

STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS.

HILLSBOROUGH COUNTY SUPERIOR COURT
SOUTHERN DISTRICT
CASE NO. 226-2021-CR-00944

STATE OF NEW HAMPSHIRE

v.

DANIELLE D. DAUPHINAIS

MOTION TO CONTINUE TRIAL

Defendant Danielle Dauphinais hereby moves to continue trial. Dauphinais relies upon the following:

1. Dauphinais is charged with first degree murder, among other things.
2. Attorney Jaye Rancourt was originally primary counsel and represented Dauphinais since the beginning of this case. Undersigned counsel was appointed as co-counsel on May 10, 2022.
3. In or around June 2023, Attorney Rancourt withdrew because she had accepted a position with the Federal Defender Office and was not allowed to continue to represent defendants in state court. Neither undersigned counsel nor Dauphinais were given significant advance notice of the withdrawal, and neither played any role in the departure of Attorney Rancourt.
4. The loss of representation was traumatic for Dauphinais, who had developed a working relationship with Attorney Rancourt. Nonetheless,

undersigned counsel continued to represent Ms. Dauphinais, resulting in a modicum of stability in the representation of the defendant.

5. In or around June 2023, Attorney Tracy Scavarelli was appointed as co-counsel to represent Ms. Dauphinais, and trial was continued to October 2024 to allow undersigned counsel to transition into the role of lead counsel. Attorney Scavarelli represented Dauphinais from approximately June 2023 through June 2024 and developed a relationship with Dauphinais, such that Dauphinais was able to develop trust in her defense team.

6. Unfortunately, in or around June 2024, Attorney Scavarelli withdrew because she had accepted a position with the trial court and was not allowed to continue to represent defendants in state court. Neither undersigned counsel nor Dauphinais were given significant advance notice of the withdrawal, and neither played any role in the departure of Attorney Scavarelli.

7. The loss of representation was all the more traumatic for Dauphinais, who had yet again developed a working relationship with an attorney who abruptly left the defense team. Nonetheless, undersigned counsel continues to represent Ms. Dauphinais, resulting in a modicum of stability in the representation of the defendant.

8. In or around June 2024, Attorney Aviva Jeruchim was appointed to represent the defendant. Attorney Jeruchim will need time to review the voluminous discovery (over 8,000 pages in .pdf form plus over a hundred CDs with,

among other things, hours of audio- and video-recordings and photographs). The State has disclosed twenty expert witnesses and the defense two.

9. In addition to preparing for this case, between now and the currently-scheduled October 7, 2024 jury selection in this case, Attorney Jeruchim has a preexisting trial schedule including the following jury trials:

- (a) 07/15/2024 Commonwealth v. Jason Woods, Suffolk County Superior Court, Case No. 2184CR00010 (First Degree Murder and other charges)
- (b) 08/05/2024 James Abdelnour v. Southcoast Physicians Group, et al, Bristol County Superior Court, Case No. 1873CV00021 (Medical Malpractice)
- (c) 09/09/2024 United States v. Jose Afonseca, United States District Court, D. Mass., Case No. 1:21-cr-10354-WGY-9 (Conspiracy to Commit Racketeering Enterprise and Dealing in Firearms)
- (d) 09/23/2024 Malary v. Devenpeck, Boston Municipal Court, Central Division, Case No. 2201CV000422 (Personal Injury)

Attorney Jeruchim has numerous other hearings, including evidentiary hearings, in various other cases, including custody criminal cases, during this same time period.

10. In addition to reviewing the voluminous discovery in this case, Attorney Jeruchim will need time to develop a trusting relationship with the defendant before the case can proceed to fruitful plea negotiations.

11. Undersigned counsel is familiar with the case, but cannot effectively manage trial in this first degree murder trial, which the State expects to last approximately a month, without co-counsel being fully prepared. Additionally, undersigned counsel notes that he has several jury trials between now and the currently-scheduled October 7, 2024 jury selection in this case:

- (a) 07/16/2024 Commonwealth v. Ibrahim Barry, Middlesex County Juvenile Court, Case No. 22YO14CA (Youthful Offender case involving Armed Assault with Intent to Murder)
- (b) 07/30/24 Commonwealth v. Atakan Kiyak, Cambridge District Court, Case No. 2352CR000996 (Operating Under the Influence)
- (c) 08/20/24 United States v. Leuris Xavier Guerrero Valdez, United States District Court, D.N.H., Case No. 1:24-cr-00027-LM-TSM (Distribution of Controlled Substance)
- (d) 08/27/24 Commonwealth v. Jonathan Gonzalez, Middlesex County Superior Court, Case No. 2381CR00330 (Firearm Possession)
- (e) 09/16/24 Commonwealth v. Jonathan Gonzalez, Middlesex County Superior Court, Case No. 2381CR00330 (Assault and Battery with a Dangerous Weapon Causing Serious Bodily Injury)

Undersigned counsel also has numerous other hearings, including evidentiary hearings, in various other cases, including custody criminal cases, during this same time period.

