

THE STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS.
DOCKET NO. 226-2019-CR-00814

SUPERIOR COURT
SOUTHERN DISTRICT

STATE OF NEW HAMPSHIRE

v.

DALE HOLLOWAY

**STATE'S MOTION TO EXCLUDE SEVERAL WITNESSES FROM DEFENDANT'S
WITNESS LIST FILED ON DATE OF JURY SELECTION AND MOTION TO
EXCLUDE THEIR ANTICIPATED TESTIMONY**

NOW COMES the State of New Hampshire, by and through the Hillsborough County Attorney's Office, and moves to exclude several witnesses from the defendant's witness list, stating in support as follows:

1. Jury selection occurred today, October 30, 2023, in this matter.
2. During jury selection, the defendant, who is representing himself currently, filed a witness list. Court Index # 456.
3. On the date of the trial management conference, October 19, 2023, the defendant filed an earlier witness list in this matter. Court Index # 445. This witness list contained the following names of witnesses:
 - a. Patricia Garcia,
 - b. Dale E. Holloway, Sr.,
 - c. Luis A. Garcia (deceased),
 - d. Tupac A. Shakur (deceased), and
 - e. Lisa M. King.
4. In the witness list that he filed on today's date, the defendant listed the following names of witnesses:

- a. Patricia A. Garcia,
- b. Dale E. Holloway, Sr.,
- c. Luis A. Garcia (deceased),
- d. Tupac A. Shakur (deceased),
- e. William C. Freyler,
- f. Dr. Stephanie Tabashneck,
- g. Eric G. Mart,
- h. Michael E. Davidow,
- i. Chris Robinson,
- j. Ruth Choate,
- k. Devan Larose,
- l. Paul Cato,
- m. Lisa M. Fontes,
- n. Calvin Troy,
- o. Angelo Castiglione,
- p. Det. Eric M. Joyal,
- q. Off. Brittany Battye, and
- r. Ofc. Alexander Martens.

5. The defendant also wrote “And all of the State’s witnesses for cross-examination or direct if not called.”

6. The State moves to exclude the following witnesses listed on today’s witness list:
 - a. Dr. Stephanie Tabashneck,
 - b. Eric Mart,

- c. Michael E. Davidow,
- d. Chris Robinson,
- e. Ruth Choate,
- f. Paul Cato, and
- g. Calvin Troy.

7. New Hampshire Criminal Rule of Procedure 12(b)(4)(B) mandates that a defendant shall provide the State with the defendant's witness list and witness statements "[n]ot later than ten calendar days before the final pretrial conference." This rule also authorizes the trial court to "take such action as it deems just under the circumstances" for the defendant's failure to comply with the rule "including, but not limited to ... prohibiting the [defendant] from introducing the evidence not disclosed." State v. White, No. 2020-0124, 2021 WL 2555646, at *2 (N.H. May 3, 2021), citing N.H. R. Crim. P. 12(b)(4)(B).

8. The defendant violated this rule.

9. In deciding whether to exclude evidence when a party violates the discovery rules, "the trial court may consider several factors, including: whether the violating party made a good faith effort to comply or provided a pre-trial warning to minimize surprise, the ability of the court to limit the scope of testimony or evidence to minimize surprise, and the availability of lesser sanctions or procedural curative measures." State v. Cromlish, 146 N.H. 277, 281(2001) (internal citations omitted).

10. What is particularly egregious on the defendant's part is that he waited until after jury selection was done or nearly done to provide the State and the Court with this witness list. He sat through all of jury selection, including the Court (Temple, J.) reading the names of all of the witnesses from both of the witness's lists previously provided by both parties, and said

nothing to the Court about a revised witness list. Then, once it was revealed by State's counsel that it had just received email notification of the witness list, the defendant offered no explanation for his delay. This reason, by itself, is sufficient cause to strike all of the witnesses from the defendant's witness list filed on the date of jury selection. The defendant is not acting in good faith.

11. Additionally, during previous hearings and conferences with the defendant, the Court had admonished the defendant to comply with the Court rules, and provide the State with his witness list and statements from the witnesses. The defendant heard this, and decided to disregard the Court's admonitions.

12. With respect to Eric Mart, the Court should strike him from the witness list and exclude his testimony because the report from Dr. Mart is approximately 3 months old. The defendant has had this report for a significant amount of time, and decided to provide it on the date of jury selection to surprise the State and attempt to put it at a disadvantage.

13. With respect to Dr. Stephanie Tabashneck, the Court should strike her from the witness list and exclude her testimony because the report from Dr. Tabashneck is over three years old. The defendant apparently had this report for this amount of time, and decided to provide it on the date of jury selection only to surprise the State and attempt to put it at a disadvantage.

14. With respect to Chris Robinson, it is unclear from the defendant's pleading why he has placed this witness on his witness list. The defendant provided only the resume of Chris Robinson. The defendant did not attach a report detailing what Chris Robinson would testify to.

15. If the defendant now seeks to have either Dr. Mart or Dr. Tabashneck or Chris Robinson as a witness, then the State may consider requesting to depose these witnesses, thereby

delaying the progress of this trial. See RSA 517:13, III, "In any felony case either party may take a discovery deposition of any expert witness who may be called by the other party to testify at trial."

16. Also, the Court should examine the reports from both doctors and determine whether the information from either is relevant to either the guilty phase of the trial or the insanity phase of the trial. In the State's interpretation, the content from the doctors' reports may offer some mitigating information, but such information would be relevant only in a sentencing hearing.

17. With respect to Michael Davidow, who was Mr. Holloway's former defense attorney before Mr. Holloway feloniously assaulted him (216-2019-CR-01856), the State objects to any testimony that Attorney Davidow could provide if it consists of the defendant's statements to him as such statements are hearsay. See Rule 801 of N.H. R. Evid.

18. The defendant offers no witness statement from Ruth Choate. Incidentally, she is the wife of Stanley Choate, one of the victims in this case. By putting her on the witness list, the defendant is attempting to preclude her from appearing in court in support of her husband when he testifies. Again, the defendant shows his bad faith.

19. The defendant offers no witness statement from Paul Cato or Calvin Troy. Also, the defendant failed to provide a street address or even a date of birth for these individuals, thereby preventing the State from being able to investigate these witnesses to prepare to cross-examine them.

WHEREFORE, the State respectfully requests that this Honorable Court:

- A. Grant the State's Motion, exclude the above witnesses from testifying;
- B. Schedule a hearing thereon, if necessary; and

C. Grant the State any such other relief as may be proper and just.

DATED: October 30, 2023

Respectfully Submitted,

/s/John Harding

John Harding #4067

Assistant County Attorney

CERTIFICATION

I hereby certify that a copy of the pleading has this day been sent to the defendant.

/s/John Harding

John Harding