

# The State of New Hampshire

HMSborough ss.

State of New Hampshire

NH Superior Court

Southern District

Case No. 2019-01-0814

v.

Dale E. Holloway Jr.

## Motion to Dismiss

Now Comes the Defendant, Dale E. Holloway Jr., pro se, pursuant to NH Super. Ct. Rule 15(b)(1), under both State and Federal Constitutions that Guarantee Due process of law, Rights of Accused, that prohibits the acts of cruel and unusual punishments inflicted, AND Equal protection of the laws, who respectfully Moves this Honorable Court for Dismissal through this Motion to Dismiss the State's Complaint, pursuant to Rule 15(b)(1). In support ~~hereof~~, the Defendant Relies on the Memorandum of Law filed Herewith, as well as the Declaration of Dale E. Holloway Jr. AND Exhibits thereto.

Wherefore, the Defendant respectfully Requests that this Honorable Court accepts this Motion to Dismiss the State's Complaint and judgments.

Respectfully Submitted, please,



Dale E. Holloway, Jr. #117151

NHSP-M

P.O. Box 14

CONCORD, N.H. 03301

Date: October 30, 2023

Denied



Honorable Charles S. Temple

October 31, 2023

The arguments regarding the sufficiency of evidence set forth in this motion will be addressed after the State rests its case under the applicable legal standard. (See orders on Court Index No. 447 and Court Index No. 448). The arguments regarding constitutional rights, mental illness (competency), and media coverage are untimely as these claims were not raised until after jury selection. Further, these arguments are not supported by the law, the facts, or the procedural history of this case.

Clerk's Notice of Decision  
Document Sent to Parties  
on 11/01/2023

# The State of New Hampshire

Hillsborough, ss.

NH Superior Court  
Southern District  
Case No. 2016-2019-CR-0811

State of New Hampshire

v.

Dale E. Holloway Jr.

## Memorandum in Support of Motion to Dismiss

Now Comes the Defendant, Dale E. Holloway Jr., pro se, who respectfully submits this Memorandum of Law in Support of His Motion to Dismiss the State's Complaint and Indictments, pursuant to NH R. CRIM. PROC., Rule 15 (b) (1).

1. The State of New Hampshire Superior Court Complaint fails woefully short of stating a sufficient claim of Attempted Murder. Hillsborough County Attorney's office is prosecuting the case and charging him with two (2) counts of attempted murder, two (2) counts of ~~first~~ First Degree Assault, Second Degree Assault, Felon in Possession, and Simple Assault for the State, after the New Hampshire Department of Justice Attorney General's office has withdrawn from further prosecution.

2. Mr. Holloway is accused of entering the New England Pentecostal Ministers Church, at 955 Bridge Street, in Pelham, during a wedding on October 12, 2019 (Approx. Four (4) years ago) allegedly shooting a clergy member, the bride, and attacking the groom upon his arrest, he reported his use of non-deadly force as self-defense of himself, his mother, and his other relatives who were scheduled to arrive there for a "celebration of life" funeral service for his slain step-father Minister Luis A. Garcia, an elder of the church.  
NH RSA 627:4, I.

3. New Hampshire Revised Statute Annotated 627:4, I provides justification as a pure defense under NH law. The criminal allegations the state complains of are untrue and are privileged for any citizen of the United States of America or specifically any resident of the state of New Hampshire. Also, the state's allegations are bias, prejudice, and/or harassment to him or his naturalization and character, including but not limited to, being African-American and of Asian descent.  
USCA 11; NH CONST. Pt. 1, Art. 15; Art. 2, 2-a; independent grounds for dismissal of the state's complaint. ON the

Merits. In addition, the State's Arousal Theory Based on His Alleged Prior Convictions has prejudiced His Fair Trial in this Jurisdiction. An Additional Ground to Dismiss the Complaint. Finally, the State's Criminal Complaint has become complicated with on-going Discovery issues (or Brady Violations), Conflict of Interest Counsel(s) for His Defense, and Speedy Trial Violations. As failure to plausibly allege actual malice provides yet another independent and alternative grounds on which to Dismiss the Complaint with prejudice.

