

THE STATE OF NEW HAMPSHIRE

ROCKINGHAM, SS.

ROCKINGHAM COUNTY SUPERIOR COURT

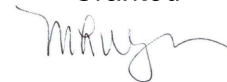
STATE OF NEW HAMPSHIRE

V.

Brandon M. Castiglione

218-19-CR-1132

Granted



Honorable Marguerite L. Wageling

February 3, 2021

Clerk's Notice of Decision
Document Sent to Parties

on 02/03/2021

EXPEDITED ASSENTED MOTION FOR SERVICES OTHER THAN COUNSEL

NOW COMES the Defendant, Brandon Castiglione, by and through counsel, Eliana Forciniti, Esquire, Delia McCarthy, Esquire, and Sydney Hanson, Esquire, and respectfully requests that this Honorable Court to enter an order on the transcription of the depositions scheduled on February 11, 2021 and to authorize the payment of the costs of transcribing said interviews, pursuant to RSA 604-A:6.

1. The State accuses Mr. Castiglione of Second Degree Murder.
2. Depositions in this matter are scheduled on February 11, 2021 at 1:30 PM.
3. Defense counsel will need the transcript of the recorded interviews to prepare the case for trial.
4. Avicore Reporting of 814 Elm Street, Suite 400, Manchester, NH 03101 has agreed to transcribe the depositions. Avicore Reporting estimates that it will cost approximately \$1,000.00 to transcribe the depositions.
5. The Defendant is indigent, unable to pay the cost of transcribing the requested recorded in and qualifies for court-appointed counsel.
6. Denial of a transcript of the depositions would be a denial of the Defendant's right to effective assistance of counsel guaranteed by Part I, Article 15 of the New Hampshire Constitution, and Amendment Six of the United States Constitution.

7. Mr. Castiglione's request for a transcript of the depositions is supported by his right to equal protection and due process as guaranteed by Part I, Articles 1, 2 and 15 of the New Hampshire Constitution and, independently, by Amendments V and XIV of the United States Constitution.
8. Though the depositions is not a transcript of a prior proceeding, the principals discussed in State v. Cofske, 129 N.H. 133, 135 (1987) should still apply. A defendant's right to a transcript depends upon an analysis of: (1) the value of the transcript to the defendant; and (2) the availability of alternative devices that would fulfill the same functions as a transcript. Cofske, 129 N.H. at 135 (*citing* Britt v. North Carolina, 404 U.S. 226, 227 (1971)). This two-step analysis requires that the defendant neither set forth specific allegations of inconsistencies in testimony, nor bear the burden of proving any adequate alternatives to a transcript that may be suggested by the State. Cofske, 129 N.H. at 136.
9. The United States Supreme Court stated in Britt v. North Carolina, 404 U.S. at 228: "Our cases have consistently recognized the value to a defendant of a transcript of prior proceedings, without requiring a showing of need tailored to the facts of a particular case ... Even in the absence of specific allegations, it can ordinarily be assumed that a transcript of a prior mistrial (or other evidentiary proceeding) would be valuable to the defendant in at least two ways: as a discovery device ... and as a tool at the trial itself for the impeachment of prosecution witnesses." *See also* Hardy v. United States, 375 U.S. 277 (1964).
10. Under the Cofske analysis, the Defendant is not required to set forth specific allegations of inconsistencies in testimony or bear the burden of proving the lack of any adequate alternatives. However, Mr. Castiglione submits that the depositions are of high value to the Accused. There is no other way for Mr. Castiglione to recreate this or get the information from the deposition.
11. Mr. Castiglione has a constitutional right to effective assistance of counsel and to a fair trial pursuant to the Sixth and Fourteenth Amendments of the United States Constitution and Part I, Article 15 of the New Hampshire Constitution. Mr.

Castiglione submits that he has a constitutional right to be protected from a denial of equal protection pursuant to the Fourteenth Amendment to the United States Constitution and Part I, Article 1 and 2 of the New Hampshire Constitution. Finally, the Accused submits that the New Hampshire Constitution provides an independent and adequate basis for this request.

12. The equal protection guarantee requires that an indigent defendant be provided "with the basic tools of an adequate defense or appeal, when these tools are available for a price to other prisoners." Britt v. North Carolina, 404 U.S. 226, 227, 92 S.Ct. 431, 433 (1971). *See also* Douglas v. California, 372 U.S. 353, 83 S.Ct. 814 (1963). (Indigent defendant entitled to court-appointed counsel to represent him on an appeal of right); Griffin v. Illinois, 351 U.S. 12, 76 S.Ct. 585 (1956) (indigent defendant entitled to free transcript of competency hearing when there was a demonstrated need and no reasonable alternatives); State v. Shute, 122 N.H. 498 (1982) (indigent defendant entitled to free transcript of prior trial for use at new trial).

13. Effective assistance of counsel and the right to a fair trial requires, when appropriate, that an indigent defendant be provided with funding for services other than counsel. Ake v. Oklahoma, 105 S.Ct. 1087 (1985) (indigent defendant entitled to access to psychiatric expert at state expense when insanity is defense); Williams v. Martin, 618 F.2d 1021 (4th Cir. 1980) (indigent defendant entitled to forensic pathologist expert at state expense in homicide); Mason v. Arizona, 504 F.2d 1345 (9th Cir. 1974) (indigent defendant entitled to investigation services to prepare for trial when need is demonstrated); In re: Allen R., 127 N.H. 718 (1986) (indigent defendant entitled to services of psychologist at state expense); State v. Campbell, 127 N.H. 112, 115 (1985) (indigent defendant entitled to expert services of a psychiatrist upon a demonstration "by reference to the facts and circumstances of his particular case that the assistance he seeks is necessary to ensure effective preparation of his defense by his attorneys [citations and quotations omitted]"; *See also* R.S.A. 604-A:6. In State v. Robinson, 123 N.H. 665, 669 (1983), the Court held:

"the right to counsel, as guaranteed by the Sixth Amendment and Part I, Article 15 of our own constitution, would be meaningless if counsel for an indigent defendant is denied the use of the working tools essential to the establishment of a

tenable defense because there are no funds to pay for these items." [citations omitted].

WHEREFORE, Brandon Castiglione respectfully requests that this Honorable Court:

- A. Order a transcript of the depositions.
- B. Authorize the payment of the costs to Avicore Reporting, not to exceed \$1,000.00, of transcribing said depositions pursuant to RSA 604-A:6; and,
- C. For such other relief as may be just and proper.

February 3, 2021

Respectfully submitted,

/S/Eliana Forciniti

Eliana Forciniti
N.H. Bar #21160
N.H. Public Defender
142 Portsmouth Ave, P.O. Box 679
Stratham, NH 03885
(603) 778-0526

CERTIFICATE OF SERVICE:

I hereby certify that a copy of this has been forwarded to the Office of the Attorney General on this 3rd day of February, 2021.

/S/ Eliana Forciniti

Eliana Forciniti