

THE STATE OF NEW HAMPSHIRE

ROCKINGHAM, SS.

SUPERIOR COURT

JULY, 2021

STATE OF NEW HAMPSHIRE

Granted as set forth in the State's response;
with no objection from Defendant.

V.

BRANDON CASTIGLIONE
218-2019-CR-1132



Honorable Marguerite L. Wageling
July 14, 2021

MOTION TO COMPEL OUTSTANDING DISCOVERY

NOW COMES the accused, Brandon Castiglione, by and through undersigned counsel, Eliana Forciniti and Delia McCarthy, New Hampshire Public Defender, and respectfully requests that this Honorable court order that the State provide the defense with the ten-print fingerprint cards for Brandon Castiglione and Officer Cameron Verrier, a State witness.

The accused makes this motion pursuant to his rights to due process, confrontation, effective assistance of counsel, the presentation of all proofs favorable, and the right to a fair trial under the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution and Part 1, Article 15 of the New Hampshire Constitution.

In support of this motion, the following is stated:

ALLEGATIONS

1. The State accuses Brandon Castiglione of two counts of Second-Degree Murder—alternate theories. The State alleges that Brandon recklessly caused the death of Luis Garcia under circumstances manifesting an extreme indifference to the value of human life, by shooting him with a gun. The State also alleges that Brandon did knowingly cause the death of Mr. Garcia by shooting him.
2. Jury selection is currently scheduled for February.
3. All factual representations in this motion, unless otherwise indicated, were provided by the State through discovery.

OUTSTANDING DISCOVERY

4. On April 7, 2021, the Defense requested by email that the State provide the Defense with enlarged images of L2 (the impressions of friction ridge detail) as well as the ten-print fingerprint cards for Brandon and Officer Cameron Verrier.

5. On April 9, 2021, the State responded that a high-resolution image for L2 would be forthcoming in the upcoming week. The State also asked a few follow-up questions as to the other two items.
6. L2 was provided to the Defense on April 27, 2021.
7. After consultation, on April 27, 2021, the Defense responded to the State's follow up question again requesting Officer Cameron Verrier's prints be provided so that the Defense expert could analyze them. The Defense also repeated its request for high resolution images of Brandon's ten print fingerprint card.
8. The Defense has sent the State follow up requests checking the status of these items. It has always been anticipated that the State would provide the Defense with these discovery materials. However, upon the filing of this motion, the State has not responded to the Defense's request as it relates to the two outstanding items.
9. The Defense now moves for the Court to order the State to provide the Defense with that evidence.

FACTS

10. At around 2:30 p.m. on October 1st, Francis Pestana, Brandon's grandmother, and Danielle Patalano, Brandon's sister, went to Mark's house. There they found Mr. Garcia on the floor and Brandon nearby praying. Ms. Patalano called the police.
11. The police entered the house and found Brandon praying. They detained him and eventually arrested Brandon for the murder of Mr. Garcia.
12. Afterwards, Officer Cameron Verrier, of the Londonderry Police Department, noticed a Glock model pistol on top of a white plastic shelf in the hallway. He picked up the gun, depressed the magazine release, and removed the magazine from the gun. Officer Verrier then realized that the gun was possibly evidence of a crime and inserted the magazine back into the gun, placing the gun back where he allegedly found it.
13. This gun was eventually tagged as evidence and sent to the State laboratory to be analyzed for fingerprints. A 9-millimeter cartridge case that was found in the room with Mr. Garcia and Brandon was also sent to the State Laboratory for analysis.
14. The State Laboratory developed and documented three areas of friction ridge detail on the gun. They have been designated L1 through L3. No areas of friction ridge detail were developed on the cartridge. L1 through L3 were compared to the fingerprints

record of Brandon obtained by the police. The State Laboratory believes that prints L1 and L3 are consistent with Brandon's left thumb print. L2 is unidentifiable.

15. The State Laboratory never compared the prints identified on the gun with Officer Verrier's fingerprints.
16. It is unknown whether Cameron Verrier was wearing gloves when he handled the gun.
17. There are no identified eyewitnesses to the shooting of Mr. Garcia and Brandon did not make any relevant statements to the police.
18. There is no indication in discovery that Brandon bore any ill will or malice towards Mr. Garcia.

