

THE STATE OF NEW HAMPSHIRE

ROCKINGHAM, SS.

SUPERIOR COURT

AUGUST, 2020


STATE OF NEW HAMPSHIRE

V.

BRANDON CASTIGLIONE
218-2019-CR-1132

Clerk's Notice of Decision
Document Sent to Parties
on 08/20/2020

Granted in part.
Within 30 days, the State shall review the discovery in the matter of State v. Dale Holloway and provide Defendant any exculpatory or favorable evidence contained therein.
If the State provides Defendant discovery from the case of State v. Dale Holloway, it will be provided subject to a protective order - and not further disseminated by counsel without specific approval from the Court.


Honorable Marguerite L. Wageling
August 20, 2020

MOTION TO COMPEL OUTSTANDING DISCOVERY

NOW COME the accused, Brandon Castiglione, by and through undersigned counsel, Eliana Forciniti and Sydney Hanson, New Hampshire Public Defender, and respectfully requests that this Honorable court order that the state provide the defense with all outstanding discoverable materials.

The accused makes this motion pursuant to his rights to due process, confrontation, effective assistance of counsel, the presentation of all proofs favorable, and the right to a fair trial under the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution and Part 1, Article 15 of the New Hampshire Constitution.

In support of this motion, the following is stated:

Factual Allegations

1. The State accuses Brandon Castiglione of Second-Degree Murder. The State is alleging in part, that Brandon recklessly caused the death of Luis Garcia by shooting him with a gun.
2. Brandon is pending indictment and jury selection has not been scheduled.
3. On October 1, 2019, Luis Garcia was found dead in Mark Castiglione's house. Mr. Garcia was an elder at New England Pentecostal Church ("NEP") in Pelham, NH. Brandon and his father, Mark, frequently attended NEP and on Thursdays would go to Mr. Garcia's house for prayer.
4. At around 2:30 p.m. on October 1st, Francis Pestana, Brandon's grandmother, and Danielle Patalano, Brandon's sister, went to Mark's house. There they found Mr. Garcia on the floor and Brandon nearby praying. Ms. Patalano called the police.

5. The police entered the house and found Brandon praying. They detained him and eventually arrested Brandon for the murder of Mr. Garcia.
6. There are no identified eyewitnesses to the shooting of Mr. Garcia and Brandon did not make any relevant statements to the police.
7. That same day, officers went to Patricia Garcia's house to provide her with the death notification of her husband. While at the residence, officers met Ms. Garcia's brother who would only identify himself as "Ronnie." Ms. Garcia asked the officers to not tell her family members that Mr. Garcia had been shot because she was afraid some of them may try to seek revenge.
8. On October 2, 2019, Brandon was arraigned on these charges and held without bail at the Rockingham County House of Corrections.
9. There is no indication in discovery that Brandon held any ill will or malice towards Mr. Garcia.
10. On October 12, 2019, Dale Holloway entered NEP with a loaded gun and began shooting. Mr. Holloway hit and injured Bishop Stanley Choate and Claire McMullen. Members of the church jumped on Mr. Holloway and subdued him until the police arrived. During the struggle, Mark was hit with an object and injured.
11. At the time of the shooting, Ms. McMullen and Mark were getting married, and Bishop Choate was officiating the wedding.
12. Bishop Choate was taken to Tufts Medical Center in Boston and listed in serious condition. Ms. McMullen and Mark were also taken to the hospital for their injuries. All individuals eventually recovered.
13. The New Hampshire State Police's major crime unit responded to NEP and began collecting evidence at the direction of the Attorney General's Office. Eventually, the case was handed from the Attorney General's Office to the Hillsborough County Attorney's Office for prosecution.
14. Mr. Holloway was indicted on numerous charges based on this incident including First Degree Assault, First Degree Assault with a Deadly Weapon, and Attempted Murder.
15. News reports from the event indicate that Mr. Holloway is the stepson of Mr. Garcia and has lengthy criminal record dating back to 1995 when Mr. Holloway was only 13 years old.

16. Most recently, Mr. Holloway served a seven-year sentence for beating and kidnapping his estranged girlfriend over three days in 2012. He was released in 2018.
17. News reports also indicate that Mr. Holloway has ties to the Latin Kings. Photos of Mr. Holloway show what appears to be a tattoo of the Latin Kings on his forehead.
18. On October 21, 2019, while at the Hillsborough House of Corrections, Mr. Holloway attacked his lawyer during an attorney-client meeting, causing a broken nose and severe head injury. During his bail hearing, Mr. Holloway denied attacking his attorney and stated that his attorney's nose just began bleeding during the meeting.

