From: Clark, Charity
To: Bruce Pandya
Subject: Public Records Act Request
Date: Friday, April 30, 2021 8:22:27 PM
Attachments: Pandya PRA Response 4.30.21.pdf

Please see attached.

Charity R. Clark
Chief of Staff
Office of the Attorney General
109 State Street
Montpelier, Vermont 05609
802-828-3171
Pronouns: she/her/hers

THOMAS J. DONOVAN, JR.
ATTORNEY GENERAL

JOSHUA R. DIAMOND
DEPUTY ATTORNEY GENERAL

SARAH E.B. LONDON
CHIEF ASST. ATTORNEY GENERAL

TEL: (802) 828-3171

http://www.ago.vermont.gov

STATE OF VERMONT
OFFICE OF THE ATTORNEY GENERAL
109 STATE STREET
MONTPELIER, VT
05609-1001

Via email to [redacted]

April 30, 2021

Bruce Pandya
[redacted]
Plainfield, VT 05667

Re: Vermont Public Records Act request, dated April 2, 2021

Dear Mr. Pandya:

Attached please find a record responsive to your Vermont Public Records Act (PRA) request received by the Attorney General's Office (AGO) on April 2, 2021. You requested:

> [A]ll correspondence between Attorney General T.J. Donovan and Chittenden County State's Attorney Sarah George regarding the following criminal cases:
> 1. Aita Gurung
> 2. Louis Fortier

In addition to the attached, two responsive records were identified that are exempt from the PRA under 1 V.S.A. §§ 317(c)(3) (production of record would cause violation of standard of ethics), 317(c)(5) (record is subject of ongoing criminal investigation), and 317(c)(14) (record is relevant to pending litigation to which the State is a party).

The cost associated with complying with your request is $61.20. Please send a check in that amount made payable to the State of Vermont to:

Office of the Attorney General
109 State St.
Montpelier, Vermont 05609

Attn: Charity R. Clark

Please let me know if you have any questions.

Sincerely,

/s/
Charity R. Clark
Chief of Staff

Cc: Business Office

Attachment

From: Donovan, Thomas
Sent: Thursday, April 15, 2021 4:21 PM
To: Clark, Charity; Jandl, Lauren; Jenkins, Brooke
Subject: FW: Resolution of 3 'Major Crimes' Cases - FOR IMMEDIATE RELEASE
Attachments: Dismissal Press Release PDF.pdf; Veronica Lewis Final Dismissal Letter.pdf; Louis Fortier Final Dismissal Letter.pdf; Aita Gurung Final Dismissal Letter.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

From: George, Sarah <Sarah.George@vermont.gov>
Sent: Tuesday, June 4, 2019 4:24 PM
To: Donovan, Thomas <Thomas.Donovan@vermont.gov>
Cc: Clark, Charity <Charity.Clark@vermont.gov>
Subject: FW: Resolution of 3 'Major Crimes' Cases - FOR IMMEDIATE RELEASE

Hi TJ and Charity,

Wanted you to have copies of the dismissal letters as well as my press release that I just sent out.

See you Friday.

Sarah

From: George, Sarah <Sarah.George@vermont.gov>
Sent: Tuesday, June 04, 2019 4:02 PM
To: George, Sarah <Sarah.George@vermont.gov>
Cc: Adams, Sally <Sally.Adams@vermont.gov>; Jiron, Justin <Justin.Jiron@vermont.gov>
Subject: Resolution of 3 'Major Crimes' Cases - FOR IMMEDIATE RELEASE

For Immediate Release:
State's Attorney's Office Announces the Resolution of Three 'Major Crimes' Cases

June 4, 2019

On Friday, May 31st, 2019, the State's Attorney's Office filed Notices of Dismissal, without prejudice, in the following cases:

1. State of Vermont v. Veronica Lewis
2. State of Vermont v. Louis Fortier
3. State of Vermont v. Aita Gurung

In each of these cases, defense counsel notified the State of its intent to rely on an insanity defense at trial. Therefore, each of these cases presented the issue of whether Defendant was criminally responsible at the time of the alleged offenses. Lack of criminal responsibility is commonly referred to as "legal insanity." Before such a defense is considered, the State must prove each essential element of the offense charged beyond a reasonable doubt. If the State meets this burden, it is Defendant's burden to prove by a preponderance of the evidence that they were insane at the time the crime was committed and are therefore not criminally responsible. Proof by a preponderance of the evidence means that the defense is more likely true than not true. This burden of proof is less than the burden of proof beyond a reasonable doubt.

