

STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS.
SOUTHERN DISTRICT

JULY TERM, 2024

STATE OF NEW HAMPSHIRE

V.

DANIELLE DAUPHINAIS

226-2021-CR-00944

STATE'S MOTION TO COMPEL DISCOVERY
FROM DEFENDANT'S EXPERT WITNESSES

NOW COMES the State of New Hampshire, by and through its attorney, the Office of the Attorney General, and respectfully requests that this Honorable Court ORDER the defendant's expert witnesses to provide materials requested during depositions as well as answers to questions which were objected to by defense counsel during depositions. In support of this position, the State provides as follows:

1. The defendant is charged with alternative counts of first-degree murder, purposeful, and second-degree murder, reckless for causing the death of E.L. She is also charged with three class B felony counts of tampering with witnesses, and with two misdemeanor counts of endangering the welfare of a child.
2. On February 12, 2024, counsel for the defendant disclosed the names and reports of two witnesses that the defendant would seek to qualify as experts for the purpose of trial. Those witnesses consisted of Timothy Dickinson, a psychologist who opined on police interview techniques, and Dr. Elizabeth Laposata, a forensic pathologist.
3. Pursuant to Rule 13(c) of the New Hampshire Rules of Criminal Procedure, the State requested an opportunity to depose each of these potential defense expert witnesses.

4. On May 8, 2024, a deposition was conducted of Mr. Dickinson. The deposition was conducted by video conference and transcribed by a stenographer. Present during the deposition were the defendant, defense counsel, and the attorneys for the State. On May 17, 2024, a copy of the transcript of the deposition was received by the State and promptly provided to defense counsel along with an errata sheet seeking to have Mr. Dickinson review the transcript and advise counsel of any noted errors or issues in the transcript.
5. Similarly, on May 9, 2024, a deposition was conducted of Dr. Laposata. This deposition was also conducted by video conference and transcribed by a stenographer. Present during the deposition were the defendant, defense counsel, and the attorneys for the State. On May 20, 2024, a copy of the transcript of the deposition was received by the State and promptly provided to defense counsel along with an errata sheet seeking to have Dr. Laposata review the transcript and advise counsel of any noted errors or issues in the transcript.
6. On June 10, 2024, the State requested through a letter that the witnesses who had been deposed complete and return the errata sheets related to their transcripts. As of the date of this filing, the errata forms have not been returned.
7. In the June 10, 2024, letter, the State requested copies of certain documents that were discussed with the witnesses during depositions. Namely, Mr. Dickinson agreed to provide an updated copy of his curriculum vitae and a list of cases in which he had previously testified as an expert witness, while Dr. Laposata agreed to provide a list of cases in which she has previously testified as an expert witness. To date, the State has not received this information.

8. During Mr. Dickinson's deposition, the following exchanges occurred:

Q: Is that your most recent CV?

A: No.

Q: Since it is no, could you provide a copy to defense counsel of your most recent CV so that we can have a copy of that?

A: Yes.

See Deposition Transcript, Bates 8109.

Q: Do you keep a list of the cases in which you've testified?

A: I do, right? I haven't updated the list recently with the last few cases, but I do have a list.

Q: Is that a list that you can provide to us?

A: Sure.

See Deposition Transcript, Bates 8121-8122.

9. During Dr. Laposata's deposition, the following exchange occurred:

Q: Do you keep a list of all the cases in which you have been either deposed or have given sworn testimony in, say, a trial proceeding?

A: I try to keep a list of about the last five years.

Q: Okay. Is that something you're able to provide?

A: It is.

Q: Okay. We'll ask you at the end to provide that.

A: Okay.

Q: And it may be easiest, because you're a defense expert, probably to provide it to defense counsel, and then they can get it to us.

A: Okay.

See Deposition Transcript, Bates 8274.

10. Through this Motion, the State seeks an Order from the Court directing the witnesses to provide the above-described requested information.

11. At the time of the depositions, the parties agreed to reserve all objections to a later date with Attorney Falkner requesting the ability to object as to form, issues of privilege, or to instruct a witness not to answer a particular question.

12. During depositions of both witnesses, counsel for the defendant objected to questions asked by the State related to the fees charged by each witness and as to the amount of financial compensation each received or expected to receive for their work in this case.
13. During Mr. Dickinson's deposition, defense counsel objected to questions concerning expert witness fees. In particular, the following questions and objections occurred:

Q: How much do you charge for your expert services?

Attorney Falkner: Objection. And I'm going to suggest that that is not an inquiry that he has to answer. That's dealt with through the court-appointed state system, and I don't think that's an appropriate area of inquiry. I'm going to instruct the witness not to answer.

