

STATE OF NEW HAMPSHIRE

HILLSBOROUGH COUNTY
NORTHERN DISTRICT

SUPERIOR COURT

STATE OF NEW HAMPSHIRE

v.

ALEXANDRA ECKERSLEY

216-2022-CR-3011

RESPONSE TO STATE'S MOTION TO PRESENT REBUTTAL EVIDENCE

Alexandra Eckersley, through counsel, Kimberly A. Kossick and Jordan Strand, submits this response to the State's motion entitled OBJECTION TO THE DEFENDANT'S MOTION TO EXCLUDE EVIDENCE OF THE DEFENDANT'S CHARACTER. The pleading is not an objection to the defense's motion in limine as much as it is a motion to admit rebuttal expert evidence. As this motion is untimely and the State has not disclosed any expert, their qualifications, their report, or their opinions, the defense OBJECTS to the State's request to admit rebuttal evidence.

In support, the following is offered:

1. This matter is scheduled for a final pretrial on July 10, 2024, and for jury selection on July 22, 2024.
2. This matter was continued on January 10, 2024, after the State objected to a late disclosure of defense expert Dr. Pelaprat. The parties agreed to continue.

3. The Court's (Messer, J.) order of January 10, 2024, directed the State to send CVs and expert disclosures to the defense by January 17, 2024. The Court also directed the defense to file objections to experts by January 31, 2024.
4. The State provided CVs and medical reports from the doctors on its witness list.
5. The defense assented to an extension of time limits for the State's objection to Dr. Pelaprat's testimony. This motion for an extension was filed on or around January 17, 2024.
6. Dr. Pelaprat was deposed on February 7, 2024. The State filed a supplemental objection to exclude Dr. Pelaprat on February 20, 2024, and a second supplemental objection on April 3, 2024.
7. On April 22, 2024, the State filed a motion to disclose Dr. Pelaprat's report to an unnamed "mental health professional."
8. On May 20, 2024, the Court denied the State's motion to exclude Dr. Pelaprat.
9. On May 24, 2024, the State filed a motion asking the Court to order the defense to produce the documents reviewed by Dr. Pelaprat. The State represented it had asked multiple times for these documents. This was not true.
10. The basis for the State's motion was that the defense should not be able to introduce any documents without first providing them to the State. The State did not represent it had an expert who needed to review the documents.
11. On June 4, 2024, the Court granted the State's motion for the production of documents. The defense delivered the documents to the State on June 12, 2024.

12. On June 10, 2024, the defense deposed Alexandra Gosselin, a nurse at CMC.
The State has never disclosed any expert opinion that Ms. Gosselin would provide. The defense assumes she will be called as a fact witness.
13. At the deposition, the State, represented by ACA Shawn Sweeney, did not mention a new non-disclosed witness.
14. On June 17, 2024, the defense deposed Dr. Linnan, the attending emergency room physician.
15. After the deposition was completed, the Avicore steno said it would take three weeks to receive the transcript. This statement prompted undersigned counsel to email the State on June 18, 2024, suggesting we accomplish the other depositions sooner than later as we were getting close to trial. The State, represented by ACA Shawn Sweeney, replied that the State **was not calling any of the other doctors.** See attached. The State did not indicate it would be calling a nurse—or any other witnesses—heretofore unknown.
16. On July 5, 2024, the State filed its OBJECTION TO THE DEFENDANT’S MOTION TO EXCLUDE EVIDENCE OF THE DEFENDANT’S CHARACTER. In that pleading, the State does not address the merits of the defense motion in limine. Instead, the State argues that it should be allowed to admit rebuttal evidence that is not disclosed to the defense.
17. The State has not filed an amended witness list. As of this writing, the State has not made any expert disclosure about Kathleen Czarneck nor has it provided a report or an opinion.

18. The State's request is untimely and meritless. If the State knew in April that Czarnec was its "mental health professional" they should have been disclosed to the defense at that time. The State did not request the underlying records until May 24. In that motion, there was no indication by the State that the purpose of the records was for review by an "expert."
19. This evidence should be excluded because the State advances no legal basis for its admissibility. The State makes a bald statement that Czarnec's "conclusions" are "very different" from Dr. Pelaprat's but declines to share those conclusions.
20. By the State's own admission, it has "no other possible method" of proving its case. If the State cannot prove these matters during its case-in-chief, then it should not be advancing this prosecution.

WHEREFORE, Alexandra Eckersley, through counsel, asks the Honorable Court to:

- A. Grant the defense motion in limine.
- B. Deny the State's request to admit rebuttal evidence.
- C. Grant other relief deemed equitable and just.

Respectfully submitted,

/s/ Kimberly A. Kossick
Kimberly A. Kossick (#17341)
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Manchester, NH 03101
603-669-7888
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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing has been served via efile to the Hillsborough County
Attorney's Office.

/s/ Kimberly A. Kossick
Kimberly A. Kossick #17341

From: [Shawn Sweeney](#)
To: [Kim Kossick](#); [Alexander Gatzoulis](#)
Cc: [Eva Reardon](#); [Jordan Strand](#)
Subject: RE: Eckersley--doctors
Date: Tuesday, June 18, 2024 9:56:52 AM
Attachments: [image001.png](#)

Kim,

We won't be calling any of the other doctors.

Shawn



Shawn P. Sweeney
1st Assistant County Attorney
Hillsborough County Attorney's Office
300 Chestnut Street, Manchester, NH 03101
Tel: (603) 627-5605
Fax: (603) 627-5627

From: Kim Kossick <kkossick@nhpd.org>
Sent: Tuesday, June 18, 2024 9:26 AM
To: Shawn Sweeney <shawn.sweeney@hcnh.gov>; Alexander Gatzoulis <alexander.gatzoulis@hcnh.gov>
Cc: Eva Reardon <eva.reardon@hcnh.gov>; Jordan Strand <jstrand@nhpd.org>
Subject: Eckersley--doctors

Hello:

Would you check on availability for the other doctors?

Avicore said yesterday it would be 3 weeks for a transcript of Dr. Linnan. So, we are cutting it close.

Thanks,
Kim

Kimberly A. Kossick
603-669-7888

If you are a State actor, opening this email is an acknowledgement of a discovery request. If there is outstanding discovery in this matter, please immediately forward it to my

office. This includes, but is not limited to: expert reports, bodyworn camera, police reports, and Zwicker material.