Consequently, in order to obtain a conviction after an initial showing by Defendant that they were legally insane at the time of the offense, the State must rebut the defense of insanity with admissible evidence that tends to show Defendant was sane at the time of the alleged offense. The issue is then ultimately decided by a jury. However, if the State does not have sufficient evidence to rebut such an insanity defense, the State, in accordance with our prosecutorial obligation to guarantee that the defendant is accorded procedural justice and that guilt is decided upon the basis of sufficient evidence, has a duty not to go forward with the charges.

In all three of these cases, Defendants submitted opinions from forensic psychiatrists opining that they were insane when they committed the charged offenses. Further, the State received evidence that each of them has a history of major mental illness diagnoses and previous psychiatric hospitalizations. Our review of the evidence indicates that Defendants have substantial admissible evidence to prove to a jury by a preponderance of the evidence that they were insane at the time the crimes were committed. Despite retention of expert forensic psychiatrists who conducted thorough evaluations of Defendants, the State does not have sufficient evidence to rebut these insanity defenses. Therefore, the State cannot meet its burden of proving Defendants are guilty beyond a reasonable doubt; rather, the evidence shows that Defendants were legally insane at the time of the alleged offenses.

Further, all three of these defendants are currently in the custody of the Department of Mental Health. In each case, the court held a hospitalization hearing pursuant to 13 V.S.A. § 4820 and issued orders of commitment directed to the Commissioner of Mental Health pursuant to 13 V.S.A. § 4822. Defendants have been in the custody of the Department of Mental Health for much of the time the cases have been pending. The Department of Mental Health has confirmed that, as far as treatment and discharge determinations, it sees no difference between a commitment order issued pursuant to § 4822 for a defendant who is found Not Guilty by Reason of Insanity after trial, and a commitment order issued pursuant to §

4822 for a defendant who is reported by a court-appointed psychiatrist to have been insane at the time of the alleged offense or incompetent to stand trial.

For these reasons, dismissal serves the interests of justice. The State does not have sufficient evidence to rebut the evidence supporting legal insanity, and to conduct criminal prosecutions in a manner that is prejudicial to the administration of justice would constitute misconduct. Further, a finding by a jury that Defendants were Not Guilty by Reason of Insanity would not trigger any additional treatment or commitment through the Department of Mental Health.

It is the State's expectation that the Department of Mental Health will maintain custody over all three of these defendants until the community can be assured that they are no longer a risk of harm to themselves or others and can also assure the community that the interests of justice have been served. The State has given the Department of Mental Health full access to its criminal files including all discovery materials in these cases to aid them in making their determinations.

These dismissals do not minimize the incredible and heroic work that the Vermont State Police and the Burlington Police Department endured in order to respond to, investigate, and arrest each of these individuals. The dismissals also do not minimize the State's belief that these crimes not only occurred, but that they were committed by the named individuals. These crimes were tragic, brutal, and horrific, and there are very real and traumatized victims and community members because of these crimes. Although our laws do not currently require the Department of Mental Health to confer with or notify the victims of these crimes nor the community as to any potential release, it is our hope that the Department of Mental Health will give the appropriate parties that courtesy, and allow them to be a part of the process in any way possible.

The full and final dismissal letters that were filed with the Court are attached to this email. A considerable amount of the information in these letters is considered confidential but included at the consent of Defense counsel in order to inform the public of these decisions in the most transparent way possible. That being said, the State recognizes that there will likely be further information the community seeks regarding specifics in these cases that are not included in these dismissal letters. Unfortunately, the State will likely be unable to provide those specifics due to the confidential nature of expert forensic reports.