### I. Statement of Facts

The following facts are drawn from the Complaint and the Discovery Materials provided so far, as well as Public Court Records and press releases issued by the New Hampshire Department of Justice, copies of which are (attached) to the Defendant's Motion. See generally Robinson v. Fimbel Door Co., 113 NH 348 (1973) ("Where as here the facts clearly and indisputably establish that a compromise for the disposition of the criminal action was procured and voluntarily entered [max 8] into by the Plaintiff, he may not prevail

in a malicious prosecution action. Under these circumstances the defendant's motion for a nonsuit should have been granted." Under NH Rules of Evidence Rule 201; State v. Barkus, 152 NH 701 (2005) ("The trial court properly could take judicial notice under Rule 201(A)."); Omran v. Schullman, 2017 N.H. Lexis 58 ("In reviewing an order granting a motion to dismiss, we assume the truth of the facts alleged in the complaint and construe all reasonable inferences from those facts in the light most favorable to the plaintiff. See Beane v. Dana S. Beane & Co., 160 NH 708, 711, 7 A.3d 1284 (2010). We also consider documents that are (attached) [2] to the pleadings, documents that are official public records, or documents that are indisputably authentic. See id. We do not credit, however, allegations that are mere conclusions of law. See id."); See also Abdallah v. Bain Capital LLC, 752 F.3d 114 (2014) ("A court may consider 'matters of public record' when dismissing a complaint on the basis of an affirmative defense."); Reliance Ins. Co. v. City of Boston, 71 Mass. App. Ct. 550, 555 (2008) ("Records of other courts in related proceedings may be considered on a motion to dismiss.")

A. The Attempted Murder AND Assault Charges  
AGAINST THE DEFENDANT ARISING OUT OF THE  
OCTOBER 12, 2019 SHOOTING INCIDENT.

1. The Defendant Currently Faces Charges in this  
Hillsborough County Superior Court's Southern  
District, ARISING OUT OF A SHOOTING INCIDENT  
THAT OCCURED ON OCTOBER 12, 2019. SEE STATE  
V. HOLLOWAY, HILLSBOROUGH COUNTY SUPERIOR COURT  
CASE NO. 226-2019-CR-0814 (COPY OF DOCKET  
ATTACHED AS EXHIBIT A); COMPLAINTS IN STATE V.  
HOLLOWAY, HILLSBOROUGH COUNTY SUPERIOR COURT  
CASE NO. 226-2019-CR-0814 (COPY OF COMPLAINTS  
ATTACHED AS EXHIBIT B); INDICTMENTS IN STATE V.  
HOLLOWAY, HILLSBOROUGH COUNTY SUPERIOR COURT  
CASE NO. 226-2019-CR-0814 (COPY OF INDICT-  
MENTS ATTACHED AS EXHIBIT C)
2. The State Alleges that, on that date, at that time,  
the Defendant entered the New England pentecostal  
ministries church in pelham while a wedding  
was being officiated, shot the wedding officiator,  
shot the bride, and "pistol-whipped" the groom, until  
a number of wedding guests "gang-tackled" him,

pinning him to the ground until the police arrived. See Supporting Affidavit for Issuance of Arrest Warrant, Section 7 (Date, Time, Location), Section 10 (5 to 6 Males on top of Him), Section 13 (Wedding of Mark Castiglione and Claire McMullen), Section 14 (Stanley Chorge), Section 15 (Claire McMullen), and Section 16 (Mark Castiglione) (Copy of Supporting Affidavit for issuance of Arrest Warrant attached as Exhibit D). See New Hampshire Department of Justice News Release, Dated October 13, 2019, (available at <https://www.doj.nh.gov/news/2019/20191013-pelham-shooting.htm>) The Charges include Attempted Murder, First Degree Assault with a Deadly Weapon, Being a felon in possession of a Dangerous Weapon, Second Degree Assault with a Deadly Weapon and Simple Assault.

## II. Argument

"To Succeed on a Motion to Dismiss in a Criminal Case, a Defendant Bears the Burden of Establishing that the Evidence, Viewed in its Entirety and with all reasonable inferences drawn in the State's favor, was insufficient to prove beyond a reasonable doubt that he was guilty of the crime charged." see State v. Huffman, 154 N.H.

678, 685 (2007); see also State v. Heinz, 119 N.H. 717, 720 (1979). "When a Trial Court is made aware of an actual conflict before Trial and fails to inquire into the nature and scope of the conflict, reversal of a defendant's conviction is automatic." See Mickens v. Taylor, 535 U.S. 162, 167-168, 122 S. ct. 1237, 152 L. Ed. 2d 291 (2002); Holloway v. Arkansas, 435 U.S. at 488-490, 98 S. ct. 1173, 55 L. Ed. 2d 426; "Not Entitled to raise the issue of sufficiency of the evidence on his conviction for the first time on appeal. Because all issues must have been presented to the Trial Court to adequately preserve them for appellate review." See State v. Guay, 162 NH 375 (2011); citing State v. McAdams, 134 N.H. 445 (1991).

