

THE STATE OF NEW HAMPSHIRE
SUPERIOR COURT

ROCKINGHAM, SS.

AUGUST TERM, 2023

State of New Hampshire

v.

Brandon Castiglione

218-2019-CR-01132

STATE'S MEMORANDUM IN SUPPORT OF SENTENCING

NOW COMES the State of New Hampshire, by and through its attorneys, the Office of the Attorney General [“the State”], and respectfully provides this Memorandum in support of its sentencing request, in advance of the defendant’s scheduled sentencing hearing on his convictions for knowing second-degree murder and reckless second-degree murder.

I. PRELIMINARY

1. The defendant was indicted on one count each of knowing second-degree murder, RSA 630:1-b, I(a), and reckless second-degree murder, RSA 630:1-b, I(b), for fatally shooting Luis Garcia in the back of the head on October 1, 2019, inside the defendant’s home in Londonderry, New Hampshire. Following a jury trial, the defendant was found guilty of both charges on May 15, 2023.

2. Sentencing in this matter is scheduled for August 25, 2023. For the reasons detailed below, as well as for the reasons that will be articulated at the scheduled sentencing hearing, the State requests that the Court impose *in toto* the sentence outlined below in paragraph 3 for the charge of knowing second-degree murder, charge ID

#1805389C. The State has attached to this sentencing memorandum a State Prison Form setting forth the sentence advocated by the State.¹ Attachment A.

3. The State requests the following appropriate sentence for this defendant and his crime:

- Stand-committed sentence of forty (40) years to life;
- Pretrial confinement credit: 1,425 days; and
- Restitution for funeral and burial expenses totaling \$7,928, with \$7,428, payable to NH Victim's Compensation, and \$500 payable to Patricia Garcia.

II. REASONS WHY THE STATE'S RECOMMENDATION IS APPROPRIATE AND JUST

A. The details of how and why the defendant murdered Luis Garcia justify imposing a significant sentence.

4. The facts of this case justify the sentence advocated by the State for knowingly murdering Luis Garcia by shooting him in the back of the head at close range. As the Court is aware, the defendant and Mr. Garcia were alone at 15 Ridgemont Drive in Londonderry, NH on the morning of October 1, 2019. Mr. Garcia had been working at the residence for the defendant's father, Mark Castiglione, for about two weeks prior to his murder at the hands of the defendant. On the morning of October 1, 2019, Mr. Garcia was working in the last room on the left down the upstairs hallway, which Mark had been using as a home office. This Court saw the photos at trial of the walls Mr. Garcia was busy patching and sanding in the room with his back was to the door.

5. As was typical, Mark placed a call to Mr. Garcia around 9:30 a.m. to check on his progress working in the home while he, Mark, was at work in Billerica, MA.

¹ Upon the conclusion of the defendant's appeal and affirmation of his conviction, the State will file a notice of nolle prosequi with respect to the reckless second-degree murder count, charge ID #1674110C.

Mark testified how Mr. Garcia consistently, if not invariably, answered his phone to speak with Mark. On October 1, 2019, Mr. Garcia did not answer because by then he was dead, and the defendant had already made the decision and taken the deadly steps to end Mr. Garcia's life.

6. The evidence at trial showed that the defendant owned the murder weapon, his black Glock 19 9mm pistol, serial # TSA446. Mark testified how the defendant kept that pistol in its case locked in the file cabinet next to his bed in the bedroom directly next to the office where Mr. Garcia was working. Mark further testified that he, nor anyone else, had access to the defendant's pistol. The evidence also showed that the defendant owned a box of 9mm ammunition made or marketed by Fiocchi. Criminalist Jill Therriault explained that these bullets were unusual, and were designed to expand or mushroom upon impact, causing more damage. Exhibits at trial showed a box of this ammunition located in the same file cabinet in the defendant's bedroom where the Glock 19 case was also kept and located.

7. On the morning of October 1, 2019, knowing his father was out of the house, and that he and Mr. Garcia were alone, the defendant took his Glock 19 from its case, loaded it with his Fiocchi ammunition, left his room and entered the office. As Mr. Garcia continued working, likely not knowing the defendant was even there, the defendant raised his pistol, held it mere inches from the back of Mr. Garcia's head and fired a bullet into the base of Mr. Garcia's skull. Chief Medical Examiner Dr. Jennie Duval testified that the bullet entered the right base of Mr. Garcia's skull, traveled through his spinal cord and exited his left neck. Dr. Duval testified that the bullet essentially "pulpified" Mr. Garcia's spinal cord and would have cause him to collapse

immediately. However, as Dr. Duval explained, it was possible Mr. Garcia did not immediately die from the injuries caused by the bullet, and it may have taken up to several minutes for him to die as he lay there paralyzed, with his lungs unable to take a breath while blood poured from the holes the defendant's bullet tore through his body.

8. After shooting and killing Mr. Garcia, the defendant made no effort to help Mr. Garcia, to call 911 for emergency medical services, or to alert police to what had occurred. He never once called for help, and as those multiple calls came to his and Mr. Garcia's phones throughout the morning from his father and their family members, the defendant never answered their calls. He did nothing.

9. In the early afternoon, after hours of trying to reach both the defendant and Mr. Garcia, the defendant's sister, Danielle Patalano, and grandmother, Frances Pestana, arrived at 15 Ridgemont Drive, concerned for the defendant and Mr. Garcia. The doors were all locked and the defendant was not responding to their yelling, so Danielle located the key to the front door under the doormat and entered. She eventually made her way to the office, her old bedroom, and found Mr. Garcia and the defendant, neither of whom would respond to her. She then ran back out of the house and Frances then entered. Frances testified to the horror she saw when she reached the end of the hall and found Mr. Garcia and the defendant. She went around the furniture in the room, saw that he was dead, told the jury about the "enormous" pool of blood surrounding his head, how one of his legs was bent awkwardly under him, and how his sanding block was resting on his lap. She then went screaming from the house. Both Danielle and Frances described the defendant kneeling in a fetal position near Mr. Garcia's body and not responding to them.

10. They called 911 and police soon arrived. When officers entered the room, they saw Mr. Garcia and the defendant in the same positions they were when Danielle and Frances saw them. In the hallway, officers located the defendant's pistol resting on a plastic set of drawers just feet from the defendant inside the room.