The State's Attorney's Office and law enforcement agencies in our community are often expected to address all public safety issues by themselves, but it is imperative that we rely on our community partners and other state agencies to address those public safety issues relating to violent acts stemming from mental

illness. When defendants are legally insane at the time of their offenses, their placement and treatment fall outside of our criminal justice system. After a thorough and exhaustive review of the evidence in their possession, and the laws at their disposal, it is the State's position that these three individuals' conduct was solely a product of major mental illnesses, and that justice for the victims of that conduct is therefore in the hands of the Department of Mental Health.

Any questions regarding the next steps for these three individuals should be directed to the Department of Mental Health, as those decisions are entirely up to them.

Best,

/s/
Sarah F. George
Chittenden County State's Attorney

Sarah F. George
State's Attorney

Justin Jiron
Chief Deputy

Sally Adams
Chief Deputy

32 Cherry Street, Suite 305
Burlington, VT 05401
Phone: (802) 863-2865
Fax: (802) 863-7440

STATE OF VERMONT
OFFICE OF THE CHITTENDEN COUNTY STATE'S ATTORNEY

June 4, 2019

For Immediate Release:
State's Attorney's Office Announces the Resolution of Three 'Major Crimes' Cases

On Friday, May 31st, 2019, the State's Attorney's Office filed Notices of Dismissal, without prejudice, in the following cases:

1. State of Vermont v. Veronica Lewis
2. State of Vermont v. Louis Fortier
3. State of Vermont v. Aita Gurung

In each of these cases, defense counsel notified the State of its intent to rely on an insanity defense at trial. Therefore, each of these cases presented the issue of whether Defendant was criminally responsible at the time of the alleged offenses. Lack of criminal responsibility is commonly referred to as "legal insanity." Before such a defense is considered, the State must prove each essential element of the offense charged beyond a reasonable doubt. If the State meets this burden, it is Defendant's burden to prove by a preponderance of the evidence that they were insane at the time the crime was committed and are therefore not criminally responsible. Proof by a preponderance of the evidence means that the defense is more likely true than not true. This burden of proof is less than the burden of proof beyond a reasonable doubt.

Consequently, in order to obtain a conviction after an initial showing by Defendant that they were legally insane at the time of the offense, the State must rebut the defense of insanity with admissible evidence that tends to show Defendant was sane at the time of the alleged offense. The issue is then ultimately decided by a jury. However, if the State does not have sufficient evidence to rebut such an insanity defense, the State, in accordance with our prosecutorial obligation to guarantee that the defendant is accorded

procedural justice and that guilt is decided upon the basis of sufficient evidence, has a duty not to go forward with the charges.

In all three of these cases, Defendants submitted opinions from forensic psychiatrists opining that they were insane when they committed the charged offenses. Further, the State received evidence that each of them has a history of major mental illness diagnoses and previous psychiatric hospitalizations. Our review of the evidence indicates that Defendants have substantial admissible evidence to prove to a jury by a preponderance of the evidence that they were insane at the time the crimes were committed. Despite retention of expert forensic psychiatrists who conducted thorough evaluations of Defendants, the State does not have sufficient evidence to rebut these insanity defenses. Therefore, the State cannot meet its burden of proving Defendants are guilty beyond a reasonable doubt; rather, the evidence shows that Defendants were legally insane at the time of the alleged offenses.

Further, all three of these defendants are currently in the custody of the Department of Mental Health. In each case, the court held a hospitalization hearing pursuant to 13 V.S.A. § 4820 and issued orders of commitment directed to the Commissioner of Mental Health pursuant to 13 V.S.A. § 4822. Defendants have been in the custody of the Department of Mental Health for much of the time the cases have been pending. The Department of Mental Health has confirmed that, as far as treatment and discharge determinations, it sees no difference between a commitment order issued pursuant to § 4822 for a defendant who is found Not Guilty by Reason of Insanity after trial, and a commitment order issued pursuant to § 4822 for a defendant who is reported by a court-appointed psychiatrist to have been insane at the time of the alleged offense or incompetent to stand trial.