A. The Complaint is untrue

Both the New Hampshire and United States Constitutions require that a criminal complaint inform a defendant of an offense with which he is charged with sufficient specificity. USCA V, VI AND XIV; NH CONST. Pt. 1, Art. 15; See State v. Fields, 119 N.H. 249 (1979) ("Function of a criminal complaint"); NH RSA 601:4 (sufficiency) an in-

Indictment, information or complaint is sufficient if it sets forth the offense fully, plainly, substantially and formally, and it is not necessary to set forth therein the special statute, bylaw or ordinance on which it is founded. (An indictment is not sufficient merely because the state deems a crime charged in an indictment to be generally understood, the necessary elements of the crime must be included in it.) See State v. Bussiere, 118 N.H. 659, 392 A.2d 151 (1978)

(1) Attempted Murder  
NH RSA 629:1; 630:1-a

With the "purpose" that the crime of murder be committed, he aimed a loaded pistol at S.C. and fired one shot into his upper chest, which under the circumstances as he believed them to be, constituted a substantial step toward to commission of the crime.

NH RSA 626:2(A) "purposely" A person acts purposely with respect to a material element of an offense when his conscious object is to cause the result or engage in the conduct that comp-

raises the Element. In the above case, no evidence has suggested any "Attempt" to Commit a Murder Crime. ("Since an attempted crime is by definition a crime not completed, the state cannot plead, factually identify, and prove the elements of the intended offense as if it had been carried out.") See State v. Perry, 166 N.H. 716, 103 A.3d 784 (2014). ("In a prosecution for an attempted murder, there was sufficient evidence that Defendant formed a purpose to kill the victim, a convenience store clerk, because even after the victim no longer had possession of a bag and said "I'm done, please run away, take the money!" Rather than returning to the cash register and completing the robbery, Defendant continued to strike the victim's head with the bag, inflicting serious physical injury.") See State v. Karasi, 170 N.H. 543, 178 A.3d 693, 2018 N.H. Lexis 3 (N.H. 2018); In the case, the State's Complaint does not allege any intent to murder with a continuing attempt to be successful in the elements of 630:1-a, nor is there any witness statements that is supportive of the charges against S.C. or C.M.; ("where Defendant was on trial for first degree murder in violation of RSA 630:1-a asserted self-defense and placed his state of mind at issue, the state had the burden to prove that Defendant acted purposely

when He shot the Victim AND DID SO WITH PRE-MEDITATION AND DELIBERATION. EVIDENCE OF HIS DRUG DEALINGS WAS PROPERLY ADMITTED TO SHOW HIS MOTIVATION FOR GOING TO THE MOTEL WHERE HE [KILLED] THE VICTIM WAS TO PRESERVE HIS DRUG BUSINESS AND NOT TO PROTECT HIS FRIEND.") SEE STATE V. SMALLEY, 151 N.H. 193, 855 A.2d 401 (2004); ALSO, HUFFMAN, SUPRA. HOWEVER, "IT IS AN AFFIRMATIVE DEFENSE TO PROSECUTION UNDER RSA 629:1, III (a) THAT THE ACTOR VOLUNTARILY RENOUNCES HIS CRIMINAL PURPOSE BY ABANDONING HIS EFFORT TO COMMIT THE CRIME OR OTHERWISE PREVENTING ITS COMMISSION UNDER CIRCUMSTANCES MANIFESTING A COMPLETE WITHDRAWAL OF HIS CRIMINAL PURPOSE." AND ("A DEFENDANT WHO RAISES RENUNCIATION AS AN AFFIRMATIVE DEFENSE BEARS THE BURDEN OF SHOWING BY PREPONDERANCE OF THE EVIDENCE BOTH THAT COMPLETELY ABANDONED HIS CRIMINAL PURPOSE AND THAT THE ABANDONMENT WAS VOLUNTARY.") SEE STATE V. JERNIGAN, 133 N.H. 396, 577 A.2d 1214 1990 N.H. LEXIS 78 (N.H. 1990); RSA 629:1, III (a). IN THE STATE'S COMPLAINT AGAINST MR. HOLLOWAY, IT IS ALLEGED THAT HE SHOT S.C. THEN, LATER BEGAN STRIKING M.C. "IN THE HEAD WITH AN OBJECT." WHICH DESCRIBES COMPLETE ABANDONMENT OF ANY ALLEGED CRIMINAL PURPOSE TO SHOOT AND [KILL] S.C.

OR implies MR. Holloway voluntarily abandoned any reassurance of S.C.'s death and did not make any substantial step towards the commission of the crime charged, nor even considered any attempt to fire multiple shots at S.C. to cause his sure death, which shows renunciation. See State v. Paffen, 126 N.H. 277 489 A.2d 657 (1985) ("Voluntary Renunciation of Criminal Purpose"); Therefore, the attempted murder charge against Mr. Holloway involving the alleged victim S.C. should be dismissed for lack of evidence, or insufficient evidence.

