

# The State of New Hampshire

ROCKINGHAM

SUPERIOR COURT

STATE OF NEW HAMPSHIRE

v.

BRANDON CASTIGLIONE

NO. 218-2019-CR-1132

## **ORDER ON DEFENDANT'S MOTION TO COMPEL "OUTSTANDING" DISCOVERY**

Defendant has been indicted for Second-Degree Murder. See Docs. 94, 95; see also RSA 630:1-b. He is alleged to have either knowingly or recklessly with an extreme indifference to the value of human life caused the death of Luis Garcia by shooting him with a firearm. See id. Defendant now moves to compel the State<sup>1</sup> to provide what he purports to be "outstanding" discovery, namely, the discovery file in State v. Holloway, No. 226-2019-CR-814 (the "Holloway File"). See Doc. 81 (Def.'s Mot. Compel). The State objects. See Doc. 85 (State's Obj.). The Court held a hearing on the motion on February 1, 2021. For the following reasons, Defendant's motion to compel discovery is **GRANTED IN PART** and **DENIED IN PART**.

### **FACTUAL AND PROCEDURAL BACKGROUND**

The following facts and procedural history are relevant to Defendant's motion. On October 1, 2019, Defendant's grandmother and sister visited the home of Defendant's father, Mark Castiglione. Once there, they entered the home and observed the alleged victim, Luis Garcia, unresponsive on the floor and Defendant nearby. .

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<sup>1</sup> For purposes of this Order, when the Court refers to "the State," it means the Attorney General's Office. To avoid confusion, the Hillsborough County Attorney's Office will be referred to by its name at all times.

Louis Garcia had been assisting Mark Castiglione paint his residence. Luis Garcia was also an elder at New England Pentecostal Church in Pelham, NH, where Defendant and his father attended. Defendant's sister notified police, who responded and searched the residence. Police found Luis Garcia deceased from an apparent gunshot wound.

Defendant was detained, and eventually arrested, by police. Officers also recovered a handgun at the scene. The next day, Defendant was arraigned on the instant charges, and has been held without bail at the Rockingham County House of Corrections since.

Roughly two weeks later, on October 12, 2019, Dale Holloway entered the New England Pentecostal Church during a wedding ceremony between Mark Castiglione and Claire McMullen. Holloway allegedly opened fire, striking and wounding Ms. McMullen and Bishop Stanley Choate, who was presiding over the ceremony. Mark Castiglione was also injured during the ensuing struggle. The New Hampshire State Police Major Crime Unit investigated the matter which investigation was initially overseen by the Attorney General's Office.<sup>2</sup> However, once it was clear that the victims would survive and the case would not evolve into a homicide investigation, it was turned over to the Hillsborough County Attorney's Office for the continuing investigation and prosecution. Holloway was eventually indicted on multiple felony charges related to the incident. Holloway is reported to be the stepson of Luis Garcia, and one plausible theory put forth by the State is that the alleged murder of Luis Garcia by Defendant provided the motive for Holloway's alleged shooting at New England Pentecostal Church.

On January 29, 2020, Holloway's counsel filed a motion for discovery requesting that the discovery file in Defendant's case be provided to Holloway. The State did not

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<sup>2</sup> The parties appear to agree that the Attorney General's Office "oversaw" a portion of the Holloway investigation, but seem to differ as to the extent of its involvement in, or supervision of, the investigation.

object, and it appears that the information was provided to Holloway's counsel subject to a protective order.<sup>3</sup> On June 4, 2020, counsel for Defendant requested that the Holloway File likewise be provided for his case. The Attorney General's Office took the position that since it was not prosecuting the Holloway case and was not in possession of the Holloway File, Defense counsel would have to obtain the file from the Hillsborough County Attorney's Office. Thereafter, Defendant requested the Holloway File from both Holloway's counsel and the Hillsborough County Attorney's Office. Both declined to provide the File, and the instant motion to compel followed. See Doc. 81.

The Hillsborough County Attorney's Office filed what it characterized as the "State's objection" to the motion, but which was actually an intervenor's motion on behalf of the County Attorney's Office. See Doc. 84. After misconstruing the pleading as the State's objection, this Court issued a Margin Order that granted Defendant's motion in part, and ordered the Attorney General's Office to review the Holloway File for any favorable or exculpatory evidence and provide such to Defendant. See Doc. 81 (Aug. 20, 2020 Margin Order). Thereafter, the Attorney General's Office timely filed a motion for reconsideration and asked to be heard on Defendant's motion. See Doc. 85. The Court granted the motion and scheduled a hearing on the matter. See Doc. 85 (Sept. 28, 2020 Margin Order). That hearing was held on February 1, 2021, at which the Court heard from the Attorney General's Office, counsel for Defendant, the Hillsborough County Attorney's Office, and counsel for Holloway.

