

[REDACTED]

3. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

4. Finally, the defendant states in his motion that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

5. On that basis, the defendant requests that the court order the State to [REDACTED]

[REDACTED].

6. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] The State is concerned that the defendant is attempting to sway public

perception against [REDACTED] through the calculated public filing of documents. The defendant

should not be allowed to publicly malign a witness for the State by vaguely and speculatively referencing [REDACTED]

[REDACTED]. Any contention by the defendant that such filing was made public through error is belied by his own actions.

7. Accordingly, the State respectfully requests that this Court: (1) place the defendant's filing under seal; and (2) order the defendant to provide the State a copy of any future motions—absent any intended *ex parte* motions—before filing, so as to allow the State the opportunity to request with this Court that the pleading be placed under seal before the defendant publicly files them. See N.H. R. Crim. Rule 50(d)(2)(B(ii)) (noting individual “privacy interests” as “confidential information”).

8. The State also respectfully requests permission to share the defendant's original pleading, the State's objection, and any resulting order by the Court with [REDACTED]. Again, the parties and this Court are well aware of the public scrutiny accompanying this case. It is very likely that interested parties and/or media outlets have already obtained copies of the defendant's pleading. Therefore, [REDACTED] should be made fully aware of all the facts and circumstances surrounding the defendant's filing.

9. The State also respectfully requests “an immediate order to seal the document pending the court's ruling on the motion,” N.H. R. Crim. Rule 50(d)(7), as well as the instant motion pursuant to N.H. R. Crim. Rule 50 (d)(5).

II. The State Objects to the Defendant’s Demand that the State Obtain and Provide Additional Evidence, Where the Defendant Has a Method to Obtain the Evidence

10. At the outset, defense counsels’ statement about not knowing whether the State was aware of [REDACTED] before the deposition is inconsistent with the facts. [REDACTED]

[REDACTED] Defense counsel is well aware that both the State and defense counsel were equally surprised by this revelation, which was learned at the very end of [REDACTED]. The State will not belabor the issue, but undersigned counsel for the State and defense counsel specifically discussed the mutual surprise after the deposition had concluded. Any assertion to the contrary is disingenuous.

11. The defendant seeks an order from the Court that the State [REDACTED]

[REDACTED]
[REDACTED]. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] Thus, the defendant requests the State [REDACTED]

The State objects.

12. The defendant cannot demand that the State obtain and produce such records. See Petition of State, 169 N.H. 340, 342, 147 A.3d 860, 862 (2016) (adopting the rule “that the trial court cannot compel the State to obtain evidence for the defendant”). The defendant’s reference to Brady does not change this analysis. “Brady requires the State to give the defendant only the

exculpatory evidence that it possesses. Here, the defendant does not contend that the State possesses [records] that he is seeking.” Petition of State, 169 N.H. 340, 344, 147 A.3d 860, 864 (2016) (internal citation omitted). Accordingly, the State is not required to obtain and produce those records. See, e.g., Petition of State, No. 2018-0328, 2019 WL 2062189, at *3 (N.H. May 9, 2019) (unpublished non-precedential) (reversing “the trial court's order that the State provide at the complainant’s deposition a sufficient number of booking photographs from which the defense may create a photographic array”). Should the defendant wish to obtain the records it seeks, it must do so independently. The defendant cannot seek to use the State to conduct an investigation that it is unwilling to conduct itself, for material that may or may not exist.

13. As the defendant noted in his October 22, 2021 filing, the State has obtained over 500 pages of personnel records regarding Mr. Benanti. The State, although not required to disclose this non-exculpatory impeachment evidence, has informed defense that it will provide the records once the parties can agree on a protective order for them. Of note, the State requested access to those records at [REDACTED]. [REDACTED] The State had to use independent methods to obtain those records.

14. Likewise, the defendant has an available potential avenue for seeking the relief that he seeks—a subpoena duces tecum. See Lewandowski, 169 N.H. at 344 (“[T]he New Hampshire Rules of Criminal Procedure permit [a defendant] to serve on . . . third parties a subpoena duces tecum”).

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

- (A) Place the instant pleading and the defendant's "Motion for Discovery of Exculpatory Evidence – [REDACTED]" under seal immediately, pending the Court's ruling;
- (B) Allow the State to share the defendant's pleading, this motion, and any resulting order from the Court with the victims;
- (C) Deny the defendant's request for an order requiring the State to [REDACTED];
- (D) Hold a hearing, if the court believes it necessary; and
- (B) Grant such further relief as may be deemed just and proper.

Respectfully submitted,

THE STATE OF NEW HAMPSHIRE

By its attorneys,

November 4, 2021

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CERTIFICATE OF SERVICE

I certify that this pleading has been provided to counsel of record, through the Superior Court's electronic filing system.

/s/ Joshua L. Speicher
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