

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
SUPERIOR COURT

Hillsborough County

Hillsborough Superior Court Northern District

State v. Alexandra Eckersley

216-2022-CR-03011

ORDER ON UNION LEADER MOTION TO INTERVENE AND UNSEAL THE RECORDS

The Union Leader Corporation (“the UL”) has petitioned the Court to intervene in this matter and moved to unseal the records. At the outset, the Court addresses the UL’s request to intervene. Although both the State and the defendant have filed responsive pleadings to the motion, neither response objects to intervention. The Court notes that unlike the civil context, the Superior Court Rules of Criminal Procedure do not contain a rule regarding intervention. In a civil matter, pursuant to New Hampshire Superior Court Rule 15, “any person shown to be interested may become a party to any civil action upon filing and service of an Appearance and pleading briefly setting forth his or her relation to the cause.” While the right to intervene is typically “freely allowed,” it is “usually determined as a matter of discretion by the trial court.” Scamman v. Sondheim, 97 N.H. 280, 281 (1952); Parsons v. Eureka Powder Works, 48 N.H. 66, 67 (1868). In criminal cases, however, there is no express right to intervene. Rullo v. Rullo, 121 N.H. 299, 300 (1981) (explaining that estate, which alleged that criminal defendant had engaged in trespass and negligence, “had no opportunity or right to intervene in the [defendant’s] criminal case”). There are, however, exceptions such as when the press seeks to intervene where First Amendment rights may be affected or where it may be necessary for a third party to intervene in a criminal trial to challenge a request for production of documents on the ground of privilege. See Petition of Rubenzer, 2015 WL 11082611 (non-precedential).

There is no doubt that there is an important constitutional interest at stake with regard to open

access to the courts and court proceedings. “[O]ur State is one of only a handful of States with a constitutional provision that explicitly protects the public’s right of access to governmental proceedings and documents.” State v. DeCato, 156 N.H. 570, 574, 938 A.2d 898, 901 (2007) (quotation omitted); N.H. Const. Pt. I, Art. 8. Therefore, the UL’s request to intervene in this matter for the purpose of moving to unseal the documents is granted.

The Court now turns to the UL’s substantive request to unseal the documents. The public has a general right of access to court proceedings and records. See Associated Press v. State, 153 N.H. 120 (2005). Such access is afforded not only by operation of practice and common law principles, but importantly as a constitutional provision explicitly set forth in Part I, Article 8 of the New Hampshire Constitution, as well as being grounded in Part I, Article 22. Id. at 128. The constitutional right of access to court records applies to both civil and criminal proceedings. Petition of Keene Sentinel, 136 N.H. 121, 127–28 (1992). The importance of public access to court proceedings and documents is well established. See Associated Press, 153 N.H. 120. Unless some special circumstance exists, all documents which are filed with the court in connection with a pending case are accessible to the public. Petition of Union Leader Corp., 147 N.H. 603 (2002).

The right of access may be overcome, however, when a sufficiently compelling interest for nondisclosure is identified. Associated Press, 153 N.H. at 129. “Under the constitutional and decisional law of this State, there is a presumption that court records are public and the burden of proof rests with the party seeking closure or nondisclosure of court records to demonstrate with specificity that there is some overriding consideration or special circumstance, that is, a sufficiently compelling interest, which outweighs the public’s right of access to those records.” Id. at 129 (citations omitted). “Furthermore, even where a sufficiently compelling interest is demonstrated, a court record may not be kept sealed unless ‘no reasonable alternative to nondisclosure exists’ and the ‘least restrictive means available’ is

utilized to serve the interest that compels nondisclosure.” Id. at 130 (quoting Petition of Keene Sentinel, 136 N.H. at 129-130).

The Court notes that the pleadings and attachments found at Docket Index # 12, 16, 17, 18, 39, 41, 42, 43, 44, 47, 71, 86, and 91 have been placed under seal in their entirety on the asserted ground that these motions contain information that is subject to protective orders or generally contain information subject to a privilege, or other governmental interest. Upon review of the documents and motions to seal, and taking into consideration the current stage of the proceedings, the Court finds that maintaining all of these documents under seal may be contrary to the law.

For example, while the State’s motions to examine and supporting documents were placed under seal in light of the State’s interest in non-disclosure due to the State’s ongoing investigation, In re State (Bowman Search Warrants), 146 N.H. 621, 626 (2001), that interest abates as a matter moves to indictment and trial. Maintaining those pleadings under seal may no longer be necessary or proper. Additionally, sealing documents in their entirety, where only some information may be confidential does not comply with Rule 50(b). Where only parts of a pleading are confidential, a proposed redacted pleading, along with a motion to seal which states with specificity that which is privileged or confidential, must be filed. Legal arguments and facts already well within the public domain, and where no privilege or basis for confidentiality exists, should not be under seal. A blanket assertion that information should be sealed because it is subject to a protective order is not, without more, an adequate basis to seal. If only a portion of a document needs to be under seal, Rule 50(b) requires that a redacted and unredacted pleading be filed. That has not been done here.

Moreover, the Court finds the State’s argument that due to pretrial publicity the documents should remain under seal unavailing. This argument is more often raised by a defendant. The law is clear, however, that merely claiming that release of information will result in pervasive, adverse pretrial publicity is insufficient to show that a defendant cannot receive a

fair trial. See Nebraska Press Ass'n v. Stuart, 427 U.S. 539, 554 (1976). The defendant must establish a “substantial probability” he will not be able to obtain a fair trial without sealing the record. Press-Enter. Co. v. Superior Ct. of California for Riverside Cnty., 478 U.S. 1, 14 (1986). The Court sees no basis for an assertion that the interest of the State and the public in the fair administration of criminal justice will be impacted by disclosure. If such an assertion is to be made with respect to one of the identified documents it must be done with particularity. Voir dire of prospective jurors is most often an effective tool to screen out people who have been tainted by pretrial publicity. Id. at 15. The Court can summons a large jury pool and carefully screen out jurors who have been influenced by pretrial publicity. This Court regularly seats juries in high profile cases and questions them regarding any prejudice or bias s/he might have as a result of such media exposure.


Based on the foregoing, the parties are ordered to review the pleadings identified at the beginning of the preceding paragraph. Within 10 days of this order the parties shall file an agreement regarding any court filings they believe should be unsealed. If either party maintains their position that the document(s) should remain under seal, that party must identify with particularity the reason the document should remain under seal in its entirety pursuant to Rule 50(b). If the pleading(s) contains only some confidential information, the party seeking to maintain confidentiality must file a redacted and unredacted version of the pleading pursuant to Rule 50(b)(4)(C) together with a new motion to seal explaining with particularity the reasons why portions of the pleading(s) should be redacted and how long the redaction should remain in effect. If the parties fail to timely file such pleadings the documents will be unsealed.

Other court filings not identified above are also under seal. These are documents, Docket Index # 13, 15, 35, 37, 55, 56, 57, 58, 59, 65, 66, 72, 80, and 87 are automatically sealed by operation of law such as motions to seal, N.H. R. Crim. P. 50(d)(5), motions for services other than counsel, RSA 604-A:6, and mediation statements, Administrative Order 2021-02 – Criminal Mediation (2021). Because these matters are maintained under seal in

accordance with state law, court rule, or administrative order, the Court will not unseal these documents at this time.

SO ORDERED.

June 27, 2024
Date


Amy B. Messer
Presiding Justice

Clerk's Notice of Decision
Document Sent to Parties
on 06/27/2024