

HILLSBOROUGH, SS.
Northern District

THE STATE OF NEW HAMPSHIRE

SUPERIOR COURT

State of New Hampshire

v.

Adam Montgomery

Case No. 216-2022-CR-00577

**STATE'S PARTIAL OBJECTION TO DEFENDANT'S MOTION TO ADMIT
IMPEACHMENT EVIDENCE RE: KAYLA MONTGOMERY**

NOW COMES the State of New Hampshire, by and through its attorneys, the Office of the Attorney General, and hereby objects in part to the defendant's Motion to Admit Impeachment Evidence Re: Kayla Montgomery ("Def.'s Mot."). As reasons therefore, the State submits as follows:

1. The defendant seeks to admit evidence of charges pending against Kayla Montgomery, an anticipated witness in this matter, when she spoke to police as well as immediately following her discussion with police. (Def.'s Mot. ¶ 3.)
2. The State concedes that evidence of pending charges against a witness is generally admissible as impeachment evidence to show a witness's potential motive to lie. *See, e.g., Stephens v. Hall*, 294 F.3d 210, 224 (1st Cir. 2002) ("As a general rule, pending charges are relevant to show pro-government bias on the part of the testifying witness, on the theory that the witness might tailor her testimony to plea the prosecutor, in exchange for a promise of leniency on the pending charges.")
3. However, as with all relevant evidence, evidence of pending charges against a witness is subject to the balancing test found in Rule 403 of the New Hampshire Rules of

Evidence. Specifically, the Court “may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.”

4. Regarding the perjury and theft by deception charges pending against Kayla Montgomery, the probative value of the impeachment evidence is substantially outweighed by a danger of unfair prejudice. This is because, contrary to a prior conviction for these offenses, which would generally be admissible under Rule 609 as evidence of a witness’s character for untruthfulness, evidence of the pending charges is instead admissible as evidence of a motive to lie.

5. If the jury were to hear that Kayla Montgomery has pending charges of perjury and theft by deception, the names of those charges may cause the jury to draw improper inferences as to Kayla Montgomery’s character for truthfulness or untruthfulness when she has not been convicted of those charges and is presumed innocent until proven guilty. This would be beyond the permissible impeachment use of evidence of the pending charges.

6. Presumably, a witness’s motive to lie is tied not to the specific name of the pending charge, but to the potential penalty the pending charge carries. In other words, common sense dictates that a witness who is facing a felony charge has more of a motive to lie than a witness who is only facing a misdemeanor. Therefore, in order to balance the probative value of the impeachment evidence of the pending charges against Kayla Montgomery with the potential for unfair prejudice, the State requests that the defendant be restricted to referring to the two perjury charges and the theft by deception charge only as “felonies,” and not by the name of the

charge. This would allow the defendant to present evidence of Kayla Montgomery's potential motive to lie while minimizing the risk of unfair prejudice.

WHEREFORE, the State of New Hampshire respectfully requests that this Honorable Court:

(A) Deny the defendant's Motion to Admit Impeachment Evidence re: Kayla Montgomery to the extent the defendant seeks to admit the name/substance of the perjury and theft by deception charges; and

(B) Grant such further relief as may be deemed just and proper.

Respectfully submitted,

THE STATE OF NEW HAMPSHIRE

By its attorneys,

John M. Formella
Attorney General

Date: October 24, 2022

/s/ Jesse O'Neill
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CERTIFICATE OF SERVICE

I hereby certify that on this date a copy of the foregoing was sent to counsel for the defendant via the electronic case filing system.

/s/ Jesse O'Neill
Jesse O'Neill