

The State of New Hampshire

Hillsborough, ss.

NH Superior Court

Southern District

CASE NO. 226-2019-CR-0814

State of New Hampshire

v.

Dale E. Holloway Jr.

[Renewed] Motion for Change of Pleading
to Not Guilty By Reason of Insanity

Now Comes the Defendant, Dale E. Holloway Jr., prose, pursuant to NH R. CRIM. PROC., Rule 15(b)(1), under (Both) State and Federal Constitutions that protect and/or provide U.S. citizens and NH residents with an Equal protection of the laws, who respectfully requests that this Honorable Court allows or accepts this [Renewed] Motion for Change of Pleading to Not Guilty By Reason of Insanity and asks the State to [Agree or Disagree] for the following:

1. On October 12, 2019 the Defendant was arrested for an alleged shooting incident in Pelham, and arraigned on October 15, 2019 at Hillsborough

County Superior Court - Southern District.
During arraignment, Mr. Holloway expressed
Deep Depression, Anxiety, Stress, and other id
entified Mental illnesses and requested to be
evaluated (immediately) for his Mental Health
concerns, as he reported to Court-Appointed
Counsel, NHPD's office, his previous Mental
Health History, including Hospitalization(s), and
Diagnoses(es). See M.O. Notes on Arraignment
(Attached) ("claims to have diagnoses...")

2. NHPD's office [Misrepresented] Mr. Holloway [at
Arraignment] and "Failed to Enter Mr. Holloway's
official pleadings" in the case, as Court-Appointed
Counsel suffered from [Conflict of Interest,]
ultimately causing the deliberate or intentional
Delay for resolution of the criminal complaint
filed in the court. Also, NHPD's office "Failed to
Report the conflict of interest" to the court
for the record to reflect, which violates NH
R. Prof'l Conduct, Rule 1.7. perhaps conflict
of Interest Counsel [purposely] ignored Mr. Holl-
oway's Insanity Defense for Deceitful Re-
asons Against Successful Recovery. See
NH RSA 651:8 [Certificate of Jury.]

3. NH RSA 651:8-A provides that "any person prosecuted for an offense may plead that he is [Not Guilty By Reason of Insanity] or [Mental Derangement]. If such a plea is accepted by the State's Counsel, such Counsel shall certify the same to the Court.

4. Therefore, Mr. Hollaway is now ^{re-}establishing his official pleading in this case, if the State disputes the fact(s) of his insanity defense, then the matter can proceed to a [Bifurcated] [Trial] and Hearing, pursuant to Novosel v. Helgenae, 118 N.H. 115 (1978), which states: "If Not Guilty plea is coupled with Insanity Defense Defendant shall, upon request, receive Bifurcated Trial Hearing before the same Judge and Jury and evidence relating to Defendant's Mental State is Admissible in Guilt Determination phase only to show whether Defendant had requisite intent, e.g., purposely or knowingly, for commission of the crime and evidence tending to show legal sanity or legal insanity, such as [psychiatric testimony] is Not Admissible in the first stage. If the State agrees

With Mr. Holloway's Plea of [Not Guilty By Reason of Insanity], Court Must Hold [Commital Hearing] after which Accused is either to be released or to be found "Dangerous" to Go At Large, But to Commit Accused Requires Proof Beyond Reasonable Doubt. See NH RSA 651:9-a (eff. July 1, 1985) Also, See Newspaper Article (Attached) for Example of A Mental Evaluation Before His Case proceeded in Court, at Arraignment.

Wherefore, the Defendant prays that this Honorable Court Accepts the [Renewed] Motion for Change of Pleading to Not Guilty By Reason of Insanity and Allows the State to Agree or Disagree for the Matter to proceed to Bifurcated Trial or schedule for a Comital Hearing; and/or

A.) Schedule an (in-person) Hearing for the Matter to be fully Heard; and/or

B.) Accepts the [Renewed] Motion for Change of Pleading to Not Guilty By Reason of Insanity; pursuant to NH RSA 651-8-A; and/or

C.) Compels the State to [Agree or Disagree,
(with the Official Pleading), pursuant to Novosel
v. Helgemoe, 118 N.H. 122-124 (1978)

Any other such relief the Court deems fair and just.

