

STATE OF NEW HAMPSHIRE

Superior Court

Merrimack, ss.

April Term, 2025

State of New Hampshire

No. 217-2024-CR-1167

v.

Anna Barbara Hantz Marconi

MOTION FOR BILLS OF PARTICULARS

The Accused, Justice Anna Barbara Hantz Marconi, respectfully requests that this Court order the State to provide bills of particulars because the State made reference in a February hearing to witnesses and/or evidence that will purportedly prove that Justice Hantz Marconi had a criminal purpose, but the defense has no notice of what witnesses or evidence would show purposeful conduct.

1. Justice Anna Barbara Hantz Marconi is charged with Attempt to Commit Improper Influence, Criminal Solicitation (Improper Influence), Official Oppression, Criminal Solicitation (Official Oppression), Obstructing Government Administration, and two counts of Criminal Solicitation (Misuse of Position).

2. At the February 3, 2025, hearing on the motion to dismiss, the defense pointed out that all of the charged offenses require proof of a purposeful state of mind. The defense proffered statements from then-Governor Sununu, Rudy Ogden, and Steve Duprey, all of whom denied perceiving any criminal purpose on behalf of Justice Hantz Marconi. The defense further pointed out that none of the indictments refers to any fact which might show a purposeful state of mind.

3. Assistant Attorney General Fincham responded:

And the evidence in this case isn't limited to what happened in that room with the meeting. There were facts and circumstances leading up to that meeting, which we expect to be presented at trial, as well as what happened inside the room. Matters which the

governor and Rudy Ogden knew nothing about. They know what happened in the room, and as this Court's familiar with, the State may have multiple witnesses, some of whom see one part of an ongoing episode. And what the jury hears is everything that goes into that. And from that, they make their inferences about whether she acted with the requisite criminal intent. And so we expected [sic] they would hear from the governor and from Rudy Ogden, but from other individuals, as well, leading up to that, including the conduct with Chairman Duprey.

Transcript of February 3, 2025 Motion Hearing, pp. 19-20 (underline added) [hereafter "Transcript"].

4. In other words, Attorney Fincham discounted the statements of the witnesses who were present for the relevant conversations and who denied any criminal purpose on behalf of Justice Marconi, because, according to the State, there is other evidence of a criminal purpose.

5. The defense has not received any discovery which would indicate what that evidence might be.

6. Part I, Article 15 of the New Hampshire Constitution guarantees that "[e]very subject shall have a right...to meet the witnesses against him face to face[.]" The Sixth and Fourteenth Amendments to the United States Constitution likewise guarantee that "[i]n all criminal prosecutions, the accused shall enjoy the right...to be confronted with the witnesses against him[.]"

7. The New Hampshire Rules of Criminal Procedure require the State, "within forty-five calendar days after the entry of a not guilty plea" to provide the Accused with "statements of witnesses." N.H. R. Crim. P. 12(b)(1)(B). *See also State v. Jette*, 174 N.H. 669, 677-78 (2021). Our Court has "long recognized that justice is best served by a system that reduces surprise at trial by giving both parties the maximum amount of information." *State v. Cromlish*, 146 N.H. 277, 280 (2001) (citing *State v. Nadeau*, 126 N.H. 120, 124 (1985)). *See also State v. Reader*, 160 N.H. 664, 667 (2010) (explaining that the purpose of discovery rules is "to avoid a trial by ambush"); McNamara, 2 NH Practice Series: Criminal Practice & Procedure § 23.01 (2025)

“the ends of justice are best served by a system that gives both parties the maximum amount of information available, thus reducing the possibility of surprise at trial”). Furthermore, the “discovery of truth in criminal proceedings should not suffer by an overly technical application of...the rules of court.” *Cromlish*, 146 N.H. at 280.

8. Thus, the defense must presume that the discovery provided by the State on the evening of December 23, 2024, or in its subsequent disclosures,¹ includes the statements of all witnesses for the State, including those referenced by Attorney Fincham in his February 3 oral argument.

9. The discovery provided includes statements by Chairperson Duprey, D1-73, Chief Justice MacDonald, D80-115, then-Governor Sununu, D118-81, Rudy Ogden, D182-269, Geno Marconi, D277-398, and Margaret Lamson, D399-535. Neither Geno Marconi nor Margaret Lamson spoke to any activity by Justice Hantz Marconi. D277-398, D399-535. The State also provided snippets of testimony provided by five witnesses before a Rockingham County Grand Jury. D587-88, D589, D590, D591-96, D597-604. None of these snippets described anything related to Justice Hantz Marconi’s interactions with then-Governor Sununu or Chairperson Duprey.

10. As the defense argued in its reply to the State’s objection, neither then-Governor Sununu, nor Rudy Ogden, nor Chairperson Duprey perceived Justice Hantz Marconi to have made any illegal attempt to influence the Attorney General’s investigation. *See Reply to State’s Obj. to Mot. to Dismiss (First Amend.; Judicial Immunity)* at ¶¶ 13-24. Nor do their respective interviews establish that Justice Hantz Marconi had the requisite purposeful state of mind

¹ The State made additional discovery disclosures on January 29, 2025, February 14, 2025, February 27, 2025, March 10, 2025, and April 4, 2025. However, these disclosures did not include new witness statements.

required for the criminal charges. *Id.* As counsel explained at the hearing on the motion to dismiss, “[t]here’s not a single fact in there that shows that – or that gives us notice that there was a purposeful conduct to any of the allegations or any of the alleged crimes.” Transcript, p. 25. *See also id.* (“they haven’t alleged any fact that says that, well, this fact shows that it was a purpose to corruptly influence or a purpose to oppress or a purpose to cause this person to do something beyond their authority or whatever. They haven’t alleged any fact like that.”); *id.* at 29 (“There is not a single fact alleged in any of these charges that shows bad intent....tell us what fact shows bad intent. They haven’t pled it.”).