### ANALYSIS

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<sup>3</sup> It also appears that Defendant, acting on his own behalf, attempted to block the disclosure of his discovery file. This filing was rejected by the Court because Defendant was represented by counsel at the time. See Doc. 88 (Sept. 18, 2020 Order).

Defendant asks this Court to compel the State to provide him the Holloway File, which he argues is “outstanding” pursuant to his initial discovery request. See Doc. 81. Specifically, Defendant contends that given the clearly defined connection between the two cases, as well as the overlapping witnesses and the nexus with the New England Pentecostal Church, there is a high potentiality that the Holloway File will contain relevant and discoverable information. See id. More to the point, Defense counsel offered at the hearing that she would like to explore in the Holloway File for any evidence of motive and opportunity for another person to have shot Luis Garcia, as well as the presence of any mitigating evidence for a potential sentencing. For its part, the State argues that it is under no obligation to disclose information in the Holloway File because the Attorney General’s Office is not in possession or control of the File. See Doc. 85. Alternatively, the State argues that even if the Court finds the Holloway File in the possession or control of the State, Defendant has failed to establish that he is entitled to it. See id.

“[T]here is no general constitutional right to discovery in a criminal case.” State v. Laux, 167 N.H. 698, 702 (2015) (quoting State v. Heath, 129 N.H. 102, 109 (1986)). However, it is well settled law that the Superior Court has the inherent power in its discretion to compel discovery in a criminal case if the interests of justice so require. Id. at 704 (citing State v. Healey, 106 N.H. 308, 309 (1965)). “In exercising its discretion, the Trial Court is to consider, under the circumstances of the case, the defendant's need of the discovery sought to properly defend himself and the adverse effect which such discovery might have on the proper prosecution of the offense.” Id. Nevertheless, the State cannot be compelled to obtain evidence from third parties or to

conduct investigations on behalf of the defense. See Petition of the State of New Hampshire (State v. Lewandowski), 169 N.H. 340, 342–43 (2016).

Here, the Court agrees with the State that Defendant has not established that he is entitled to the complete Holloway File. While the alleged murder of Luis Garcia may have provided the motive behind Holloway’s alleged shooting at New England Pentecostal Church, it cannot be said that the reverse is true given that the shooting at the Church occurred nearly two weeks after the shooting of Luis Garcia. Instead, Defendant relies on the temporal proximity of the two crimes, as well as the connection to New England Pentecostal Church and the potential overlap of witnesses in both cases, to argue that there might be relevant, discoverable evidence in the Holloway File. However, without more than conclusory arguments of what might be found in the Holloway File, at this juncture the Court cannot find that Defendant has met his burden of proving that he is entitled to the Holloway File in toto. See N.H. R. Crim. P. 12(b)(1) (listing the mandatory pretrial disclosures by the State); cf. State v. Breest, 118 N.H. 416, 419 (1978) (holding that the federal constitution does not demand “that there be permitted a complete discovery of all investigatory work or an examination of the State’s complete file”).

Nonetheless, this does not end the Court’s inquiry into the matter. The New Hampshire Constitution affords an accused the “right to produce all proofs which may be favorable to himself.” N.H. CONST., Part I, Art. 15.<sup>4</sup> This provision “imposes on the prosecutor the duty to disclose evidence favorable to the accused where the evidence is

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<sup>4</sup> Because the State Constitution is more protective than the Federal Constitution in this area, see, e.g., State v. DeWitt, 143 N.H. 24, 33 (1998), the Court addresses Defendant’s claims under the State Constitution, citing to federal cases for guidance only, see State v. Ball, 124 N.H. 226, 231–33 (1983).

material either to guilt or to punishment.” State v. Shepherd, 159 N.H. 163, 169 (2009) (quoting State v. Dewitt, 143 N.H. 24, 33 (1998)). “Favorable evidence is that which is admissible, likely to lead to the discovery of admissible evidence, or otherwise relevant to the preparation or presentation of the defense.” Id. at 170 (quoting Dewitt, 143 N.H. at 33). Favorable evidence may also include impeachment evidence. Id.