12. The defense expects that a continuance of approximately four months, to February 2025, would be sufficient to allow Attorney Jeruchim to represent Ms. Dauphinais effectively. The defense understands that the schedules of the Court and the attorneys for the State may not be able to accommodate a trial in that time frame, and that a continuance may well result in a significantly longer continuance.

13. Given the stakes involved in this case - a potential sentence of life without the possibility of parole - the right to effective assistance of counsel is paramount.

14. The defense is aware of the fact that the State and the Court have made significant arrangements around the currently-scheduled date and is sensitive to the need to resolve this case in a timely manner. The defense is further aware of and sensitive to the State's concern that this is not the first continuance occasioned by the departure of a lawyer for Ms. Dauphinais.

15. The defense responds that neither Ms. Dauphinais nor Attorney Falkner had advance notice of or played any role in either the departure of Attorney Rancourt or the subsequent departure of Attorney Scavarelli. To the contrary, those departures have left the defense scrambling to catch up and the defendant herself left to try to develop a relationship with yet another new lawyer.

16. Ms. Dauphinais should not be punished by rushed representation because of events over which she has and had no control - namely, the sudden departure of her trusted counsel not once, but twice.

WHEREFORE, for the following reasons, Defendant Danielle Dauphinais respectfully requests that this Court GRANT the within motion and CONTINUE this case to a date convenient to the Court and the parties in or after February 2025.

Defendant
Danielle D. Dauphinais
By her Attorney,

/s/ Benjamin L. Falkner
Benjamin L. Falkner (NH Bar # 17686)
Krasnoo, Klehm & Falkner LLP
28 Andover Street, Suite 240
Andover, MA 01810
(978) 474-9955 (telephone)
(617) 365-4368 (mobile)
(978) 474-9005 (facsimile)
bfalkner@kkf-attorneys.com

Dated: June 28, 2024

CERTIFICATE OF SERVICE

I hereby certify that I served a true and genuine copy of the within document upon counsel to the State via efileing on June 28, 2024.

/s/ Benjamin L. Falkner
Benjamin L. Falkner

Denied



Honorable Charles S. Temple

Clerk's Notice of Decision
Document Sent to Parties
on 07/10/2024

July 9, 2024

This case has been pending since October 19, 2021. The indictments were returned on April 15, 2022. Multiple structuring orders have been approved by the Court to ensure a fair and orderly pre-trial and trial process. Attorney Faulkner filed an appearance in this case on May 12, 2022. The original trial scheduled for January 8, 2024, was continued on June 21, 2023, due to Attorney Rancourt's withdrawal. On that same date, Attorney Scavarelli was appointed as co-counsel for the defendant. Amended assented to structuring proposals were approved by the Court on September 1, 2023 and December 18, 2023. Attorney Scavarelli withdrew as co-counsel on June 11, 2024. On June 12, 2024, Attorney Jeruchim was appointed as counsel for the defendant. Attorney Faulkner asserted a need for a continuance at a status hearing held on June 26, 2024. Attorney Durand objected to a continuance at this hearing. The motion to continue the trial was filed on June 28, 2024. On July 2, 2024, the State filed an objection to the motion. After considering the procedural history of this case, the pleadings, and the applicable law, the motion to continue trial is denied. There is ample time for defense counsel to prepare for the trial. Both Attorney Faulkner and Attorney Jeruchim are experienced and highly competent criminal defense attorneys. Attorney Jeruchim has nearly four months to prepare for the upcoming trial. The discovery phase of this case is complete and a hearing on all pending motions is scheduled for August 12, 2024. While the Court understands and appreciates the defendant's position, there are not sufficient grounds under N.H. R. Crim Pro. 15(b)(4)(E) for a continuance of this long delayed trial. Exceptional grounds for a continuance simply do not exist. The interests of justice require that the trial remain as scheduled.