

THE STATE OF NEW HAMPSHIRE  
SUPERIOR COURT

COÖS, SS

OCTOBER TERM, 2025

STATE OF NEW HAMPSHIRE

V.

DUSTIN MARK DUREN

214-2024-CR-00028

**STATE'S MOTION TO UTILIZE TRANSCRIPT OF DEFENDANT'S STATEMENT AS  
A GUIDE FOR JUROR'S DURING TRIAL**

NOW COMES the State of New Hampshire, by and through its attorneys, the Office of the Attorney General, and respectfully requests this Honorable Court to allow the State to provide jurors with the transcript of the defendant's statement to utilize as a guide during the playing of that statement at trial. In support of this pleading, the State submits the following:

**FACTS AND PROCEDURAL HISTORY<sup>1</sup>**

1. The defendant is charged with alternative charges of knowing second-degree murder and reckless second-degree murder, for killing Caitlyn Naffziger on February 29, 2024, in Berlin, New Hampshire. The defendant is further charged with reckless conduct with a deadly weapon and child endangerment related to his actions in the homicide.

2. On March 1, 2024, at approximately 10:00 A.M., the defendant was taken into custody in the parking lot of an Applebee's restaurant located in Keene, New Hampshire.

3. The defendant was subsequently read his *Miranda* rights, waived them, and agreed to speak with investigators from the New Hampshire State Police. This interview

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<sup>1</sup> All facts listed below are drawn from the discovery materials and from arguments made during motions hearings in this case.

took place inside an interview room in the Troop C barracks, located in Keene, New Hampshire. It was video and audio recorded. During that interview, the defendant provided his account of the events that occurred surrounding the murder of Caitlyn Naffziger, including his admission that he had shot and killed her.

4. The defendant's statement was subsequently transcribed by a stenographer and a copy of that transcript was provided to the defendant in discovery (Bates 390-560). Subsequently, the interviewer reviewed the transcript and noted minor errors that were inconsistent with the tape. The interviewer marked the errors and a "corrected" transcript was provided to the defendant in discovery (Bates 1747-1919).

5. In litigation concerning redactions to the transcript – counsel for the defendant utilized Bates 390-560. The State remained consistent with the use of Bates 390-560 in that litigation and, should the State admit the defendant's statement at trial, the State would utilize the original, unedited transcript with the defendant's statement.<sup>2</sup>

## **ARGUMENT**

6. There are two ways in which the State could seek to provide the jury with a copy of the transcript during trial. In both options, a copy of the transcript would be marked for identification only and remain with the Court.

- a. The State could provide each juror with a physical copy of the transcript for them to have and review while the statement is playing on the television in front of them. Should the jury receive physical transcripts, they would be collected from each juror at the conclusion of the playing of the defendant's statement. The transcript would not be available for jurors to use during deliberations.

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<sup>2</sup> To the extent necessary, if called to testify, the witness who reviewed and corrected the transcript may be asked about inconsistencies between that original transcript and the tape.

- b. Or, as the State currently intends, the State could play the transcript of the statement on the television screen concurrent with and immediately below the audio/video recording of the defendant's statements, *ie.* the transcript would be used as subtitles for the recording.<sup>3</sup>

7. This Court has discretion to allow the use of transcripts to aid the jury in listening to and following the playback of a recorded statement. *United States v. Panzardi-Lespier*, 918 F.3d 313, 318 (1990) (citing *United States v. Devous*, 764 F.2d 1349, 1354 (10th Cir. 1985)).

8. The use of transcripts to aid the jury has been recognized in several courts including in New Hampshire. This type of visual aid is of assistance to jurors where audio can be difficult to hear or certain words such as names or locations may not be familiar. There is no concern of misleading a jury or confusing the issues especially when jurors have the recording itself in addition to the visual aid.

9. In *State v. Cook*, the New Hampshire Supreme Court discussed the use of transcripts as evidence to aid the jury during trial. The Court recognized that transcripts are admissible to aid the jury as it listens to a tape. 148 N.H. 735, 742-743 (2002) (citing *United States v. Costa*, 691 F.2d 1358, 1362-1363 (1982) (“[t]his Court has recognized previously that transcripts are evidence admissible to aid the jury as it listens to a tape”). *See also United States v. Onori*, 535 F.2d 938 (5th Cir. 1976).

10. In *Cook*, the defendant did not object to the use of the transcript to aid the jury during trial but rather to the fact that the transcript was erroneously sent with the other evidence for the jury to review during deliberations. On appeal, the Court found that the

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<sup>3</sup> Should the Court deem it necessary – the State could admit a copy of the recorded statement in its original form, without subtitles, and that version would be provided to the jurors during their deliberations.

jury's possession of the transcript during deliberations was harmless error. Specifically, the Court stated, "[w]e fail to see how the presence of the transcript increases the likelihood that the jury would improperly focus upon the content of the tape where the tape itself was also available. 148 N.H. 735, 742-743 (2002).

11. While transcripts are allowed in to aid the jury, it is the content of the recording and not the transcript that is evidence in the case. *United States v. Carbone*, 798 F.2d 21, 26 (1<sup>st</sup> Cir. 1986); *United States v. Richman*, 600 F.2d 286, 295 (1st Cir. 1989); *United States v. Nashawaty*, 571 F.2d 71, 75 (1st Cir. 1978). See also *United States v. Rengifo*, 789 F.2d 975, 980 (1st Cir. 1986) ("transcripts are used to assist the jury in following tape-recording playbacks").

12. In *Carbone*, the Court stated "[w]e have approved, as have most circuits, the use of transcripts as a jury aid in following tape recording playbacks. 798 F.2d at 26 (citing *United States v. Rengifo*, 789 F.2d 975 (1<sup>st</sup> Cir. 1986); *United States v. Fontanez*, 628 F.2d 687, 691 (1st Cir. 1980); *United States v. DiMuro*, 540 F.2d 503, 512 (1<sup>st</sup> Cir. 1976)). In that case, the trial court issued a limiting instruction to the jury to ensure that they knew that the tapes, not the transcripts, constituted the evidence and that the tapes controlled if there was any difference between them. The appellate court found that such an instruction accurately reflected the prior rulings of the First Circuit. (citing *United States v. Richman*, 600 F.2d 286, 295 (1<sup>st</sup> Cir. 1979); *United States v. Nashawaty*, 571 F.2d 71, 75 (1<sup>st</sup> Cir. 1978)).

13. In this case, consistent with prior court holdings, the State suggests a limiting instruction be read to the jury that would indicate that the transcript is provided for them to utilize as an aid in listening to the recording. The State would suggest the following:

Members of the jury, exhibit X, a recording, will now be played. A transcript of that recording will be visible on the screen below the video recording (or, in the alternative: At the same time, you will be given a transcript of that recording.)

The transcript is not evidence. The transcript is intended only as an aid to help you as you listen to the recording. Therefore, you may only consider what you hear and understand the contents of the recording to be. That means if you perceive a difference between the recording and the transcript, you must rely on the recording.

WHEREFORE, the State respectfully requests that this Honorable Court:

- A. Grant the State's Motion to Utilize Transcript of Defendant's Statement as a Guide for Juror's During Trial; and,
- B. Read the Requested Limiting Instruction to the Jury; and/or,
- B. Grant such further relief as may be just and proper.

Respectfully submitted,

THE STATE OF NEW HAMPSHIRE

By its attorney

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Date: October 14, 2025

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**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing was provided to counsel for the defendant, Hanna Kinne, Esq. and Margaret Kettles, Esq., through the Court's e-filing system.

October 14, 2025

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