(2) First Degree Assault

NH RSA 631:1, I (b); 651:2, II (g)

he "knowingly" caused bodily injury to S.C. by means of a deadly weapon when he shot S.C. in the upper chest with a firearm.

NH RSA 626:2 (b) "knowingly" A person acts knowingly with respect to conduct or to a circumstance that is a material element of an offense when he is aware that his conduct is of such nature or that such circumstances exist. In the above case, Mr. Holloway has raised his

Defense(s) to support this Motion to Dismiss, as the charges are simply untrue, as reported to NH state police upon his interview, including but not limited to, Self-Defense of himself, his mother and other relatives that were arriving at the church for the funeral service. However, besides the NH Justification Law regarding self-defense, ("AN individual is protected from prosecution for a criminal act under RSA 627:3, I if he commits a criminal act that was urgently necessary to avoid a clear and imminent danger.") See State v. Fee, 126 N.H. 78, 489 A.2d 606 (1985), the state's fully aware of the homicide case involving the alleged victims S.C., M.C., and the conviction of M.C.'s son, Brandon Castiglione, for the Murder of Luis A. Garcia. Mr. Holloway's step-father and/or immediate family (household) member. In that murder case, M.C. was in possession of firearms <sup>(several)</sup> and ammunition <sup>(excessive)</sup>, as reported in the investigation by the New Hampshire Department of Justice's Major Crime Unit, and not charged with any part of the murder, including but not limited to, accessory to commit murder. Therefore, the state's claim of first degree assault should be Dismissed, as it is now clear by preponderance of the evidence in this case and the homicide case, that Mr. Holloway could

Reasonably Believe that it would be necessary to use [NON-Deadly force] with competing HARMs to AVOID HARM to himself, His Mother and/or other relatives attending to the Church for the funeral, as S.C. did not warn the GARCIA family of the wedding guests. RSA 627:3, I; RSA 627:4, I; Fee, supra. Furthermore, Mr. Holloway could reasonably believe that S.C. was ARMED, AS WELL AS M.C., AND ANY OTHER CASTIGLIONE family members, to knowingly profess the ["Celebration"] of life "funeral services for Luis Garcia, with any threatening demeanor, acts, or disruptive behaviors that would rebel the peaceful mourning of the murdered victim. Seemingly, S.C. was secretly associated with M.C., and Mr. Holloway could reasonably believe the two (together) could have planned for (another) kill or murder, possibly Mr. Holloway's Mother. Therefore, ("A person who is insane at the time ~~he~~ acts is not... criminally responsible for his conduct.") See NH RSA 628:2, I. Whereas, in the above case, Mr. Holloway has filed an INSANITY defense for the state's complaint(s) of the alleged criminal acts. The state has [RECORDS] that do show Mr. Holloway's [prior mental illnesses or defects] that will be [clear and convincing evidence] of the sanity or civil phase of the bifurcated trial. RSA 628:2, II

Ultimately, "Insanity is an [Affirmative Defense] in New Hampshire." "A Defendant ~~Accepting~~ an Insanity Defense Must prove Two (2) Elements: First, that at the time he acted, he was suffering from a mental disease or defect; and, second, that a mental disease or defect caused his actions. See State v. Fichera, 153 N.H. 588 (2006); RSA 626:2(b); RSA 626:1, I; In the case, Mr. Holloway suffers from PARANOID, PTSD (POST TRAUMATIC STRESS DISORDER), SCHIZOPHRENIA, BIPOLAR DISORDER, SUBSTANCE ABUSE DISORDER, ANXIETY AND MANIC DEPRESSIVE DISORDER WITH DIAGNOSES FROM SEVERAL SEPARATE PSYCHIATRIC EVALUATIONS, INCLUDING THE STATE'S OWN EXPERT. Also, Lay witness(es)' testimony will support the Insanity Defense, if trial is commenced, as well as, other witnesses' testimonies of Mr. Holloway's mental condition at the time of the alleged criminal actions. The first degree assault charge should be Dismissed for these said reasons, alone. But, it should be noted, that any threat of one's own life will cause a person to become (personally) cautious of [any] attack; then it is worst if one becomes aware, or fears, for his mother's life. No animal in the kingdom will remain sane in a time of life or death, and will put itself in harms way to prevent the life of his mother, as the Ten Commandments suggests:

<sup>12</sup> Honour thy father and thy Mother: that thy Days may be long upon the land which the Lord thy God giveth thee.

See The Holy Bible (King James Version) Exodus 20:12.  
Also, See (Attached) Exhibit A photograph.

(3) Second Degree Assault  
NH RSA 631:2, I(b)

He "Recklessly" caused bodily injury to another by means of a deadly weapon when he shot C.M. in the arm with a pistol.

