

THE STATE OF NEW HAMPSHIRE  
HILLSBOROUGH COUNTY SUPERIOR COURT – NORTHERN DISTRICT

HILLSBOROUGH, SS.

DECEMBER TERM 2023

STATE OF NEW HAMPSHIRE

V.

ALEXANDRA ECKERSLEY

216-2022-CR-3011


**DEFENDANT’S MOTION IN LIMINE #1**

NOW COMES Alexandra Eckersley, by and through counsel, Kimberly Kossick and Jordan A. Strand and requests this Court prohibit the State from referring to Ms. Eckersley’s son as the “discarded infant” during Trial. This terminology has no probative value, is unduly prejudicial, and would mislead the jury. Ms. Eckersley makes this request pursuant to the due process provisions of the federal and state constitutions, and New Hampshire Rules of Evidence 402 and 403. In support of the motion, the following is stated:

**FACTS**

1. The State has accused Ms. Eckersley [hereinafter Allie] of reckless conduct, falsifying physical evidence, second-degree assault and endangering the welfare of a child. These accusations stem from Allie unexpectedly giving birth in a tent in the woods in the late night of December 25, 2022.
2. Following the birth, George Theberge, with whom Allie was staying in the tent, called 911 and put Allie on the line with dispatch.
3. Allie spoke with the dispatch operator for approximately 12 minutes.

After review, and the State have asserted no objection or other responsive pleading, the motion is GRANTED.

  
Honorable Amy B. Messer  
January 9, 2024

Clerk's Notice of Decision  
Document Sent to Parties  
on 01/10/2024

4. The bulk of the conversation between Allie and the operator concentrated on managing Allie's ongoing post-birth bleeding. The operator advised Allie to keep warm, put towels or a blanket on the ground and stop moving. She advised Allie how to give herself a fundal massage and keep pressure on that area so the bleeding did not become worse. The operator asked Allie where the fetus was. Allie said it was on the ground. The operator told Allie to leave the fetus where it was, and to stay where she was, so the paramedics could see her when they arrived.
5. Allie told the operator that she did not think she could have been more than 3 months pregnant. She said she was not ready to have kids. She expressed her fear that she would make the same mistakes her birthparents made when she was born.
6. It is clear throughout this conversation that the event is being discussed as a miscarriage. The operator told Allie that "things happen for a reason" and that we all learn from our experiences in life.
7. Allie was clearly frightened. She was scared she would get an infection because "the cord is still coming out of her." So, at that point, Allie had still not expelled the placenta. Allie called what was happening to her a "life or death" situation.
8. Toward the end of the call, the operator called to update fire/rescue and told the person on the other end that the fetus was likely not viable. Allie was still on the line when this statement was made. The operator was exceptionally kind to Allie and did her best to help Allie through a very difficult and terrifying situation.
9. The operator told Allie to stay on the line until rescue arrived. Right after that, the call ended.

10. Presumably, rescue was not there. The call was made with George Theberge's phone. He was nowhere to be found when rescue arrived. He took his phone and abandoned Allie.
11. According to the affidavit, while walking to Allie's tent, officers saw what they believed to be a placenta on the side of the rail trail. Therefore, at some point between making the 911 call and rescue coming, Ms. Eckersley passed the placenta while alone in the woods.
12. When rescue arrived, they put Ms. Eckersley in the ambulance to treat her. When the police could not figure out where the baby was, they got Allie out of the ambulance. She was still in her bloody clothes, still experiencing postpartum bleeding. The police put a headlamp on her and told her to lead them to where the baby was.
13. The police asked her why she did not walk with the baby. Allie told them she did not know what to do.
14. Approximately ten minutes into the walk with Allie, the group of police pause to regroup. A male officer, it is unclear whether it is Officer Hennessey or someone else, says the following: "Are the cameras rolling? This chick is out of her fucking mind. She has no idea." This is followed by a female officer saying something to the effect of: "maybe three months, she said she popped out two kids."
15. It is clear from the bodycam that the officers believed that Allie was not in a good state of mind. It should have been clear that she was not in a good physical state considering she had lost quite a bit of blood before rescue even arrived and she was still bleeding.
16. The officers returned Allie to the ambulance to warm up.
17. The AMR attendant and a police officer asked Allie if she remembered anything now that she was warmed up. Allie answered that she was "still kind of in shock."

18. The AMR attendant told Allie that she was not in any trouble, but that the baby could still be alive and they needed to find it. Allie then told the attendant that the baby was across the bridge. The AMR attendant became upset with Allie. Allie said she had wanted to tell them but “didn’t want to get yelled at.”
19. Allie said, “I know exactly where it is. I just, I didn't want to risk and we're behind closed doors. So, I feel safe enough to tell you.” The AMR attendant told Allie that “[Theberge] can’t do anything to you.”
20. Allie led the police to the tent. On the way, Allie commented, “You understand what I what I mean? Once I was behind closed doors I was like I was ready to talk exactly what was going on.”
21. When officers arrived at the tent, the baby was still alive. Rescue personnel took the baby from the tent and brought him to the hospital.
22. By all accounts the child was never moved out of the tent.

### **ARGUMENT**

23. Allie asks the Court to prohibit the State from referring to her son during Trial as the “discarded infant” or anything to that effect.
24. This Court has broad discretion when determining what evidence is relevant. *N.H. R. Evid. 401*; *State v. Mazzaglia*, 169 N.H. 489, 492 (2016); *State v. Milton*, 169 N.H. 431, 435 (2016). However, the State has no evidence that the child was discarded and should be prohibited from arguing inaccurate information to the jury.
25. Even if the Court finds that the evidence supports the State’s argument, the probative value is substantially outweighed by the danger of unfair prejudice and/or misleading the jury. *N.H. R. Evid. 403*.

26. “It is well settled that counsel may not argue facts that have not been introduced into evidence.” *State v. Brinkman*, 136 N.H. 716, 720 (1993). Statements and arguments that are intended to elicit the emotions or prejudices of jurors that are not fairly inferable from the evidence at trial is not permissible. *Walton v. City of Manchester*, 140 N.H. 403, 407 (1995).
27. The jury is instructed to reach a verdict based on facts not sympathy. The State’s argument that the child was discarded is not supported by evidence and seeks to invoke the sympathy of the jury.
28. Allowing the State to refer to Allie’s son as the “discarded infant” would have “an undue tendency to induce a decision against the defendant on [an] improper basis . . . .” *See State v. Cochran*, 132 N.H. 670, 672 (1990) (citations omitted). There is no evidence that Allie discarded her son. It misleads the jury into believing the child was moved by Allie when the evidence will show that she [Allie] gave birth to her son in the makeshift tent, was told by George Theberge the child was not alive and was directed by the 911-dispatcher to leave the fetus where it was.

WHEREFORE, the defense requests that this Honorable Court:

- (A) Prohibit the State from making the aforementioned argument at Trial;
- (B) Hold a hearing on this Motion if necessary; and
- (C) Grant other relief deemed equitable and just.

Respectfully submitted,

/s/ Jordan A. Strand  
Jordan A. Strand #272303

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion has been forwarded this 26<sup>th</sup> day of December 2023 to Assistant County Attorney Shawn Sweeney and Alexander Gatzoulis with the Hillsborough County Attorney's Office – North.

/s/ Jordan A. Strand

Jordan A. Strand, Esq.