

THE STATE OF NEW HAMPSHIRE

ROCKINGHAM, SS.

MAY TERM, 2008

SUPERIOR COURT

07-S-1028-1031, 2886  
08-S-580-583

State of New Hampshire

v.

John Brooks

07-S-1394-1395  
State of New Hampshire

v.

Michael Benton

07-S-1032-1033  
State of New Hampshire

v.

Robin Knight

RECEIVED  
ROCKINGHAM  
SUPERIOR COURT  
2008 MAY -9 P 2:57

**STATE'S NOTICE TO THE COURT REGARDING THE UNSEALING OF THE EX PARTE MOTION FOR A PROTECTIVE ORDER**

NOW COMES the State of New Hampshire by and through its attorneys, the Office of the Attorney General, and respectfully submits to this Honorable Court the following redacted copies of the Ex Parte Motion for a Protective Order, previously submitted to this Court on August 24, 2007. In support of the redaction, the State submits the following.

1) The State submitted the attached pleading to the Court as the basis for a protective order issued under Superior Court Rule 98(I). In relevant part, that rule states as follows:

Upon sufficient showing of good cause, the court may at any time order that discovery required hereunder be denied, restricted or deferred, or make such other order as appropriate. Upon motion by a party, the court may permit the party to make such showing of good cause, in whole or in part, in the form of an ex parte written submission to be reviewed by the court in camera. If the court enters an order granting relief following such an ex parte showing, *the written submission made by the party shall be sealed and preserved in the records of the court* to be made available to the supreme court in the event of an appeal.

SUPER. CT. R. 98(I) (emphasis added.)

2) Pursuant to this Court's order of May 7, 2008, the State is submitting redacted motions for unsealing, should the Court be inclined to do so. The State is submitting two alternative redacted versions of the motion. Incorporated within the motion are two areas of protected information.

3. The subject of plea negotiations with potential co-defendants are redacted from the pleading in Exhibit A, attached hereto. A second set of statements and assertions that are derived from grand jury transcripts are further redacted in Exhibit B, attached hereto, along with the previously described portions regarding plea negotiations.

4. Redactions pertaining to the potential plea negotiations with co-defendants are based on New Hampshire Rule of Evidence 410. That rule states in relevant part;

[E]vidence of the following is not, in any...criminal proceeding, admissible against the defendant who made the plea or was a participant in the plea discussions....[a]ny statement made in the course of any state court proceeding regarding any of the foregoing; or any statement made in the course of plea discussions with an attorney for the prosecuting authority which do not result in a plea of guilty.

N.H. RULES EV. 410

5. Additionally, the information is protected by the Rule of Professional Responsibility 3.6. Such rules prohibit extrajudicial statements that could be disseminated by means of public communication if ...it will have a substantial likelihood of materially prejudicing an adjudicative proceeding. RULES OF PROF. RESP., 3.6 (a). The Rule goes on to state that the possibility of a plea of guilty in a criminal proceeding, or the existence of any admission or statement is one such statement that should not be disseminated. RULES OF PROF. RESP., 3.6 (b)(2).

6. The information was provided to the Court in a sealed pleading, and in anticipation of it remaining under seal as provided for in Superior Court Rule 98 (I). The State would now ask the Court, to the extent that unsealing is contemplated, that the information regarding plea discussions be redacted as provided in both attached submissions.

7. The second area of redactions proposed by the State are incorporated into Exhibit B, and include information provided via grand jury transcripts. The redaction of the information contained in grand jury transcripts is based upon Supreme Court Rule 52. Such Rule requires that the Court specifically authorize further dissemination of materials contained in grand jury transcripts. SUPREME COURT RULE 52 (1).

8. The Rule further states that when such transcripts are made, "the Justice authorizing the records shall make every effort to recognize and protect the rights and physical well-being of witnesses who testify before the grand jury, by issuing protective orders where necessary to prevent harm to a witness by the disclosure of his testimony." SUPREME COURT RULE 52 (3). The State submits that redaction of the portions of grand jury transcripts in Exhibit B is appropriate for just this reason.

9. The State does not note information in the subsequent order of this Court that needs redaction.

WHEREFORE the State of New Hampshire respectfully requests, should this Honorable Court unseal the ex parte motion for a protective order and subsequent order granting the same:

- A. Release the redacted version, Exhibit B attached hereto, or in the alternative,
- B. Release the redacted version, Exhibit A, attached hereto; and
- C. Grant any other relief it deems appropriate.

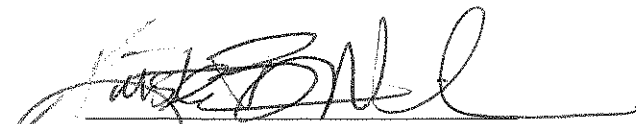
Respectfully submitted,


THE STATE OF NEW HAMPSHIRE

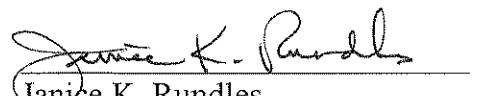
By its attorneys,

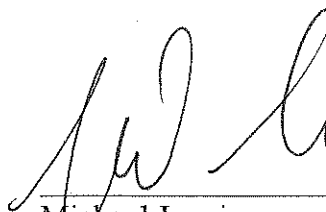
Kelly A. Ayotte  
Attorney General

DATED: May 09, 2008

  
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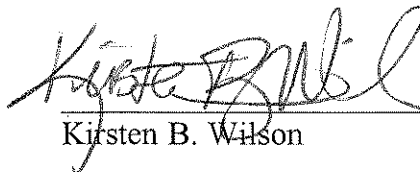


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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was this day forwarded to Christopher H.M. Carter, Esq., Thomas M. Hoopes, Esq., and Martin F. Murphy, Esq., counsel for the John Brooks, Steven Jeffco, counsel for Robin Knight, and Richard Samdperil and Joseph Welsh, counsel for Michael Benton.

DATED: May 9, 2008



Kirsten B. Wilson