11. Inside the room, officers found the bullet the defendant had fired through Mr. Garcia's head, as well as the casing from which it had been fired. Fragments from the expanding bullet appeared missing. Dr. Duval testified that there were what appeared to be fragments seen in the x-rays of Mr. Garcia's head and neck. The missing fragments from the bullet were still inside Mr. Garcia.

12. While the defendant's choice not to speak with detectives should not be held against him, his behavior after being arrested shows a lack of remorse, a failure to take responsibility, and a callousness with which he regarded Luis's death. Despite speaking audibly with the investigators about multiple other topics, the defendant would cease speaking once the officers tried administering him his Miranda rights. Instead, the defendant would claim he was speaking with them through eye contact and reference God. At no point were the investigators able to fully administer Miranda to the defendant and the interview was ended due to the defendant's insistence that he was communicating through eye contact. Multiple times investigators asked him to simply state whether he did or did not understand a right, and his response was to stop talking until the conversation went to something else he felt like discussing.

B. Multiple aggravating factors weigh in favor of the State's recommended sentence.

13. The Court should consider the following relevant aggravating factors of the defendant's conduct.

14. **The defendant murdered his victim from behind, giving Mr. Garcia no opportunity to defend himself, or even see the attack coming.** The evidence at trial showed that Mr. Garcia was busy sanding the wall in the last bedroom on the left in the Castiglione residence. The defendant retrieved his pistol from where kept it in his bedroom, exited his room and approached Mr. Garcia from behind. There was no evidence that Mr. Garcia even knew the defendant was behind him. The defendant then raised his pistol just inches from Mr. Garcia's head and, in essence, executed him.

15. The manner in which the defendant chose to execute Mr. Garcia demonstrates the callousness and disregard for human life the defendant possessed at the time he pulled the trigger. That he would take the life of a man who by all accounts served his community and his family lovingly through such callous means is a significant factor that underscores the extreme nature of the defendant's conduct. This warrants the imposition of a significant sentence for both punishment and deterrence.

16. **The defendant committed the murder of an innocent man with no apparent motive or reason.** The crime of second-degree murder is in itself an egregious offense. But that the defendant committed such an egregious offense with no apparent motive or reason is a proper aggravating factor in crafting an appropriate sentence. No evidence at trial or from the investigation clearly established why the defendant woke up the morning of October 1, 2019 and decided to execute Mr. Garcia. Furthermore, at no point in the lengthy amount of time investigators attempted to speak with him did the defendant offer an explanation as to why he was compelled to murder an innocent man with no clear reason.

17. The lack of any clear motive or reason for killing Mr. Garcia makes his murder all the more egregious. That the defendant would take the life of such a man in such a violent way without cause is especially abhorrent, and again underscores the extreme nature of this murder. Murder committed under these circumstances clearly warrants the sentence advocated by the State.

18. **The charged offense was the extreme, permanent culmination of multiple choices and conscious steps made by the defendant.** Although it is unknown exactly when or why the defendant decided he would end Mr. Garcia's life, it is clear that once the choice to kill was made, the defendant made several conscious decisions to effect the murder. First, the defendant chose to murder Mr. Garcia at a time when he knew both of them would be in the house alone, undisturbed. He then chose to retrieve his pistol from where he kept it in the bedside file cabinet in his room and load it. The defendant then chose to enter the room where Mr. Garcia was busy at work and clearly unaware of his presence. He then raised the pistol mere inches away from the back of Mr. Garcia's head and pulled the trigger, firing a bullet through the base of his skull and out the front of his neck, causing untold damage along its path. After murdering Mr. Garcia, the defendant chose not to call law enforcement or 911 to seek aid. He did not call family or Mr. Garcia's wife. He refused to answer the many phone calls and shouts from outside from his father, his sister, his grandmother, and Mrs. Garcia.

19. The many calculated, deliberate steps the defendant took again highlight his callousness in committing this murder. While his decision to murder Mr. Garcia may have been spontaneous, the defendant's actions and choices after making that choice demonstrate how he remained controlled throughout his actions.

20. **The defendant has a significant disciplinary record while incarcerated pretrial.** The State has attached to this sentencing memorandum the relevant disciplinary reports and dispositions. Attachment B. The defendant's disciplinary record, as recounted by Probation/Parole Officer Raimo Kalvi in the presentence investigation requested by and filed with the Court, includes approximately 150 incident reports, including violent infractions while the defendant has been held before and after trial.

21. In April of 2020, was seen punching an inmate who was on the phone. When staff attempted to restrain him, the defendant resisted and attempted to charge the corrections officer who was holding the other inmate on the ground. The defendant had to be restrained for corrections officer to gain control over him.

22. In August of 2021, the defendant threatened staff members after being informed he would be placed in full restraint status due to his previous behavior. Specifically, the defendant stated words to the effect of "you guys need to understand, I have nothing to lose. I will smash someone," and, "If I have to sta-," before he stopped himself mid-word. Corrections officers noted that it was believed he was about to say "stab."

23. In September of 2021, the defendant was in another fight with two inmates who had accused him of stealing from them.

24. In May of 2022, the defendant was seen punching another inmate and would not stop until corrections officers intervened. In video, the defendant could be seen running at the other inmate and punching him in the head.

25. That the defendant would engage in multiple instances of violence, attacking other inmates, and threatening corrections officers' lives while awaiting trial for

murder, shows the defendant's flagrant disregard for the seriousness of the charges (now convictions) against him, and possibly more so, the taking of Luis Garcia's life. The above are facts and circumstances regarding the defendant and the nature of his crime that the Court properly should take into account when considering a fair and appropriate sentence, and they support the sentence advocated by the State.

C. The scarcity of mitigating factors weigh in favor of the State's recommended sentence.

26. It is difficult, if not impossible, to discern the existence of any mitigating circumstances in this case. The defendant was twenty-four years old when he committed the murder, more than old enough to recognize the violent danger of the conduct he engaged in. He also was familiar with firearms, in particular, his pistol which he used to murder Mr. Garcia. Evidence and videos exchanged in discovery showed that the defendant went to a shooting range with Mr. Garcia days before the murder, and fired tens of rounds from the same gun, which is why the defendant never claimed this was a mistake or accident. He also shot and killed Mr. Garcia from behind indicating there was he did not perceive danger or that Mr. Garcia was a physical threat, and such perception did not motivate his acts.

