Filed
File Date: 1/15/2024 12:59 PM
Hillsborough Superior Court Northern District
E-Filed Document

THE STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS. HILLSBOROUGH COUNTY SUPERIOR COURT - NORTH

STATE OF NEW HAMPSHIRE

V.

ADAM MONTGOMERY

216-2022-CR-20

216-2022-CR- 2372

DEFENDANT'S RESPONSE TO STATE'S MOTION *IN LIMINE*
TO PRECLUDE DEFENDANT'S USE OF HIS OWN STATEMENTS

Now comes Adam Montgomery, by and through his Public Defenders, Caroline L. Smith, Esq., and James T. Brooks, Esq., and hereby responds to the State's Motion *in Limine* to preclude the Defendant's use of his own statements.

As grounds for this response, the following is stated:

1. Kayla Montgomery and/or Adam Montgomery seeded false exculpatory statements to suggest that Harmony Montgomery was taken to her biological mother to live after the Montgomery's were evicted from their residence.
2. Mr. Montgomery concedes that false exculpatory statements purportedly made by him may be elicited by the State. He further concedes that he may not elicit such statements absent the State "opening the door" or creating a misleading impression.
3. False exculpatory statements of the same ilk by Kayla Montgomery, however, are relevant and admissible on numerous grounds, including as prior inconsistent statements and lying under oath to the grand jury.

4. Mr. Montgomery further agrees with the State that inadmissible evidence asserted in opening is not necessarily remedied by a curative instruction. Mr. Montgomery asserts that the same rules should apply to the State's opening. Significant disagreements exist regarding the admissibility of uncharged allegations of assaultive and abusive conduct by Adam Montgomery as part of a purported pattern of abuse against Kayla and/or Harmony Montgomery prior to and, in Kayla's case, subsequent to, Harmony's death.
5. Mr. Montgomery agrees that under State v. Bennett, 144 N.H. 13 (1999), he may not argue his cooperation with the police's investigation. He has no intention of doing so. His failure to cooperate, however, is not reflective of guilt.
6. The State asserts concerns that Mr. Montgomery will use his opening statement "in order to attempt to assert a claim of nonculpable metal state" . See State's Motion in Limine: To Preclude the Defendant's Use of His Own Statements at ¶ 5. Mr. Montgomery has no intention of doing so. Rather, he asserts that **he did not cause the death of Harmony Montgomery** and his opening statements will not be reflecting the defense apparently envisioned in the State's argument.
7. At this time, without knowing the State's strategy, Mr. Montgomery has no intention of arguing statements made by him were excited utterances.
8. In short, the defendant is not seeking to introduce inadmissible hearsay evidence. He, however, reserves the right, pursuant to New Hampshire Rule of Evidence 106 and its completeness doctrine, to introduce potential statements by him to rebut or explain statements introduced by the State. He also reserves the right use to use same as impeachment of a witness or to correct a misleading impression. Just as the State is

unable to foresee every circumstance it may seek to introduce a statement by Adam Montgomery as a party admission, the defense is equally unable to proactively anticipate every instance a statement by Adam Montgomery may be admissible for a non-hearsay purpose. Suffice it to say that Mr. Montgomery does not intend to use his statements regarding the disappearance or death of Harmony Montgomery in his "case in chief".

WHEREFORE, Adam Montgomery respectfully responds to the State's Motion.

Respectfully submitted,

/s/ Caroline L. Smith
Caroline L. Smith, Esq.
NH Bar #5992
NH Public Defender
408 Union Avenue
Laconia, NH 03246
(603) 524-1831

/s/ James T. Brooks
James T. Brooks, Esq.
NH Bar #14876
NH Public Defender
27 John Stark Highway
Newport, NH 03773
(603 865-1460

CERTIFICATE OF SERVICE:

I hereby certify that a copy of this response has been forwarded to Senior Assistant Attorney General Benjamin J. Agati and Assistant Attorney General R. Christopher Knowles on this 15th day of January 2024.

/s/ Caroline Smith
Caroline Smith, Esq