

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 RESPONSE TO DEFENDANT'S MOTION TO STIPULATE TO STATUS AS
FELON**

NOW COMES the State of New Hampshire, by and through its attorneys, the Office of the Attorney General, and hereby responds to the defendant's Motion to Stipulate to Status as Felon ("Def.'s Mot.").

1. On or about September 2, 2022, the defendant filed a motion to sever the Armed Career Criminal and Felon in Possession charges from the charges of Receiving Stolen Property and Theft by Unauthorized Taking or Transfer. On October 19, 2022, this motion was denied.

2. The defendant asks the Court, in the event the motion to sever is denied, to "permit [the defendant] to remove the issue of his status a [*sic*] violent felon from the jury by stipulating to such status." (Def.'s Mot. ¶ A.)

3. The State notes that the defendant's status as a "violent felon" is not an issue for the jury to consider in either the Armed Career Criminal charges or the Felon in Possession charges.

4. On the Armed Career Criminal charges, what the State must prove, and what the issue for the jury would be, is whether the defendant, at the time of the offense, had "been convicted of any combination of 3 or more felonies in this state or in any other state under

homicide, assault, sexual assault, arson, burglary, robbery, extortion, child sexual abuse images, or controlled drug laws.” *See* RSA 159:3-a, I. Similarly, on the Felon in Possession charges, what the State must prove is whether the defendant, at the time of the offense, had “been convicted in a state court in this or any other state of a felony against the person or property of another.” *See* RSA 159:3, I.

5. Therefore, if the defendant wants to remove his status as a felon from the consideration of the jury, the State proposes a stipulation consistent with the State’s burden on the Armed Career Criminal and Felon in Possession charges. Specifically, the State proposes that the defendant stipulates as follows: “The defendant stipulates that he has been convicted of any combination of 3 or more felonies in this state or in any other state under homicide, assault, sexual assault, arson, burglary, robbery, extortion, child sexual abuse images, or controlled drug laws. The defendant further stipulates that he has been convicted in a state court in this or any other state of a felony against the person or property of another.”

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

- (A) With the knowing, intelligent, and voluntary consent of the defendant, permit the defendant to stipulate as stated in paragraph 5 above; 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