Outstanding Discovery

19. On October 2, 2019, the Defense sent the Attorney General's Office a discovery request. This request asked for all exculpatory or favorable to the accused and specifically noted the following:
 - a. This request is not limited to information known to you personally. We specifically request that you question your witnesses, including law enforcement personnel, for this information and include their answers in your response. Kyles v. Whitley, supra.
 - b. This request is not limited to information which has been documented in your file. We specifically request that you provide us with information known to you or your witnesses, regardless of whether it has been recorded in writing or otherwise. Kyles v. Whitley, Id.
 - c. This request should be answered without regard to whether such evidence would be admissible at any trial or hearing. State v. Laurie, supra. Furthermore, this request should be answered without consideration of the effect such information might have on the outcome of any trial or hearing. Id.
 - d. This request also includes information contained in a police officer's personnel file that is covered by In re: State (State v. Theodosopoulos), 153 N.H. 318 (2006); and,
 - e. If you believe there is information which may be exculpatory or favorable to the accused but not within the possession of the State, please detail that information, including a summary of what it is, where it is or who is in possession of it, and contact information for individuals that possess or control that information so that the accused may procure it on his own pursuant to Petition of the State of New Hampshire (State v. Lewandowski), 169 N.H. 340 (2016).

20. The State did not file an objection to the Defense's discovery request.
21. On January 29, 2020, the State, through Adam Woods, Esq., contacted the Defense. Defense Counsel for Mr. Holloway had filed a motion for discovery requesting the discovery from Brandon's case. In that email, the State indicated that it was planning on providing the discovery; however, they were requesting Undersigned Counsel's position before doing so.
22. Undersigned Counsel assented to providing the discovery in Brandon's case to Mr. Holloway provided that a protective order was put into place for that discovery.
23. Upon information and belief, that discovery was provided to counsel for Mr. Holloway by agreement.
24. On June 4, 2020, Undersigned Counsel requested the discovery from the Holloway case from the State, through Adam Woods, Esq. Attorney Woods stated that since the Attorney General's Office was not prosecuting the case it was up to the Hillsborough County Attorney's Office to provide us with that discovery.
25. Upon information and belief, the Attorney General's Office has not reviewed the discovery in the Holloway case to see if there is exculpatory or favorable information to the Accused contained therein.
26. On June 5, 2020, a request for the Holloway discovery was made to the Holloway Defense Team. Mr. Holloway, through his attorney, Donna Brown, Esq., objected to providing the defense with that discovery.
27. On July 28, 2020, a request was made to the Hillsborough County Attorney's Office for the discovery. The State, through Cassie Devine, Esq., objected to the request and this motion followed.

LEGAL ARGUMENT

I. The Attorney General's Office Has The Authority To Request The Discovery At Issue

28. Attorney Woods can and should request the needed documents from the Hillsborough County Attorney's Office.
29. The attorney general has general supervision over all criminal cases pending in the supreme and superior courts of New Hampshire. RSA 7:6. The county attorneys in the

state operate under the direction and subject to the control of the attorney general. RSA 7:11, RSA 7:34. These statutes “demonstrate a legislative purpose to place ultimate responsibility for criminal law enforcement in the Attorney General, and to give him the power to control, direct and supervise criminal law enforcement by the county attorneys in cases where he deems it in the public interest.” Wyman v. Danais, 101 N.H. 487, 490 (1958).

30. Therefore, though Mr. Holloway’s case is not currently being prosecuted by the attorney general’s office, the attorney general’s office has the authority to request and obtain documents from the county attorneys prosecuting the Holloway case.

31. In fact, at the time the request was made to Attorney Woods, the attorney general’s office had assumed control over criminal cases at the Hillsborough County Attorney’s Office.

II. The Defense Is Entitled To The Requested Materials.

32. The information contained within the Holloway file is discoverable.

33. In New Hampshire, an accused has “the right to produce all proofs which may be favorable to himself.” N.H. Constitution, Pt. I, Art. 15; State v. Lucius, 140 N.H. 60 (1996); State v. Laurie, 139 N.H. 325 (1995); State v. Duckette, 127 N.H. 540 (1986).

34. The New Hampshire Supreme Court has plainly stated that “the New Hampshire Constitutional right to present all favorable proofs affords greater protection to a criminal defendant” than analogous federal rights. State v. Laurie, 139 N.H. at 330.