Respectfully Submitted, pro se,
Dale E. Holloway Jr.

Dale E. Holloway Jr. #117157

NHSP-M

P.O. Box 14

CONCORD, NH. 03301

Date: August 27, 2023

A ruling on this motion is not necessary. The Court has already recognized that the defendant has placed the State on notice of an insanity defense. (See Court Index No. 152 and No.153).



Honorable Charles S. Temple

September 6, 2023

Clerk's Notice of Decision
Document Sent to Parties

on 09/08/2023

Michael Davidow

Notes on arraignment:

Mr. Holloway presents as distraught – highly emotional – highly unstable -- versed in certain criminal procedures but barely able to entertain rational discussion about them. Query whether competency is an issue, but doubtful. Basically a very, very difficult client with some serious mental health issues.

Claims to have diagnoses of schizophrenia, bipolar, and paranoia. Unclear whether these are actual diagnoses or his idea of what his diagnoses are / should be. Says he has been treated at Bridgewater State Hospital. Unclear if this was part of incarceration. Seemed surprised that NH was holding him in a jail instead of sending him to "a hospital."

Still in a fresh stage of grief over his father's murder. This is coloring everything that he says and does.

Says he is innocent of all these charges. Says they can't prove he had a gun on him. Says he never shot anyone. Says that maybe other people had guns and they shot those guns in the tumult that took place.

Went around and around in circles over the uses of a bail hearing. Said repeatedly, "he is not asking for PR" but was asking for "the bracelet" and "to be released to probation, which is going to hold him anyway, so why did this Court need to hold him as well." When I pointed out that probation's holding him, made it pointless to argue bail in this court, he replied, "he does not want to be held on these bullshit charges, he wants to be held only on his probation violation, because otherwise he will be doing dead time." Finally agreed that what he wanted was an evidentiary hearing, where he would get to show "all the inconsistencies in the state's case and look sympathetic to the judge, so he could get a sympathetic bail." Took particular issue with my suggesting to him that the judge was highly unlikely to find in his favor because how do I know what the judge will do? Especially taken by the variance between the complaint (which says "shot in chest.") and the police report (which says "shot in neck.") Sees this not as sloppy work that is easily fixed, and more as evidence that the case itself is "bullshit."

Evidentiary hearing set for next Tuesday, 10/22, 1:30 pm. Amy reserving "at least two hours." If today is any gauge, there will be a large press contingent.

Client wants us to contact PPO Jason Myers ASAP so that Jason can violate him ASAP and he can start "getting credit" on his VOP ASAP.

Client hopeful of retaining private counsel. Unclear if this is realistic. Mother, PATTY, at 508-369-8127, says that client's sister is in touch with some attorney, but that attorney (Stephanie Soriano, 617-780-8779) told me "nobody has retained her yet."

Client also wants to be "evaluated" immediately. Unclear what for. Unclear to what end. An evaluation would certainly be appropriate, but counsel should decide the reasons and the type after another long conversation with this very difficult, unrealistic, and highly emotional client.

NB that the AG's office (Ben Agati) has a piece of this case, along with Nicki T. Unclear whether this is because the AG's are stomping all over the county attorney or because this is an attempted murder on top of another actual murder, or what.

NOTE ON POSSIBLE CONFLICT: Ben also thinks we will be conflicted out of this quickly because of the overlap in witnesses between this case and the murder. In particular he notes that the victim of the Simple Assault in this case, MC, is a chief witness in that homicide. (Not sure if this person's being a witness in two cases, makes us a conflict?). Or possible that Mr. Holloway himself is a witness in the murder? That would be a clearer issue. Perhaps talk to Ben and get the witness list for that murder, ASAP?

