

STATE OF NEW HAMPSHIRE

STRAFFORD COUNTY

SUPERIOR COURT

The State of New Hampshire

v.

Timothy Verrill

Docket No. 219-2017-CR-00072

ORDER ON DEFENDANT’S MOTION FOR REMEDIES

The defendant Timothy Verrill is charged by indictment with two counts of first degree murder, two counts of second degree murder, and five counts of falsifying evidence. These charges arise out of the deaths of Christine Sullivan and Jenna Pelligrini on or about January 27, 2017. The court (Houran, J. (ret.), presiding) held a jury trial on this matter in October 2019 which resulted in a mistrial following the mid-trial revelations that the State committed multiple discovery violations. Verrill subsequently moved to dismiss the pending charges with prejudice based on the discovery violations. This court (Howard, J.) conducted a lengthy evidentiary hearing on the motion and issued an order denying dismissal with prejudice. On interlocutory appeal, the Supreme Court affirmed this court’s order denying dismissal. On remand, this court issued a scheduling order regarding briefing of the issue of alternative remedies. The court directed the defense “to identify with specificity the discovery violations, the offending State actor, the level of culpability, and the requested sanction.” (Order, dated Feb. 10, 2023, Doc. 656). The defense filed its Motion for Remedies on or about March 8, 2023 (Doc. 661), and the State filed its partial objection on April 3, 2023 (Doc. 662).

In making this order, the court has reviewed Judge Houran’s order of November 6, 2019 (Corrected), this court’s order of February 1, 2021, the Supreme Court opinion dated April 21,

2022, relevant pleadings, the instant motion and objection, portions of trial transcripts, and relevant portions of the audio recordings of the hearing on the motion to dismiss. The court's sanctions and remedies are designed to address the discovery violations in a manner that places the defense in as similar position as possible as it would have been in if the discovery violations had not occurred in the first trial; to deter specifically and generally similar violations by the State in the future; and to promote justice through a meaningful search for the truth.

Sanctions or Remedies Imposed

The parties agree to certain sanctions and remedies. Accordingly, the court imposes the following:

1. The State shall reimburse the defense the reasonable expenses related to additional investigation and subpoenas in Florida as a result of the discovery violations.
2. The State is prohibited at trial from using in its case-in-chief the inculpatory evidence contained within discovery that was provided in the delayed disclosures, except as the court may deem necessary to counter any inaccurate or mischaracterized evidence presented by the defense.
3. The court will apply the same evidentiary rulings and agreements on motions in limine and hearsay evidence from the first trial. As with any evidentiary ruling, the court may reconsider any prior order upon a showing that the evidence in the trial is materially different from that relied upon in making the original ruling, or to rectify a misleading or inaccurate presentation of the facts.
4. The court intends to give to the jury an adverse inference instruction materially consistent with the following:

In any criminal prosecution, the State has a legal duty to provide evidence and information about the case to the defense in a timely manner. In this case, the

prosecutors and the Major Crime Unit of the State Police failed to disclose information to the defense in a timely manner. Although the failure to disclose evidence and information in a timely manner does not necessarily, in and of itself, bear on the question of guilt or innocence, you may, if you think it appropriate in light of all of the evidence, take into account the delay in disclosing evidence when evaluating the credibility or reliability of the State Police investigators who were responsible for the untimely disclosures, or whether the State has proved the defendant's guilt beyond a reasonable doubt.

Requested Sanctions or Remedies Denied

The defense seeks an additional adverse inference instruction relating to the fact that federal authorities assumed responsibility for investigating Dean Smoronk's alleged drug trafficking activities. The defense alleges that the State made the decision to cede jurisdiction over the drug investigation to federal authorities, thereby depriving the defense of access to relevant information contained in the federal investigation. This request is denied based on the record before the court because the evidence does not support the conclusion that the State decided to give investigative authority over Smoronk's alleged drug trafficking to federal authorities. Similarly, there is no evidence that any such activity was undertaken with the intent or knowledge to shield the information from the defense. Finally, there is no evidence that the defense was prevented from obtaining the information.

