

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2013-0290, State of New Hampshire v. Justin L. Roy, the court on March 19, 2015, issued the following order:

After review of the defendant's motion to reconsider, the court modifies the slip opinion as set forth below. In all other respects, the defendant's motion to reconsider is denied.

The slip opinion dated January 16, 2015, is modified by deleting the first full paragraph on page 13 and replacing it with:

Assuming, without deciding, that the sealed motion to continue was exculpatory material that should have been disclosed to the defense earlier, we conclude that the trial court did not err in denying the defendant's motion to dismiss because the defendant has failed to demonstrate prejudice. See id. The defendant was apprised of the motion and the nature of the prosecution's agreement with Downs several hours before Downs began to testify, and several hours before the court heard oral argument on the defendant's motion to unseal. Additionally, after the court unsealed the motion and the defendant was given a copy, the defendant asked the court for "approximately five minutes" to review the motion in advance of oral argument. The court granted the request. Moreover, the defense was able to cross-examine Downs about her agreement with the prosecution, thereby challenging her credibility. See State v. Stowe, 162 N.H. 464, 467 (2011) (explaining that cross-examination provides the defendant with an opportunity to impeach a witness's credibility and expose possible biases of the witness). The record does not establish that the initial nondisclosure "impeded to a significant degree" the defendant's case; therefore, we conclude that the trial court did not err in denying the defendant's motion to dismiss. See Stickney, 148 N.H. at 236.

The slip opinion is further modified on page 2, line 2, and page 13, line 2 of the second full paragraph, by replacing "for a directed verdict" with "to set aside the verdicts."

Reconsideration denied;
slip opinion modified.

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

**Eileen Fox,
Clerk**