LEGAL ARGUMENT

19. The information requested is discoverable because it is potentially exculpatory.
20. In New Hampshire, an accused has "the right to produce all proofs which may be favorable to himself." N.H. Constitution, Pt. I, Art. 15; State v. Lucius, 140 N.H. 60 (1996); State v. Laurie, 139 N.H. 325 (1995); State v. Dukette, 127 N.H. 540 (1986).
21. The New Hampshire Supreme Court has plainly stated that "the New Hampshire Constitutional right to present all favorable proofs affords greater protection to a criminal defendant" than analogous federal rights. State v. Laurie, 139 N.H. at 330.
22. Under both the state and federal constitutions, an accused person has a due process right to present exculpatory evidence in his defense. United States Constitution, Amend. V, XIV; N.H. Constitution, Pt. I, Art. 15; Brady v. Maryland, 373 U.S. 83 (1963); Kyles v. Whitley, 115 S. Ct. 1555 (1995).
23. However, the federal constitution requires only that favorable evidence that is material to guilt or innocence be disclosed. See Brady v. Maryland, 373 U.S. 83 (1963). The New Hampshire constitution requires that all proofs favorable be disclosed to criminal defendants. N.H. CONST. Pt. I, Art. 15.
24. Favorable includes that which is admissible, likely to lead to the discovery of admissible materials, or otherwise relevant to the preparation of the defense. United States v. Bagley, 473 U.S. 667, 683 (1985).
25. In deciding whether evidence is favorable, the Court need not decide or conclude that it is admissible. State v. Shepard, 159 N.H. 163, 170 (2009).

26. Prosecutors have an obligation to seek justice, not merely convictions. The prosecution's interest in a criminal prosecution "is not that it shall a win a case, but that justice shall be done. As such, he is in a peculiar and very definite sense the servant of the law, twofold aim of which is that guilt shall not escape or innocence suffer. He may prosecute with earnestness and vigor – indeed, he should do so. But, while he may strike hard blows, he is not at liberty to strike foul ones." Berger v. United States, 295 U.S. 78, 88 (1935); see also Petition of State of New Hampshire (State v. Lewandowski), 169 N.H, 340 (2016); State v. Leveille, 160 N.H. 630, 634 (2010).
27. Because the prosecutor alone can know what is undisclosed, each individual prosecutor has the responsibility of ferreting out favorable evidence known to others acting on behalf of the State. Kyles v. Whitley, 115 S.Ct. 1555, 1567 (1995).
28. The State alleges that this gun was the gun used to shoot and kill Mr. Garcia and that Brandon's fingerprints were found on the gun.
29. However, Officer Verrier touched and handled that same gun directly before it was preserved and sent to the State Laboratory for analysis. It is unknown whether Officer Verrier wore gloves when handling the gun. Therefore, it is important to exclude Officer Verrier's fingerprints from the fingerprint analysis.
30. It is possible that the State Laboratory has misidentified the impressions obtained from the gun and that the impressions actually belong to Officer Verrier. Alternatively, a fingerprint contributed by someone other than Officer Verrier or Brandon would suggest that someone else handled and even fired the gun.
31. To do this exclusion, a high-resolution copy of the fingerprint card for both Brandon and Officer Verrier is needed.

WHEREFORE the accused, Brandon Castiglione, respectfully requests that this Honorable Court:

- A. GRANT the within motion; or
- B. SCHEDULE a hearing on the motion; and
- C. GRANT all further and favorable relief as justice may require.

DATED: 7/8/2021

Respectfully submitted,

Brandon Castiglione
By counsel,

/s/ *Eliana Forciniti* _____

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CERTIFICATE OF SERVICE

I, Eliana Forciniti, do hereby certify that a copy of this notice was forwarded the Attorney General's Office and the Hillsborough County Attorney's Office on this __8th day of July, 2021.

/s/ *Eliana Forciniti* _____

Eliana Forciniti, #21160