

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2014-0592, State of New Hampshire v. Seth Mazzaglia, the court on September 29, 2016, issued the following order:

Before trial, the defendant moved to introduce evidence that the victim was allegedly interested in certain kinds of sexual activity, and that her interest was evidenced by specific instances of her prior consensual sexual conduct. At the trial court's hearing on the defendant's motion, defense counsel clarified that counsel sought only to introduce evidence of the victim's alleged "openness" to certain sexual practices and would not seek to introduce evidence as to specific instances of her prior consensual conduct.

The trial court ruled that evidence of the victim's alleged interest in certain sexual practices was inadmissible. The defendant challenges this ruling in his direct appeal of his convictions. In his direct appeal, the defendant also challenges the trial court's rejection of his argument, made at various times during trial, that the State had opened the door to the evidence that the trial court had earlier ruled inadmissible.

The trial court sealed its records pertaining to the defendant's pretrial motion to introduce the challenged evidence. In a June 10, 2016 order, we concluded, based upon our review of memoranda filed by the parties, the pertinent law, the sealed portion of the trial court record, and the parties' unredacted briefs and appendices, that the sealed portion of the trial court record and the unredacted briefs and appendices should not be sealed on appeal and should be made available for public review. As requested by the State, and not opposed by the defendant, we stayed our order until June 15, so that the State could inform the victim's immediate family of our order and of the nature of the information under seal.

On June 13, the State filed a motion that we treated as a motion to reconsider our June 10 order. On June 15, we granted the State's motion to reconsider and ordered the parties, and allowed interested amici curiae, to file briefs addressing questions related to whether: (1) the sealed portion of the trial court record should remain sealed; (2) the parties' unredacted appellate briefs and appendices should remain confidential; and (3) the oral argument in the defendant's direct appeal of his conviction should be open to the public. See Sup. Ct. R. 12(2)(a) (describing the procedure to be used for requesting that the trial court record or a portion thereof be kept confidential in the supreme court when the trial court has already determined it to be confidential). On July 13, we

granted the emergency motion to intervene filed by the victim's father, both individually and as administrator of her estate, for the limited purpose of responding to the questions set forth in our June 15 order. On September 21, we heard oral argument from the parties and the intervenor on those questions.

Having considered the oral arguments, briefs, and the applicable law, we hereby order that the records sealed by the trial court shall remain sealed and that the parties' unredacted appellate briefs and appendices shall remain confidential. Oral argument on the defendant's direct appeal of his convictions shall be open to the public.

The State has recently filed a replacement redacted public brief on the merits, which contains fewer redactions than the State's previously filed redacted public brief on the merits. In light of the detail in the State's replacement brief, the defendant is granted leave to file a replacement redacted public brief on the merits expressing his argument in reasonably equivalent detail.

Dalianis, C.J., and Hicks, Conboy, Lynn, and Bassett, JJ., concurred.

**Eileen Fox,
Clerk**

Distribution:

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