HAVERHILL

Police: Man accused of murder has violent past

Reports in other cases detail his mental issues

By MIKE LABELLA AND ALLISON CORNEAU
Staff Writers

HAVERHILL — A man charged with killing another man by beating him in the head with a pipe will undergo a mental evaluation before his case proceeds in court.

Police reports on file detailing past cases against the accused attacker indicate he has a violent criminal history and has shown evidence of mental problems.

Diecryk Garcia, 35, of 127 Winter St., Apt. 5, is charged with beating to death John Rosado, 34, of Haverhill. Investigators said Rosado was found Thursday afternoon lying on the sidewalk outside the Winter Street apartment building where Garcia lives and bleeding profusely from head wounds. Investigators said Rosado did not live in the building. They have released no other information about him or what led to the killing.

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MURDER

Continued from Page A1

At Friday's arraignment in Haverhill District Court, a judge ordered that Garcia undergo the mental evaluation. He is being held without bail.

A prosecutor said police found a bloody pipe in Garcia's apartment. Rosado was taken to Lawrence General Hospital and then by helicopter to Boston Medical Center, where he died, police said.

The company that manages the building where Garcia lives said it recently served him with an eviction notice.

Mental health questioned

Garcia was arraigned before Judge Cesar Archilla on one count of murder. The judge entered a not guilty plea on Garcia's behalf and appointed Ron Ranta as his defense lawyer. Police records in the murder case are impounded, court officials said.

During the court hearing, Ranta asked that Garcia not be arraigned.

"I don't believe he's competent at this time to understand the proceedings," Ranta said.

The judge did arraign Garcia, but also ordered that he undergo the mental health evaluation.

Assistant District Attorney Cal Skeirik asked that Garcia be held without bail "given the charge" against him.

Haverhill police responded to 127 Winter St. at 4:31 p.m. Thursday for an "altercation of some kind" between two men, said Carrie Kimball, spokeswoman for District Attorney Jonathan Blodgett's

office.

The building at 127 Winter St. has several stories of apartments. It is at the southern edge of the inner-city Acre neighborhood.

During Friday's hearing, Skeirik outlined the case against Garcia, saying officers were dispatched to Winter Street for a well-being check and observed a man lying on the sidewalk.

Skeirik said the man was bleeding and had a large pool of blood around his head that appeared to be coming from significant wounds to his head.

"There were large lacerations to the side and top of his head," Skeirik said. "EMTs arrived simultaneously on scene with officers and began to render aid."

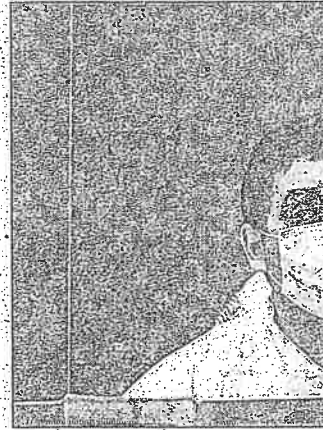
Police find Garcia

"Officers observed a large trail of blood leading into the building" where Garcia lives, Skeirik said at the arraignment. "It led up a set of stairs to the second floor."

Skeirik said police found a large pool of blood on a second-floor landing and that officers saw bloody shoe prints leading to Apartment 5 where Garcia lives.

Skeirik said police encountered a man who was walking down the stairs from the second floor, and they identified him as Garcia. Skeirik said it appeared to police that he had blood on his pants and shoes.

Police detained Garcia, Skeirik said. He said officers spoke to several witnesses, including one of Garcia's neighbors, who told police that earlier she saw him holding a pipe-like weightlifting bar which has was banging



Diecryk Garcia, 35, of Haverhill Haverhill District Court on a m

on the wall and floor. Skeirik said the witness described the entrance to Garcia's apartment as having a blue towel hanging on the door.

Police said they confirmed it was Garcia's apartment and that they found blood on the door knob.

"The apartment was in disarray and they (police) did locate a shiny metal pipe that did appear to have fresh blood on it," Skeirik said.