35. Under both the state and federal constitutions, an accused person has a due process right to present exculpatory evidence in his defense. United States Constitution, Amend. V, XIV; N.H. Constitution, Pt. I, Art. 15; Brady v. Maryland, 373 U.S. 83 (1963); Kyles v. Whitley, 115 S. Ct. 1555 (1995).

36. However, the federal constitution requires only that favorable evidence that is material to guilt or innocence be disclosed. See Brady v. Maryland, 373 U.S. 83 (1963). The New Hampshire constitution requires that all proofs favorable be disclosed to criminal defendants. N.H. CONST. Pt. I, Art. 15.

37. Favorable includes that which is admissible, likely to lead to the discovery of admissible materials, or otherwise relevant to the preparation of the defense. United States v. Bagley, 473 U.S. 667, 683 (1985).

38. In deciding whether evidence is favorable, the Court need not decide or conclude that it is admissible. State v. Shepard, 159 N.H. 163, 170 (2009).
39. Prosecutors have an obligation to seek justice, not merely convictions. The prosecution's interest in a criminal prosecution "is not that it shall a win a case, but that justice shall be done. As such, he is in a peculiar and very definite sense the servant of the law, twofold aim of which is that guilt shall not escape or innocence suffer. He may prosecute with earnestness and vigor – indeed, he should do so. But, while he may strike hard blows, he is not at liberty to strike foul ones." Berger v. United States, 295 U.S. 78, 88 (1935); see also Petition of State of New Hampshire (State v. Lewandowski), 169 N.H. 340 (2016); State v. Leveille, 160 N.H. 630, 634 (2010).
40. In failing to disclose evidence, the State does more than merely deprive the Defense of that evidence. Rather, it has the effect of representing to the Defense that the evidence does not exist. In reliance on that representation the Defense might abandon lines of investigation, defenses, or trial strategies that it would otherwise have pursued. Laurie, 139 N.H. at 327.
41. Because the prosecutor alone can know what is undisclosed, each individual prosecutor has the responsibility of ferreting out favorable evidence known to others acting on behalf of the State. Kyles v. Whitley, 115 S.Ct. 1555, 1567 (1995).
42. This case is dissimilar to Petition of State, 169 N.H. 340, 342 (2016). The Defense is not requesting that the State obtain evidence or information not already in the State's possession. The Hillsborough County Attorney's Office is surely abiding by its discovery requirements in the Holloway case. Therefore, the materials are already compiled and available. Therefore, this request is not burdensome to the State.
43. The materials contained within Mr. Holloway's case file are not confidential records and therefore are not subject to a limited privilege. See State v. Gagne, 136 N.H. 101 (1992). Hence, there is no prejudice to the State or Mr. Holloway if the documents are provided to the Defense. This is especially true considering that Mr. Holloway has received the discovery in Brandon's case.
44. To the extent that the Hillsborough County Attorney's Office has a concern about sealed materials contained with the Holloway file, the Defense would agree to a protective order

that provides that such materials will not be distributed or discussed beyond the defense team.

45. The two cases are clearly related to one another. They occurred within a two-week period and many of the witnesses are the same for both cases including Bishop Choate, Mark Castiglione and other members of Brandon's family. Moreover, both cases have a strong connection to NEP which may have been a motive for the shooter in both cases.
46. The investigative reports, witness statements and other evidence from the Holloway case are relevant to potential defenses that may be argued by the Accused and therefore are discoverable. Brandon has pled not guilty to the charges that he shot and killed Mr. Garcia. Any evidence relevant to a motive and/or means for other individuals to commit these murders is highly relevant to Brandon's defense.
47. The relatedness between the two cases alone establishes that the information contained within the Holloway file is discoverable. Should the Defense choose to admit any of the evidence contained within, the Defense will file the appropriate motion.

WHEREFORE the accused, Brandon Castiglione, respectfully requests that this Honorable Court:

- A. GRANT the within motion; or
- B. SCHEDULE a hearing on the motion; and
- C. GRANT all further and favorable relief as justice may require.

DATED: 8/12/2020

Respectfully submitted,

Brandon Castiglione
By counsel,

/s/Eliana Forciniti _____
Eliana Forciniti, #21160
New Hampshire Public Defender
142 Portsmouth Ave.
P.O. Box 679
Stratham, NH 03885
603-778-0526

CERTIFICATE OF SERVICE

I, Eliana Forciniti, do hereby certify that a copy of this notice was forwarded the Attorney General's Office and the Hillsborough County Attorney's Office on this __12__ day of August, 2020.

/s/Eliana Forciniti _____
Eliana Forciniti, #21160