For these reasons, dismissal serves the interests of justice. The State does not have sufficient evidence to rebut the evidence supporting legal insanity, and to conduct criminal prosecutions in a manner that is prejudicial to the administration of justice would constitute misconduct. Further, a finding by a jury that Defendants were Not Guilty by Reason of Insanity would not trigger any additional treatment or commitment through the Department of Mental Health.

It is the State's expectation that the Department of Mental Health will maintain custody over all three of these defendants until the community can be assured that they are no longer a risk of harm to themselves or others and can also assure the community that the interests of justice have been served. The State has given the Department of Mental Health full access to its criminal files including all discovery materials in these cases to aid them in making their determinations.

These dismissals do not minimize the incredible and heroic work that the Vermont State Police and the Burlington Police Department endured in order to respond to, investigate, and arrest each of these individuals. The dismissals also do not minimize the State's belief that these crimes not only occurred, but that they were committed by the named individuals. These crimes were tragic, brutal, and horrific, and there are very real and traumatized victims and community members because of these crimes. Although our laws do not currently require the Department of Mental Health to confer with or notify the victims of these crimes nor the community as to any potential release, it is our hope that the Department of Mental Health will give the appropriate parties that courtesy, and allow them to be a part of the process in any way possible.

The full and final dismissal letters that were filed with the Court are attached to this email. A considerable amount of the information in these letters is considered confidential but included at the consent of Defense counsel in order to inform the public of these decisions in the most transparent way possible. That being said, the State recognizes that there will likely be further information the community seeks regarding specifics in these cases that are not included in these dismissal letters. Unfortunately, the State will likely be unable to provide those specifics due to the confidential nature of expert forensic reports.

The State's Attorney's Office and law enforcement agencies in our community are often expected to address all public safety issues by themselves, but it is imperative that we rely on our community partners and other state agencies to address those public safety issues relating to violent acts stemming from mental illness. When defendants are legally insane at the time of their offenses, their placement and treatment fall outside of our criminal justice system. After a thorough and exhaustive review of the evidence in their possession, and the laws at their disposal, it is the State's position that these three individuals' conduct was solely a product of major mental illnesses, and that justice for the victims of that conduct is therefore in the hands of the Department of Mental Health.

Any questions regarding the next steps for these three individuals should be directed to the Department of Mental Health, as those decisions are entirely up to them.

Best,

Sarah F. George
Chittenden County State's Attorney

STATE OF VERMONT

SUPERIOR COURT
CHITTENDEN CRIMINAL DIVISION

CRIMINAL DIVISION
DOCKET NO.: 3506-10-17 Cncr

STATE OF VERMONT

V.

Aita Gurung, Defendant

NOTICE OF DISMISSAL

NOW COMES the State of Vermont, by and through State's Attorney, Sarah F. George Esq., and pursuant to V.R.Cr.P 48(a) hereby dismisses WITHOUT PREJUDICE the Information in the above captioned case. In support of this motion, the State offers the following:

1. On October 13, 2017, Defendant was charged with one count of Murder in the First Degree, a violation of 13 V.S.A. §2301, and one count of Attempted Murder in the First Degree, a violation of 13 V.S.A. §§ 9 and 2301. At his arraignment that same day, the Court, at the request of Defense counsel and based on a mental health screener's recommendation, ordered the Department of Mental Health [DMH] to conduct an inpatient psychiatric examination of Defendant to determine (1) whether he was mentally competent to stand trial for the offenses, and (2) whether he was insane at the time of the offenses. Defendant was remanded to the custody of DMH.
2. On December 14, 2017, pursuant to the Court's order, the parties received a report from Dr. Paul Cotton, a psychiatrist, in which he opined, based on a reasonable degree of medical certainty, that Defendant was competent to stand trial but insane at the time of the alleged offenses. Specifically, Dr. Cotton opined that Defendant was suffering from a mental disease,

Schizophrenia, at the time of the offenses. Schizophrenia, Dr. Cotton explained, is a substantial disorder that could significantly affect Defendant's judgment, behavior, and the ability to meet the ordinary demands of life. Dr. Cotton further explained that Defendant lacked adequate capacity to conform his conduct to the requirements of the law at the time of the alleged offenses due to his major mental illness. Dr. Cotton noted that there is evidence to substantiate the presence of disordered thought at the time of the alleged offenses that would have overridden Defendant's ability to conceptualize and weigh alternative courses of action.

