

THE STATE OF NEW HAMPSHIRE
NORTHERN DISTRICT OF HILLSBOROUGH COUNTY

SUPERIOR COURT
HILLSBOROUGH, SS.

APRIL TERM, 2024

THE STATE OF NEW HAMPSHIRE

v.

ADAM MONTGOMERY

Case No. 216-2022-CR-00020,
216-2022-CR-002372

**STATE'S OBJECTION TO DEFENDANT'S DE FACTO
MOTION TO WAIVE PRESENCE AT SENTENCING HEARING**

NOW COMES the State of New Hampshire, by and through its attorneys, the Office of the Attorney General, and files this pleading by which the State objects to the defendant's de facto motion to waive his presence at the upcoming sentencing hearing and requests a hearing on the matter if the Court deems that a hearing is warranted. In support thereof, the State says the following:

1. After trial, the defendant was convicted of second-degree murder, tampering with a witness, falsifying physical evidence, second-degree assault, and abuse of a corpse arising out of his murder of Harmony Montgomery in Manchester, New Hampshire on December 7, 2019, and the numerous steps the defendant took in an effort to conceal his crimes and evade responsibility for them.
2. By Order dated February 23, 2024, the Court scheduled the sentencing hearing in the case to occur on May 9, 2024.
3. On March 20, 2024, the State filed a passive notice regarding the applicability of RSA 651:4-a to the sentencing hearing and the requirement that the defendant personally

appear for sentencing. The state noticed that an appropriate transport order would be needed as the defendant's appearance was so compelled.

4. In response, by motion filed on March 28, 2024, the defendant filed his de facto Motion to Waive his Presence at the Sentencing Hearing, stating simply that he maintains his innocence despite the jury's findings and asks the Court to excuse his appearance. Defendant's Response ¶ 2. The motion does not set forth any basis either constitutional, statutory, or in case law supporting his request to waive his presence at sentencing. The State objects to the defendant's motion.

5. The New Hampshire Supreme Court has characterized sentencing as the process in which rehabilitation, deterrence, and punishment converge, and where the sentencing court, directed by the Criminal Code and common law, administers society's sentence upon a defendant for his or her crime. *See State v. Rothe*, 142 N.H. 483, 484 (1997). Contrary to the defendant's current request to absent himself from the scheduled sentencing hearing, the defendant has a constitutional right to be present and can waive that right. *See generally, e.g., United States v. Ferrario-Pozzi*, 368 F.3d 5, 8 (1st Cir. 2004) (citing *United States v. Gagnon*, 470 U.S. 522, 526 (1985)). But that right and associated ability to waive does not confer upon the defendant any concomitant right to absent himself from that same proceeding:

The ability to waive a constitutional right does not ordinarily carry with it the right to insist upon the opposite of that right. For example, although a defendant can, under some circumstances, waive his constitutional right to a public trial, he has no absolute right to compel a private trial; although he can waive his right to be tried in the State and district where the crime was committed, he cannot in all cases compel transfer of the case to another district; and although he can waive his right to be confronted by the witnesses against him, it has

never been seriously suggested that he can thereby compel the Government to try the case by stipulation.

Singer v. United States, 380 U.S. 24, 34-35 (1965) (internal citations omitted). Therefore, the defendant has no right to absent himself from this proceeding.

6. The Court should reject the defendant's request to absent himself from his sentencing and compel his presence. Instructive on the matter is the legislative history and effect of the 2016 amendment to RSA 651:4-a.

7. In 2015, the legislature amended RSA 651:4-a to overrule previous case law that viewed the defendant's appearance at sentencing as a right the defendant may freely waive. The legislature's modification makes it clear that RSA 651:4-a is now a rule requiring the defendant to personally appear at sentencing. The amendment to RSA 651:4-a, or House Bill 225 ("HB225"), was introduced by Rep. Renny Cushing, after the sentencing hearing in State of New Hampshire v. Seth Mazzaglia, in which a defendant convicted of murdering an innocent college student moved to wave his appearance at sentencing. Rep. Cushing was noted news reports at that time that in bringing HB225 he had "conversations with lawmakers and victim advocates across the country who were outraged at the conduct in [State v. Seth Mazzaglia] saying [Mazzaglia] didn't want to listen to the family whine." Ryan Lessard, *Bill Would Make N.H. The First To Mandate Criminal Sentencing Attendance*, NHPR, Feb. 25, 2015, <https://www.nhpr.org/nh-news/2015-02-25/bill-would-make-n-h-the-first-to-mandate-criminal-sentencing-attendance>. Rep. Cushing noted that "if we're successful here, it will be replicated in other places." *Id.*

8. Indeed, the HB225 was passed in New Hampshire, and replicated in other jurisdictions. HB225 was passed on July 15, 2015, and became effective on January 1, 2016. In 2018, Michigan became another state to pass a bill requiring defendants to listen to the impact statements of victims' families at sentencing. *See*, Maya Goldman, *Defendants Will Now be Required To Listen To Their Victims' Impact Statements*, MPNPR, May 24, 2018, <https://www.michiganpublic.org/news/2018-05-24/defendants-will-now-be-required-to-listen-to-their-victims-impact-statements>. Regarding Michigan's decision to make this legislative change, Professor Blanche Cook at Wayne State University commented on the effect of such a law and its impact on victims and defendants; explaining that the law was crucial for victims and their families in that "tell[ing] [the defendant] what the crime or what the impact of the crime has had on the family and the victim is a kind of vindication, and also a form of healing." *Id.* Cook also noted that the effect of such a law additionally serves to help defendants "by allowing them to hear the full effects of their actions." *Id.*