Ranta told the judge that the defense had no objection to Garcia being held without bail, but requested that it be done without prejudice so Ranta could have a thorough conversation with his client.

Ranta also asked that the competency evaluation be limited to mental competency and not criminal responsibility, to which the judge responded he would note the request, along with the objection to having Garcia arraigned.

The judge scheduled a probable cause hearing for March 29.

Before the hearing, Attorney Daniel Hutchinson of Haverhill, speaking on behalf of S&B Property Management company, owner of 127 Winter St., told The Eagle-Tribune that the company served Garcia with an

Lottery

MASSACHUSETTS

TRI-STATE MEGABUCKS PLUS



MIKE LABELLA/Staff photo

**at his arraignment Friday in
under charge.**

"essential eviction" notice early last week. Hutchinson said a notice of this kind is served because of criminal activity or concerns about the health and safety or welfare of other tenants.

"If you drive by his unit, you'll see broken windows in his (Garcia's) unit," Hutchinson said Friday. "You can find plenty of records on Mr. Garcia within the court system. He was served (the eviction notice) by a sheriff we hired, very likely in the last few days, Monday or last weekend. As I understand it, he (Garcia) was not available last week because he was in a hospital somewhere. The owner tries real hard to keep good people in there. This guy has had (problems) and it's a matter of public record."

Records detail Garcia's past

According to records on file at Haverhill District Court, on April 8, 2013, Garcia was charged with breaking and entering in the daytime for felony and malicious destruction of property over \$250. He pleaded guilty to the charges on Oct. 23, 2013, and was sentenced to one year in jail, the records show. He was credited with 198 days served and the balance of

his sentence was suspended with the requirement that he be on probation. He was also ordered to submit to drug and alcohol screening.

According to a police report on that incident, officers responded to a duplex on Primrose Street for a report of breaking and entering. The owner told police that one side of the duplex was vacant and that someone broke in there and damaged two doors, the police report said. A resident living on the other side of the duplex told police that Garcia had stopped by and was looking for a woman who formerly lived in the other half of the duplex, the report said.

The resident told police that Garcia was walking around the building yelling the woman's name and that he seemed to be in some sort of "rage," according to the report. The resident also told police that Garcia punched a hole in a hallway wall and then entered the basement and kicked down a door, the report said. He was later ordered by the court to pay restitution of \$1,420 for the damage he caused to the building, according to court documents.

The woman Garcia was looking for and who lived at a different address told police that he had come to her apartment and she told him to leave or she would call police, according to the report. The woman told police she feared Garcia and that she thought he was having a "psychotic episode," the report said.

Police said they obtained a warrant for Garcia's arrest on charges of breaking and entering.

Police said they subsequently received a call from a business on Washington Street that Garcia was there causing a disturbance. Police said they responded to the

business and arrested him. Officers said that while they booked him at the police station, Garcia refused to answer questions or have his photo taken. He also threatened to sue police, they said.

Police said that after they placed Garcia in a cell, he began punching the cell door and cut his left hand.

In another case, on April 29, 2019, police charged Garcia with assault with a dangerous weapon. Two days earlier at 10:29 a.m., according to a police report, officers were called to Common Grounds, 129 Winter St., for a report of a man who was threatened by another man with a knife. Common Grounds is a street ministry that provides food to needy people and has since moved to another location.

The police report said a 54-year-old Haverhill man told officers he was waiting in line to enter Common Grounds when Garcia, who the man said he had known for years, yelled to him to come upstairs to Garcia's apartment. The man told police that Garcia asked him to enter the apartment, and when the man refused, Garcia pulled out a pocket knife and waved it in the man's direction, according to the report. Garcia then entered his apartment and closed the door behind him, the report said.

The man called police to report what had happened, according to the report.

When questioned by police, Garcia said it was a misunderstanding and that he just wanted to ask the man a question, according to the report. Police charged Garcia with assault with a dangerous weapon (a knife). Court officials said the case was eventually dismissed upon Garcia paying court fees and restitution.