

THE STATE OF NEW HAMPSHIRE  
SUPERIOR COURT

COÖS, SS

MAY TERM, 2025

STATE OF NEW HAMPSHIRE  
V.  
DUSTIN MARK DUREN

214-2024-CR-00028

**STATE'S ANSWER TO THE DEFENDANT'S RESPONSE  
TO STATE'S MOTION TO CONTINUE DEADLINES**

NOW COMES the State of New Hampshire, by and through its attorneys, the Office of the Attorney General, with this answer to the Defendant's request for an extension of or the creation of deadlines in his Response to the State's Motion to Continue Deadlines. In support of the State's position, the State submits the following:

1. On September 4, 2024, the parties agreed to a July 2025, trial date. On October 3, 2024, the Court granted an assented-to structuring proposal which established deadlines for the case including the filing of motions and defenses. The deadlines were established with input from both parties including amendments that were requested by defense counsel. The Court's order established the dates in the assented-to proposal as deadlines in the case. Those deadlines included:

- a. December 1, 2024, Notice of defenses;
- b. January 1, 2025, State expert disclosure/CVs/reports/defendant's criminal record;
- c. January 15, 2025, State's 404(b) disclosure;
- d. February 1, 2025, Motions including motions to suppress, motions to dismiss, and any additional discovery motions;
- e. February 1, 2025, Defense expert disclosure;
- f. February 1, 2025, Defense expert reports;
- g. March 15, 2025, Expert Witness Depositions;
- h. April 30, 2025, Pretrial motions, including Motions *in limine*;
- i. May 1, 2025, Defense reciprocal discovery;
- j. June 1, 2025, State's anticipated trial witness list and witness criminal records;

k. June 11, 2025, Defense’s anticipated trial witness list.

2. On February 28, 2025, the Court issued a notice continuing the scheduled July trial date in this matter. The Court requested that the parties communicate concerning scheduling. In lieu of such discussion, the defense filed a motion for a hearing seeking to discuss scheduling in Court. On March 10, 2025, the Court held a scheduling conference with the parties to discuss scheduling of this case. At no time during that hearing did the defense request alterations to any deadlines. Nor did the defense express a belief that the deadlines would be “amended by default”<sup>1</sup> as expressed in their response or somehow rendered “moot” as described by counsel in email communications on April 23, 2025.<sup>2</sup> During the hearing, defense counsel indicated that they were ready for trial.

3. On March 11, 2025, the Court determined that a new trial date would be scheduled in October of 2025.<sup>3</sup>

4. Later that day, after the Court’s decision, the State inquired as to whether defense counsel would agree to an extension of the deposition deadline to the end of May. Attorney Kinne responded on March 12, 2025, indicating that “the defense objects to timeline extensions”. If defense counsel believed that the Court’s continuance of the July trial date amended the deadlines by default, they would not have made this objection. The State’s request was granted

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<sup>1</sup> The State is unsure what the defendant is referring to when he writes that the deadlines were “amended by default” as a search of Lexis Nexis shows that phrase has not been used in any New Hampshire jurisprudence, nor any other court case or statute in the United States.

<sup>2</sup> In an email on April 18, 2025, defense counsel inquired as to whether the State would agree that the previously scheduled deadlines could be postponed. On April 23, 2025, counsel indicated that the deadlines were moot because they were based on a July trial date.

<sup>3</sup> As indicated during the March 10, 2025, hearing, Assistant Attorney General Bethany Durand is scheduled to be in trial beginning September 8, 2025. That case involves first-degree murder charges, three victims, and a non-bifurcated insanity defense. As a result, Attorney Durand will not be available for the final pre-trial conference in this case and possibly will not be available for jury selection. Further, as discussed in the scheduling hearing, Assistant Attorney General Charles Bucca was previously scheduled in another trial in October. Due to the newly created scheduling conflict, Attorney Bucca has withdrawn from this case and Senior Assistant Attorney General Joshua Speicher is entering his appearance.

over the objection of defense counsel and the State's deadline to depose the defendant's expert witness was extended to May 23, 2025.

5. On March 14, 2025, the Court issued a notice of jury trial which provided new hearing and trial dates for this case including dates for final pre-trial, jury selection, and jury trial. No other dates were suggested, cancelled, altered, or amended by the Court.

