

STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS.
SOUTHERN DISTRICT

JULY TERM, 2024

STATE OF NEW HAMPSHIRE

V.

DANIELLE DAUPHINAIS

226-2021-CR-00944

**STATE'S RESPONSE TO DEFENDANT'S NOTICE OF OBJECTION TO
DENIAL OF 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 Notice of Objection to Denial of Motion to Continue. In support of this position, the State responds as follows:

1. The State incorporates herein by reference its statements and arguments made during the June 26, 2024, status hearing on this matter, as well as in the State's Objection to Defendant's Motion to Continue Trial, dated July 1, 2024.
2. 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 defendant filed a Motion to Continue Trial on June 28, 2024.
3. On July 9, 2024, the Court denied the defendant's motion to continue stating, "[t]here is ample time for defense counsel to prepare for the trial...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." Order (Temple, J.), July 9, 2024.

4. On July 10, 2024, the defendant filed a Notice of Objection to Denial of Motion to Continue Trial. In this pleading, the defendant claims that the Court’s denial of the motion to continue puts the defendant “in danger of receiving ineffective assistance of counsel and leave[s] the defense team inadequate time to prepare as a team.” See Defendant’s Notice of Objection to Denial of Motion to Continue Trial.
5. To the extent the defendant is requesting reconsideration of the Court’s Order, the defendant has failed to meet the critical requirements of the New Hampshire Rules of Criminal Procedure. The defendant has failed to state points of law or fact that the Court has overlooked or misapprehended. See N.H. R. Crim. Pro. 43(a). In fact, the State asserts that the Court has not overlooked or misapprehended any law or any fact in reaching the decision to deny the defendant’s motion to continue trial.
6. To the extent the defendant is anticipating raising a claim of “ineffective assistance of counsel,” the State asserts that such a claim is a tactic intended to procure delay when there is no reasonable basis to continue an already delayed trial.
7. To prevail upon a claim of ineffective assistance of counsel, the defendant must demonstrate first, that counsel’s representation was constitutionally deficient and, second, that counsel’s deficient performance actually prejudiced the outcome of the case. See State v. Labrie, 172 N.H. 223, 236 (2019); Strickland v. Washington, 466 U.S. 668, 688 (1984).
8. When reviewing an ineffective assistance claim, the Court should remain mindful that the State and Federal Constitutions guarantee “reasonable competence, not perfect advocacy judged with the benefit of hindsight.” State v. Labrie, 172 N.H. 223, 236 (2019) (quoting Yarborough v. Gentry, 540 U.S. 1, 8 (2003) (per curiam)). Because the proper measure

of attorney performance is reasonableness under prevailing professional norms, to establish that his trial attorney's performance fell below this standard, the defendant must show that "no competent lawyer" would have engaged in the challenged conduct. Labrie, 172 N.H. at 236 (quoting *State v. Cable*, 168 N.H. 673, 680-81 (2016)).

9. In this case, Attorney Falkner has been assigned to represent the defendant since May 10, 2022; approximately 25 months. While other defense counsel has changed, Attorney Falkner has remained constant in his assignment as counsel on this matter. At a minimum, Attorney Falkner has served as lead counsel on this matter since June 7, 2023.
10. Attorney Falkner was aware that this case was scheduled to begin trial on October 7, 2024, and has had ample time with the aid of other attorneys to review the evidence and to develop a sound trial strategy. He has made strategic decisions including not to file motions and not to depose witnesses in this matter. Attorney Falkner has consulted with expert witnesses and made determinations as to which of those experts to utilize at trial.
11. As noted by the Court, Attorney Falkner, and Attorney Jeruchim are both "experienced and highly competent criminal defense attorneys." See Order (Temple, J.), July 9, 2024. Attorney Falkner has been admitted to the New Hampshire Bar Association since 2006, or for about 18 years. Attorney Jeruchim has been a member of the Massachusetts Bar since 1986, or for about 38 years.
12. As evidenced by the Court's finding and their years of practice, both Attorney Falkner and Attorney Jeruchim are experienced and competent counsel, neither of whom have shown any deficient representation of the defendant. Neither have counsel given the Court any reason to believe that they are deficient in said representation. Again, as

indicated by the Court, counsel have ample time to complete final trial preparation and to appropriately represent the defendant in this matter.

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

- A. Issue an Order on the Defendant's Notice of Objection to Denial of Motion to Continue Trial; and
- B. 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

July 16, 2024

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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 16, 2024

/s/ Bethany J Durand
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Assistant Attorney General