The defense next seeks an order precluding the State from using transcripts of trial testimony to impeach a witness' testimony, refresh recollection, or in lieu of the testimony of an unavailable witness. This request is denied. The defense has not demonstrated how this remedy or sanction is in any way rationally related to the discovery violations.

Finally, the defense seeks an order requiring the State to employ the same theory of its case that it pursued at the first trial. This request is denied. The defense has not provided the court with any specificity as to what the parameters of such an order would be. Similarly, the defense has not explained how the requested order is rationally related to the discovery violations. The State has acknowledged that it intends to pursue the same theory of criminal liability that it used in the first trial. However, this

does not mean that the State must or should be limited to admitting only the same evidence that it did in the first trial or arguing the significance of certain evidence.

Rulings on Request for Additional Findings

The defense makes several requests for specific findings of fact relating to the discovery violations. The court addresses each request in turn.

a. Request for finding: That Det. Sloper, an experienced officer who had worked as a lead investigator, made egregious discovery violations by not turning over all the notes and recordings associated with his polygraphs and interviews of Steven Clough and Mike Ditroia after they were completed.

Court Ruling: The request is denied in part. The court finds based on the record that Det. Sloper was negligent in failing to provide his reports directly to the lead investigator, or ensuring that his reports were provided to the lead investigator, for production to the defense. The discovery violation – that is, the failure to produce the reports to the defense – rests principally with the lead investigator, who was aware of the polygraph activities involving Clough and Ditroia.

b. Request for finding: That the State denied that there were any institutional patterns of misconduct with respect to the MCU's system of keeping track of discovery materials that had been in existence for decades.

Court Ruling: The request is denied. There is insufficient evidence before the court to conclude that this case reflects or establishes an institutional pattern of misconduct relating to the Major Crime Unit's investigative case management system.

c. Request for finding: That the delayed discovery disclosure included the names of several potential witnesses whom the defendant would have interviewed prior to trial.

Court Ruling: The request is denied because it lacks the required specificity. The defense does not identify the potential witnesses to which it refers, nor does the defense explain whether any particular witness would or would not have been interviewed. While the court can assume in a case of this complexity and magnitude that the defense would likely interview many witnesses who appear from the discovery to possess relevant information, it does not follow that every person named in discovery is a potential witness or would in fact be interviewed by the defense.

d. Request for finding: That the failure to disclose potential witnesses, such as James Morin, Monique Cote, Christopher Cortez, and Mouse (who by the time of trial was deceased), prevented the defendant from having information which would have assisted in his trial strategy before the first trial.

Court Ruling: The court agrees that the failure to timely disclose the named witnesses prevented the defense from determining whether the witnesses possessed information that may have

assisted or affected the defense's trial strategy. The court cannot conclude that the defense's trial strategy in the first trial would have been assisted or affected in any material way.

e. Request for finding: That while Judge Houran found that the fault for the initially discovered violation laid primarily with the lead investigator; the magnitude of the entirety of the violations was caused by more than the incompetence of one officer.

Court Ruling: The request is granted to the following limited extent. Judge Houran and the undersigned have found negligence on the part of Investigators McCauley and Sloper.

f. Request for finding: That, according to the lead investigator, the Attorney General's Office decided early in the investigation of the homicides to hand over the drug investigation to the DEA and as a result both the MCU and the Attorney General's Office were unable to obtain reports from the DEA's investigation. Tr. Vol. II, p. 311.

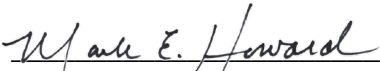
Court Ruling: The request is denied. The record does not support the conclusion that the Attorney General's Office decided to cede authority over the drug investigation to the DEA, or that State authorities were "unable" to get reports.

g. Request for finding: That the lead investigator had no experience with working with the DEA and the division of investigations, and the division, in part, caused confusion as to whether to provide information, such as interviews with Tanner Crowley and Dominic Mango, both of whom had contact with Dean Smoronk on the date of the homicides, to the defense.

Court Ruling: This request is denied because it lacks evidentiary support in the record.

Date: July 26, 2023

SO ORDERED



Mark E. Howard
Presiding Justice

Clerk's Notice of Decision
Document Sent to Parties
on 07/26/2023