NH RSA 626:2(c) "Recklessly" a person acts recklessly with respect to a material element of an offense when he is aware of and consciously disregards a substantial and unjustifiable risk that the material element exists or will result from his conduct. The risk must be of such a nature and degree that his failure to become aware of it constitutes a gross deviation from the conduct that a reasonable person would observe in the situation. In the above case, Mr. Holloway has raised his defense(s) to support this Motion to Dismiss,

As the Charges are Simply untrue, as Reported to NH State police upon his interview, including but not limited to, Self-Defense of Himself, His Mother and other relatives that were Arriving at the Church for the funeral Service. However, Besides the NH Justification Law Regarding Self-Defense, "An individual is protected from prosecution for a criminal act under RSA 627:3, I if He Commits a criminal act that was urgently necessary to avoid a clear and imminent danger." See State v. Fee 126 N.H. 78, 489 A.2d 606 (1985), the State's Fully aware of the Homicide case involving the Alleged Victims S.C., M.C. and the Conviction of M.C.'s Son Brandon Castiglione, for the Murder of Luis A. Garcia, Mr. Holloway's Step-father and/or immediate family (Household) member. In that Murder case, M.C. was in possession of several firearms (or "Deadly weapons") and Excessive Ammunition, as Reported in the investigation by the New Hampshire Department of Justice's Major Crime Unit, and not charged with any part of the Murder, including but not limited to, Accessory to Commit Murder. The Alleged Victim in the Second Degree Assault, C.M., Reported that she "believed" that this incident is related to M.C.'s son's

Shooting" (The Murder of Luis Garcia) and also reported that she "believed" this incident is a [Revenge] [Shooting."] Thus, Her statements will support the facts of Mr. Holloway's Self-Defense Claim. Therefore, the State's Claim of Second Degree Assault should be Dismissed, as it is now clear by preponderance of the Evidence in this case and the Homicide case, that Mr. Holloway could reasonably believe that it would be necessary to use [Non-deadly force] with Competing Harms to avoid harm to himself, his Mother and/or other relatives arriving to the church for the funeral, as S.C. did not warn the Garcia family of the wedding guests. RSA 627:3, I; RSA 627:4, I; Fee, supra. Furthermore, Mr. Holloway cannot possess the requirement of Culpability in the State's Attempted Murder charge against C.M., which was of "purposely" and "conscious objective" to cause the result or engage in the conduct that comprises the element, [and] the State's First Degree Assault charge against C.M., which was of "knowingly" and "awareness" that his conduct is of such nature or that such circumstances

Exist, [At the same time] Act "recklessly" in the state's Second Degree Assault Charge ~~Against~~ C.M., is of "recklessly" "Awareness" and "Consciously Disregard(ing)" a Substantial and Unjustifiable Risk that the Material Element Exists or will Result from His Conduct. In Actual Reality, C.M. Knew of Danger of a possible [Revenge][Shooting] and the Conflict between the Wedding and the funeral, According to Her Statements, As Mr. Holloway Has the Right to NH Justification Law in His Self-Defense Claim, upon His Arrival for the funeral, and Could Reasonably Believe that S.C. was Armed, as well as M.C., and unfortunately [His Bride] C.M., or other Castiglione family members, who did Gradually participate in any protest of the "Celebration of Life" funeral services for Luis Coarzia, with any threatening Demeanor, Acts, or Disruptive Behaviors that would Reel the peaceful Mourning of the "Murdered" Victim, who could have also been Armed with one of the (Several) Guns owned by M.C. [Her Groom] As Proven at the Suppression Hearing During Mr. Holloway's Cross-Examinations of the state's witnesses, who testified that "None of the Victims or wedding Guests were

Searched for any weapons," "Nor asked if they were in possession of any weapons at the time of the incident or interview." Therefore, the Second Degree Assault, with the first Degree Assault, and Attempted Murder Charges against C.M. should be dismissed for these said reasons, including RSA 627:1-A; RSA 628:2.

(4) Felon in possession  
NH RSA 159:3

He "knowingly" had in his possession a firearm, specifically a .380 caliber pistol, after having previously been convicted in the Commonwealth of Massachusetts of a felony against a person or property of another, specifically Assault and Battery with a Dangerous Weapon and Assault to Kill out of the Suffolk County Superior Court in 2003 under docket no. 0110467001 and 0110467002.

