THE STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS. SUPERIOR COURT
DOCKET NO. 216-2019-CR-01324 NORTHERN DISTRICT

STATE OF NEW HAMPSHIRE

v.

CHASRICK HEREDIA

STATE'S BRIEF REGARDING DEFENDANT'S COMPETENCY FOR THE FURTHER RECESS OF JURY TRIAL
EXPEDITED

RELEVANT BACKGROUND INFORMATION

1. The defendant is currently charged with one count of Aggravated Felonious Sexual Assault, five counts of Felonious Sexual Assault, one felony count of Witness Tampering, one count of Criminal Solicitation to Commit Falsifying Physical Evidence, and three misdemeanor counts of Intentional Contribution to the Delinquency of Minor stemming primarily from an incident that took place on or about July 23, 2019. Such matter has been pending since 2019 and was scheduled for jury selection on June 1, 2021, with a start date for the jury trial of June 2, 2021. The trial began as scheduled and the Court heard testimony from the two juvenile victims, one juvenile witness, and two investigating Manchester Sergeants throughout June 2, 2021 and June 3, 2021.

2. Prior to the Start of trial, defense counsel informed the Court that he received information that something would be done to disrupt the trial. Defense counsel informed the Court that the information did not come from his client, that anything threatening appeared to be directed toward defense counsel and potentially contained threats of self-harm from the defendant. The Court instituted extra security measures and defense counsel told the Court that

he spoke with his client about such information and that his client appeared to be focused on his trial and ready to begin.

3. On June 4, 2021, the parties received notice that the defendant was not transported to the courthouse. Initially, it was reported by the Sherriff via the Department of Corrections that the defendant self-reported that he potentially had a seizure or hurt his head during the night. The Court held a hearing, at which time the Honorable Judge Amy Messer decided that the jury would be released until 1 PM on June 4, 2021, so that defense counsel could meet with the defendant at the House of Correction ("VSJ") and gather more information about his medical condition.

4. Subsequently, upon meeting with the defendant, the Court held another hearing during which the defendant and his counsel appeared via video at VSJ. During such hearing, the defendant did not look at the camera. He presented holding his head in his hands and repeatedly stated the words "I'm going to die in here," and "I'm dying of thirst," or words to that effect. Defense counsel informed the Court that the defendant presented similarly during their interaction. Additionally, defense counsel pointed out that the defendant appeared to have a cut toward the back of his head that was glued shut by the medical staff at the jail and that his eyes were watering profusely. The defendant, via his counsel, expressed sensitivity to light and sound and his counsel informed the Court that the defendant's mother informed counsel that the defendant has a "history of concussions." The defendant was placed in a safety smock and the State later communicated with the jail to ensure that he was under a 24 hour watch.

5. During such hearing, the State informed the Court of the details of a similar incident that took place after the defendant's initial arrest in July and August of 2019, in which

his former attorney raised the issue of competency after the defendant began acting in a strange manner and was similarly found at VSJ with a potential head injury. Before a hearing on his competency could be held, undersigned counsel requested surveillance footage from the holding cell at the Hillsborough County Superior Courthouse. In such footage, the defendant was seen interacting with at least one other inmate in a manner that starkly contradicted the way he presented to the Court and to his own attorney. Upon viewing the footage in the custody of the State, the defendant's former attorney withdrew his request for evaluation.

6. Throughout the course of the pendency of the above-captioned case, the defendant has attempted multiple times to manipulate the course of his adjudication. The defendant was indicted for Witness Tampering and Criminal Solicitation to Commit Falsifying Physical Evidence in in September of 2020. The additional charges arose after the State obtained jail calls between the defendant and his co-defendant, Matthew Hugle. In such calls, the defendant informed Mr. Hugle that he sent him and encoded letter. The State subsequently obtained a copy of the letter and it was determined that such letter directed Mr. Hugle to access an email account to delete photos and videos of the incident that took place on July 23, 2019. The defendant specifically stated that he knew what the video evidence looked like, and that it "didn't look good."

7. [redacted]

[redacted].

8. The defendant also wrote attempted to send a letter to the presiding Judge (*Messer, J.*) discussing the current plea offer on the table and how he felt distracted by her presence in Court because he was in love. The Court subsequently held a hearing in which the defendant was informed that the letter had no influence on his sentencing or the outcome of his trial.