11. Therefore, to the extent that Attorney Fincham alluded to “facts and circumstances leading up to the meeting” and “[m]atters which the governor and Rudy Ogden [know] nothing about,” the defense has no notice of these allegations. Likewise, insofar as Attorney Ficham told the Court that he heard “from other individuals, as well, leading up to that [meeting], including the conduct with Chairman Duprey,” the Accused has no notice.

12. Here, if the State has additional information or other witnesses who allegedly will enable the jurors to infer the Accused’s intent, then that information must be provided to the Accused.² Bills of particulars are necessary for the Accused “to prepare an intelligent defense.” *State v. Sanborn*, 168 N.H. 400, 415 (2015); *State v. French*, 146 N.H. 97, 101 (2001); *State v. Dixon*, 144 N.H. 273, 275 (1999).

13. Our Court has explicitly and repeatedly countenanced bills of particulars that “have ‘the effect of specifying and circumscribing the scope of the allegations.’” *French*, 146 N.H. at 101 (quoting *State v. Erickson*, 129 N.H. 515, 519 (1987)). *See also State v. Maguire*, 129 N.H.

² Part 1, Article 15 of the New Hampshire Constitution requires that a crime be “fully and plainly, substantially and formally, described” to the Accused. N.H. Const. pt. I, art. 15; *State v. Cheney*, 165 N.H. 677, 679 (2013); *see also* RSA 601:4. The indictment must “describe the offense with sufficient specificity to ensure that the defendant can prepare for trial and avoid double jeopardy.” *State v. Woodard*, 146 N.H. 221, 227 (2001) (quotation and citation omitted).

165, 169 (1987) (“If for some reason...the defendant believed there was a need for specificity, he or she has the right to file a motion for a bill of particulars.”). Thus, insofar as the State alleges to have other information or witnesses who can testify to the alleged state of mind of Justice Hantz Marconi and her purported intent, she is entitled to notice of them via bills of particulars.

14. A trial court has the discretion to order a bill of particulars when it is necessary for the defendant to prepare a defense. The New Hampshire Supreme Court has described bills of particulars as ““a tool for clarifying an inadequate indictment or complaint.”” *State v. Kuchman*, 168 N.H. 779, 784 (2016) (quoting *Sanborn*, 168 N.H. at 415). To the extent the State has referred to additional evidence to cure any defect in its indictments, such clarification is necessary. *See State v. Sinbandith*, 143 N.H. 579, 584 (1999) (“the indictment must contain the elements of the offense and enough facts to notify the defendant of the specific charges.”); *Cheney*, 165 N.H. at 679 (“It is not enough merely to state the crime with which a defendant is being charged; the indictment must include the elements of the offense with sufficient allegations to identify the offense in fact.”); *State v. Mealey*, 100 N.H. 228, 231 (1956) (An indictment that “fails to allege every fact necessary to constitute the offense charged is defective.”).

15. Thus, for instance, in *Sanborn*, the defendant moved prior to trial “to quash the indictments, alleging that they failed to place him on notice of the specific allegations against him,” the State objected because it had “filed a bill of particulars specifying facts upon which the indictments were based[.]” *Sanborn*, 168 N.H. at 415. The bill of particulars listed twenty alleged acts to prove the allegations of negligent homicide and manslaughter. *Id.* Likewise, in *French*, when the defendant moved for a bill of particulars about the specific alleged course of conduct in a theft prosecution, the State provided one that, among other things, specified the dates, amounts, and specific lump sum payment alleged. *French*, 146 N.H. at 99.

16. The Supreme Court has “repeatedly held that [describing the offense in the words of the statute] alone ‘does not always meet the constitutional requirements that a fair and full description of the offense must be alleged.’” *State v. Bussiere*, 118 N.H. 659, 661 (1978) (quoting *State v. Bean*, 117 N.H. 185, 187-88 (1977)). Rather, an indictment must contain “the elements of the offense and *enough facts* to warn a defendant of the specific charges against him.” *State v. Bisbee*, 165 N.H. 61, 64 (2013) (citing *State v. Marshall*, 162 N.H. 667, 661-62 (2011) (emphasis added)).

WHEREFORE, the defense respectfully requests that this Court grant this motion and order the State to provide bills of particulars to the seven indictments that detail what witnesses or evidence the State possesses that will show Justice Hantz Marconi’s purposeful state of mind.

Dated this 16th day of April, 2025.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Richard Guerriero, do hereby certify that Senior Assistant Attorney General Dan Jimenez and Assistant Attorney General Joseph Fincham are registered e-filers in the Court's electronic filing system and that when filing this motion, I am electing for them to receive a copy of the document through the electronic filing system's system for electronic service.

/s/ Richard Guerriero