

STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS.
SOUTHERN DISTRICT

JUNE TERM, 2023

STATE OF NEW HAMPSHIRE

V.

DANIELLE DAUPHINAIS

226-2021-CR-00944

**STATE'S OBJECTION TO DEFENDANT'S MOTION TO CONTINUE TRIAL AND TO
EXTEND ALL DEADLINES BY 120 DAYS**

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 deny the defendant's instant motion for a continuance of the trial date and an extension of all associated deadlines by 120 days. The State avers that the Motion is not currently ripe and that any new schedule would be arbitrary. In support of this position, the State responds as follows:

1. On April 18, 2022, the defendant was indicted for first-degree murder and related charges for killing E.L. (Age 5) in or around September of 2021 in Merrimack, New Hampshire. On October 19, 2021, Attorney Jaye Rancourt was appointed to the case. On May 10, 2022, Attorney Benjamin Falkner was appointed as co-counsel. The defendant was arraigned on the murder charges on May 14, 2022.
2. On November 1, 2022, the parties submitted an assented-to structuring proposal which guided the relevant deadlines for the case including a trial date scheduled for January 2024.
3. On January 2, 2023, the defendant submitted a signed waiver of her speedy trial related specifically to any delay as a result of the adoption of the January 2024 trial date and associated

scheduling order.

4. On May 18, 2023, defense counsel advised the State that they needed additional time related to the disclosure of two potential expert witnesses and requested a 60-day extension of their deadline to file expert witness disclosures. The State assented to that request. During communications related to that request, the parties discussed the possibility of extending the September 15, 2023, deadline for the deposition of expert witnesses and indicated that such an extension would be addressed at a later date. The State remains open to an extension of that deadline.

5. On May 25, 2023, defense counsel filed an assented-to motion related to extending the defense expert witness disclosure deadline, which was subsequently granted by the Court.

6. On June 6, 2023, the parties appeared for a status hearing at which time, Attorney Rancourt advised the State and Court that she would be unable to further represent the defendant because she was moving to a position with the Office of the Federal Public Defender. Attorney Rancourt has since advised that State that she was offered and accepted this new position near the end of May.

7. Following the hearing, defense counsel advised the State of their intent to file the instant Motion to Continue all deadlines and the trial date for 120 days. In communications related to this request, the State requested that the filing note the State's objection to a continuance at this time.

8. The States notes that the trial in this matter is not scheduled until January 2024, which is seven months away. While the State recognizes that any newly appointed counsel will likely require a continuance of the deadlines and possibly the trial date in the current structuring order, the State believes that the selection of a 120-day extension is arbitrary, at

best. As an example, Attorney Falkner indicates in the current filing that he is merely “up to speed” on the case and he has been assigned to it for over thirteen months.

9. At this time, Attorney Rancourt has not filed to withdraw her appearance from the case and no new counsel has been appointed. Until new counsel is appointed and is able to assess the case and any potential needs in terms of scheduling for the case, a continuance is premature and unnecessary. There are no deadlines scheduled between June 7, 2023, and September 15, 2023. This time period is ample enough for a new attorney to be appointed and to make an assessment of the actual amount of time they need to review the materials and prepare for trial. Such an evaluation would allow the parties to discuss meaningful deadlines and trial dates and seek to reach an agreement as to any updated structuring order.

10. With respect to the June 7, 2023, deadline for the defense to file any motions to suppress evidence in this matter, counsel provided no indication that they were unable to meet this deadline prior to June 7, 2023, and the filing of the instant motion regarding Attorney Rancourt leaving the case. In fact, in communications related to the instant motion, the State invited counsel to provide additional information and/or to discuss a specific request to extend this deadline. Defense counsel chose not to do so, but instead filed the instant motion.

11. The State would note that counsel has been assigned to this case for over a year, that discovery in this matter was completed by January 20, 2023¹, but for the State’s disclosure of the curriculum vitae of expert witnesses and a single 15-page report on or about February 24, 2023, and March 6, 2023, respectively. The State agrees that any new counsel could appropriately file additional motions and/or amendments to previously filed motions once

¹ The State notes that while discovery is voluminous, the majority of the materials had been provided to defense counsel by July 1, 2022.

appointed.

12. Regardless, current counsel were aware that this motions deadline was scheduled, did not express concern that they would be unable to meet it and made no effort to seek extension prior to the instant filing. Were there specific reasons beyond the anticipated departure of Attorney Rancourt, the State would consider them and as has been done in the past, possibly assent. As it stands, the request to extend this deadline should be denied.

13. Counsel for the defendant has suggested an arbitrary trial date in May 2024 without consideration for the schedule of the Court, the defendant's to-be appointed co-counsel, or even the State. Undersigned counsel, Assistant Attorney General Bethany Durand, is currently scheduled for trial in front of this Court in June 2024 on another homicide matter, that of *State of New Hampshire v. Joshua Shea*, 226-2022-CR-00485.

14. The State notes that trial in the instant case is anticipated to last approximately four weeks, which would make a trial in May of 2024 not feasible for either the State or the Court. Additionally, the Court would have to take into consideration the schedule of the yet to-be appointed co-counsel before setting any date.

15. The State believes that the selection of arbitrary dates in this case will result in the need for further continuances and would impact the rights of the defendant, the rights of the victim's family, and the interests of justice. Accordingly, the Court should deny the Motion to Continue at this time.

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

- A. Deny the Defendant's Motion to Continue all deadlines and the trial date in this matter for 120 days; and
- B. Deny an extension of the June 7, 2023, deadline for filing of Motions to Suppress; and
- C. Schedule a dispositional conference on a date to be determined in September, 2023; and
- D. Grant such further relief as may be just and proper.

Respectfully submitted,

THE STATE OF NEW HAMPSHIRE

By its attorneys,

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Attorney General

June 12, 2023

/s/ Bethany J Durand

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was provided to counsel for the defendant, Attorney Jaye Rancourt and Attorney Benjamin Faulkner, through the Court's e-filing system.

June 12, 2023

/s/ Bethany J Durand

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Assistant Attorney General