

THE STATE OF NEW HAMPSHIRE

COÖS, SS.

SUPERIOR COURT

No. 214-2019-CR-00078

State of New Hampshire

vs.

Volodymyr Zhukovskyy

ORDER

On August 22, 2022, Boston Globe Media Partners, LLC (“Boston Globe”), publisher of the Boston Globe, filed a Petition to Access Juror Names, in which it seeks access to the names and addresses of the jurors in this case. (Index #444.) The State takes no position on the relief requested. (Index #446.) The defendant objects. (Index #448.) The New Hampshire Association of Criminal Defense Lawyers, appearing as amicus curiae, also objects. (Index #453.)

As the parties observe in their pleadings, the jurors’ decision following the conclusion of this case received commentary from public officials and extensive media coverage. (Pet. ¶¶ 6–8; Def.’s Obj. ¶¶ 15–16; Amicus’ Obj. ¶ 5–6.) Generally, “[t]he courts of New Hampshire have always considered their records to be public, absent some overriding consideration or special circumstance.” State v. Kibby, 170 N.H. 255, 258 (2017). Jurors’ names, however, are not typically records that are disclosed to the public. See, e.g., N.H. R. Crim. P. 22(b) (providing that parties to case shall not reveal any information contained in juror questionnaires, which includes jurors’ names and addresses, “except as may be necessary in connection with the prosecution or defense of the case or cases for which access was granted”); Procedure Relative to Juror

Questionnaire Dissemination, N.H. Superior Court Admin. Order 2016-06 ¶ 5 (May 4, 2016) (Order, Nadeau, J.) (explaining that “[j]uror questionnaires are confidential material”); Super. Ct. R. 38(e) (outlining rules regarding communication with jurors).

The Court must balance the Boston Globe’s interest in accessing the jurors’ names and addresses with the jurors’ interest in maintaining confidentiality, particularly in light of the media attention their verdict received. Kibby, 170 N.H. at 258–59 (discussing balancing competing interests in disclosing court documents); see “In re Disclosure of Juror Names & Addresses, 592 N.W.2d 798, 808–09 (Mich. Ct. App. 1999) (balancing the media’s interest in access to identity of jurors with jurors’ safety and privacy interests in criminal cases). The Court also considers any impact that allowing access to the jurors’ names and addresses may have on the integrity of the justice system. See id. at 808 (observing that “[u]nhibited and frank jury deliberations are essential to our system of justice. That frankness would be jeopardized if jurors refrained from speaking freely because they fear for their safety should their names and comments become public knowledge”).


In light of the concrete interests that each of the jurors has in this proceeding and in the relief that the Boston Globe seeks, the Court appoints Philip R. Waystack, Jr., Esquire as amicus counsel (“Court-appointed amicus”) to represent the interests of the seventeen jurors who sat on this case. See United States v. Chin, 913 F.3d 251, 254 (1st Cir. 2019) (appointing amicus counsel to represent the position reflected in the District Court’s order denying radio station’s motion to unseal names and addresses of jurors in criminal case). The Court-appointed amicus shall contact each juror and ascertain each juror’s position with respect to the relief requested and the juror’s reasons therefor.

On or before November 21, 2022, the Court-appointed amicus shall file a report, with copies to all parties, setting forth his findings, which report shall identify each juror by letter (A, B, C, and so forth) so as to maintain each juror's anonymity. The Court-appointed amicus shall simultaneously file under seal a schedule identifying each juror by letter and name, to which only the Court will have access. The Clerk shall then schedule a ninety-minute hearing on the Boston Globe's Petition as the docket permits. At least five business days prior to the hearing (1) the Court-appointed amicus shall file a hearing memorandum or brief on behalf of the jurors in which he articulates and advocates for their interests; and (2) any other party may file a hearing memorandum or brief.

The New Hampshire Judicial Branch shall be responsible for the Court-appointed amicus' reasonable fees, billed at his usual hourly rate, and expenses. The Court-appointed amicus shall submit his bill(s) to the Court for review and approval.

So Ordered.

Date: 10/19/2022



Hon. Peter H. Bornstein
Presiding Justice.

Clerk's Notice of Decision
Document Sent to Parties
on 10/19/2022