

THE STATE OF NEW HAMPSHIRE

HILLSBOROUGH COUNTY
NORTHERN DISTRICT

SUPERIOR COURT

STATE OF NEW HAMPSHIRE

V.

ALEXANDRA ECKERSLEY

216-2022-CR-3011

(2045612C; 2045614C; 245633C)

MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT AND
FOR A NEW TRIAL

Alexandra Eckersley, through counsel, Kimberly A. Kossick and Jordan Strand, respectfully asks the Court (Messer, J.) to enter judgment notwithstanding the verdict (JNOV) on charge i.d. 2045612C accusing her of reckless conduct (enhanced misdemeanor), charge i.d. 2045614C accusing her of falsifying physical evidence and charge i.d. 245633C accusing her of endangering the welfare of a child. If the JNOV request is denied, Ms. Eckersley asks the Court also to grant her a new trial on the above listed charges.

This motion is grounded in part 1, Article 15 and the Fourteenth Amendment.

As grounds, it is stated:

1. The court (Messer, J.) presided over a jury trial in this matter. A jury was selected on July 22, 2024. The trial started on July 25, 2024. On August 2, 2024, the jury returned guilty verdicts on reckless conduct (enhanced misdemeanor), falsifying physical evidence

(felony), and endangering the welfare (misdemeanor). The jury returned not guilty verdicts on the two second degree assault charges.

2. The New Hampshire Supreme Court has explained in some detail the differing standards that apply to a JNOV motion and a motion for new trial. See State v. Spinale, 156 N.H. 456 (2007). These standards will be set forth first before applying them to the facts adduced at trial in this case.
3. A JNOV motion must be granted where the evidence was insufficient as a matter of law. Id. at 463. The motion must be granted if no rational jury could have found guilt beyond a reasonable doubt. See id. In ruling on this motion, all evidence and reasonable inferences should be drawn in the light most favorable to sustaining the verdict. See id. at 464.
4. A motion for new trial may be granted if the Court concludes that the verdict was “against the weight of the evidence.” Id. at 465. Ruling on such a motion involves a more “subjective” inquiry because the Court weighs the evidence as it “sits as a `thirteenth juror.’” Id. (citations and internal quotations omitted). The inquiry is not one of mere sufficiency. “The weight of the evidence is its weight in probative value, not the quantity or amount of evidence. It is not determined by mathematics, but depends on its effects in inducing belief.” Id. (citation and internal quotations omitted). A trial court’s grant of a new trial does not mean that acquittal was the only proper verdict. Nor does it mean that the jury acted irrationally. Rather, it means that the jury acted unreasonably. See id.
5. Because the ruling on a motion for new trial necessarily involves a subjective examination of the probative value of the evidence, and includes consideration of the

credibility of the witnesses, such a ruling is reviewed more deferentially on appeal than a ruling on a JNOV motion. See id. at 466. The ruling on a motion for new trial will be upheld on appeal unless the ruling constituted an “unsustainable exercise of discretion.”

Id.

6. In order to apply these legal standards, it is necessary to review the trial testimony in this matter. The facts recounted below are taken from trial counsel’s notes and collective memory. Ms. Eckersley of course defers to the Court’s recollection of the testimony.
7. The State presented six witnesses.
8. Witnesses present at the scene on December 26, 2022, were Officer Collins, Officer Vitale, and Lauren Barry. Pam Packard was the 911 dispatcher who spoke with Allie.
9. The other two witnesses were Alexandra Gosselin and Dr. Brigid Linann from Catholic Medical Center (CMC).
10. The State’s evidence showed the following:
 - George Theberge called 911 and gave his phone number to Pam Packard.
 - Allie told Pam Packard that she did not know she was pregnant.
 - Allie told Pam Packard that she could not have been more than three months pregnant.
 - Allie was under the impression she had delivered twice.
 - Allie told Pam Packard one fetus lived for “a minute” and one was dead when it came out.
 - Pam Packard asked Allie where the fetus was and Allie said, “on the ground on the other side of the trestle.”

