

THE STATE OF NEW HAMPSHIRE

CARROLL, SS.

CARROLL COUNTY SUPERIOR COURT

STATE OF NEW HAMPSHIRE

V.

WILLIAM R. KELLY

212-2023-CR-337

Objection to State's Motion to Unseal

And

Request to Delay Ruling

Redacted

NOW COMES the defendant, William R. Kelly, by and through counsel, Caroline L. Smith, Esq., and respectfully objects to the State's Motion to Unseal and requests this Honorable Court delay ruling on the matter until at least 90 days after disclosure by the State to defense counsel of all autopsy reports, lab testing, and Grand Jury statements in this matter. In support of this request, the following is stated:

1. The defendant is charged with two counts of Second Degree Murder for the deaths of Christine Falzone and for the death of her unborn fetus.
2. The defendant is scheduled for a Status Conference on June 20, 2024.
3. On December 17, 2023, some time in the early afternoon, Mr. Kelly was taken from his home and taken to the Carroll County Police Department and detained. According to police reports, an arrest warrant was applied for and signed by Judge St. Hilaire at approximately 22:00 that same day, and the formal arrest executed shortly thereafter. According to the State's motion, a number of search warrants were applied for, and presumably signed, at the same time as the arrest warrant.
4. On December 18, 2023, the signed arrest warrant and accompanying affidavit was filed with the Court along with a Motion to Seal same, which was granted. On information and belief, no other warrants were filed in this docket.

5. The State now seeks to unseal the previously filed arrest warrant as well as other warrants not filed in this docket. Mr. Kelly does not object to unsealing the signed arrest warrant. He does, however, object to the unsealing and disclosure of the affidavit in support of that warrant until, at the very least, he is able to conduct his investigation after full disclosure of the investigative discovery in this matter. He also objects to the unsealing of warrants not filed in this docket. If the Court, however, is inclined to unseal the other warrants, Mr. Kelly requests that the affidavit in support of those warrants remain sealed along with the affidavit in support of the arrest warrant.

6. As a general rule, pursuant to the New Hampshire Rules of Criminal Procedure, Rule 50(a)(21):

Except as otherwise provided by statute or court rule, all pleadings, attachment to pleadings, exhibits submitted at hearings or trials, and other docket entries (hereinafter referred to collectively as "documents") shall be available for public inspection. This rule shall not apply to confidential or privileged documents submitted to the court for in camera review as required by court rule, statute or case law.

7. RSA 595-A:4 "Affidavit in Support of Application for Warrant; Contents and Form" provides, in pertinent part and the documents "shall be a public document when the warrant is returned, unless otherwise ordered by a court of record." The State was able to obtain an exception to this public disclosure for purposes of its investigation. Mr. Kelly seeks a similar exception as it applies to the affidavits filed in support of the warrants for similar reasons.

[REDACTED]

10. As of the filing of this Objection, the State has provided general investigative discovery in this matter including 911 calls, interviews of responding EMT's, witnesses to the relationship between Mr. Kelly and Ms. Falzone, as well as prior history of Mr. Kelly. One result of testing

conducted by the NH State Lab has been provided. It is not known as of this filing whether other tests by the NH State Lab were conducted or about to be conducted. There is, however, critical information to the defense investigation that has not yet been received, including, the autopsy reports and any accompanying attachments, any results of testing conducted by outside facilities, and the Grand Jury testimony referred to in the State's Motion to Seal. Upon receipt of this information, defense counsel can commence their own investigation. [REDACTED]

[REDACTED]

12. The risk of compromise to the defense investigation is elevated here in this specific case because of the media attention the case has fostered. This expanded coverage appears to be due in large part to the fact that this case is the first action for murder of an unborn fetus since the law was changed to permit such a crime to be charged. Prior to a 2017 amendment, the murder statute specifically excluded an unborn fetus from the definition of murder.

[REDACTED]

14. Media attention in homicide cases experience an increased focus in New Hampshire. In this case, the charges have picked up national as well as statewide interest. Any premature disclosure of investigative material is highly prejudicial. The advent of media programs that critique investigations, hearings, trials and attorneys, as well as potentially conduct independent investigations, make any premature disclosure of investigative material even more prejudicial. This type of programing is not relegated to hobbyists but rather has ballooned into a form of consumable entertainment. There is a heightened risk that media commentators, including social media commentators, may seek to speculate about investigative matters in a manner that influences potential witnesses who have spoken to the State but not yet the defense, or witnesses who have

not yet spoken to either State or defense. The risk is further heightened by the emotionally and politically charged nature of the fetal death indictment.

WHEREFORE, Mr. Kelly, by and through Counsel, respectfully requests that this Honorable Court:

- A. Delay ruling on the matter until at least 90 days after disclosure by the State to defense counsel of all autopsy reports, lab testing, and Grand Jury statements; or,
- B. If this Court is inclined to unseal the other warrants, seal the affidavits in support of those warrants along with the affidavit in support of the arrest warrant for at least 90 days after the State's disclosure of all autopsy reports, lab testing, and Grand Jury statements;
- C. Order such other and further relief as may be just and proper.

Respectfully submitted,

/s/ Caroline L. Smith
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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Objection to State's Motion to Unseal has been forwarded to the Office of the Attorney General on this 27 day of March, 2024.

/s/ Caroline L. Smith
Caroline L. Smith, Esq.