27. The State recognizes that he committed his murder at a young age, twenty-four; hopefully, there is opportunity for change in his future. However, this does not nullify or lessen his culpability in that he knowingly fired the shot that killed Mr. Garcia. To the extent his age is mitigating, it should nevertheless be tempered by the fact that the defendant was the one who engaged in the inherently violent and dangerous events that unfolded and ultimately led to his act of murder, and that there was no evidence at any point that Mr. Garcia provoked the defendant in any way.

28. The State does not turn a blind eye to the potential for rehabilitation and affirmative change that may be more readily obtainable with a youthful offender. To the contrary, the State hopes that will occur in this very case. After all, under the sentence advocated by the State, the defendant likely will be released from incarceration at an age in which he can still be a productive member of society, and achieve personal and professional milestones that his victim never had an opportunity to obtain. Under the State's recommended sentence, the defendant will get the opportunity to parole and will enjoy some of the same later golden years of life that Mr. Garcia never got to enjoy. However, none of that potential can excuse or mitigate the violent crime that the defendant committed and the deadly results that followed, or that they were entirely foreseeable to and caused by the defendant.

29. For all of these reasons, pertinent aggravating factors justify the sentence advocated by the State.

D. Principles of sentencing law in New Hampshire justify imposing the State's recommended sentence.

30. The State's proposed sentence also is justified in this case because it meets the goals of sentencing. The three-part test for sentencing is well-settled under our law. "The legislature has vested in the trial court the ability to adapt sentencing to best meet the constitutional objectives of punishment, rehabilitation and deterrence." *State v. Henderson*, 154 N.H. 95, 97 (2006). No single factor is essential to justify a particular sentence in a particular case, so long as the trial court considers all three goals. *See State v. Wentworth*, 118 N.H. 832, 842 (1978) ("The real purpose of all sentencing is to reduce crime. This theoretically can be done by rehabilitating the individual defendant so he will not offend again. Another way is to punish the individual defendant in the hope that he

will be deterred from repeating his crime. Moreover, by punishing the individual defendant, others may be deterred from committing crimes. Whichever sentence is thought to be likely to reduce the most crime is the proper sentence to impose.”).

31. As to punishment, the New Hampshire Supreme Court has made clear that in addition to rehabilitation and deterrence, “retribution . . . remains a societal goal.” *State v. Farrow*, 118 N.H. 296, 303 (1978). In fact, the New Hampshire Supreme Court has specifically noted that Part I, Article 18 “sanctions ‘punishment’ as a method of reforming the criminal.” *Wentworth*, 118 N.H. at 842. Thus, punishment is an independent goal of sentencing that courts can and should take into account in evaluating the appropriateness of a sentence. Accordingly, this Court has broad discretion to determine the sentence that reflects the appropriate punishment here.

32. It should go without saying that a significant punishment is justified in this case. The defendant committed murder; the most serious of criminal offenses that warrants punishment of commensurate gravitas. And, the punishment aspect of the defendant’s sentence should also appropriately take into account what led up to his act of murder – the conscious choices and steps the unprovoked defendant took which ultimately led to the fatal shooting. Given the nature of the defendant’s conduct and the catastrophic and irremediable result of that conduct – the death of another human being – no lesser sentence than that advocated by the State is warranted.

33. Turning next to rehabilitation, there is no evidence before the Court that links the defendant’s act of murder to any particular psychological, intellectual, cognitive, or developmental condition or deficiency that may require or even benefit from treatment or counseling. Nor does the State believe that the defendant will point to any such

condition or deficiency. Therefore a sentence less than the State's recommendation is not warranted to achieve rehabilitative goals.

34. Deterrence, both general and specific (*i.e.*, individual), also supports imposition of the sentence advocated by the State. New Hampshire courts have long acknowledged that general deterrence is a legitimate consideration when handing down a sentence for a particular offense. *See State v. Darcy*, 121 N.H. 220, 225 (1981) ("The real purpose of all sentencing is to reduce crime, and our Constitution recognizes deterrence as a legitimate purpose of sentencing."). In the seminal case of *State v. Wentworth*, 118 N.H. at 842-43, the New Hampshire Supreme Court discussed the role of general deterrence in sentencing in more detail:

Contrary to defendant's assertion, the emphasis on deterrence in this case is not inconsistent with N.H. Const., pt. I, art. 18, which states in part that "the true design of all punishments (is) to reform, not to exterminate mankind." It should be noted that this constitutional language sanctions "punishment" as a method of reforming the criminal. This same language also recognizes deterrence as a valid purpose of sentencing; the implication is that reform will result from the deterrent effect of punishment. General deterrence is also recognized in other language in the article when it states that if the same "severity is exerted against all offenses, the people are led . . . to commit the most flagrant with as little compunction as they do the lightest offenses." Rehabilitation, which in the modern sense of the word includes counseling and training, is not a constitutional requirement. The defendant in this case is an educated, highly motivated individual with no prior record and with no apparent criminal tendencies apart from the practice of civil disobedience to accomplish what he considers to be an important goal. He is not in need of rehabilitation in the modern sense of the word. The State, however, does need to deter repetition of this offense both by the defendant and others. Both individual and general deterrence were important considerations for the imposition of sentence in this and related cases. To accomplish these purposes, the sentence needed to be more severe than in ordinary criminal trespass cases. In deciding on the degree of severity to obtain the necessary deterrent

effect, the trial judge was entitled to consider the dedication and motivation of the offender who would not likely be deterred by a lighter sentence, but who with others might be induced by a more severe sentence to use lawful, instead of unlawful, means to protest. The object is not to stifle protest, but to deter unlawful conduct.

(Internal quotations marks omitted).

35. The New Hampshire Supreme Court in *Wentworth* concluded that as long as a trial court does not fail to consider the circumstances of the particular individual defendant in imposing its sentence, “[g]eneral deterrence is a permissible consideration.” *Id.* at 843.