See NH RSA 626:2 (b); "knowingly". In the case above, the state complains of Mr. Holloway being previously convicted in the Commonwealth of Massachusetts of a felony, and have not proved through any evidence,

Documents, or Testimony that He Has a loss of His Civil Rights, or Has Not Been Restored Any of His Civil Rights, Nor Has the State provided Any Federal Conviction that would certainly Disable the Civil Rights of a U.S. Citizen. see Beechan v. United States, 511 U.S. 368 (1994); 18 U.S.C.S. § 922(g) ("State Restoration of Civil Rights could not undo the federal disability flowing from a federal conviction.") However, "A Convicted felon in Massachusetts Does Not Lose the Right to Vote. M.G.L. ch. 54 §§ 86, 103B; He Does, However, Lose the Right to Hold public office while serving His Sentence. M.G.L. ch. 279, § 30; AND, A felon is Disqualified from Juror Service until seven years from His conviction. M.G.L. ch. 234A, § 4. However, even after seven years, a Judge can remove one from a Jury Panel solely on the basis of a prior felony conviction. M.G.L. ch. 234, § 8. In this case, Mr. Holloway Does Not Have any felony conviction that Disqualifies Him from Juror Service, AND His State Conviction(s) Exceed Seven years, ACCORD MASSACHUSETTS' LAWS, that would "Disable" His Civil Rights. Furthermore, Mr. Holloway's (State) convictions are Eligible for Annulment of His Criminal Record, AND ANY

Purchase, Ownership, or possession would result in a violation of probation, imposed by Plymouth Superior Court on or about July 27, 2015. NH RSA 651:5 provides annulment of criminal records, whereas, MR. Holloway's ~~convictions~~ would not have constituted felonies in the state of New Hampshire at the time the felonies were committed if representations would appear. See NH RSA 159:3, III. "It is an affirmative defense to a charge under this section that a felony of which a defendant has been convicted in another jurisdiction would not have constituted a felony in the state of New Hampshire at the time such felony was committed."; See State v. Strayton, 132 N.H. 451, 567, A.2d 986 (1986) ("Prosecution is required to prove that the defendant 'knowingly' owned, possessed, or controlled the firearm, and that he was a convicted felon."); Therefore, the Felon<sup>in</sup> possession charge should be Dismissed. ("A statute is void for overbreadth if it attempts to control conduct by means which invades areas of protected freedom.") See USCA 1, 11, V, VI AND XIV; NH CONST. Pt. 1, Art. 1, 2, 2-a, 3, 4, 5, 6, 7, 8, 10, 12, 13, 14, 15, 23, 33 AND 35. IN WHICH, MR. Holloway is a TAX PAYING NH RESIDENT AND UNITED STATES

CITIZEN [WITH] NATURAL RIGHTS.

## B. VIOLATION OF CONSTITUTIONAL RIGHTS

Both the New Hampshire AND United States Constitutions [Guaranteed] A CRIMINAL DEFENDANT A FAIR AND SPEEDY TRIAL AS WELL AS DUE PROCESS OF LAW AND EQUAL PROTECTION OF THE LAWS. USCA V, VI AND XIV; SEE BARKER V. WINGO, 407 U.S. 514, 530 92 S. Ct. 2182, 33 L. Ed 2d 101 (1972); UNITED STATES V. HALL, 551 F.3d 257, 272 (4th Cir. 2009) which says ("The court must consider: 1) whether there was an oppressive pretrial incarceration; 2) the anxiety and concern suffered by the accused; and 3) the possibility that the defense was impaired.") whereas, the BARKER FACTORS ARE AS FOLLOWS: 1) length of the delay 2) reasons for the delay 3) prejudice to the defendant cause by the delay, consistent with NH Superior Court Speedy Trial Policy. However, the trial is not fair because the ("standard for attorney performance under state and federal constitutions is that of reasonable effective assistance") see State v. Morse, 135 NH 565, 607 A.2d 619 (1992); Also, see Strickland v. Washington, 466 U.S. 668 104 S. Ct. 2052 (1984) "the sixth amendment right to

Counsel exists, and is needed, in order to protect the fundamental right to a fair trial. The Constitution [Guarantees] a fair trial through the [\*685] Due Process Clauses, but it defines the basic elements of a fair trial largely through the several provisions of the Sixth Amendment, including the Counsel Clause: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to [\*\*\*692] have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence." In the case above, Mr. Holloway has suffered from ineffective assistance of counsel during the entire pretrial stage starting at his arraignment. Speedy trial violations have been docketed and raised as an issue, as presumptively prejudicial (over 4 years). The state has the broad discretion to nolle prosequere, but its discretion is not unlimited, for the trial courts are empowered to curb that discretion where it is used to inflict

Confusion, Harassment, or other unfair prejudice upon a defendant." State v. Courtemarche, 142 N.H. 772, 774, 711 A.2d 248 (1998). Mr. Holloway filed a Motion for Change of Venue, which was denied, that change of venue was filed to secure a fair and speedy trial with an impartial jury, and since it cannot be had in this state and district wherein the alleged shooting incident took place due to the conflict(s) of interest with defense counsel(s) and the on-going discovery violations of non-compliance to fully inform him of the nature and cause of the accusations or compliance with the court's orders, Mr. Holloway's entire defense has been impaired and dismissal is the only remedy to use for equal protection of the law. Whereas, withdrawn defense counsel(s) were unprepared for the trial date(s) set and that should be actual factual proof that Mr. Holloway is unprepared to defend himself ("pro se") by October 30, 2023. Regarding being confronted with the witnesses against him, and having compulsory process for obtaining witnesses in his favor, specifically, because the NADOC has restricted him from certain privileges and/or attorney/client privileges including phone.

