

THE STATE OF NEW HAMPSHIRE  
SUPERIOR COURT

COÖS, SS

JULY TERM, 2025

STATE OF NEW HAMPSHIRE

V.

DUSTIN MARK DUREN

214-2024-CR-00028

**STATE'S OBJECTION TO MOTION FOR EVIDENTIARY BAIL HEARING**

NOW COMES the State of New Hampshire, by and through its attorneys, the Office of the Attorney General, and respectfully objects to the defendant's Motion for Evidentiary Bail Hearing. The defendant is held without bail pursuant to RSA 597:1-c, not 597:2. This court therefore lacks discretion to grant the relief the defendant seeks. In support of this pleading, the State submits the following:

**FACTS AND PROCEDURAL HISTORY**

1. The defendant is charged with alternative charges of purposeful first-degree murder, knowing second-degree murder, and reckless second-degree murder, for killing Caitlyn Naffziger on February 29, 2024, in Berlin, New Hampshire. The defendant is further charged with reckless conduct with a deadly weapon and child endangerment related to his actions in the homicide.

2. After his arrest, the defendant was held without bail by the 1<sup>st</sup> Circuit, District Division, Berlin (*Subers, J.*). The bail order, dated March 4, 2024, states that the defendant "shall be held on no bail per [RSA] 597:1-c, 597:4" (emphasis in original).

3. On March 11, 2024, the defendant's case was bound over to this court. On June 28, 2024, after the Coos County Grand Jury returned indictments against the defendant, the defendant waived arraignment. The waiver of arraignment form, bearing the signatures of the defendant, counsel for the defendant, and counsel for the State, indicates that bail is to remain as set on March 4, 2024. The waiver of arraignment was approved by this court (*MacLeod, Jr., J.*) on June 28, 2024, with notice of the decision sent to the parties on July 1, 2024.

4. On August 28, 2024, the defendant filed an additional waiver of arraignment form, in relation to additional and amended charges. This form, bearing the signatures of the defendant, counsel for the defendant, and counsel for the State, states that bail is to remain as set on March 4, 2024 and on July 1, 2024.

5. The defendant now asks this court for a bail hearing pursuant to RSA 597:2. The defendant requests that his motion be granted "to explore bail modification as an alternative remedy for the constitutional violations he has endured." Def. Mot., ¶ 21. The defendant does not identify the nature of the bail modification he seeks.

### **ARGUMENT**

6. The defendant's motion should be denied because it seeks relief to which he is not entitled, and fails to identify any basis in the law for his request.

7. The defendant cites to RSA 597:2, IV(a), for the proposition that a defendant may request an evidentiary bail hearing at an initial appearance or at any time thereafter. The defendant also states that he has never previously requested an opportunity to be heard on bail pursuant to RSA 597:2. Def. Mot., ¶ 15.

8. The defendant's references to RSA 597:2 are inapposite. The defendant is held pursuant to RSA 597:1-c, not RSA 597:2.

9. RSA 597:1-c provides that “[a]ny person arrested for an offense punishable by up to life in prison, where the proof is evident or the presumption great, shall not be allowed bail.” Should the defendant request an evidentiary bail hearing, the State must meet this standard by clear and convincing evidence. *State v. Furgal*, 161 N.H. 206, 217 (2010).

10. The defendant has been arrested for, and charged with, first-degree murder and two alternative counts of second-degree murder. These offenses are punishable by up to life in prison. *See* RSA 630:1-a, III; 630:1-b, II; and RSA 651:2, II(d). He is therefore appropriately held pursuant to RSA 597:1-c.

11. RSA 597:1-c “leaves the court with no discretion where the proof is evident or the presumption great. In such cases, a person *shall* not be allowed bail.” *State v. Furgal*, 161 N.H. at 210 (emphasis in original). The plain language of RSA 597:1-c does not permit the trial court to consider factors such as flight risk or dangerousness. *Id.* at 211. “The ‘proof is evident’ analysis focuses solely upon the strength of the evidence against a defendant charged with a crime punishable by life in prison.” *Id.*

12. The defendant has not requested an evidentiary bail hearing pursuant to RSA 597:1-c and *State v. Furgal*. Should he do so, the resulting hearing must be narrowly focused on the strength of the evidence against the defendant. Should the State carry its burden to prove the strength of its case by clear and convincing evidence, then the trial court is without discretion and must continue to hold the defendant without bail until the conclusion of the defendant’s case. The defendant’s request for bail modification under RSA 597:2 is therefore inappropriate, and requests relief that this court is without authority to grant.