3. Defense counsel filed a Notice of Insanity Defense on December 28, 2017, listing Dr. Cotton as their expert witness to support their insanity defense.

4. Given Dr. Cotton's opinion that Defendant was insane at the time of the offenses, the Court scheduled a commitment hearing pursuant to 13 V.S.A. §4820(1). At that hearing, Dr. John Malloy, a staff psychiatrist at the Vermont Psychiatric Care Hospital and Defendant's treatment provider since October 17, 2017, testified to his belief that Defendant suffers from an Unspecified Depressive Disorder and an Unspecified Psychotic Disorder. These disorders include depressive and psychotic symptoms that severely impact Defendant's thought processes and moods. The illnesses grossly impair Defendant's ability to judge, behave, and recognize reality. Dr. Malloy noted that when Defendant was first hospitalized, Defendant was severely psychotic and his ability to rationally perceive reality was substantially impaired. With treatment and medication, Defendant's psychosis diminished, but his symptoms of depression increased. According to Dr. Malloy, Defendant could not meet his needs and he was a danger to himself due to a high risk of suicide. The Court found, based on this testimony from Dr. Malloy, that Defendant suffers from major mental illnesses involving psychotic behavior and

depression. Further, the Court noted that the illnesses appear to have triggered the horrific killing of Defendant's wife and the attempted killing of his mother-in-law. In addition to being a danger to himself, the Court found that the behavior depicted in the filed charges illustrated the Defendant's dangerousness to others should treatment be discontinued. In accordance with 13 V.S.A. §4822 and 18 V.S.A. §§ 7619 and 7623, the Court committed Defendant to the care and custody of the Commissioner of Mental Health for an indeterminate period and hospitalization at a designated hospital for a period not to exceed 90 days.

5. The State subsequently retained Dr. Albert Drukteinis, a psychiatrist, to review the case and offer an opinion as to sanity. The Court, over Defendant's objection, granted the State's motion for a mental health examination pursuant to V.R.Cr.P. 16.1(a)(1)(I) and ordered Defendant to submit to a reasonable mental examination by Dr. Drukteinis.
6. In a report dated December 5, 2018, Dr. Drukteinis, like Dr. Cotton, opined that Defendant, at the time of the alleged offenses, lacked an adequate capacity to appreciate the criminality of his conduct and to conform his conduct to the requirements of law, as a result of a mental disease or defect; his actions were the product of insanity. Dr. Drukteinis noted that Defendant was experiencing psychotic thinking during his brief hospitalization that preceded the incidents on 10/13/17. He further noted that Defendant did admit and records appear to substantiate that voices were telling him to kill his wife and that he was afraid of those voices. Dr. Drukteinis explained that the video of Defendant's assault on his wife depicts a violent frenzy beyond anything that he exhibited before; it did not appear to have been planned and he was exhibiting complete abandon of inhibition. Coupled with the psychiatric history of Defendant's mental disorders, Dr. Drukteinis opined that Defendant's behavior must be understood as psychotic.

