

STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS.
SOUTHERN DISTRICT

JULY TERM, 2024

STATE OF NEW HAMPSHIRE

V.

DANIELLE DAUPHINAIS

226-2021-CR-00944

STATE'S OBJECTION TO DEFENDANT'S MOTION TO CONTINUE TRIAL

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 Motion to Continue the current October 2024 trial date. In support of this position, the State responds as follows:

I. CASE HISTORY:

1. On October 14, 2021, the New Hampshire State Police along with the Merrimack Police Department began a search for E.L. (Age 5) after it was determined that his whereabouts were unknown. That same day, the defendant fled the State of New Hampshire.
2. On October 18, 2021, the defendant was taken into custody in New York City. The next day, Attorney Jaye Rancourt was appointed to represent her.
3. On October 23, 2021, the body of E.L. was found in Abington, Massachusetts.
4. On April 18, 2022, the defendant was indicted for first-degree murder and related charges for killing E.L. in or around September of 2021 in Merrimack, New Hampshire.

5. Approximately 25 months ago, on May 10, 2022, Attorney Benjamin Falkner was appointed as co-counsel to Attorney Rancourt. The defendant was arraigned on the murder charges on May 14, 2022.
6. On November 1, 2022, the parties filed an assented-to structuring order in which trial was scheduled for January 2024.
7. The State provided notice of eighteen expert witnesses on February 24, 2023.
8. Approximately 13 months ago, on June 6, 2023, Attorney Rancourt advised the Court and parties at a status hearing that she would be withdrawing from the case. On that same day, Attorney Falkner filed a Motion to Continue the trial. In that Motion, Attorney Falkner wrote that he was then just “up to speed” on the case arguably a result of his position as the second attorney on the case.
9. With the departure of Attorney Rancourt, Attorney Falkner assumed the role of lead counsel for the defendant. To date, Attorney Falkner has been lead counsel on this matter for over a year.
10. On June 27, 2023, two weeks after Attorney Rancourt’s withdrawal, Attorney Tracey Scavarelli entered her appearance in the case.
11. On August 30, 2023, the parties filed an assented-to structuring order in which trial was scheduled for October 2024.¹
12. On February 12, 2024, counsel for the defendant disclosed two expert witnesses along with their associated reports.
13. On April 15, 2024, the State filed eight Motions *in Limine* seeking to admit or utilize specific statements, evidence, and/or actions of the defendant at trial. After receiving an

¹ The structuring order was amended in December 2023, to provide for extended dates for defense expert disclosures, State’s rebuttal expert disclosures, deposition deadlines and to add a *Daubert* motions deadline.

extension of the filing deadline, the defendant filed responses to those Motions on May 17, 2024. A hearing on the Motions is currently scheduled for August 12, 2024.

14. Between May 8, and May 9, 2024, the State conducted depositions of the two disclosed defense expert witnesses.
15. On May 20, 2024, the State learned that Attorney Scavarelli had accepted a position with the Court Administrative Offices. On May 23, 2024, the State contacted Attorney Scavarelli over email about the new position and any impact it would have on the case. On or about May 27, 2024, the State left voicemail messages for both Attorney Scavarelli and Attorney Falkner to inquire about Attorney Scavarelli's new position and any impact it would have on the case. On May 28, 2024, Attorney Scavarelli confirmed over email that she had accepted the position and would be leaving the case. On that day, the State filed a Motion seeking a hearing on status of counsel. No response was filed by the defendant.
16. On June 10, 2024, the State sent a letter to Attorneys Falkner and Scavarelli seeking information about the status of the case, which defense counsel did not respond to until June 25, 2024.²
17. On June 11, 2024, Attorney Scavarelli filed her Motion to Withdraw from the case as well as the defendant's written waiver of speedy trial. The State notes that the waiver of speedy trial related to the postponement of the case from January of 2024 to October of 2024.
18. Just two days after the withdrawal of Attorney Scavarelli, on June 13, 2024, Attorney Vivianne Jeruchim filed to enter into the case. On June 17, 2024, Attorney Jeruchim's

² The State is still awaiting reciprocal discovery materials that were requested in that letter.

appearance was accepted by the Court. The following day, the State provided Attorney Jeruchim with access to all discovery in this matter and copies of prior correspondence with counsel.