RELEVANT FACTS FOR THE ISSUE OF COMPETENCY AND DELAY

9. During the hearing for which the defendant was present via video on June 4, 2021, the Court ordered that the jury be released for the day and that the trial remain in recess until Monday June 7, 2021. The Court further ordered that the defendant sign a release for his counsel to obtain documentation of any legitimate medical issues and the State expressed the intent to move forward with the trial as soon as possible—should the defendant choose to participate or absent himself. Subsequently, the State requested copies of recent recorded outgoing phone calls from VSJ made by the defendant, Matthew Hugle, and the calls and placed by defendant's cellmate, Jaiden Ciruzzi. The State began listening to calls placed right before the

defendant was not transported to the courthouse during trial and worked backward to put the following details together. The State now presents the Court with the following information gathered from the content of such calls. It should be noted that the quoted phrases below, while accurate, might not be an exact replication of these conversations. However, any small deviations in these quotes do not change the substantive nature of such conversations.

I. Calls Placed by the Defendant

10. On May 20, 2021, the defendant placed a call to his girlfriend, Alexandra Gonzalez ("A.G."), a listed witness in the State's case. In such call the defendant discussed the potential plea offers extended by the State and stated "I don't know if I want to go that route (taking a plea), " further stating that he might "try the other thing" in order to get back home as soon as possible, or words to that effect.

11. On May 22, 2021, the defendant placed a call to his brother, Joshua Heredia ("J.H."), who is still on parole and has a suspended sentence over his head out of this Court from docket #216-2018-CR-00873. In such call, the defendant discussed plea negotiations and stated that he was going to trial. He instructed J.H. to talk with A.G.: "Ask Ale what I said to her at the window yesterday, she'll tell you—I can't talk about it on the phone, though," to which J.H. replied: "that's all you gotta say," or words to that effect. The defendant stated "I'm straight[1] no matter what, just ask Ale ("A.G.")." The defendant directed his brother to message A.G. and J.H. indicated that he got a message back from her right away. J.H. indicated that he understood but questioned: "you really think that will happen?" to which the defendant replied "I know it will, I researched it." The defendant later stated: "if the trial gets delayed, the worst that happens

[1] The term 'straight' is a commonly used slang term meaning "good," "okay," and "fine." http://onlineslangdictionary.com/meaning-definition-of/straight

is that we go back and make the same offer." It should be noted that hroughout the calls the defendant constantly references that he will not take a deal from the State that involves more than 4 years of stand committed time. The defendant than discussed his desire to make sure the victims were discredited and stated that "after he (referring to his attorney) discredits them, it's gonna be fuckin' good."

12. On May 22, 2021, the defendant placed another call to A.G. and confirmed that she 'messaged' J.H.. A.G. responded affirmatively and stated "did you want me to tell him everything?" A.G. told the defendant that she used Facebook Messenger to speak with J.H. and the defendant appeared to get upset and stated that he wished she had used SnapChat.[2] A.G. informed the defendant that she did not say that much and that she "kept it pretty vague."

13. The defendant next placed a call to J.H. on May 22, 2021, and asked J.H. if he had access to a vehicle. The defendant informed J.H. that he wanted him to "come to the window sometimes, that's what Ale does, I can talk to you there." The defendant informed J.H. "you can't see inside my room in the day, you can at night." It should also be noted that throughout the calls, there are many references to both A.G. and J.H. coming to the defendant's window at VSJ in order to communicate with him. The State reached out to staff at VSJ who indicated that such conduct is possible in some locations at the jail; while it is impossible for inmates to communicate verbally with those on the outside, they often can write on cardboard or pieces of paper to hold up to persons on the outside. J.H. asked the defendant "you still doing that thing, right? You still have that thing? You're still doing that?" and the defendant indicated that he has done his own research over the past "15 to 20 months." The defendant stated "I read a bunch of

[2] "SnapChat is a multimedia messaging app developed by SnapInc. One of the principle features oSnaf pChat is that pictures and messages are usually unavailable for a short time before they become inaccessible to their recipients." https://en.wikipedia.org/wiki/Snapchat.

statutes, I understand statutes, I've been reading mad case law, I know what they can and cannot do… I know my rights and how to get around shit now." He and J.H. went on to discuss that their dissatisfaction with defense counsel and the defendant stated: "that's why with Ale, the shit I said—I know what I'm doing bro, trust me—you're gonna have my information pretty soon, what I have, you'll have it, you'll see it soon." The defendant described this issue as a "backup," and told J.H. again to come to his window. J.H. expressed concern and the defendant stated that he knows what will happen: "there's no losing for me, even if it's on a deal—everyone thinks I'm under so much stress that I can't make rational decisions," but went on to indicated that he can.