36. In the context of the defendant’s criminal conduct here, general deterrence is particularly appropriate for two reasons. First, the defendant chose to arm himself with a loaded firearm. Guns serve a myriad of lawful and useful purposes in our society, including hunting, target shooting, and personal protection. There is no evidence that the defendant was engaged in, or intended, any of this legitimate and law-abiding activity when he went armed himself and ultimately fatally shot Mr. Garcia from behind. Guns also are by their very nature and design deadly weapons. With their ownership and use comes a responsibility to handle them lawfully, as well as carefully so as not to injure or kill others. This is a responsibility the defendant knew and consciously disregarded when viewed in the light of his previous firearm ownership and operation. Violations of such fundamental precepts are worthy of enhanced sentencing in order to deter others from engaging in similar dangerous behavior. *See State v. Dumont*, 122 N.H. 866, 868 (1982) (“[I]t is clear that society’s legitimate concern with the public danger of thefts involving firearms increases the need for general deterrence of such offenses, and serves as an

adequate justification for imposition of a more severe penalty. Thus, New Hampshire judges have generally dealt more severely with offenses involving firearms.”).

37. Second, the lack of clear motivation behind the defendant’s arming himself with a loaded firearm and killing an unarmed man from behind. Obviously, such patently dangerous conduct – engaging in such violence on a mere whim – should be strongly discouraged. For these reasons, a significant sentence must be imposed against the defendant as a legitimate means of generally deterring others from similar future violent behavior. *See State v. Belanger*, 114 N.H. 616, 619 (1974) (An “immediate goal [of sentencing] is the protection of society against the commission of future crimes, whether by the particular defendant being sentenced or by others who the sentence is supposed to deter.”).

38. Specific or individual deterrence is similarly an important consideration in this case, and is reflected in the sentence advocated by the State. This defendant acted with a patent disregard for the safety of others, and his homicidal act was the culmination of a series of choices on his part, *supra*. The defendant’s lack of motive alone justifies an appropriate and significant sentence as a means of effectively deterring the defendant from ever even contemplating such extreme lawlessness in the future. With no known motivation for the defendant to kill Mr. Garcia so mercilessly we cannot know what reason would motivate him to do so again. Plainly then, the just sentence recommended by the State is necessary to prevent him from any similar conduct ever happening again. Again, barring future misconduct or criminality, the defendant will get the second chance that his victim never will, including the opportunity and ability to live a full and free adult life. The defendant should always be mindful of the life he alone took, and the

opportunities that he nevertheless still has. To date he has shown nothing to indicate to the Court or the community such mindfulness or acknowledgement of his acts. Therefore, considerations of specific deterrence weigh in favor of imposing the recommended sentence in the hopes that he will someday make the choice to recognize what he has done and be deterred from ever doing it again.

39. Finally, the State's proposed sentence should be imposed to instill confidence in the criminal justice system. The New Hampshire Supreme Court recognized that this was a valid sentencing factor even in the absence of rehabilitation or deterrence. In *Darcy*, the Supreme Court aptly observed:

Many persons who are incarcerated for having committed homicide are not dangerous. They committed their crimes, as did this defendant, under a set of circumstances which are not likely to recur. It may be argued that a crime of this nature, committed in the heat of passion, is not likely to be deterred by imprisonment. Yet it is recognized that there are some crimes for which imprisonment may properly be thought to be the appropriate sentence even though it may not have a deterrent effect; otherwise, the seriousness of the crime would be unduly depreciated.

Darcy, 121 N.H. at 225-26. The Supreme Court also stated that "public confidence in the system of justice" is an "important consideration" in sentencing. *Id.* at 225.

40. These considerations have plain import here, where unlike the murder in *Darcy*, the defendant acted in a collective matter and not "in the heat of passion". It should go without saying that a significant prison sentence is required in this case to ensure public confidence in our system of justice. It will hold the defendant accountable for the wholly needless and unjustified taking of a life for which he and he alone is responsible. That this offense is truly antithetical to lawful society and public safety should not be open to legitimate debate.

41. Accordingly, for all of the reasons discussed above, the State's proposed sentence advances all of the legitimate goals of sentencing. The Court should not deviate from it and provide the defendant with further leniency.

III. COMPARABLE SENTENCES

a. State v. Justin Belanger (219-2019-CR-00233) – Strafford County Superior Court

42. At about midnight on June 5/6, 2018, Justin Belanger (age 19) was walking in the area of South Main Street in Rochester with two acquaintances, Joseph Folger and Devin Giles. Belanger was armed with a semiautomatic pistol, a gun that he had been seen with and had fired about two weeks prior, and that he had just retrieved from Brodie Thirsk.

43. While Belanger was walking on South Main Street with Folger and Giles, they encountered another group of people – the victim, Billy Ahearn, and two of her friends, Remy Lopez and his wife Patricia Lopez. The day before, Belanger had exchanged heated words with Remy Lopez.

44. When the two groups encountered one-another, Belanger and Remy Lopez again exchanged words. Eyewitness accounts are consistent that Belanger pulled out his pistol and fired a shot in Remy Lopez's direction. That shot struck Ahearn in the hip. After the gunshot, Belanger, Folger, and Giles fled on foot to Belanger's nearby residence. Ahearn died from the single gunshot wound that she sustained.

45. Following a jury trial, Belanger was found guilty of both knowing and reckless second-degree murder. Belanger was sentenced to knowing second degree murder: thirty (30) years to life, stand committed. Three (3) years of his minimum

sentence could be suspended for no major disciplinary infractions for the first fifteen (15) years of his stand committed sentence. An additional two years could be suspended provided Belanger obtain his GED and/or his associate degree.

b. State v. Roody Fleuraguste (217-2010-CR-00584) – Merrimack County Superior Court

46. In April of 2010, Roody Fleuraguste was staying with his brother at the Paul family residence in Henniker, NH, where his brother lived and worked as an in-home caregiver. The family owned three properties on Rand Road in Henniker. On the morning of April 29, 2010, Fleuraguste entered one of the homes owned by the Paul's where Molly MacDougall lived with her husband, Dan Paul VIII. No one else was in the home.

47. Before going to MacDougall's home, Fleuraguste loaded a .357 revolver he had found in a closet at the residence he was living in down the road. He brought the revolver with him. Fleuraguste stated to investigators that MacDougall let him into the house and he asked for a glass of water. He pulled the gun out when she turned to get the water. He further stated that when she turned back around, she saw the gun and asked what he was doing several times. When MacDougall told Fleuraguste to get out of her house, he pulled the trigger once, shooting her in the face.