19. On June 25, 2024, the State sent an email to counsel in advance of the status hearing scheduled for June 26, 2024. That email inquired as to the position of Attorneys Falkner and Jeruchim related to trial scheduling and requested a response to the June 10, 2024, letter. In response, Attorney Falkner noted that the defense would be seeking a continuance of the trial. Further, Attorney Falkner noted that the defense would not be filing any Motions *in Limine* and would not be seeking to conduct depositions of any of the State's disclosed expert witnesses.
20. On June 26, 2024, Attorney Falkner appeared at the scheduled status hearing and indicated to the Court that he would be filing a Motion to Continue the trial date. The *instant* Motion was filed on June 28, 2024.
21. The State notes that discovery in this matter was substantially completed by January 20, 2023. As with any case, the State continues to comply with its ongoing discovery obligations. The most recent substantive discovery was provided on November 2, 2023, in the form of DNA lab results. The State notes that an undisclosed defense expert witness observed the testing of the items discussed in those results. Along with those materials, the State provided a supplemental notice, naming two additional expert witnesses.

II. OBJECTION

22. The State incorporates herein by reference its statements and arguments made during the June 26, 2024, status hearing on this matter.
23. E.L. was killed over three years ago. The defendant was indicted over two years ago. The instant request is the second request by the defendant for what would, if granted, amount to a lengthy postponement.
24. In June of 2023, a continuance was understandable. The lead attorney left the case and Attorney Falkner needed time to assume that role and to bring a second attorney into the trial team. Now, however, Attorney Falkner is the lead counsel. Attorney Scavarelli was the second attorney and Attorney Jeruchim is taking her place.
25. Attorney Falkner's presence is not merely a "modicum of stability" in the representation of the defendant – he has been assigned to this case since prior to the defendant's arraignment, over two years ago. He has served as lead counsel on this matter since June 7, 2023.
26. Attorney Falkner is an experienced, competent, effective litigator. While he describes himself as "familiar" with the case, he has had the discovery for close to two years, has responded to Motions in *Limine*, and has prepared defense expert witnesses for deposition. Attorney Falkner has made strategic determinations, including not to file motions and not to depose witnesses in this matter.
27. The State avers that, by the time of trial, Attorney Jeruchim would have had four months to prepare for trial and would have Attorney Falkner at her side, as lead counsel.

28. As indicated during the status hearing, the State and the Court have multiple other matters which were scheduled in order to avoid conflict with this trial. As a result, the State's next available time to schedule this trial would be in August of 2025.
29. The State objects to the defendant's motion to continue the trial because a continuance would not be in the interest of justice.
30. Pursuant to New Hampshire Rule of Criminal Procedure 15(b), the Court recognizes that grounds for a continuance may be "illness of a defendant, defense attorney, or prosecutor; want of material testimony, documents, or other essential evidence; unavoidable absence of an essential witness; and such other exceptional grounds as the court may deem to be in the interest of justice." N.H.R. of Crim. Proc. 15(b)(4)(E).
31. In this case, the State asserts that a continuance would not be in the interest of justice because the defendant's lead counsel has not raised any issues, such as anticipated additional pretrial pleadings or expert depositions, which would necessitate additional delay.
32. Furthermore, the State asserts that granting another continuance at the defendant's request would undermine the Rights of Crime Victims. Pursuant to RSA 21-M:8-k, victims should be treated with fairness and respect for their safety, dignity, and privacy throughout the criminal justice process. The criminal case began in 2021, but despite a previous continuance for similar reasons, the defendant is again seeking a continuance – this time after over 20 months of representation by at least one of the same defense attorneys. The State asserts that the requested continuance would not be fair or respectful to E.L.'s dignity.

33. Under the circumstances at this time, a continuance of the trial would not be in the interest of justice. Accordingly, the State respectfully requests that this Honorable Court deny the defendant's motion to continue.

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

- A. Deny the Defendant's Motion to Continue the trial date; and
- B. Grant such further relief as may be just and proper.

Respectfully submitted,

THE STATE OF NEW HAMPSHIRE

By its attorneys,

John M. Formella
Attorney General

July 1, 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 1, 2024

/s/ Bethany J Durand

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