13. Notwithstanding the above, and contrary to the defendant’s characterization, the defendant has not “endured” any constitutional violations. After this court rescheduled the jury

trial in this matter from July of 2025 until October of 2025, the defendant filed a motion to dismiss on speedy trial grounds. In an order dated May 30, 2025, this court denied the motion. In its order, this court specifically found that “there has been no violation of [the defendant’s] right to a speedy trial,” and denied the motion to dismiss under both the New Hampshire and the United States Constitutions.

14. The defendant has not filed a motion to reconsider this court’s May 30, 2025 ruling. Nor has the defendant sought to appeal this court’s order by other means. The defendant’s claim that there have been constitutional violations based on this court’s rescheduling of the trial, therefore, is baseless, and his request for relief cannot rely on such claim.

15. As the defendant notes, the appropriate remedy for a violation of a defendant’s constitutional right to speedy trial is dismissal of the indictments. Def. Mot., ¶ 17. The defendant has already sought, and been denied, this remedy. The defendant nevertheless seeks the inappropriate - and unspecified – relief of “bail modification” as “an alternative remedy.” *Id.*, ¶ 21. The defendant provides no basis in the law for his claim that he is entitled to an “alternative remedy.”<sup>1</sup>

16. The defendant asserts that “procedural due process considerations must be explored within the context of this case and the delay in trial.” Def. Mot, ¶ 20. The defendant cites no statutory authority, and no caselaw, in support of this proposition. Nor does the defendant identify the nature of the procedural due process considerations he references. If the due process considerations the defendant references relate to this court’s rescheduling of the jury

---

<sup>1</sup> The defendant cites to *State v. Zhukovskyy*, 174 N.H. 430 (2021) for the proposition that a trial court is not required to grant a defendant’s request for a bail hearing under RSA 597:2. As the defendant himself notes, however, he has never previously requested an opportunity to be heard on bail pursuant to RSA 597:2. Def. Mot, ¶ 15. Since the defendant has not (until now) requested a bail hearing under RSA 597:2, and this court has therefore not yet had an opportunity to deny such a request, the New Hampshire Supreme Court’s holding in *State v. Zhukovskyy* is inapplicable.

trial in this matter, as it appears from the substance of the defendant's pleading, then this court has already rejected the defendant's arguments and found that there have been no constitutional violations. If they relate to different circumstances, the defendant has failed to identify either the constitutional rights he claims have been violated, or the manner in which the violations have occurred. On this basis, this court has insufficient information to grant the defendant a hearing, much less provide the relief he requests.

17. Since RSA 597:1-c does not grant this court discretion to release the defendant on any grounds other than those specified in *State v. Furgal*, a request for an evidentiary hearing under RSA 597:2, on the issues of flight risk or dangerousness, would be irrelevant and inappropriate. For the same reason, this court lacks the authority to make "bail modifications" on any grounds, constitutional or otherwise.

18. Although the defendant's pleading is captioned as a request for an evidentiary bail hearing, the defendant does not specify what nature of evidence would be required. As noted above, the defendant is entitled to an evidentiary hearing solely on the issue of the strength of the case against him, pursuant to RSA 597:1-c and *State v. Furgal, supra*. The defendant has not made such a request.

19. The defendant has not provided sufficient information to determine what nature of evidence would be required, or relevant, for this court to properly consider the nature of the unspecified "due process considerations" the defendant references, or the unspecified "bail modification" that he seeks. An evidentiary hearing on the matter is therefore not warranted.

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

- (A) Deny the defendant's motion; and
- (B) Grant such further relief as may be deemed just and proper.

Respectfully submitted,

THE STATE OF NEW HAMPSHIRE

JOHN M. FORMELLA  
ATTORNEY GENERAL

Date: July 7, 2025

/s/ Bethany J. Durand  
Bethany J. Durand, Bar #273943  
Assistant Attorney General  
New Hampshire Attorney General's Office  
1 Granite Place, South  
Concord, NH 03301  
Bethany.J.Durand@doj.nh.gov

/s/ Joshua L. Speicher  
Joshua L. Speicher, Bar #273020  
Senior Assistant Attorney General  
New Hampshire Attorney General's Office  
1 Granite Place, South  
Concord, NH 03301  
Joshua.L.Speicher@doj.nh.gov

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of this pleading was filed through the Court's electronic filing system and will be electronically served by the e-Filing system on counsel for the defendant on the date listed above.

*/s/ Joshua L. Speicher*

Joshua L. Speicher, Bar #273020  
Senior Assistant Attorney General