48. The bullet entered just to the right of MacDougall's nose, smashed her upper palate, and then traveled into her spinal cord, resting within her cervical vertebrae. The bullet caused instant paralysis and rendered MacDougall immediately unable to breathe, killing her within seconds to one minute later. The impact of the bullet may or may not have caused MacDougall to go unconscious before her death. Fleuraguste gave no motive to investigators when interviewed. Later, an inmate claimed Fleuraguste told

him he did it because MacDougall refused to have sex with him. Ultimately, Fleuraguste's motive remained unclear throughout the case.

49. Fleuraguste was charged with first degree murder, but ultimately took responsibility in an allocution before the Court when he pled guilty to knowing second degree murder on March 19, 2012. He was sentenced 42 ½ years to life at the NH State Prison.

IV. CONCLUSION

50. The defendant chose to end the life of a giving, selfless man in a brutal and tragic way. By pulling the trigger and executing Luis Garcia, the defendant tore a patriarch away from his loving family, leaving them to pick up the pieces left behind and try to make sense of such a horrific, senseless act. He also, to a large extent, destroyed his own family – this Court heard the testimony of Danielle Patalano and Frances Pestana, whom the defendant subjected to the horrific murder scene through his actions and inactions. The emotional damage caused to them was apparent in their testimony. To this day, the defendant has refused to accept responsibility or to offer remorse for his actions in tearing Mr. Garcia away from his family, friends, and community. For all the reasons stated *supra*, as well as for the reasons to be stated at the sentencing hearing, the Court should sentence the defendant as advocated by the State. That sentence, in its entirety, fairly and appropriately takes into account the defendant and the life that he took, the aggravating and any mitigating circumstances of the defendant's offenses, and the goals of sentencing.

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

- A. Impose the sentence advocated by the State; and
- B. Grant such further relief as may be just and proper.

Respectfully submitted,

THE STATE OF NEW HAMPSHIRE

By its attorneys,

John M. Formella
Attorney General

August 22, 2023



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CERTIFICATION

I certify that a copy of this pleading has been sent to Wade Harwood, Esq., and Amy Ashworth, Esq., counsel for the defendant.

August 22, 2023



Adam L. Woods

Attachment A

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
<http://www.courts.state.nh.us>

Court Name: Rockingham Superior Court
Case Name: State of New Hampshire v. Brandon Castiglione
Case Number: 218-2019-CR-01132 Charge ID Number: 1805389C
(if known)

STATE PRISON SENTENCE

Plea/Verdict: Guilty	Judge: Ruoff
Crime: Second Degree Murder	Date of Crime: 10/01/2019

A finding of GUILTY/TRUE is entered.

CONVICTION AND CONFINEMENT

A. The defendant has been convicted of Domestic Violence contrary to RSA 631:2-b or of an offense recorded as Domestic Violence. See attached Domestic Violence Sentencing Addendum.

B. The defendant is sentenced to the New Hampshire State Prison for not more than life, nor less than 40 years

There is added to the minimum sentence a disciplinary period equal to 150 days for each year of the minimum term of the defendant's sentence, to be prorated for any part of the year.

Pretrial confinement credit: 1,425 days.

C. This sentence is to be served as follows:

Stand committed Commencing 08/25/2023

_____ of the minimum sentence and _____ of the maximum sentence is suspended.

Suspensions are conditioned upon good behavior and compliance with all of the terms of this order. Any suspended sentence may be imposed after a hearing at the request of the State. The suspended sentence begins today and ends _____ years from today or release on _____

_____ of the sentence is deferred for a period of _____ year(s). The Court retains jurisdiction up to and after the deferred period to impose or terminate the sentence or to suspend or further defer the sentence for an additional period of _____ year(s). Thirty (30) days prior to the expiration of the deferred period, the defendant may petition the Court to show cause why the deferred commitment should not be imposed, suspended and/or further deferred. Failure to petition within the prescribed time will result in the immediate issuance of a warrant for your arrest.

D. The sentence is consecutive to case number and charge ID _____
 concurrent with case number and charge ID _____

E. See Addendum to State Prison Sentence Sexual Offender Assessment and Treatment.

F. See Addendum to State Prison Sentence Substance Use Disorder Assessment and Treatment.

G. The Court recommends to the Department of Corrections:

Screen and/or assess for drug and alcohol treatment needs.

Sentence to be served at House of Corrections

Case Name: State of New Hampshire v. Brandon Castiglione

Case Number: 218-2019-CR-01132

STATE PRISON SENTENCE

If required by statute or Department of Corrections policies and procedures, the defendant shall provide a sample for DNA analysis.

PROBATION

A. The defendant is placed on probation for a period of _____ year(s), upon the usual terms of probation and any special terms of probation determined by the Probation/Parole Officer.

Effective: Forthwith Upon release from _____

The defendant is ordered to report immediately, or immediately upon release, to the nearest Probation/Parole Office.

B. Subject to the provisions of RSA 504-A:4, III, the probation/parole officer is granted the authority to impose a jail sentence of 1 to 7 days in response to a violation of a condition of probation, not to exceed a total of 30 days during the probationary period.

Violation of probation or any of the terms of this sentence may result in revocation of probation and imposition of any sentence within the legal limits for the underlying offense.

FINANCIAL OBLIGATIONS

A. **Fines and Fees:**

Fine of \$ _____, plus a statutory penalty assessment of \$ 0.00 to be paid:

Today

By _____

Through the Department of Corrections as directed by the Probation/Parole Officer. A 10 % service charge is assessed by DOC for the collection of fines and fees, other than supervision fees.

\$ _____ of the fine and \$ _____ of the penalty assessment is suspended for _____ year(s).

A \$25.00 fee is assessed in each case file when a fine is paid on a date later than sentencing.

B. **Restitution:**

The defendant shall pay restitution of \$ 7,928.00 to Patricia Garcia \$7,428 to Victim's Comp; \$500 to _____

Restitution shall be paid through the Department of Corrections as directed by the Probation/Parole Officer. A 17% administrative fee is assessed for the collection of restitution.

At the request of the defendant or the Department of Corrections, a hearing may be scheduled on the amount or method of payment of restitution.

Restitution is not ordered because: _____

C. **Appointed Counsel: NOTE:** Financial Obligations, Section C is NOT a term and condition of the sentence.

The Court finds that the defendant has the ability to pay:

counsel fees and expenses in the amount of \$ _____

payable through _____ in the amount of \$ _____ per month.