7. This case presents the issue of whether Defendant was criminally responsible at the time of the alleged offenses. Lack of criminal responsibility is commonly referred to as legal insanity. Before such a defense is considered, the State must prove each essential element of the offenses charged beyond a reasonable doubt. If the State meets this burden, it is Defendant's burden to prove by a preponderance of the evidence that he was insane at the time the crimes were committed and is therefore not criminally responsible. Proof by a preponderance of the evidence means that the defense is more likely than not true. This burden of proof is less than the burden of proof beyond a reasonable doubt.
8. Consequently, in order to obtain a conviction after an initial showing by defense that Defendant was legally insane at the time of the offenses, the State must rebut the issue of insanity with admissible evidence that tends to show Defendant was sane at the time of the alleged offense. The issue is then ultimately decided by a jury. However, if the State does not have sufficient evidence to rebut Defense counsel's evidence that Defendant was insane at the time of the offense, it is the State's belief that they have a prosecutorial duty not to go forward with the charge.
9. In this case, in light of the opinions of Dr. Cotton and Dr. Drukteinis, Defendant has substantial admissible evidence to prove by a preponderance of the evidence that he was insane at the time the crimes were committed and is therefore not criminally responsible. The State does not have sufficient evidence to rebut this insanity defense. Therefore, the State cannot meet its burden of proving the Defendant is guilty beyond a reasonable doubt; rather, the evidence shows that Defendant was insane at the time of the alleged offenses.
10. Further, Defendant is currently in the custody of DMH and has been since October of 2017. The Commissioner of DMH confirmed that it makes no difference to DMH, as far as treatment and discharge determinations, whether Defendant is found not guilty by reason of insanity after a trial or

if the criminal charges are dismissed. It is the State's expectation that DMH will maintain custody over Defendant until the community can be assured that he is no longer a risk of harm to himself or others, and the interests of justice have been served. The State has given DMH access to all discovery materials in this case to aid them in making their determinations.

DATED: May 31, 2019.

Sarah F. George Esq.
State's Attorney

cc: Jessica Brown, Esquire
Sandra Lee, Esquire

STATE OF VERMONT

SUPERIOR COURT
CHITTENDEN CRIMINAL DIVISION

CRIMINAL DIVISION
DOCKET NO.: 1059-3-17 Cncr

STATE OF VERMONT

V.

Louis Fortier, Defendant

NOTICE OF DISMISSAL

NOW COMES the State of Vermont, by and through State's Attorney, Sarah F. George Esq., and pursuant to V.R.Cr.P 48(a) hereby dismisses WITHOUT PREJUDICE the Information in the above captioned case. In support of this motion, the State offers the following:

1. On March 30, 2017, Defendant was charged with one count of Murder in the First Degree, a violation of 13 V.S.A. §2301.
2. On April 13, 2017, the Court, at the request of Defense counsel, ordered the Department of Mental Health [DMH] to conduct a psychiatric examination of Defendant to determine (1) whether he was mentally competent to stand trial for the offenses, and (2) whether he was insane at the time of the offenses.
3. In a report dated April 26, 2017, Dr. Paul Cotton, a psychiatrist, noted that it seems most likely that Defendant could not work together with his attorney with a reasonable degree of rational understanding. Dr. David Rosmarin, a psychiatrist retained by Defense counsel, opined that Defendant lacked the capacities associated with judicial findings of competency to stand trial or proceed pro se. Dr. Cotton was provided with the history and medical documents that had been obtained as part of Dr. Rosmarin's evaluation. After reviewing that material, Dr. Cotton

concurred with Dr. Rosmarin's opinion and concluded that Defendant was not competent to stand trial.

4. Based on these expert opinions, the Court found Defendant incompetent to proceed on June 26, 2017 and committed Defendant to the Commissioner of Mental Health to be hospitalized for an indeterminate period of time. The Court also requested that DMH report to the Court and the parties, every ninety days, regarding Defendant's competency.
5. On June 20, 2018, after receiving an update from the Vermont Psychiatric Care Hospital indicating that Defendant's condition has improved, the Court ordered another psychiatric examination of Defendant.
6. Dr. Cotton examined Defendant for approximately 3 hours, reviewed documentation including medical records and police records, and ultimately opined, within a reasonable degree of medical certainty, that Defendant was mentally competent to stand trial. Regarding the issue of criminal responsibility, Dr. Cotton further opined that Defendant was suffering from a mental disease, Schizophrenia, at the time of the alleged offense. Schizophrenia is a disorder of thought and a substantial disorder that affects his judgment, behavior, and ability to meet the ordinary demands of life. Dr. Cotton indicated that despite irrational thinking, Defendant likely appreciated the potential criminality of his alleged act. However, in Dr. Cotton's opinion, Defendant lacked adequate capacity to conform his conduct to the requirements of the law at the time of the alleged offense. Dr. Cotton noted that there is ample evidence to substantiate the presence of disordered thought at the time of the alleged offense that would have overridden his ability to conceptualize an alternative course of action. Specifically, his degree of fear during his untreated, disordered mental state deprived Defendant of the capacity to choose an alternative course. Therefore, Dr. Cotton found that Defendant would be considered insane at the time of the alleged offense.