Q: How much, Mr. Dickinson, do you expect to be paid for this case in its entirety?

Attorney Falkner: Objection. And again, the same objection, and I'm going to instruct him not to answer.

See Deposition Transcript, Bates 8113 – 8114.

14. Similarly, during Dr. Laposata's deposition, defense counsel objected to questions concerning expert witness fees. In particular, the following questions and objections occurred:

Q: Do you charge a different rate for consulting versus expert testimony?

A: Yes. I charge a different rate for sworn testimony.

Q: What is your hourly rate?

Attorney Falkner: Objection.

Q: Is your rate the same regardless of who your client is?

Attorney Falkner: Objection, and I'd instruct her not to answer.

Q: Doctor, do you charge different rates for private versus public clients?

Attorney Falkner: Objection, and I'd instruct her not to answer.

Q: Doctor, how much are you charging in this case?

Attorney Falkner: Objection, and I would instruct her not to answer.

See Deposition Transcript, Bates 8276 - 8277.

15. Either during or following the depositions, the State advised counsel for the defendant that questions related to this topic, which the witnesses were instructed not to answer, would be addressed separately and/or with the Court.

16. The United States Supreme Court has long recognized that cross examination of a witness “directed toward revealing possible biases, prejudices, or ulterior motives of the witness...may relate directly to issues or personalities in the case at hand.” *Davis v. Alaska*, 415 U.S. 308, 316-17 (1974). In analyzing a defendant’s right to confrontation of witnesses, the Court further stated, “[t]he partiality of a witness is subject to exploration at trial, and is always relevant as discrediting the witness and affecting the weight of his testimony.” *Id.* (citations and quotations omitted). The New Hampshire Rules of Evidence contemplate that “[a] witness may be cross-examined on any matter relevant to any issue in the case, including *credibility*.” N.H. R. of Ev. 611(b) (emphasis added).
17. The State asserts that inquiring about the possible financial bias or motive of the defendant’s expert witnesses during a deposition is an appropriate area of inquiry, and that defense counsel’s objections were unwarranted. At trial, the defendant will be asking the jury to weigh the credibility of her expert witnesses in support of her theory of defense. As a result, the State should be able to explore what, if any, financial incentives the witnesses have in testifying on her behalf.
18. To the extent that the defendant claims that this information is privileged, the State asserts that the information sought including payment received by expert witnesses, fees charged by expert witnesses, and/or the expert witnesses’ anticipated income for work (up to and including testimony) in this case consists of financial information for which there is no known privilege. The information sought relates directly to potential bias and credibility and is in no way privileged or otherwise confidential.
19. Given that the credibility of these witnesses can be challenged at trial, the State requests that the Court issue an order compelling Mr. Dickinson and Dr. Laposata to answer the

following questions by sworn or notarized statement. The State respectfully requests that this Court order that the responses be provided to the State within 14 days of the Court's order.

- a. How much do you charge for your expert services?
- b. Do you charge a different rate for consulting versus expert testimony?
- c. What is your hourly rate for consulting? What is your hourly rate for testimony?
- d. Do you charge different rates for private versus public clients? What are those rates?
- e. How much money are you charging in this case?
- f. How much money do you expect to be paid for your work in this case?

WHEREFORE, the Attorney General for the State of New Hampshire respectfully requests that this Honorable Court:

- A. Issue an Order compelling Timothy Dickinson to provide an updated copy of his curriculum vitae and a list of cases in which he has testified as an expert witness; and,
- B. Issue an Order compelling Dr. Elizabeth Laposata to provide a list of cases in which she has testified as an expert witness; and,
- C. Issue an Order compelling Timothy Dickinson and Dr. Elizabeth Laposata to provide sworn or notarized affidavits in response to the questions in paragraph 19 above within 14 days of the Court's Order; and/or
- D. Grant such other and further relief as may be just and proper.

Respectfully submitted,

THE STATE OF NEW HAMPSHIRE

By its attorneys,

John M. Formella
Attorney General

July 24, 2024

/s/ Bethany J Durand
Bethany J Durand, NH Bar ID #273943
Assistant Attorney General
New Hampshire Attorney General's Office
1 Granite Place South
Concord, NH 03301
(603) 271-3671

/s/ Meghan C. Hagaman
Meghan C. Hagaman, NH Bar ID# 20804
Senior Assistant Attorney General
New Hampshire Attorney General's Office
1 Granite Place South
Concord, NH 03301
(603) 271-3671

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was provided to counsel for the defendant through the Court's e-filing system.

July 24, 2024

/s/ Bethany J Durand
Bethany J Durand, NH Bar ID #273943
Assistant Attorney General