The Court order for repayment is suspended until the time of the defendant's release from state prison.

The Court finds that the defendant has no ability to pay counsel fees and expenses.

Case Name: State of New Hampshire v. Brandon Castiglione

Case Number: 218-2019-CR-01132

STATE PRISON SENTENCE

OTHER CONDITIONS

- A. The defendant is to participate meaningfully in and complete any counseling, treatment and educational programs as directed by the correctional authority or Probation/Parole Officer.
- B. Subject to the provisions of RSA 651-A:22-a, the Department of Corrections shall have the authority to award the defendant earned time reductions against the minimum and maximum sentences for successful completion of programming while incarcerated.
- C. Under the direction of the Probation/Parole Officer, the defendant shall tour the
 New Hampshire State Prison House of Corrections
- D. The defendant shall perform _____ hours of community service and provide proof to _____ within _____ of today's date.
- E. The defendant is ordered to have no contact with Patricia Garcia, and the family of Luis Garcia either directly or indirectly, including but not limited to contact in-person, by mail, phone, email, text message, social networking sites or through third parties.
- F. Law enforcement agencies may destroy the evidence return evidence to its rightful owner.
- G. The defendant and the State have waived sentence review in writing or on the record.
- H. The defendant is ordered to be of good behavior and comply with all the terms of this sentence.
- I. Other:

For Court Use Only

Attachment B

Inmate's Name: CASTIGLIONE, BRANDON MICHAEL

Date: 03/26/2020 21:01

Reporting Staff Member: BROWN, RAYMOND S

Offense Type	Offense Code	Description	Date/Time	IsPrimaryCharge	Guilty Plea	Findings
CLASS A	1.14	DISORDERLY CONDUCT TO INCLUE VERBAL THREATS ANDINTIMIDATION	03/16/2020 10:10	0	0	Guilty

Evidence Presented:
Written reports from officers involved.

Inmate's Statement:
Inmate Castiglione stated he was not guilty because he woke up from his sleep being carried out of door 200. He stated any person would react in the same way and struggle to get free not knowing where they were or why they were being carried. He stated he did not mean to be disorderly and the intent was not there.

Witness Testimony:

Facts Presented:
All written reports describe the same course of events. Multiple orders were given in the cell for Inmate Castiglione to stand up and prepare to be handcuffed. He did not react or respond to the orders, Officer Cairra then grabbed his arm to which Inmate Castiglione then grasped both hands together and refused to allow his arms to be separated. At this point he was carried out of the cell and off the tier safely at which point he began to fight the involved officers. Despite multiple orders and commands it took the inmate being drive stunned twice with the taser to comply to being handcuffed.

Written Decision:
I began the Disciplinary board by introducing the 2 officers. I then read aloud the reports presented. Inmate Castiglione gave his plea of Not Guilty and explained why he felt he was not guilty. I questioned him about grasping his hands in the cell after the orders were given by Officer Cairra in the cell. He did not have an acceptable reason except that he was asleep. Inmate Castiglione was found guilty by the officers. The written reports by the officers are consistent in their stating he was given no less than 3 orders in the cell to which he did not comply. Officers attempted to gain compliance by the least amount of force necessary. Inmate Castiglione's active resistance is what led to the situation reaching the level of disorderly conduct and presented a clear and present danger for officers involved. He was given credit for his 2 days in R/C and the board Suspended 10 days. I had the conversation with Inmate Castiglione that we want to correct this behavior. We as Corrections need to be able to give an order and have him follow without it being necessary to go hands on or use elevated levels of force. The appeals process was explained to him and he stated he did not want to appeal.

Privileges Revoked

Type	Date/Time	No Of Days	Confinement Type
			Location B06
			No Days 10
			Start Dt/Tm
			Credit Days ²

Appeal within Fifteen days to: Superintendent
ROCKINGHAM COUNTY DEPARTMENT OF CORRECTIONS
99 NORTH ROAD

RR

03/26/2020

114913 BROWN
Chairman Signature

Date
Auto Signed

Member Signature

Date

Member Signature

Date

Inmate's Name: CASTIGLONE, BRANDON MICHAEL

Date: 09/24/2015 21:56

Reporting Staff Member: CWYNAR, THOMAS

Offense Type	Offense Code	Description	Date/Time	IsPrimaryCharge	Guilty Plea	Findings
CLASS A	1.16	MALICIOUS DAMAGE OF COUNTY PROPERTY	09/20/2015 20:00	0	0	Guilty

Evidence Presented:

Reports of incident

Inmate's Statement:

I explained the D-Board process and Castiglone stated he understood. I read aloud the reports of the incident then asked him if he had any questions or comments on the reports, he stated, no. Castiglone then said that he had told the CO about his seizures and was ignored and that the CO was talking about him to other inmates. He also said that he asked to speak to a Supervisor 2 or 3 times and nothing happened. Castiglone also stated that he had seizures while he was on the block and was ignored. He also said that he told the CO he wanted to be in booking were he would be watched. When asked about the light fixture he said that the cover was loose and he took the light bulb out. when asked how he wished to plea, he sated, not guilty. I explained to him his right to appeal the boards finding and he said he understood and did not want to appeal.

Witness Testimony:

Facts Presented:

Written Decision:

I conducted the D-Board in booking cell P-7 with CO's Salvo and Graham. The board found him guilty based on the reports provided of the incident and Castiglone's statements to the board. Sanctions as follow: 30 days PR L/U, credit 3 days constant observation in booking, 20 days PR L/U suspended, 7 days PR L/U to do

Privileges Revoked

Type	Date/Time	No Of Days	Confinement Type	Start Dt/Tm
VISITATION	(none)		Location P06	
COMMISSARY	(none)		No Days 30	Credit Days 23
RAZOR	(none)			
PHONE	(none)			

Appeal within Fifteen days to: Superintendent

ROCKINGHAM COUNTY DEPARTMENT OF CORRECTIONS
99 NORTH ROAD

09/24/2015

114139 CWYNAR

Date

Date

Date

Inmate's Name: CASTIGLIONE, BRANDON MICHAEL

Date: 04/22/2020 21:19

Reporting Staff Member: BICKFORD, GWENDOLYN

Offense Type	Offense Code	Description	Date/Time	IsPrimaryCharge	Guilty Plea	Findings
CLASS A	1.12	ASSAULT ON AN OFFICER OR INMATE TO INCLUDE ATTEMPT	04/11/2020 18:50	0	0	Guilty