9. The State elaborates at length about this legislative history because of the misconception that, like the right of a defendant to absent themselves from trial, RSA 651:4-a allows the defendant to absent themselves from sentencing. The rule, and the legislative history behind the rule, recognize that there are many interests in requiring the defendant to appear at sentencing including the State's, the Court's, the public's, the family's, and the defendant's. Therefore, based upon the legislative history of RSA 651:4-a and subsequent interpretation, it is clear that the defendant's presence is not the sole controlling interest in whether he is present at sentencing.

10. While RSA 651:4-a allows the Court discretion to excuse a defendant from sentencing, doing so defeats the legislature's objective if defendants were permitted to waive

their appearance at sentencing without a compelling justification. Here, the defendant writes that his compelling justification is that he “maintains his innocence on the charges of Second Degree Murder, Tampering with a Witness and Second Degree Assault . . .”. *See* Defendant’s Response ¶ 2. This is not a compelling reason to excuse his presence, and in itself, is further evidence he still does not take responsibility for all of his actions found proven beyond a reasonable doubt. This does nothing to provide for the collective interests of the State’s, the Court’s, the public’s, and most importantly the family in the defendant being present at sentencing. In addition, the defendant’s request provides an even more compelling argument for securing his presence at sentencing as he does not dispute that following the murder of Harmony Montgomery, he falsified physical evidence by altering, destroying, concealing, or removing Harmony’s body and that he abused Harmony’s corpse. *See* Charge ID 2027113C and 2027114c.

11. Here, consideration of all relevant factors warrants the defendant’s presence at the May 9 sentencing hearing, and the defendant has not set forth any reasons that could be considered valid or legitimate, for absenting himself from the proceeding.

12. The countervailing interests of the State, the Court, the public, and the family in having the defendant present at his sentencing are numerous and weighty. The defendant was convicted after a jury trial of second-degree murder, second-degree assault, tampering with a witness, falsifying physical evidence, and abuse of a corpse. As the State noted in its *Notice for Defendant’s Appearance at Sentencing*, Harmony Montgomery’s family will be personally appearing in court along with other individuals victimized by the defendant’s crimes and wish to provide statements on the impact the defendant’s criminal actions have had upon them. The seriousness of the offenses weighs in favor of his appearance at

sentencing to promote public accountability for his actions and specific and general deterrence. While the second-degree murder charge carries a mandatory minimum sentence of 35 years, none of the other charges of which the defendant was convicted carry a particular mandatory sentence, and the need for public accountability and deterrence for those crimes are significant.

13. Other interests of the public, the court system, and the public all favor the defendant's personal appearance at his sentencing hearing. The defendant's presence may benefit the Court in imposing an appropriate sentence for all five counts. The defendant's presence also can help avoid any unnecessary and unwanted confusion or claim of error due to absence that may warrant resentencing and would undermine the finality of the process to the prejudice of the State and the victims. *See* United States v. Hicks, 997 F.2d 594, 597 (9th Cir. 1993); United States v. Munoz-Dela Rosa, 495 F.2d 253, 256 (9th Cir. 1974). Furthermore, the defendant's personal presence in order to receive his sentence after a fair and public trial, with the associated goals of deterrence and punishment, clearly will foster both the appearance and actuality of dispensing fair justice.

14. Finally, the interests of the Harmony's family can hardly be more compelling than in this case. New Hampshire has recognized the significance and import of the rights of victims of such crimes. *See generally* RSA 651:4-a and 21-M:8-k et al. Many of those who may speak at the defendant's sentencing attended the defendant's trial and many of the pretrial hearings. As the Court knows, they all acted with dignity and respect. Pursuant to the statute, Harmony's family deserves to finally be heard; not just before the Court, but by the defendant, in order to explain how his crimes have so fundamentally affected them.

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

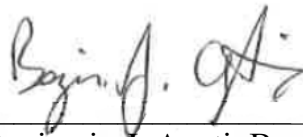
- A. Deny the defendant's motion to waive his presence at his May 9 sentencing hearing; and
- B. Grant such other and further relief as may be deemed just and proper.

Respectfully submitted,

THE STATE OF NEW HAMPSHIRE

By its attorney,

JOHN M. FORMELLA
ATTORNEY GENERAL



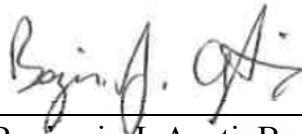
Date: April 9, 2024

Benjamin J. Agati, Bar # 16161
Senior Assistant Attorney General

/s/ R. Christopher Knowles
R. Christopher Knowles, Bar #276524
Assistant Attorney General
Criminal Justice Bureau
1 Granite Place - South
Concord, NH 03301

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was sent via the State of New Hampshire e-filing system to Carrie Smith, Esq. and Jamie Brooks, Esq. counsel of record in this matter.



Benjamin J. Agati, Bar # 16161