

THE STATE OF NEW HAMPSHIRE

CARROLL, SS.

April, 2025

CARROLL COUNTY SUPERIOR COURT

Granted



Honorable Mark D. Attori

May 5, 2025

STATE OF NEW HAMPSHIRE

V.

WILLIAM R. KELLY  
212-2023-CR-337

Clerk's Notice of Decision  
Document Sent to Parties  
on 05/05/2025

**MOTION FOR SERVICES OTHER THAN COUNSEL**  
**PURSUANT TO R.S.A. 604-A:6**

NOW COMES the defendant, William R. Kelly, by and through counsel, Brett W. Newkirk, Public Defender, and respectfully requests that this Honorable Court authorize the expenditure of funds in the amount of \$767.50 to reimburse the services of Court Reporting and Transcription Services performed by Avicore Reporting and Video..

- 1) Mr. Kelly is charged with Second Degree Murder.
- 2) Mr. Kelly is scheduled for Trial in November 2025.
- 3) On 3-19-2025, the Defense conducted a deposition of the Deputy Chief Medical Examiner Dr. Mitchell Weinberg.

**LEGAL ARGUMENTS**

4) The accused has a constitutional right to effective assistance of counsel and to a fair trial pursuant to the Sixth and Fourteenth Amendments to the United States Constitution, and Part I, Article 15, of the New Hampshire Constitution. The accused also has a constitutional right to be protected from a denial of equal protection pursuant to the Fourteenth Amendment to the

United States Constitution and Part I, Articles 1 and 12, of the New Hampshire Constitution. Finally, the accused submits that the New Hampshire Constitution provides an independent and adequate basis for this request. See, also, New Hampshire Rule of Evidence 702.

5) The accused submits that the equal protection guarantee requires that an indigent accused be provided "with the basic tools of an adequate defense or appeal, when these tools are available for a price to other prisoners." Britt v. North Carolina, 404 U.S. 226, 227, 92 S.Ct. 431, 433 (1971). See also Douglas v. California, 372 U.S. 353, 83 S.Ct. 814 (1963) (Indigent defendant entitled to court-appointed counsel to represent him on an appeal of right); Griffin v. Illinois, 351 U.S. 12, 76 S.Ct. 585 (1956) (Indigent defendant entitled to a transcript of lower proceedings at State expense when transcript necessary to effect appeal of right). State v. Cofske, 129 N.H. 133 (1987) (Indigent defendant entitled to free transcript of competency hearing when there was a demonstrated need and no reasonable alternatives); State v. Shute, 122 N.H. 498 (1982) (Indigent defendant entitled to free transcript of prior trial for use at new trial). To deny the accused the funds requested herein, when all other non-indigent defendants would be able to retain said services for this purpose, would be a denial of equal protection.

6) The accused further submits that effective assistance of counsel and the right to a fair trial requires, when appropriate, that an indigent defendant be provided with funding for services other than counsel. Ake v. Oklahoma, 105 S.Ct. 1087 (1985) (Indigent defendant entitled to access to psychiatric expert at state expense when insanity is defense); Williams v. Martin, 618 F.2d 1021 (4th Cir. 1980) (Indigent defendant entitled to forensic pathologist expert at state expense in homicide); Mason v. Arizona, 504 F.2d 1345 (9th Cir. 1974) (Indigent defendant entitled to investigation services to prepare for trial when need is demonstrated); In Re: Allen R.,

127 N.H. 718 (1986) (Indigent defendant entitled to services of psychologist at state expense); State v. Campbell, 127 N.H. 112, 115 (1985) (Indigent defendant entitled to expert services of a psychiatrist upon a demonstration "by reference to the facts and circumstances of his particular case that the assistance he seeks is necessary to ensure effective preparation of his defense by his attorneys [citations & quotations omitted]"; See also R.S.A. 604-A:6. In State v. Robinson, 123 N.H. 665, 669 (1983), the court held:

the right to counsel, as guaranteed by the Sixth Amendment and Part I, Article 15 of our own constitution, would be meaningless if counsel for an indigent defendant is denied the use of the working tools essential to the establishment of a tenable defense because there are no funds to pay for these items. [citations omitted]

WHEREFORE, the accused respectfully requests that this Court order the following relief:

- a) An order authorizing an expenditure of \$767.50 to Avicore Reporting and Video for Court Reporting Services and Transcription of this Deposition.

April 22, 2025

Respectfully submitted,

/s/ Brett W. Newkirk  
Brett W. Newkirk, Esq.  
NH Bar #18963  
N.H. Public Defender  
142 Portsmouth Ave, PO Box 679  
Stratham, NH 03885

#### Certificate of Service

I certify that a copy of the foregoing motion has been forwarded to the Office of the Attorney General on 4/22/2025.

/s/ Brett W. Newkirk  
Brett W. Newkirk, Esq.  
NH Bar #18963  
N.H. Public Defender



Case Name: **William Kelly**

Case Number: **212-2023-CR-337**

**MOTION FOR AUTHORIZATION TO OBTAIN SERVICES OTHER THAN COUNSEL**

**Brett W. Newkirk**

Name of Filer

**NHPD**

Law Firm, if applicable

**142 Portsmouth Ave**

Address

**Stratham**

City

**18963**

Bar ID # of attorney

**NH**

State

**03885**

Zip code

**/s/ Brett W. Newkirk**

Signature of Filer

**(603) 778-0526**

Telephone

**bnewkirk@nhpd.org**

E-mail

**04/22/2025**

Date

**FOR COURT USE**

Request is  Approved  Denied

Services not to exceed \$ 767.51, all or part of which may be ordered reimbursed by the liable party at the conclusion of the case.



Honorable Mark D. Attori

May 5, 2025