Evidence Presented:
REPORTS WRITTEN

Inmate's Statement:
SEE BELOW

Witness Testimony:

Facts Presented:
REPORTS WRITTEN

Written Decision:

ON THE ABOVE DATE I CONDUCTED A D BOARD ON INMATE CASTIGLIONE, FOR THE OFFENSE OF ASSAULT ON AN INMATE. I CONDUCTED THIS D BOARD WITH OFFICERS AYLWARD AND LABONTE. I ASKED INMATE CASTIGLIONE IF HE HAD READ THE REPORTS, AND HE SAID THAT HE HAD. I READ SEVERAL REPORTS ALOUD FOR THE D BOARD OFFICERS, AND I ASKED INMATE CASTIGLIONE HOW HE PLED. HE SAID NOT GUILTY. I ASKED HIM WHAT HAD OCCURRED THAT EVENING. HE SAT IN SILENCE FOR SEVERAL MINUTES. I ASKED HIM IF HE WAS THINKING, AND HE SAID THAT HE WAS. SEVERAL MOMENTS OF SILENCE LATER, I ASKED HIM IF HE HAD ANYTHING TO ADD. HE SAID THAT HE DID NOT FEEL THAT HE HAD DONE ANYTHING WRONG, AND THAT THERE ARE OTHER FACTORS TO CONSIDER. I CONVENED WITH THE D BOARD MEMBERS, AND THE D BOARD FOUND INMATE CASTIGLIONE GUILTY OF ASSAULT ON AN INMATE, BASED ON THE REPORTS WRITTEN. THE D BOARD IMPOSED THE FOLLOWING SANCTIONS:

20 DAYS L/U + 10 DAYS SUSP. BROUGHT FORWARD = 30 DAYS PR L/U
CREDIT FOR 11 DAYS; (1 DAY L/U + 10 DAYS R/C)

5 DAYS SUSP.

= 14 DAYS PR L/U TO SERVE.

I ASKED INMATE CASTIGLIONE IF HE WISHED TO APPEAL THE BOARD'S DECISION, AND HE STATED THAT HE WOULD.

Privileges Revoked

Type	Date/Time	No Of Days	Confinement Type
			Location A36
			No Days 30
			Start Dt/Tm
			Credit Days 11

Appeal within Fifteen days to: Superintendent
ROCKINGHAM COUNTY DEPARTMENT OF CORRECTIONS

99 NORTH ROAD

can sign

	Date	Member Signature	Date	Member Signature	Date
114334 BICKFORD Chairman Signature	04/22/2020 Auto Signed				

Inmate's Name: CASTIGLIONE, BRANDON MICHAEL

Date: 06/25/2020 11:46

Reporting Staff Member: VOIGT, DEREK

Offense Type	Offense Code	Description	Date/Time	IsPrimaryCharge	Guilty Plea	Findings
CLASS A	1.25	THREATENING CORRECTIONAL OFFICERS OR STAFF MEMBER	06/14/2020 09:17	0	0	Guilty

Evidence Presented:
Officer reports

Inmate's Statement:

I had refused meds at first and then changed my mind. When i asked Nate if i could have them he said no, you're all set. I asked several more times and got blown off. I did yell at him but never said those words. When asked what words he said "I'll kill you"

Witness Testimony:

Facts Presented:

Officer reports
Castiglione admitted to being upset with Nate for making him a level 2 and his frustration with being locked down 23 hours a day. He also admitted to yelling at Nate but never said those words "I'll kill you"
Board members Cpl.Buscanera,Cpl.Moore
no plea was entered, finding of guilty, sanctions were time served

Written Decision:

Privileges Revoked

Type	Date/Time	No Of Days	Confinement Type
			Location B16
			No Days 11
			Start Dt/Tm
			Credit Days 11

Appeal within Fifteen days to: Superintendent
ROCKINGHAM COUNTY DEPARTMENT OF CORRECTIONS
99 NORTH ROAD

D. Voigt

114238 VOIGT	06/25/2020				
Chairman Signature	Date Auto Signed	Member Signature	Date	Member Signature	Date

Inmate's Name: CASTIGLIONE, BRANDON MICHAEL

Date: 04/01/2021 11:37

Reporting Staff Member: BUSCANERA, GREGORY

Offense Type	Offense Code	Description	Date/Time	IsPrimaryCharge	Guilty Plea	Findings
CLASS B	2.20	POSSESSION .OR CONSUMPTION	03/24/2021 22:00	0	0	Guilty

Evidence Presented:

Staff reports and pictures showing bottles of homebrew.

Inmate's Statement:

Inmate Castiglione entered a plea of Not Guilty. Inmate Castiglione did not have any problems with any staff reports. Inmate Castiglione asked if the jail was able to test the alleged homebrew for alcohol content. Inmate Castiglione asked the board to take into consideration that he attends a class on Mondays.

Witness Testimony:

Facts Presented:

Staff reports and pictures showing bottles of homebrew.

Written Decision:

On the date of 4/1/2021 a disciplinary hearing (D-board) was held for Inmate Castiglione, Brandon at the time of 10:54 in the Pretrial Classification Office. Inmate Castiglione was seated in front of the board while the members of the board were introduced (CO Gosson, CO Nusbaum, and myself). I asked Inmate Castiglione if he knew what he was being charged with. He responded "Having homebrew in my cell". I then explained the process to Inmate Castiglione and asked if he had any questions. He stated that he did not. I asked Inmate Castiglione how he would like to plea. He responded "Not Guilty". The reports were then read out loud by myself and after each report Inmate Castiglione was asked if he had any issues or problems with what was just read. He stated that he did not have any problems with the reports. Inmate Castiglione then asked if the jail had the ability to test for alcohol content in the alleged homebrew. I informed him that the jail did not have the ability to do so. Pictures of the shampoo bottles were then shown to the board members. I asked if the other members of the board had any questions for Inmate Castiglione. They did not. Inmate Castiglione was returned to A/B block while the board members deliberated. After a short deliberation Inmate Castiglione was returned in front of the board. Inmate Castiglione was found Guilty of the charge of Possession or Consumption of Homebrew due to the facts presented in the reports from staff and the pictures provided with those reports. The sanctions are as follows:

15 days PR lock up.