6. On March 17, 2025, counsel for the defendant filed a Motion to Dismiss for Violation of Speedy Trial. On April 10, 2025, during a hearing on that motion, defense counsel argued that the defendant was ready for trial, and that the delay caused prejudice to the defendant. As part of the argument, defense counsel indicated that the delay disadvantaged the defendant. Specifically, counsel argued that the delay hindered the defense and caused actual prejudice.

7. In fact, and of import to the current request and to the defendant's pending Motion to Dismiss, the delay of this trial appears to benefit the defendant (1) by allowing his attorneys to establish new deadlines where they missed or would have missed the previously established ones, and (2) by allowing time for additional investigation that could have been completed previously. At the time the Court continued the July trial date, the deadline for expert witness depositions was just two weeks away and no depositions had been requested or scheduled. Even on March 11, 2025, when the State asked for the defendant's position on a continuance of the deposition deadline, defense counsel made no reciprocal request for deposition of witnesses or a continuance of the deposition deadline in general. On April 15, 2025, counsel for the defendant filed a motion for services with the Court to authorize the retention of a new potential expert witness in this case.<sup>4</sup> On April 18, 2025, counsel for the

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<sup>4</sup> The State learned of this motion through communications with counsel.

defendant asked whether the State would agree to postpone the previously scheduled deadlines. If defense counsel believed that the Court's continuance of the July trial date amended the deadlines by default, they would not have made this request. It was not until April 21, 2025, that counsel for the defendant, for the first time, requested to depose the state's expert witnesses, and, to date, defense counsel have not identified which of the State's noticed expert witnesses they now seek to depose. Further, on April 21, 2025, defense counsel requested that the defendant's cellular phone be made available for examination by their newly retained potential expert witness.<sup>5</sup>

8. On April 22, 2025, the State responded to the defendant's inquiries and advised that if counsel was seeking an extension of any deadlines in the case – they should file a motion. On April 29, 2025, the State responded to additional communications from defense counsel indicating that they should file motions if they were seeking to negate the previously ordered deadlines or establish new ones.

9. On May 2, 2025, with no response or filing from defense counsel, the State filed its Motion to Continue two remaining deadlines from the previously assented-to and granted Court Scheduling Order. The State notes that it did not make a request to extend its deadline of May 23, 2025, for the deposition of the defense expert witness as the State has scheduled that deposition to occur on May 16, 2025.

10. The defendant now seeks to use their response to the State's Motion to generate a wholly separate demand that the Court extend previously expired deadlines and establish new ones. The defendant argues in this filing that all the previously agreed upon and ordered

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<sup>5</sup> The parties are in the process of coordinating this request.

deadlines were “amended by default” when the Court continued the trial. *Defendant’s Response*  
¶ 5. The Court made no such order or amendment to the assented-to structuring order.

11. Defendant’s position as to these deadlines appears to have altered over time. As discussed *supra*, immediately following the continuance of the trial, defense counsel advised the State that it objected to any extension of the timeline. Then, defense counsel requested that the State agree to a postponement of the deadlines. Defense counsel never made a request of the Court to extend or create deadlines. Only now, does the defendant argue that the deadlines were “amended by default” or moot, an argument that appears to be motivated by a need for additional time to prepare for trial. This is contrary to the position that his counsel has taken in their Motion to Dismiss this case where the defendant insists that he is ready for trial and that he does not benefit from a delay.

12. In terms of the State’s current position on the specific deadlines and requests made by the defendant in his response to the State’s Motion to Continue Deadlines:

- a. The defendant requests that the deadline for the State’s witness list to be provided be set at August 27, 2025. The State has no objection.
- b. The defendant requests that the deadline for the Defendant’s witness list to be provided be set at September 5, 2025. The State has no objection.
- c. The defendant requests that a deadline for Notice of Intent to Use 404(b) evidence be set on August 7, 2025. The State objects. The State provided such notice in January of 2025.
- d. The defendant requests that a deadline for Motions to admit 404(b) evidence be set on August 22, 2025. The State objects. The assented-to motions deadline passed on April 30, 2025.