14. The defendant placed a subsequent call to A.G. in which he stated:"I explained things to my brother discreetly, he feels a lot better now—not a lot I can say to my mom, don't know how to form a sentence to make her comfortable—but just know everything is going to be straight no matter what…there's no way around it for them (referencing the State)." A.G. quickly stated "we shouldn't talk about it on the phone." The defendant replied that he did not want everyone (his family and A.G.) so "stressed out…I should be the one stressed out, you guys should be able to tell by my composure, I wouldn't have such confidence if I didn't know," and indicated that he was "trying to get Josh to come to my window—at some point, not right now."

15. On May 23, 2021, the defendant placed another call to J.H. who told the defendant that their mother is pushing for the defendant to "take the deal." The defendant rejected such idea and J.H. stated "cuz you know shit will be good because of that other thing?" The defendant replied "yeah I know what I'm doing." J.H. asked the defendant "are you on the same page as your lawyer?" to which the defendant replied "nah, not really." J.H. stated in reply

"cuz he's pushing for that (taking a deal) too, right?" and asked the defendant again if is "one thousand and ten percent sure?" The defendant asked J.H. to google the term "*sua sponte*," and J.H. read the defendant the definition. The defendant explained that it's something he "needed to know," and that the definition is "better than he thought." J.H. told the defendant "I hope you know what the fuck you're doing bro," and the defendant told him that the definition is "in regards to what I was telling you" and stated "I'm sure, I'm good." The defendant goes on to discuss plea negotiations with J.H. and stated that his research indicated that the present issue is like "them (the State) breaking my Miranda rights, there's no getting around it, cuz' Miranda is the standard for basically waiving your rights or whatever—that's the standard so I'm straight—I can't even talk to my attorney like that, I won't be able to say that—that's why I have this shit that will be sent out, and you guys will have it, everything I have, you'll have it." The defendant went on to explain: "*sua Sponte*, regarding what I told you, the Judge has an obligation after that so that's what it is, there's no way around it."

16. On May 23, 2021, the defendant placed another call to J.H. and told J.H. "don't tell mom nothing, I don't want her panicking and saying nothing to my attorney." The defendant and J.H. once again discuss plea negotiations and J.H. encouraged the defendant to talk to his attorney. The defendant told J.H. "if they (the State) don't take a 4 to 8 then I'm going all the way, that's the most I'll take," and indicated again "I'm straight."

17. On May 24, 2021, the defendant placed a call to his mother who appeared to be urging him to consider the plea deal. The defendant became angry and argued with her about why he would not take it. The defendant's mother asked him if he was being influenced by other inmates and the defendant firmly denied any influence. The defendant continued to argue with

his mother and stated "I don't care, I know what I'm doing, I'm doing something else."

18. On May 24, 2021, the defendant called J.H. and discussed the previous phone call with their mother. The defendant stated that he will only take a deal for 4 years of stand committed time and stated that he "does not trust the prosecutor's word, I got until jury selection, they're trying to scare me… I'm good. I already know." The defendant reiterated that he would only agree to 4 years and told J.H. "they (the State) better strap up though, these bitches (the victims) lied and they can come to trial and lie on the stand in front of a bunch of strangers, a bunch of jurors." J.H. appeared cautious and expressed concern that if the defendant were to lose at trial, he would get more time than the State's most recent negotiated offer (which included more than 4 years of stand committed time). The defendant told J.H. "I told you, I already got this shit covered, *no matter what*." J.H. asked "you're not really worried?" and the defendant answered "not at all—I got, trust me, I'm not doing 4 years *no matter what*," and indicated again that he cannot and did not tell his lawyer. The defendant told J.H. "you'll realize soon, you'll know it." The defendant and J.H. then started to discuss J.H.'s recent release from prison on the abovementioned docket and the defendant asked J.H. how long his (unsuccessful) appeal took to process and stated "my case, I can win on appeal, I know." J.H. told the defendant that his appeal took approximately 1 ½ years to process and the defendant responded by stating "good, then I won't do more than 4." J.H. expressed concern about the low number of successful appeals and the defendant responded "yeah well, that's because they don't have grounds…I know I got my thing going, I already got a strategy." J.H. appeared worried about such strategy and tells the defendant that it will "suck if he gets more time." The defendant then explained to J.H. "100% I'm gonna win on appeal no matter what, I won't be doing more than 4 years, I don't think it will