Credit for 1 day PR lock up.

Credit for 7 days reclass.

5 days PR lock up suspended.

2 days PR lock up left to serve.

Inmate Castiglione was informed of his right to appeal the board's decision. When asked if he wanted to appeal he stated that he did not.

Privileges Revoked

Type	Date/Time	No Of Days	Confinement Type
			Location B06
			No Days 15
			Start Dt/Tm
			Credit Days ⁸

Appeal within Fifteen days to: Superintendent

ROCKINGHAM COUNTY DEPARTMENT OF CORRECTIONS
99 NORTH ROAD

[Handwritten signature]

04/01/2021

114682 BUSCANERA
Chairman Signature

Date
Auto Signed

Member Signature

Date

Member Signature

Date

Inmate's Name: CASTIGLIONE, BRANDON MICHAEL

Date: 06/19/2021 14:24

Reporting Staff Member: PELCHAT, JEFFREY

Offense Type	Offense Code	Description	Date/Time	IsPrimaryCharge	Guilty Plea	Findings
CLASS A	1.14	DISORDERLY CONDUCT TO INCLUE VERBAL THREATS ANDINTIMIDATION	06/08/2021 10:35	0	0	Guilty
CLASS A	1.19	REFUSAL TO LOCK IN WHEN DIRECTED TO DO SO	06/08/2021 10:35	0	0	Guilty
CLASS B	2.13	DISOBEY A DIRECT ORDER	06/08/2021 10:35	0	0	Guilty

Evidence Presented:

- Officer's incident reports were read to Inmate Castiglione.
- Video footage from D block yard was shown to Inmate Castiglione

Inmate's Statement:

Inmate Castiglione claims that he didn't call Officer Smith a cunt but he did call him a prick. Inmate Castiglione didn't like the way Officer Smith was talking to him, claimed he had an attitude. Inmate Castiglione stated that he doesn't remember being told anything about getting a shift lockup because he had his headphones in. He felt a bit of unreasonableness and feels things could have been handled differently.

Witness Testimony:

Facts Presented:

- Officer's incident reports
- Video footage of D-Block yard

Inmate Castiglione requested copies of the reports and video footage on 6/18/21. Board was held on 6/19/21. Officer's incident reports were read to the members of the board and inmate Castiglione. Inmate Castiglione agreed with the majority of reports but claimed he called Officer Smith a prick, not a cunt. Inmate Castiglione plead not guilty to all 3 charges. After watching the video and reading the reports, the members found inmate Castiglione guilty on all three charges and sanctioned him to 11 days PR lockup, credit for 1 day PR lockup, Credit for 10 days re-class status with 0 days PR lockup to serve.

Privileges Revoked

Type	Date/Time	No Of Days	Confinement Type
			Location
			No Days ¹¹
			Start Dt/Tm
			Credit Days ¹¹

Appeal within Fifteen days to: Superintendent
ROCKINGHAM COUNTY DEPARTMENT OF CORRECTIONS
99 NORTH ROAD

[Handwritten Signature]

114284 PELCHAT Chairman Signature	06/19/2021 Date Auto Signed	Member Signature	Date	Member Signature	Date
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Inmate's Name: CASTIGLIONE, BRANDON MICHAEL

Date: 07/30/2021 22:03

Reporting Staff Member: MOORE, MATTHEW A

Offense Type	Offense Code	Description	Date/Time	IsPrimaryCharge	Guilty Plea	Findings
CLASS B	2.18	HOARDING MEDICATION OR UNPRESCRIBED MEDICATION	07/20/2021 21:30	0	0	Guilty

Evidence Presented:

Incident report written by Officer Cruz, D

Inmate's Statement:

Inmate Castiglione stated that he sometimes chews his medication rather than swallow it whole. Inmate Castiglione stated that he has been in 23 hours and 1 hour lockdown status for a month and a half and sometimes he unintentionally chews his medication instead of swallow it. Inmate Castiglione further stated that the medication in question is a blood pressure medication and he does not have any reason to hoard the medication.

Witness Testimony:

No witnesses present or requested

Facts Presented:

Incident report written by Officer Cruz, D and the statement of Inmate Castiglione.

Written Decision:

The disciplinary board was conducted in the gym of AB Block. The disciplinary board consisted of Sergeant Moore as the disciplinary board chairman, Officer Brown and Officer Davies as the board members. The disciplinary board process was discussed with Inmate Castiglione as well as the due process rights afforded. I explained to Inmate Castiglione the right to have an impartial board, meaning no members were present or involved with the incident in question, the right to view evidence presented on the charge in question and the right to call witnesses if he chooses to. Inmate Castiglione was asked if he understood the disciplinary board process and he stated he understood.

The incident report written by Officer Cruz, D was read to the board and Inmate Castiglione. Once the report was read, Inmate Castiglione provided his statement as described above in the Inmate's Statement section. The board provided their input on the incident report in question, and Inmate Castiglione was asked if he had anything further to add to the information discussed. Inmate Castiglione stated that he did not. Inmate Castiglione was escorted to his cell and the disciplinary board deliberated.

The disciplinary board found Inmate Castiglione guilty on the charge of hoarding prescribed medication. The guilty finding was due to the fact that Inmate Castiglione was chewing his medication rather than swallowing it with water and whether or not the intent was there, the fact that the medication was found within the area of his lip with a large piece of the medication still intact constituted hoarding medication.

The following sanctions were given by the disciplinary board:

- 14 Days Privilege Revoked Lockup
- Credit 1 Day Privilege Revoked Lockup
- Credit 8 Days Reclassification
- 5 Days Privilege Revoked Lockup suspended for any further disciplinary boards with a guilty finding.

Inmate Castiglione was explained the process of appealing the decision of the board and offered the opportunity to appeal and he declined to appeal.

Privileges Revoked

Type	Date/Time	No Of Days	Confinement Type
			LocationB21
			Start Dt/Tm

No Days14

Credit Days14

Appeal within Fifteen days to: Superintendent
ROCKINGHAM COUNTY DEPARTMENT OF CORRECTIONS
99 NORTH ROAD



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114898 MOORE	07/30/2021				
Chairman Signature	Date Auto Signed	Member Signature	Date	Member Signature	Date