Calls, Email, USPS legal mail, and visitation. The Court has become made aware of each issue as it occurred during the pretrial stage through counsel(s) and Mr. Holloway, pro se. Therefore, the violations of constitutional rights in this case have been well-established and warrants dismissal of the criminal complaints or indictments.

C. Failure to investigate Mental Illnesses

New Hampshire District Courts are empowered to order a pretrial competency evaluation for an unindicted felony defendant prior to defendant's probable cause hearing. See State v. Cagne, 129 N.H. 93 (1986). Whereas, a defendant's due process rights, [guaranteed] under both federal and state constitutions, prohibit him from being placed on trial if "legally incompetent," that is, not capable of understanding the proceedings against him or her or assisting his or her lawyer in the preparation of his or her defense. NH CONST. pt. 1, Art. 15. A trial judge must order an evidentiary hearing whenever a bona fide or legitimate doubt arises whether a criminal defendant is competent

to STAND TRIAL. N.H. REV. STAT. ANN. § 135:17. See Court Order for status of Counsel(s); WITHDRAWN. The Court Expressed Concern for Mr. Holloway's willingness to Assist prior Counsel(s) in the preparation of his Defense, instead of Considering a Competency Evaluation for the Mental illnesses that he suffers from, which include PARANOID AND SEVERE PTSD, AND NOW STRAIN THE BRAIN of AN UNEDUCATED PRO SE LITIGANT WITH AN UNPREPARED TRIAL SET FOR OCTOBER 30, 2023. See DANIELS v. WOODFORD, 428 F.3d 1181 ("The Sixth Amendment provides that in all criminal prosecutions, the Accused shall enjoy the right to have the assistance of counsel for his defense. US CONST. AMEND VI. This right has two components (1) the right to counsel's UNDIVIDED loyalty. AND (2) the right to reasonably competent counsel.") Also ("A defendant has a Sixth Amendment right to conflict-free representation.") Whereas, prior counsel(s) have been found to be a conflict of interest in Mr. Holloway's representation to a degree that the conflict case administration is having difficulties with new appointments, which is an ADDITIONAL REASON for the delay in the speedy trial. Therefore, the criminal complaint or indictments in the above case should be dismissed. See IN RE BAHMER, 2003 N.H. LEXIS 82; STATE v. HULLSON, 119 NH 963; citing

Novosel v. Helgemoe.  
("30 DAYS to indict"); See Also, Stape v. Fichera,  
153 NH 588; Lastly, see Stape v. Bertrand, 123 NH  
719, 727-28, 465 A.2d 912 (1983) ("Stape Has Burden  
to prove defendant is competent to stand trial.")

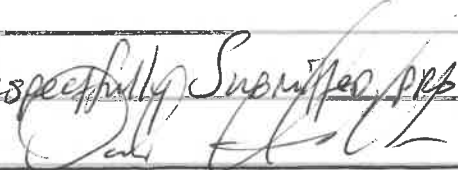
#### D. Libel-proof - Media Coverage

The Supreme Judicial Court has recognized that  
a plaintiff "may have such a notorious reputation  
that he is incapable of recovering damages in a  
libel action, and therefore, may be characterized  
as libel-proof." See Jackson v. Longcope, 394  
Mass. at 579. In the above case, Mr. Hollow-  
ay is being charged with convicted felon in possess-  
ion, as he has been convicted of, incarcerated for,  
and in most cases, pled guilty to, numerous criminal  
offenses over two decades, and has received sub-  
stantial publicity in connection with these pending  
charges, and pending trial. In a matter of facts, Mr.  
Holloway is libel-proof and cannot receive a fair  
trial for the complaint(s) and the complaint(s) should  
be dismissed for equal protection of the law with  
court orders and/or strict stipulations to enter a

PROGRAM upon His Release and/or "Continue Mental Health Treatments, including taking Anti-psychotic and Anti-Anxiety Medications," as prescribed currently. In Re Bahner, Supra.

### Conclusion

For the foregoing reasons, the Defendant respectfully requests that this Honorable Court GRANTS His Motion AND Dismisses the state's complaint with prejudice.