- The placenta Allie delivered was on the ground on the other side of the trestle. The baby was on the ground in Allie's tent.
- Pam Packard told her to leave the fetus "where it is."
- Allie was actively bleeding throughout the 12 minutes of the 911 call. Allie told Pam Packard that she thought she could die.
- George Theberge left the vicinity as soon as the State actors began arriving.
- While in the ambulance, Allie told the EMTs she heard the baby cry.
- Allie told the EMTs she had been near the ballfields when she delivered.
- Allie refused to go the hospital because it gave her anxiety and PTSD.
- EMTs told Allie that her post-partum bleeding was potentially life threatening.
- When Allie got out of the ambulance the first time, she led the first responders and Officer Vitale in the opposite direction from where she had delivered.
- At least one EMT told Officer Collins that Allie heard the baby cry.
- Allie told multiple people she lived on the other side of the trestle.
- Multiple first responders asked Allie where George was and how could they get George back to where they were.
- Multiple first responders seemed to know who George was and where he hung out.
- Allie told first responders she "was not lost in the woods."
- One officer told Officer Collins that Allie was "fucked up" and did not know what was going on.

- Officer Vitale asked Allie if she had been in a tent when she delivered and Allie said, “no.”
- Multiple first responders told Allie she was not in trouble.
- Officer Collins took Allie back to the ambulance because she was bleeding and cold.
- While in the ambulance, multiple people asked Allie to call “her boyfriend.”
- Allie attempted to call George but was not successful.
- Multiple people said that Allie lived on the other side of the trestle. More than one person commented that “made sense” because that was where the homeless encampment was.
- Lauren Barry told Allie that she was not in trouble but, that no matter what, once the baby came out of her it was still a life. Allie said she respected that. Allie told Lauren Barry that the baby was in her tent on the other side of the trestle bridge.
- Allie said now that she was behind closed doors she felt safe telling them that. Allie said she did not want to get in trouble or get yelled at.
- Lauren asked if she was afraid of George. Allie said she was. Lauren Barry told Allie he was not around and could not do anything to her.
- Allie got up and led everyone to the tent.
- Allie showed first responders where the baby would be.
- Officer Vitale looked at the baby and said he was still moving.
- Lauren Barry rushed into the tent, picked up the baby and began life-saving measures.

- Allie asked Officer Collins if the baby was still moving. Officer Collins told Allie the baby was “gone” and had been gone. Officer Collins testified he told Allie this because he wanted to calm her down.
- Allie asked for a cigarette and a lighter. Allie asked to be taken to her boyfriend before being taken to the police station.
- The police eventually took Allie to MPD where she was questioned.
- Lauren Barry took the baby to the hospital in a fire truck. This was against protocol. Lauren Barry did this because the ambulance did not answer the call and time was of the essence.
- There were two internal investigations into the conduct of Lauren Barry and the ambulance driver. Lauren Barry’s investigation was concluded as unfounded. The outcome of the ambulance driver investigation was unclear.
- The testimony about the temperature was that it was around 15 F-18 F.
- When the baby arrived at the hospital, he was so cold they were unable to get a temperature. The first skin temperature was 84 F.
- Dr. Linnan testified that the hypothermia was life-threatening.
- Dr. Linnan testified about the life saving measures employed. The baby was actively warmed and intubated throughout his stay at CMC.
- Dr. Linnan testified she could not give a cause of the respiratory distress.
- After several hours the baby was stable enough to be transported to Dartmouth-Hitchcock.

11. The defense presented two witnesses, Dr. Mathilde Pelaprat and Alexandra Eckersley.

The defense’s evidence showed the following:

- Dr. Pelaprat testified about Allie’s lifelong complex mental health history.
- Dr. Pelaprat testified about how that history and her own observations helped her form an opinion about Allie’s condition on December 25-26, 2022.
- Dr. Pelaprat testified that Allie had been on the street for about five years on December 25-26, 2022.
- Dr. Pelaprat testified how Allie had to relearn basic skills as part of her rehabilitation after this event.
- Dr. Pelaprat gave an opinion that Allie was suffering from untreated bipolar disorder, PTSD, emotional dysregulation, and substance use disorder on the night in question.
- Allie testified that George picked out the place where she lived and built the tent for her.
- Allie testified that she did not know she was pregnant.
- Allie described giving birth and delivering the placenta. Allie testified that the information she had about childbirth was from movies and television.
- Allie testified that she had a propane heater in her tent. Allie testified that George kept turning it off because he was hot.
- Allie testified after the baby was born, she heard a cry. Allie testified that George told her the baby had no pulse.
- Allie said she thought the baby was dead.
- Allie testified that she was afraid of George because he had physically and verbally abused her in the past.