This duty to produce exculpatory evidence “extends only to evidence in the prosecutor's possession or in the possession of a law enforcement agency charged with the investigation and presentation of the case.” State v. Lavallee, 145 N.H. 424, 427 (2000). The Court “impute[s] knowledge among prosecutors in the same office, and [it] also hold[s] prosecutors responsible for at least the information possessed by certain government agencies, such as police departments or other regulatory authorities, that are involved in the matter that gives rise to the prosecution.” Duchesne v. Hillsborough Cnty. Atty., 167 N.H. 774, 778 (2015) (internal citations omitted). “This in turn means that the individual prosecutor has a duty to learn of any favorable evidence known to the others acting on the government's behalf in the case, including the police.” Id. (quoting Kyles v. Whitley, 514 U.S. 419, 437 (1995)).

While the Hillsborough County Attorney's Office and Holloway's counsel have represented to this Court that the Holloway File contains no exculpatory evidence, the constitutional duty to disclose in this case rests with the Attorney General's Office. See id. at 777–78; accord State v. Lacourse, 127 N.H. 737, 740 (1986) (observing that it was unclear to the Court how the prosecutor in the case could have determined that the victim's diary contained no exculpatory evidence if it was never examined by the

prosecutor). The parties agree that this duty ultimately turns on whether the Attorney General's Office is in "possession or control" of the Holloway File.

The State argues that based on its limited supervisory role over county attorneys' offices, it cannot be imputed with the knowledge or control of every case being prosecuted by every county attorney in the State. See Doc. 85, ¶¶ 8–9; see also State v. Etienne, 163 N.H. 57, 90–91 (imputing knowledge among prosecutors at the criminal bureau of the New Hampshire Attorney General's Office); Lavallee, 145 N.H. at 427 (declining to impute the Division for Children, Youth and Families' knowledge of possibly exculpatory evidence to prosecutors, and holding that the prosecutor's duty to disclose "does not extend to evidence in possession of other government agencies.") Thus, the Attorney General's Office argues, because it has neither possession nor control over the Holloway File, it does not have a duty to disclose material contained therein. See Doc. 85, ¶¶ 8–10.

However, as Defendant asserts, this case is distinguishable because here, there is no knowledge being imputed to the Attorney General's Office from outside agencies. Instead, prosecutors from the Attorney General's Office have actual knowledge of the existence of the Holloway File and its connection to this case. Moreover, the Attorney General's Office initially "oversaw" the Holloway investigation and is aware of the temporal proximity and apparent relationship between the two alleged crimes, as well as the potential witnesses in common. Indeed, counsel for the State conceded that he had reviewed the initial search warrant and arrest affidavit in the Holloway case.

Nor can it be said that the Attorney General's Office is being compelled to conduct an investigation on behalf of Defendant or to discover evidence from a third

party or non-law enforcement government agency. See Petition of the State, 169 N.H. at 342–43 (holding that a trial court could not compel the State to obtain the complainant's records and communications from third party providers on behalf of the defense, even though the defense argued that they contained potentially relevant and exculpatory evidence). As far as the Court can discern, Defendant is asking for the Holloway discovery that was already compiled and disclosed to Holloway. The State is merely being asked to fulfil its constitutional obligations by reviewing a file it knows to exist, knows to be connected to this case, and which is in the possession of a law enforcement agency over which it exerts at least some degree of supervisory control. See Reid v. N.H. Atty. Gen., 169 N.H. 509, 525 (2016); Wyman v. Daniels, 101 N.H. 487, 490 (1958).

Based on the foregoing, and in light of the unique factual circumstances connecting these two cases, the Court finds and rules that the Holloway File is in the possession or control of the State for purposes of Defendant's motion and its constitutional obligations arising therefrom. Accordingly, the Court hereby orders the State to review all investigative narratives and reports, as well as any witness statements contained within the Holloway File. Within thirty (30) days of the date on the notice of decision accompanying this Order, the State will complete its review and provide any favorable or exculpatory evidence contained therein to Defendant, subject to a protective order, and accordingly notify this Court. If the State finds no exculpatory evidence after its review, the State will submit a filing indicating that its review was completed.




CONCLUSION

For the foregoing reasons, Defendant's motion to compel discovery is **GRANTED**  
**IN PART** and **DENIED IN PART**.

So ordered.

March 23, 2021  
Date



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Marguerite L. Wageling  
Presiding Justice

Clerk's Notice of Decision  
Document Sent to Parties  
on 03/24/2021