- e. The defendant requests that a deadline for Motions to exclude 404(b) evidence be set on September 6, 2025. The State objects. The assented-to motions deadline passed on April 30, 2025. The State further notes that the defendant filed a motion to exclude 404(b) evidence in accordance with the April 30, 2025, motions deadline.
- f. The defendant requests that a new deadline for the filing of Motions *in limine* be set on September 5, 2025. The State objects. The assented-to motions deadline passed on April 30, 2025.
- g. The defendant requests that a new deadline for defense reciprocal discovery be set on August 7, 2025. The State objects. The assented-to reciprocal discovery deadline passed on May 1, 2025. At this time, counsel for the defendant should have provided any reciprocal discovery in its possession to the State. The parties each have a continuing obligation to supplement discovery responses in a timely manner as additional materials are generated or as it becomes apparent that previously disclosed information is incomplete, inaccurate, or misleading. *See* N.H. R. Crim. P. 12(b)(7).
- h. The defendant requests that a new deadline for submission of proposed *voir dire* be set on September 12, 2025. The State has no objection.
- i. The defendant requests that a new deadline for submission of proposed jury instructions be set on September 26, 2025. The State objects, noting that the final pre-trial in this case is set for September 15, 2025.
- j. The defendant requests that a new deadline be established for the deposition of witnesses to be set on July 31, 2025. The State objects. The assented-to

deposition deadline passed on March 15, 2025, with no request by the defendant to seek additional time.

13. The defendant indicates in his filing that the State “failed to include amended deadlines for any motions *in limine*, motions to exclude or admit 404(b) evidence, additional discovery motions, and several other deadlines set forth within the October 3, 2024, structuring order.” *Defendant’s Response* ¶ 4. The State did not fail to include these deadlines – many of the deadlines have already passed with no request by the defendant to extend them.

14. The defendant’s proposed extended and new deadlines fail to consider the complexity of this case or the scheduling concerns of counsel and/or the Court. For example, the defendant’s proposed deadlines for motions (September 5, 2025, for motions *in limine*, and September 6, 2025, for 404(b) motions) would result in responsive deadlines days after the final pre-trial. The Court would then have two weeks to schedule, hold hearings, and render opinions prior to the October 6, 2025, scheduled individual jury selection.<sup>6</sup>

15. The defendant’s request also fails to consider the fact that the defendant had substantially all the discovery in this case since October of 2024, and received their own expert witness report on or about November 1, 2024. The defense has offered no reason (and the State is not aware of one) why the court should accommodate their request to extend certain deadlines when they have informed the court on multiple previous occasions that they are ready for trial.

16. Defense counsel’s representations to this court that they believed the previous deadlines were “amended by default” are contradicted by their actions in objecting to the State’s request for the extension of a deadline and asking for the State’s assent to postpone the deadlines.

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<sup>6</sup> All occurring while Assistant Attorney General Durand is in trial in another matter, a fact which counsel and the Court were already made aware of at the March 10, 2025, scheduling hearing.

17. The defendant agreed to the previous deadlines and has been in possession of all relevant discovery material for months. The defendant has therefore had ample opportunity to conduct depositions of the State's expert witnesses, file motions *in limine*, and move for the exclusion or admission of evidence under Rule 404(b). The defendant did not do so and has allowed the applicable deadlines to pass without a request for a continuance, until now. The defendant has provided no explanation for why he should be entitled to an extension. The defendant is not entitled to an extension of these deadlines, and this court should not provide him with one.

WHEREFORE, the State of New Hampshire respectfully requests that this Honorable Court:

- (A) Grant the State's Motion to Continue Deadlines related to the provision of witness lists; and/or,
- (B) Deny the Defendant's request for extension of and/or new deadlines in this matter; and/or,
- (C) Hold a scheduling hearing; and/or,
- (D) Grant such further relief as may be deemed just and proper.

Respectfully submitted,

THE STATE OF NEW HAMPSHIRE

JOHN M. FORMELLA  
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Date: May 13, 2025

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this pleading was filed through the Court's electronic filing system and will be electronically served by the e-Filing system on counsel for defendant.

May 13, 2025

/s/ Bethany J. Durand  
Bethany J. Durand