

THE STATE OF NEW HAMPSHIRE  
SUPREME COURT

No. 2021-0394

State of New Hampshire

v.

Caleb Douglas Marquis

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APPEAL PURSUANT TO RULE 7 FROM A JUDGMENT OF THE  
HILLSBOROUGH COUNTY SUPERIOR COURT  
(SOUTHERN)

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**REPLY BRIEF FOR THE STATE OF NEW HAMPSHIRE**

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## ARGUMENT

### **I. THE TRIAL COURT LISTED CERTAIN FACTS BUT DID NOT CONSIDER THEM IN ITS ORDER SUPPRESSING THE EVIDENCE.**

In his brief, the defendant takes issue with the State's contention that the trial court "ignored certain key facts" in suppressing the evidence. DB 21. The analysis of the custody issues regarding the third interview began on page 14 of the court's order. SA 54. The court wrote, "several factors surrounding the defendant's third interview at the Nashua police station weigh in favor of finding that he was in custody." SA 54. The reference to the fact that he was there as a visitor, therefore, weighed in favor of finding no custody in the first two interviews, SA 46, but was dismissed in a sentence in the analysis of the third interview, SA 57. The trial court similarly dismissed the significance of the fact that the defendant arrived of his own volition. SA 57. Merely mentioning these facts without discussing them is, in the State's view, the equivalent of ignoring them.

The defendant next contends that the State "claims that the trial court did not refer to the video recordings." DB 22. This simply misquotes the State's argument. The State wrote: "Although the court had access to the recorded interviews, it did not refer to them *in gauging the defendant's behavior* while being interviewed." SB 25 (emphasis added) (citations to the record omitted). The court did not refer to the tapes when reviewing the defendant's reactions. The defendant then points out, as proof that the court did refer to the tapes that it found that Det. Durden "raised his voice." DB 22. This assertion simply proves the State's point: the court may have

used the tapes to judge the detectives' actions; it did not use them to gauge their effect on the defendant.

The difference is important as the functional equivalent of custodial interrogation “focuses primarily upon the perceptions of the suspect, rather than the intent of the police.” *State v. Plch*, 149 N.H. 608, 614 (2003) (quoting *Rhode Island v. Innis*, 446 U.S. 291, 301 (1980) (internal quotation marks omitted)). The perception that Det. Durden raised his voice does not answer the question of whether that act actually had an impact on the defendant. That analysis is missing from the court’s analysis. Although the standard remains an objective standard, *State v. Sachdev*, 171 N.H. 539, 548 (2018), the defendant reaction – or lack thereof – is relevant to the determination. It is also notably missing from the trial court’s analysis.

**II. THE STATE IS NOT REQUIRED TO DEMONSTRATE EITHER RELEVANCE OR ADMISSIBILITY IN A SUPPRESSION HEARING.**

The defendant next states that the State has not “identif[ied] a point in the interview beyond which the evidence should be suppressed but before which there is any relevant or admissible evidence.” DB 23. The defendant is correct that the State contends that the order suppressing the entire interview was error. But the defendant is incorrect as a matter of law that the State must show that the suppressed statements are either relevant or admissible.

The sole consideration in a suppression hearing is whether the defendant was subjected to custodial interrogation without the benefit of *Miranda* warnings. *Sachdev*, 171 N.H. at 548. The questions of admissibility and relevance are questions for the trial court before and

during trial. *See, generally, State v. Kim*, 153 N.H. 322 (2006) (discussing relevance and probative value of Rule 404(b) evidence).

Indeed, relevance and admissibility are not generally considerations in suppression hearings as the Rules of Evidence do not apply. *See N.H. R. Ev.* under 104(a) (“The court must decide any preliminary question about whether . . . evidence is admissible.”); 1101(d)(3) (The Rules of Evidence do not apply to “preliminary examinations” in criminal cases.); *United States v. Schaefer*, 87 F.3d 562, 570 (1st Cir. 1996) (stating that it is a “bedrock” principle that the Federal Rules of Evidence “do not apply at suppression hearings”); *United States v. Feliz*, 794 F.3d 123, 133 n. 3 (1st Cir. 2015) (same). In short, the defendant’s suggestion that the State must demonstrate relevance and admissibility is both an incorrect statement of the law and premature.

**CONCLUSION**

For the foregoing reasons, the State respectfully requests that this Honorable Court reverse the judgment below.

The State requests a 15-minute oral argument.

Respectfully Submitted,

THE STATE OF NEW HAMPSHIRE

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June 10, 2022

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**CERTIFICATE OF COMPLIANCE**

I, Elizabeth C. Woodcock, hereby certify that pursuant to Rule 16(11) of the New Hampshire Supreme Court Rules, this brief contains approximately 707 words, which is fewer than the words permitted by this Court's rules. Counsel relied upon the word count of the computer program used to prepare this brief.

June 10, 2022

*/s/Elizabeth C. Woodcock*  
Elizabeth C. Woodcock



**CERTIFICATE OF SERVICE**

I, Elizabeth C. Woodcock, hereby certify that a copy of the State's reply brief shall be served on Deputy Chief Appellate Defender Stephanie Hausman, counsel for the defendant, through the New Hampshire Supreme Court's electronic filing system.

June 10, 2022

*s/Elizabeth C. Woodcock*  
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