come to that," and subsequently told J.H. that he should not keep talking about it on the recorded line—but emphasized "like I said, I'm not doing more than 4 fuckin' years."

19. On May 27, 2021, the defendant placed a call to A.G. who informed the defendant that she was subpoenaed by the State for trial. The defendant stated "well I guess they're going to want you to get up on the stand or something…I hope you know you have a right to plead the fifth—I can't tell you what to do but I just want you to know you have that right." Later in the conversation the defendant told A.G. "I'm going to need you to come to my window before trial."

20. On June 2, 2021, the defendant placed a call to A.G. and expressed frustration about the testimony by the victims. He told A.G. "it makes me want to go back downstairs and let the trial go on without me…I'm planning on doing that anyways."

21. On June 3, 2021, after the trial started, the defendant placed a call to J.H. who stated "you seem composed," talking about the defendant's demeanor in the courtroom. The defendant replied "yeah, I'm composed for now—um, you know what I'm talking about, you'll know."

II. Calls Placed by Jaiden Cirruzzi

22. On the morning of June 4, 2021, the defendant's cellmate, Jaiden Cirruzzi placed two phone calls to A.G. In the first call, Cirruzzi told A.G.: "hey this is Chaz's friend Jaiden… listen, last night, Chaz had a seizure and he hit his head really hard… I don't even think they brought him to the hospital, I need you to call his mom and tell his mom to tell his attorney." A.G. stated that she would and Cirruzzi replied "not just that but they brought him back wicked fast and there's no way they brought him to the hospital and got it checked out…and he's not

right, he can barely walk, he can't see, I think he might have a concussion, he's acting irrational, I need you to call her and tell her all that." The call ended with A.G. responding that she would call the defendant's mother.

23. Moments later, Cirruzzi placed the second call to A.G. and stated "hey I forgot um, another thing, it looked like he needed staples, at least sutures, definitely staples, and they didn't do any of that, they just like, glued his head and I don't think they did that right, he definitely needed sutures at the least, probably even staples." A.G. replied "Ok, I'm telling his mom right now and she should be calling his attorney."

III. Calls Placed by Matthew Hugle

24. During the course of the defendant's trial, Matthew Hugle placed a call to J.H. in which he asked many questions about the trial and what happened during the day. Hugle and J.H. discuss a plan of the defendant's and Hugle stated "if he just cracks it, they gonna give him a deal in the middle." J.H. and Hugle discuss the amount of research the defendant has done and Hugle told J.H. "well, it might not work now, his lawyer tried to say something that blew up his spot."

RELEVANT CASE LAW

25. Having determined from the above facts it is clear that it is the defendant's intent and plan to create a reversible error and have any potential convictions overturned on appeal, it is of the utmost importance that the Court address these issues head on and avoid any potential avenue for such appeal. The defendant's statements on the jail calls are a clear reference of the analysis from one case in particular: Johnson v. Norton, 249 F.3d 20, 203 (1st Cir. 2001). In Johnson, the defendant was still able to participate in most of the trial, with the exception of a

small portion for which his attorney waived his presence. Id. The issue of competency was raised, but the defendant was ultimately medically cleared to appear in the courtroom. Id. at 23. The defendant was convicted, and filed an appeal arguing that there was sufficient doubt pursuant to his competency during trial. Id. The Court held that the defendant's right to Due Process under the 14th Amendment was violated when the Court con to proceed with his trial without a competency evaluation. Id. The defendant was granted an appeal issued a writ of *Habeas Corpus*.

