

Clerk's Notice of Decision
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on 09/23/2021

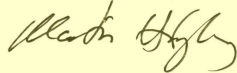
THE STATE OF NEW HAMPSHIRE

ROCKINGHAM, SS.

SUPERIOR COURT

SEPTEMBER, 2021

GRANTED at status conference today. The 9/13/22 deadlines are extended to 10/29/22. The parties will confer and file an agreement by the end of this week (9/24) to include other deadlines for jury selection on 3/21/22.



Honorable Martin P. Honigberg
September 20, 2021

STATE OF NEW HAMPSHIRE

v.

BRANDON CASTIGLIONE
218-2019-CR-1132

MOTION TO EXTEND DEFENSE EXPERT DISCLOSURE DEADLINE AND PRETRIAL EVIDENTIARY MOTIONS DEADLINE

NOW COMES the Accused, Brandon Castiglione, through counsel, Eliana Forciniti and Delia McCarthy, and respectfully moves for the Court to grant this Motion to Extend the Defense's Expert Disclosure Deadline and Pretrial Evidentiary Motions Deadline.

This motion is grounded in Mr. Castiglione's rights to due process, to effective assistance of counsel, and to be able to consult with counsel as issues may arise during the hearing. N.H. Const. pt. I, art. 15; U.S. Const. Amends. V, VI, XIV.

As grounds, Mr. Castiglione states:

1. The State accuses Brandon Castiglione of one count of Second-Degree Murder for the death of Luis Garcia.
2. A 9mm Glock semiautomatic pistol was found near the scene and sent to the State Laboratory for testing. There was also a fired bullet, a fired 9 mm cartridge case and a magazine that were sent to the laboratory for testing.
3. An autopsy of Mr. Garcia was done at the State Laboratory by Dr. Jennie Duval.

4. On April 5, 2021, the Defense filed an Assented To Structuring Proposal. This proposal was accepted and ordered by the Court on April 6th. The structuring proposal created a deadline of August 3, 2021, for Defense expert disclosure/CVs/reports.
5. By agreement this deadline was continued until September 13, 2021, due to delays in scheduling depositions.
6. Upon information and belief, the State intends on calling four expert witnesses. As of today's date, the Defense has deposed three of those witnesses — Jill Therriault, Stephen Ostrowski, and Rachael Martinez. Ms. Therriault and Mr. Ostrowski were involved in testing and analyzing the 9mm Glock, fired bullet and fired cartridge. Ms. Martinez was involved in analyzing the 9 mm Glock for fingerprint evidence.
7. The Defense has yet to depose Jennie Duval (forensic pathology). The Defense has requested potential dates for a deposition of Dr. Duval but has not received an answer from the State.
8. Moreover, the Defense is still awaiting some discovery relating to the fingerprint evidence obtained in this case. This evidence is necessary so that the Defense expert can do an independent analysis.
9. The Defense can state they do not intend on calling a firearm expert in this case. However, without deposing Dr. Duval, the Defense does not know whether a Defense expert in the field of forensic pathology is needed. Likewise, without the requested fingerprint discovery, the Defense does not know whether a Defense expert in the field of fingerprint analysis is needed.
10. The Structuring Order also created a deadline of September 14, 2021, for Pretrial Evidentiary Motions, including Motions in Limine.

11. On August 6, 2021, during a hearing it was decided that Undersigned Counsel would need to withdraw from the case due to a scheduling conflict. Another attorney from the public defender's office, Robin Davis, Esq. was appointed to this case. However, Attorney Davis does not start with the Public Defender's Office until September 15th. Therefore, Attorney Davis has not begun as lead counsel.
12. The decision to call expert witnesses and to file motions in limine is a strategic one. It is a decision that should ultimately be made by the lead attorney and co-counsel with consultation of the client. Different attorneys may disagree about the need to call certain witnesses or to litigate particular legal issues. Therefore, the decision should be left to Attorney Davis and Attorney McCarthy.
13. Attorney Davis anticipates that she will only need 30 days to make a decision on both the expert disclosure deadline and on any motions in limine.
14. Due to the change in counsel, trial has already been moved to March and therefore there should be plenty of time to address both issues prior to the start of trial.
15. The State's position on this motion has been requested but is unknown as of the filing of this motion.

WHEREFORE, Mr. Castiglione requests that this Honorable Court:

- (A) GRANT the Accused's Motion to Extend the Defense Expert Disclosure Deadline
- (B) GRANT the Accused's Motion to Extend the E
- (C) SCHEDULE a hearing on this motion
- (D) GRANT such further relief as may be deemed just and proper.

Respectfully submitted,

/s/ **Eliana Forciniti** #

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this foregoing Motion was forwarded this _10th day of September, 2021 to the Attorney General's Office .

_s/ **Eliana Forciniti** _____

Eliana Forciniti, #21160