTGOMERY

216-2022-CR-577

**RESPONSE TO STATE'S OBJECTION TO MOTION TO PRECLUDE TESTIMONY
OF KAYLA MONTGOMERY**

NOW COMES the defendant, Adam Montgomery, by and through counsel, Caroline L. Smith, Esq., and respectfully responds to the State's Objection to Motion to Preclude Testimony of Kayla Montgomery as follows:

1. New Hampshire Rule of Criminal Procedure 12(b) sets forth the discovery deadlines for the State when a case is initiated as follows:

Pretrial Disclosure by the State. If a case is initiated in superior court, the State shall provide the materials specified in RSA 592-B:6. In addition, within forty-five calendar days after the entry of a not guilty plea by the defendant, the State shall provide the defendant with the materials specified below. If a case is originated in circuit court-district division, within ten calendar days after the entry of a not-guilty plea by the defendant, the State shall provide the defendant with the materials specified below.

2. In his Motion to Preclude Testimony of Kayla Montgomery, Mr. Montgomery did not fault the State for failing to meet its 45-day deadline for disclosure of the June 3, 2022 statement of Kayla Montgomery, recognizing that the statement was made more than 45 days after his initial arraignment on April 5, 2022. However, the State still failed to turn over the statement 45 days after the June 20, 2022 indictments on those charges, and again failed to do so 45 days after the June 28 dispositional conference at which the State elected to proceed on the gun charges first.

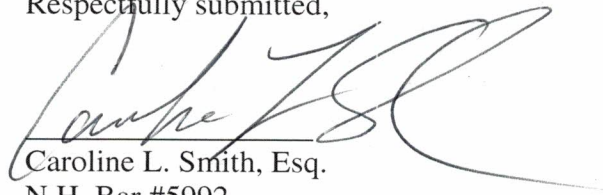
3. The State appears to argue that its four-month delay in turning over the statement was "timely" and in accordance with its continuing duty to disclose pursuant to Rule 12(b)(7) because it disclosed the statement at the deadline for filing a witness list and statements of those witnesses not already provided. However, the State fails to look at the term "timely" in context with the rest of the rule: "The parties are under a continuing obligation to supplement their discovery responses on a timely basis **as materials covered by this rule are generated or as a party learns that**

discovery previously provided is incomplete, inaccurate, or misleading". *Emphasis added.* A four-month delay in disclosing a statement of a witness that is substantially different from statements of that witness previously provided is not timely and violates the continuing duty to disclose.

4. The State appears to acknowledge that it acted intentionally when it withheld the June 3, 2020 statement. *See* ¶16. This means that on June 28, 2022, when the State requested to proceed on the gun charges before the second-degree assault, interference with custody, and endangering charges, it did so knowing that discovery was not complete and intending to withhold critical information regarding a key witness. The State chose the docket subjecting Mr. Montgomery to the most exposure for prison time, while at the same time intentionally handicapping Mr. Montgomery's defense.

5. Mr. Montgomery has asserted his right to speedy trial. The intentional violation of discovery disclosure rules by the State cannot be used to force Mr. Montgomery to waive this right. In this circumstance, the only appropriate sanction is to prohibit the State from introducing the evidence it failed to disclose in a timely manner. *See* NH Rules of Criminal Procedure 12 (b)(9).

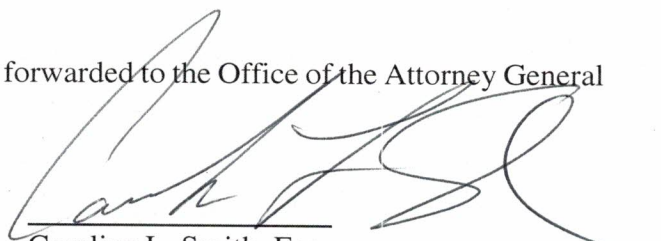
Respectfully submitted,



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CERTIFICATE OF SERVICE:

I hereby certify that a copy of this has been forwarded to the Office of the Attorney General on this 25th day of October 2022.



Caroline L. Smith, Esq.