

# ***THE STATE OF NEW HAMPSHIRE***

**COÖS, SS.**

**SUPERIOR COURT**

No. 214-2019-CR-00007

State of New Hampshire

v.

Jeffrey Woodburn

## **ORDER ON DEFENDANT'S MOTION TO CONTINUE**

This matter is before the Court on the defendant's Motion to Continue (Index #155), to which the State objects. (Index #157.) For the reasons stated, the Court DENIES the defendant's Motion to Continue.

The relevant aspects of the procedural history of this case are as follows. After the New Hampshire Supreme Court remanded the pending charges for a new trial, see State v. Woodburn, 175 N.H. 645 (2023), the Court conducted a status conference on June 6, 2023, at which the defendant and counsel for both parties appeared. At that status conference, counsel for both parties advised the Court that they were available for trial in March 2024, and estimated that the length of trial would be three days. Accordingly, the Court ordered the Clerk to schedule a three-day jury trial in March 2024, as the docket permits (Index #134), and on June 7, 2023, the Clerk issued a Notice of Jury Trial scheduling the Final Pretrial on February 15, 2024, jury selection on March 7, 2024, and the jury trial on March 12–14, 2024. On August 31, 2023, the Clerk issued an Amended Notice of Jury Trial that changed the date of jury selection to March 5, 2024, but restated the February 15, 2024 date for the Final Pretrial and the March 12–14, 2024 dates for the jury trial. At the February 15, 2024 Final Pretrial, defense counsel told the Court that he

would be unavailable for trial on March 12, 2024, because the Gilmanton town meeting was scheduled on that day and he was the town moderator. The defendant then filed his Motion to Continue on February 20, 2024, alleging that he “is unavailable on March 12, 2024,” because the town meeting is scheduled for that day. (Index #155 ¶ 3.)

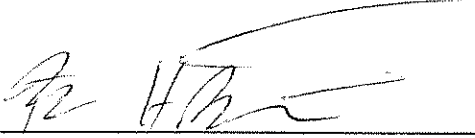
The defendant’s Motion to Continue is extremely untimely, and the defendant has not articulated any good cause for filing this motion “at the eleventh hour.” State v. Knight, 161 N.H. 338, 341 (2011) (quoting State v. Prisby, 131 N.H. 57, 60 (1988); see State v. Young, 159 N.H. 332, 336–37 (2009). “Courts have a legitimate interest in the enforcement of scheduling deadlines, both to manage a pending case and to retain the credibility of these deadlines in future cases.” Knight, 161 N.H. at 341 (quotations omitted); Prisby, 131 N.H. at 59–60 (explaining that courts can modify deadlines “by order and may act upon a motion to do so at any time as a matter of discretion,” but parties “are not entitled to assume that a judge will exercise discretion to entertain such a motion at the eleventh hour”). As the State observes (State’s Obj. ¶ 4), the alleged victim also has an interest in this trial proceeding on the dates on which it was scheduled to be conducted more than eight months ago. March 15, 2024, is not an available trial date, so the Clerk cannot simply move this three-day trial forward one day and schedule it to begin on March 13, 2024. Nor are there any other trial dates available in March 2024, for the conduct of this trial.

Defense counsel has not even asserted, much less demonstrated, good cause or any exceptional circumstances that account for his failure to file a motion to continue in a timely manner. Defense counsel likely knew or should have known at least eight months ago that the 2024 Gilmanton town meeting was scheduled for March 12, 2024, inasmuch

as the date of annual town meetings in New Hampshire is prescribed by statute. See RSA 39:1 (providing that, unless a town has adopted the provisions of RSA 40:13, “[a] meeting of every town shall be held annually on the second Tuesday of March”). Nevertheless, defense counsel did not move to continue the March 12–14 trial after receiving the June 7, 2023 Notice of Jury Trial, nor did he move to continue it after receiving the August 31, 2023 Amended Notice of Jury Trial. Having considered the procedural history and posture of this case and all other relevant circumstances, the Court DENIES the defendant’s untimely Motion to Continue. See Knight, 161 N.H. at 341–42; Young, 159 N.H. at 336–37.

So Ordered.

Date: 2/22/24

  
Hon. Peter H. Bornstein  
Presiding Justice

Clerk's Notice of Decision  
Document Sent to Parties  
on 02/22/2024