26. "Due Process requires a court to hold a competency hearing *sua sponte* whenever evidence raises a sufficient doubt as to the competency of the accused." Drope v. Missouri, 420 U.S. at 180. Possible factors for the judge to consider are the defendant's irrational behavior, his demeanor at trial, and any prior medical opinion on competence to stand trial. Id. In Johnson, the Appellate Court held that although the defendant appeared competent and medically able to proceed with trial, that the Court erred in failing to have him evaluated for competency in order to address whether his injury raised sufficient doubt about his competency, given a nurse's opinion that he may have suffered a *concussion* which could have impaired his ability to participate in the proceedings. Johnson, at 27 (emphasis added). The Supreme Court clearly cautioned the lower courts that even when a defendant is competent at the commencement of trial, the Court must always be alert to circumstances suggesting a change that would render the accused unable to meet the standards of competence to stand trial. Drope, 420 U.S. at 181.

27. Despite the overwhelming evidence that Mr. Heredia's potential injury was self-inflicted, there is sufficient evidence to show that he was successful in giving himself some form of head injury—he ensured that the record was clear. Therefore, it is imperative that the Court

follow the above precedent to ensure that the defendant does not successfully create a valid appellate issue. The defendant's roommate, Jaiden Ciruzzi, called the defendant's girlfriend, Alexandra Gonzalez the morning of his alleged injury and provided her with specific symptoms—directing her to tell his mother and to ensure that his mother informed his attorney immediately. Cirruzzi told Gonzalez that the defendant was acting disoriented irrational, and that he specifically suffered a head injury. He expressed urgency that the information be provided to the defendant's mother and Attorney Chadwick. In turn, Attorney Chadwick (who was clearly unaware of this plan), in good faith, informed the Court that the defendant had a history of concussions during the abovementioned video hearing. Consequently, the defendant managed to establish the necessary factors—almost mirroring the facts in Johnson—to raise a sufficient concern for his competency. The burden is now on the Court to raise an inquiry, *sua sponte*, to raise an inquiry into his competency to continue with the trial.

28. The analysis, however, does not end here. In a case out of the Hillsborough County Superior Court, State v. Bertrand, the Court held that a trial judge must, on her own initiative, hold an evidentiary hearing during trial on the defendant's competency if a *bona fide* doubt about his competency is raise. 123 N.H. 719, 725 (1983). Bertrand adopted the Supreme Court standard for the criteria a trial court should consider to determine whether a competency hearing is required—to include: evidence of defendant's irrational behavior (Jaiden Cirrizzi informed Alexandra Gonzalez that the defendant was actin irrational), his demeanor at trial (Joshua Heredia informed the defendant "you seem composed" to which the defendant replied "yeah I'm composed for now, you know what I'm talking about, you'll know") and any prior medical opinion on competency to stand trial. Id. at 725. If any of these concerns arise, the Court

shall hold a competency hearing with the opportunity to introduce evidence, cross-examine witnesses, and seek specific factual findings made on the record which may be reviewed on appeal. Id. Finally, the Court held that competency to stand trial is a legal concept and not a medical one. Id. The trial judge must not be permitted to abdicate to psychiatrists their judicial responsibility to determine whether a criminal defendant is competent to stand trial. Id. at 726.

29. Based on the above analysis, here, the Court must hold the jury while the defendant receives a competency evaluation and the conduct a hearing on the record. Proceeding in this manner will successfully cure several potential appellate concerns. First, should the evaluator conclude that the defendant is, in fact, not competent, the Court will then be able to transition this analysis to question whether or not the defendant has voluntarily waived his right to be present at trial via intentional self-injury. If the defendant is determined competent, declines to participate in the evaluation, or appears to be faking his incompetence, these issues can be addressed on the record at a competency hearing and the Court may make a decision as to the defendant's ability to continued trial. The Court may keep in mind all of the avaoe information as competency is ultimately a legal determination under the standard set forth in Bertrand.

DATED: June 6, 2021

Respectfully Submitted,

/s/ Shaylen Roberts
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Assistant County Attorneys

CERTIFICATION

I hereby certify that a copy of the foregoing pleading has this day been sent to Roger C. Chadwick, Jr.,, Esq., counsel for the defendant.

/s/ Shaylen Roberts
Shaylen Roberts