

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 OBJECTION TO DEFENDANT'S MOTION TO CONTINUE TRIAL

NOW COMES the State of New Hampshire, by and through the Hillsborough County Attorney's Office, and **objects** to the Defendant's Motion to Continue Trial, stating in support as follows:

1. The defendant, Dale Holloway, is charged in the above-captioned docket number with Attempted Murder, First Degree Assault, Second Degree Assault, Felon in Possession of a Deadly Weapon, and Simple Assault. The offenses the defendant stands accused of are alleged to have occurred on October 12, 2019 in Pelham, New Hampshire.

2. Jury Selection in this matter is presently scheduled for October 30, 2023, with a Trial Management Conference scheduled for October 19, 2023.

3. Per Court Index #371, the defendant filed a pro-se motion titled: *Motion to Continue Trial Dates Scheduled by Withdrawn Contract Attorneys And/Or State*. In said Motion, the defendant cites a variety of reasons to support his request for a continuance, including his need to review files, study case law and court rules, receive transcribed versions of "new discovery", to file pretrial motions, as well as the unavailability of purportedly 50-75 family members that the defendant intends to call as witnesses at trial. ¶ 3-4 Def. Mot. To Continue (Sept. 8, 2023). Additionally, the defendant cites his current incarceration at the New Hampshire

Prison – specifically his housing classification in “SHU” and “CCU” - as interfering with his abilities of self-representation.¹ ¶ 5 Def. Mot. To Continue (Sept. 8, 2023). The defendant, in his Motion, requests that the trial be continued for “1 full year.” ¶ 5 Def. Mot. To Continue (Sept. 8, 2023).

4. The State **strenuously objects** to the defendant’s Motion to Continue Trial.

ARGUMENT

5. The offenses the defendant stands accused of in this case occurred October 12, 2019. As of the October 30, 2023, date for Jury Selection currently scheduled for this matter this case will have been pending for **approximately 1,481 days**.

6. Throughout the pendency of this case, the defendant has filed numerous pro-se pleadings, had various iterations of defense attorneys represent him, and has represented himself at hearings. This Honorable Court has granted multiple requests by the defendant/his defense to continue trial in this matter over the course of the case, at times over the State’s objection. Further, the defendant has elected at various points to have counsel appointed to represent him, and to represent himself, resulting in significant delays to trial.

7. In his Motion, the defendant claims he has “50-75 family members” that he intends to call as witnesses, that he asserts are apparently all unavailable during the presently scheduled trial dates that this Court has set. ¶ 4 Def. Mot. To Continue (Sept. 8, 2023). Notably, it is the State’s understanding that the defendant has not filed a Witness List identifying who he intends to call as witnesses at trial, nor has the State received discovery from the defendant as to

¹ There has already been a hearing addressing the nature of the defendant’s claims regarding his access to legal materials while incarcerated.

what these witnesses may testify to pursuant to State v. Zwicker, 151 N.H. 179 (2004).² At the time of the State’s filing of this Objection, the State is prepared to go to trial, as are the victims and the State’s witnesses in this case.

8. To put it simply, the defendant’s request to continue trial until August of 2024 is absurd. The victims have waited nearly 4 years to have this case conclude. Among the various rights that victims of crime have in New Hampshire, victims have the right to be “treated with fairness and respect for their dignity and privacy throughout the criminal justice process” and the right “to have inconveniences associated with participation in the criminal justice system minimized.” RSA § 21-M:8-k. To continue this case again would constitute more than an unfair inconvenience to the victims.

9. From the State’s perspective of the procedural history of this case highlighted by the defendant’s multiple requests for continuances, withdrawal of his appointed counsel, and requests for new counsel to be appointed, the timing of the defendant’s instant Motion to Continue Trial renders his request for a continuance dubious.³ Notably, the New Hampshire Supreme Court in State v. Barham held that the trial court did not abuse its discretion in denying a *pro-se* defendant’s motion to continue trial, citing “[u]nder the circumstances of this case, where the defendant had been warned on several occasions that trial would begin as scheduled, where two continuances had already been granted, and where defendant did not attempt to make reasonable efforts to take advantage of the research opportunities made available to him, we hold that the court did not abuse its discretion in denying the defendant’s motion to continue.” State v.

² The State will be filing a Motion for Discovery, based on the defendant’s purported reference in his Motion to Continue of “new discovery” he implies will be admissible at trial. See ¶ 3 Def. Mot. To Continue (Sept. 8, 2023).

³ The State notes that the defendant claims in his Motion that August of 2024 would be a “suitable” new trial date yet fails to provide an explicit reason as to why. See ¶ 5 Def. Mot. To Continue (Sept. 8, 2023).

Barham, 126 N.H. 631, 640 (1985).⁴

10. The defendant’s attempt to bait the State into agreeing to a continuance by arguing that “the State’s prosecution team(s) should not oppose to a new set trial date with a [no further continuance agreement] to show good faith or equal opportunity in the defense of an accused with the severity of the ‘alleged’ crimes in the case” is without merit. ¶ 5 Def. Mot. To Continue (Sept. 8, 2023). The defendant has had an equal opportunity in his defense, especially considering the multiple continuances of trial at his request or action to accommodate that principle. Make no mistake: the defendant has a fundamental right to a fair trial, but he does not have a fundamental right to a trial solely on his own terms, his own opinion, and his own timeline. See N.H. CONST. pt. 1, art. 15. The defendant is not the only party in this case – the State of New Hampshire is also a party.

11. Therefore, the State objects to the defendant’s Motion to Continue Trial. The State stands ready to proceed to trial as presently scheduled.

WHEREFORE, the State respectfully requests that this Honorable Court:

- A. Deny the Defendant’s Motion to Trial; or
- B. Schedule a hearing thereon, if necessary; and
- C. Grant the State any such other relief as may be proper and just.

⁴ The Barham court noted that “the court had warned the defendant that the case would proceed as scheduled regardless of whether the defendant represented himself or had counsel. The defendant did not object. Indeed, as late as February 22, the defendant wrote to the court that he “demands trial” on the scheduled date of May 4. For this reason, the court’s error in not more promptly holding a hearing after the defendant moved to proceed *pro se* on December 8, 1982 is not a basis for finding error in denying a continuance of the May 1983 trial date.” Barham, 126 N.H. at 640. Further, the Barham opined “Nor was the defendant’s inability to use the library at the New Hampshire State Prison a sufficient basis for concluding that the trial court abused its discretion in denying the defendant’s request for a fifty-six day continuance. The trial court found that the defendant was unable to use the library because of his own unwillingness to conform to prison regulations by shaving his beard.” Id. See State v. Panzera, 139 N.H. 235, 240 (1994) (holding in part: “the court made legal information available to the defendant through a court-appointed attorney. The defendant assured the court that he understood the role of this standby counsel. Furthermore, the transcript reflects that the defendant was intelligent, had not used drugs since his arrest, and was physically capable of availing himself of this legal service. Under these circumstances, the provision of standby counsel ensured the defendant’s fundamental right of access to the courts and rendered his admittance to a law library unnecessary.”).

DATED: September 14, 2023

Respectfully Submitted,

/s/ Seth Dobieski

Seth S. Dobieski #273674

Assistant County Attorney

CERTIFICATION

I hereby certify that a copy of the foregoing pleading has this day been sent to the defendant, Dale Holloway via mail.

/s/ Seth Dobieski

Seth S. Dobieski