

THE STATE OF NEW HAMPSHIRE
HILLSBOROUGH COUNTY SUPERIOR COURT – NORTHERN DISTRICT

HILLSBOROUGH, SS.

MARCH TERM 2024

STATE OF NEW HAMPSHIRE

V.

ALEXANDRA ECKERSLEY

216-2022-CR-3011

OBJECTION TO STATE’S MOTION FOR JUDICIAL NOTICE

NOW COMES Alexandra Eckersley, by and through counsel, Kimberly Kossick and Jordan A. Strand and requests this Court deny the State’s request for the Court to take judicial notice of the definition of “hypothermia.” The definition of hypothermia is not relevant, would mislead the jury, and goes beyond the scope of New Hampshire Rule of Evidence 201. Additionally, the definition of “hypothermia” is hearsay and violates Ms. Eckersley’s right to confrontation. Ms. Eckersley makes this request pursuant to the due process provisions of the federal and state constitutions, the Confrontation Clauses of the Sixth Amendment and Part 1 Article 15. The State’s request also violates New Hampshire Rules of Evidence 201, 402, 403 and 801.

In support of the motion, the following is stated:

FACTS

1. The State has accused Ms. Eckersley [hereinafter Allie] of reckless conduct, falsifying physical evidence, second-degree assault (two counts) and endangering the welfare of a child. These accusations stem from Allie unexpectedly giving birth in a tent in the woods in the late night of December 25, 2022.

2. The second-degree assault indictment [Charge ID#2054610c] alleges that Allie “recklessly caused bodily injury to another under circumstances manifesting extreme indifference to the value of human life, when Eckersley caused hypothermia to her newborn infant when she abandoned the newborn infant where the ambient temperature was extremely cold.”
3. The State now seeks to introduce hearsay, in violation of confrontation, to prove an element of the alleged offense.
4. This Objection follows.

ARGUMENT

5. This Court has broad discretion when determining what evidence is relevant. *N.H. R. Evid. 401; State v. Mazzaglia*, 169 N.H. 489, 492 (2016); *State v. Milton*, 169 N.H. 431, 435 (2016). However, the dictionary definition of hypothermia is not relevant to whether Allie’s son was in fact hypothermic.
6. Hypothermia is a medical diagnosis. The definition of the word does not make any fact in this case more or less probable.
7. Even if the Court finds that the evidence is relevant, the probative value is substantially outweighed by the danger of unfair prejudice and/or misleading the jury. *N.H. R. Evid. 403*.
8. If the Court takes judicial notice, there is a significant risk that the jury will give that notice undue weight. It will also circumvent the State’s obligation to prove all of the elements beyond a reasonable doubt. Even if the Court instructs the jury that they are not required to accept the notice as evidence the jury will naturally wonder why this particular element of the indictment was treated differently by the Court than any of the other elements of the indictment(s).

9. New Hampshire Rule of Evidence 201 states that “a court may take judicial notice of a fact. A judicially noticed fact must be one not subject to reasonable dispute in that it is either: (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.”
10. The definition of hypothermia is not generally known within the jurisdiction and the State’s proposed sources can be reasonably questioned.
11. The definition of hypothermia, in this case, is not simple terminology. It is a medical diagnosis that requires the opinion of an expert witness to provide context. Without that context the definition is irrelevant.
12. Additionally, a simple search of the term “hypothermia” conducted by using a standard internet search engine, Google.com, produced 70,2000,000 results.¹
13. The search produced multiple definitions from various sources to include medical sources and dictionary definitions. For example, the Mayo Clinic’s definition of hypothermia differs from the Cleveland Clinic’s definition. Both of those definitions are different than the definitions produced by the State in their pleading.
14. In this case, taking judicial notice of the definition of hypothermia proposed by the State allows them to circumvent the rules of evidence including the rules regarding experts and expert disclosures.
15. Lastly, the definition of hypothermia is hearsay and violates Allie’s right to confrontation.

¹ See https://www.google.com/search?q=hypothermia+&sca_esv=dd5fb20fe780040b&sxsrf=ACQVn09WdYugKZL1gM_m-w9_J45h6kXDVw%3A1711393511561&source=hp&ei=58oBZvfWH7SSwt0P-MSPiAs&iflsig=ANes7DEAAAAAZgHY9_h591_9GTUwnuthJjdbo4YCEWTD&ved=0ahUKEwi35szSjZCFAXU0ibAFHXjiA7EQ4dUDCBc&uact=5&oq=hypothermia+&gs_lp=Egdnd3Mtd2l6IgxoeXBvdGhlcm1pYSAyCBAAGIAEGLEDmGgQABiABBixAzIIEAAyGAAQYsQMyBRAAGIAEMggQABiABBixAzIFEAAYgAAQyBRAAGIAEMggQABiABBixAzIFEAAYgAAQyBRAuGIAESKkPUABYIQ5wAHgAkaEBmAGpAaAB_AaqAQQxMS4xuAEDyAEA-AEBmAlIoAKCBsICBBajGCfCAhEQLhiABBixAxiDARjHARjRA8ICDhAAGIAEGIoFGLEDGIMBwgILEAAyGAAQYsQMYgwHCAG4QLhiABBikBRixAxiDAcICDhAuGIAEGLEDGMcBGNEDwgILEC4YgAAQYsQMYgwGYAwCSBwIxMaAHIII&scient=gws-wiz#ip=1

16. Hearsay is an out-of-court statement offered in evidence to prove the truth of the matter asserted. In general, such statements, which are not made under oath or subject to cross-examination, are less trustworthy than those made in court. *State v. Cole*, 139 N.H. 246 (1994). Hearsay is inadmissible unless it falls within an exception to the general rule barring its admission in court. *Id.* at 652.
17. Under Part 1, Article 15 of the New Hampshire Constitution, hearsay must fall into a hearsay exception and bear “particularized indicia of reliability.” *State v. Cook*, 135 N.H. 655, 662 (1992).
18. If the Court takes judicial notice of the State’s proposed definitions defense counsel will have no ability to cross examine regarding the veracity of the definition and its alleged applicability to the case.
19. Therefore, the State’s request for the Court to take judicial notice must be denied.

WHEREFORE, the defense requests that this Honorable Court:

- (A) Deny the State’s Motion for Judicial Notice;
 - (B) Hold a hearing on this Motion if necessary; and
 - (C) Issue written findings of fact and rulings of law should this Objection be denied;
- and
- (D) Grant other relief deemed equitable and just.

Respectfully submitted,

/s/ Jordan A. Strand
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Objection has been forwarded via the Court's e-filing system this 26th day of March 2024 to Assistant County Attorney Shawn Sweeney and Alexander Gatzoulis with the Hillsborough County Attorney's Office – North.

/s/ Jordan A. Strand
Jordan A. Strand, Esq.