- Allie testified that George went back to the campsite three separate times. George did not tell her anything about the baby when he came back.
- Allie testified that George told her to tell first responders “if anything” they had been over by the ballfields.
- Allie testified that she did not remember a lot about what happened on December 25-26, 2022, or about what happened at CMC when she was admitted.
- Allie testified that she did not know her baby was alive until she was at the police station. Allie testified that she gave him the name Edward Ruth after her grandparents.
- Allie testified that she lives with her mother and her son in Massachusetts.

12. Viewing the evidence in the light most favorable to the State, no rational jury could have returned a guilty verdict on the falsifying physical evidence. The State’s own evidence was that multiple people told Allie she was not in trouble, and they were just looking for the baby. The State’s evidence showed that Allie was worried about getting in trouble with George and not the police. The overarching testimony was that Allie was emotional and “hysterical” and actively experiencing postpartum bleeding. Based on these facts, no rational jury could find beyond a reasonable doubt that 1) Allie believed there was an official investigation going on, and 2) Allie acted purposely. Therefore, the guilty verdict on the falsifying physical evidence indictment must be vacated and that indictment must be dismissed.

13. Viewing the evidence in the light most favorable to the State, no rational jury could have returned a guilty verdict on the reckless conduct (enhanced misdemeanor). The defense

reiterates the arguments in paragraph 12. In addition, the evidence presented was that Allie thought the baby was dead. Therefore, she could not have consciously disregarded a risk that he could suffer a protracted injury. Therefore, the guilty verdict on the reckless conduct (enhanced misdemeanor) must be vacated and that information must be dismissed.

14. Viewing the evidence in the light most favorable to the State, no rational jury could have returned a guilty verdict on the endangering the welfare of a child. The evidence presented was that Allie thought the baby was dead. Therefore, no rational jury could find that Allie acted to purposely violate a duty of care. Therefore, the guilty verdict on the endangering the welfare misdemeanor must be vacated and that complaint must be dismissed.
15. If the request for judgment notwithstanding the verdict is denied, then a new trial should be granted on the three charges of which Ms. Eckersley was convicted.
16. A new trial is warranted because the only evidence of Allie's knowledge about whether the baby was alive is her own testimony that she heard the baby cry briefly and then George Theberge told her the baby was dead. The testimony was that the heat was on when she left the tent and the only person who returned there was George Theberge.
17. To believe that Allie, in the "circumstances as she knew them to be" acted with a "conscious object" to commit a crime or was able to "consciously disregard a risk" is not reasonable.
18. Weighing the evidence, this Court should grant Alexandra Eckersley a new trial in fairness to her and in vindication of the principle that verdicts should be supported by the evidence.

WHEREFORE, Alexandra Eckersley, through counsel, respectfully asks the Honorable Court to:

- A. Grant this motion.
- B. Enter judgment notwithstanding the verdict on the above captioned matter.
- C. In the alternative, grant Ms. Eckersley a new trial on the above captioned matter.
- D. Hold a hearing on the matter if necessary.
- E. If the Court denies this motion, issue an order containing findings of fact and rulings of law to preserve the issue for appellate review.
- F. Grant any other relief deemed equitable and just.

Respectfully submitted,

/s/ Kimberly A. Kossick

Kimberly A. Kossick #17341

N.H. Public Defender

20 Merrimack St.

Manchester, NH 03101

(603) 669-7888

kkossick@nhpd.org

CERTIFICATE OF SERVICE

I, Kimberly A. Kossick, do hereby certify that this motion has been served in compliance with e-filing requirements.

/s/ Kimberly A. Kossick

Kimberly A. Kossick