Respectfully Submitted, per se,  


DADE E. Holloway Jr. #117157

NHSP-M

P.O. BOX 14

CONCORD, NH. 03301

Date: October 30, 2023

# The State of New Hampshire

Hillsborough, ss.

NH Superior Court

Southern District

State of New Hampshire

Case No. 226-2019-CR-0814

v.

Dale E. Holloway, Jr.

Declaration of Dale E. Holloway Jr. in Support  
of Motion to Dismiss.

Under Oath, I hereby state that the following  
statements are sworn true and accurate:

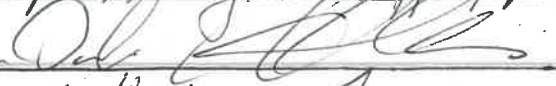
1. My name is Dale Eugene Holloway Junior. I am pro se (self-represented) and I am not an attorney admitted to the New Hampshire Bar of Association. I am the defendant in the above case or matter.
2. A true and correct copy of the Docket for State of New Hampshire v. Dale E. Holloway Jr., Hillsborough County Superior Court - Southern District, Case No. 226-2019-CR-0814 is attached hereto as Exhibit A.

3. A True AND Correct Copy of the ORIGINAL Complaint(s) in STATE of New Hampshire v. Dale E. Holloway Jr., Hillsborough County Superior Court - Southern District, Case No. 226-2019-CR-0814 is attached hereto as Exhibit B.
4. A True AND Correct Copy of the indictment(s) in STATE of New Hampshire v. Dale E. Holloway Jr., Hillsborough County Superior Court - Southern District, Case No. 226-2019-CR-0814 is attached hereto as Exhibit C.
5. A True AND ~~Correct~~ Copy of the Defendant's Defense Investigator's MEDIA COVERAGE REGARDING the Charges in STATE of New Hampshire v. Dale E. Holloway Jr., Hillsborough County Superior Court - Southern District, Case No. 226-2019-CR-0814 is attached hereto as Exhibit D.
6. A TRANSCRIBED VERSION of the Defendant's Deceased Step-father MINISTER Luis A. GARCIA's SERMON at New England Pentecostal Ministries Church in Pelham, New Hampshire PRIOR to HIS MURDER is ~~Attached~~ hereto as Exhibit E.

7. A True AND correct copy of the Defendant's Sentences in state of New Hampshire v. Dale E. Holloway Jr., Hillsborough County Superior Court - Northern District, case NO. 216-2019-CR-~~00856~~ is attached Hereto as Exhibit F.
8. A True AND correct copy of the Defendant's Acceptance Letter to the Delancey Street Foundation, Dated June 9, 2020 is attached Hereto as Exhibit G.
9. A True AND correct copy of the Defendant's Completed Rehabilitation Certificates from the past to the present incarceration is attached Hereto as Exhibit H.
10. A True AND correct copy of the Defendant's other related documents to show proofs or actual factual evidence is attached Hereto as Additional Exhibits.

Note: Mr. Holloway is currently incarcerated at NHSPM and cannot produce photocopies of the above exhibits prior to trial unless assisted with photocopies to return originals.

Respectfully Submitted, PPO SA,



Dale E. Holloway Jr. #117157

NHSP-M

P.O. Box 14

CONCORD, NH 03301

Date: October 30, 2008

# The State of New Hampshire

Hillsborough, SS.

NH Superior Court  
Hills. - Southern District  
Case No. 206-2019-CR-0814

State of New Hampshire

v.


Dale E. Holloway Jr.

## Affidavit to Support

Under Oath, I Dale E. Holloway Jr. Hereby Depose  
AND STATE that the following statements are  
True AND Accurate:

1. I AM the Defendant, Pro Se, in the above Matter.
2. I AM Indigent AND CANNOT AFFORD PRIVATE COUNSEL  
for My Representation.
3. I AM incarcerated at NHSP-M, in CONCORD, NH,  
serving 7 1/2 - 15 years while pending trial in  
the above case.

Respectfully Submitted, Pro Se

  
Dale E. Holloway Jr. #117157

NHSP-M

P.O. Box 14

CONCORD, NH, 03301

Date: October 30, 2023

## Certificate of Service

I, Dale E. Holloway Jr. do Certify that the Enclosed has been Served upon all parties involved in Stage V, Dale E. Holloway Jr., Case No. 226-2019-CR-0814 (Hillsborough County - S.D.), by HAND, for the State, at Hillsborough County Superior Court - S.D. 30 Spring Street Nashua, Nh. 03060 on this 30th Day of October 20th 2023.



Dale E. Holloway Jr. #117157

NASP-11

P.O. Box 14

CONCORD, Nh. 03301