

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 RESPONSE TO DEFENDANT'S MOTION TO TRANSPORT DEFENDANT
TO COURTHOUSE TO CONDUCT MENTAL HEALTH EVALUATION BY
DEFENDANT'S EXPERT DOCTOR
*HEARING REQUESTED***

NOW COMES the State of New Hampshire, by and through the Hillsborough County Attorney's Office, and responds to the defendant's Motion to Transport Defendant to Courthouse to Conduct Mental Health Evaluation by Defendant's Expert Doctor (hereafter, "motion to transport"), stating in support as follows:

1. On or about February 15, 2022, current defense counsel were appointed to represent the defendant, Dale Holloway. Court Index #239-40.
2. On February 16, 2022, defense counsel John MacLachlan filed his appearance in this matter. Court Index #241.
3. On February 19, 2022, defense counsel William Dolan filed his appearance in this matter. Court Index #244.
4. On February 18, 2022, this Court (Temple, J.) issued a Case Scheduling Order, noting that defense counsel had just been appointed. The Court also continued several hearings and the jury trial. The Court also noted that "[i]t was both necessary and imperative to allow [defense counsel] a reasonable amount of time to prepare for pretrial and trial proceedings in an effective manner." Court Index #242.
5. On or about September 16, 2022, the Clerk's Office sent the Notice of Jury Trial

that notified counsel that jury selection was scheduled for May 1, 2023.

6. In an order after a mediation session that occurred on December 20, 2022, the Court (Nadeau, C.J.) noted that “the parties determined that a second mediation session would be appropriate. In the meantime, the defendant shall obtain a mental health evaluation.” Court Index #289.

7. On January 8, 2023, after a hearing, the Court (Temple, J.) issued an order on the defendant’s renewed motion to enforce constitutional rights. Court Index #294. In this order, the Court noted that it was:

assured that defense counsel and the Department of Corrections will work in a collaborative manner to establish a schedule for attorney-client visits over the next four months. While the court schedules of the attorneys and the visitation schedule of the prison remain fluid and subject [to] change, it is imperative that defense counsel and the warden communicate in a timely manner to maintain the appropriate level of attorney access to Mr. Holloway for pretrial and trial purposes.

8. On January 27, 2023, defense counsel filed an expedited assented-to motion for continuance of status hearing, citing conflicts due to scheduling as well as an injury to their defense expert. Court Index #296.

9. On February 10, 2023, defense counsel filed an expedited motion for continuance of status hearing, then scheduled for February 13, 2023, citing that the defendant was scheduled for a mental health evaluation on February 13, 2023. Court Index #302.

10. On March 16, 2023, defense counsel filed the pending motion to transport Mr. Holloway to the courthouse for the mental health evaluation. Court Index #304.

11. The pending motion to transport Mr. Holloway on either May 1, 2, or 3 is unnecessary, given that it is common practice for the Clerk’s Office to issue a transport order for incarcerated defendants for trial. As noted above, jury selection is scheduled for May 1, and trial

is expected to begin thereafter.

12. Conducting a mental health evaluation in early May is untimely, assuming that the evaluation would be used at a mediation, which is currently scheduled for this Friday.¹

13. After an email exchange today with defense counsel, undersigned counsel understands that the defense intends to file a motion to continue the second session of the mediation, the trial management conference (TMC) as well as the trial. The State will object to the motion to continue the TMC and the trial. The State will take no position regarding the motion to continue the second session of the mediation.

WHEREFORE, the State respectfully requests that this Honorable Court:

- A. Schedule a hearing on the pending motion to transport; and
- B. Grant the State any such other relief as may be proper and just.

DATED: March 22, 2023

Respectfully Submitted,

/s/John Harding

John Harding #4067

Assistant County Attorney

CERTIFICATION

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

/s/John Harding

John Harding

¹ Conducting the mental health evaluation in early May for trial purposes would be especially untimely and the subject of additional pleadings by the State.