7. On December 20, 2018, during a competency hearing, the Court found Defendant competent to stand trial based on Dr. Cotton's report.
8. Thereafter, Defense notified the State of its intent to rely on an insanity defense at trial.
9. On January 29, 2019, at the request of the parties, Dr. Cotton authored a supplemental report, providing a more detailed analysis of Defendant's medical records, and affirming his previous opinion that Defendant was insane at the time of the alleged offense.
10. This case presents the issue of whether Defendant was criminally responsible at the time of the alleged offense. Lack of criminal responsibility is commonly referred to as legal insanity. Before such a defense is considered, the State must prove each essential element of the offense charged beyond a reasonable doubt. If the State meets this burden, it is Defendant's burden to prove by a preponderance of the evidence that he was insane at the time the crime was committed and is therefore not criminally responsible. Proof by a preponderance of the evidence means that the defense is more likely than not true. This burden of proof is less than the burden of proof beyond a reasonable doubt.
11. Consequently, in order to obtain a conviction after an initial showing by defense that Defendant was legally insane at the time of the offense, the State must rebut the issue of insanity with admissible evidence that tends to show Defendant was sane at the time of the alleged offense. The issue is then ultimately decided by a jury. However, if the State does not have sufficient evidence to rebut Defense counsel's evidence that Defendant was insane at the time of the offense, it is the State's belief that they have a prosecutorial duty not to go forward with the charge.
12. In this case, in light of the opinion of Dr. Cotton, Defendant has substantial admissible evidence to prove by a preponderance of the evidence that he was insane at the time the crime was committed and is therefore not criminally responsible. The State does not have sufficient

evidence to rebut this insanity defense. Therefore, the State cannot meet its burden of proving the Defendant is guilty beyond a reasonable doubt; rather, the evidence shows that Defendant was insane at the time of the alleged offense.

13. Further, Defendant is currently in the custody of DMH and has been since June of 2017. The Commissioner of DMH confirmed that it makes no difference to DMH, as far as treatment and discharge determinations, whether Defendant is found not guilty by reason of insanity after a trial or if the criminal charges are dismissed. It is the State's expectation that DMH will maintain custody over Defendant until the community can be assured that he is no longer a risk of harm to himself or others, and the interests of justice have been served. The State has given DMH access to all discovery materials in this case to aid them in making their determinations.

DATED: May 31, 2019.

Sarah F. George Esq.
State's Attorney

cc: Bryan Dodge, Esquire

STATE OF VERMONT

SUPERIOR COURT
CHITTENDEN CRIMINAL DIVISION

CRIMINAL DIVISION
DOCKET NO.: 2165-6-15; 1106-4-16; 261-2-16; 3813-10-15; 4245-11-15 Cncr

STATE OF VERMONT

V.

Veronica Lewis, Defendant

NOTICE OF DISMISSAL

NOW COMES the State of Vermont, by and through State's Attorney, Sarah F. George Esq., and pursuant to V.R.Cr.P 48(a) hereby dismisses WITHOUT PREJUDICE the Informations in the above captioned cases. In support of this motion, the State offers the following:

1. On June 30, 2015, Defendant was arraigned on one count of Attempted First Degree Murder.
2. On October 26, 2015, at the request of the State, a competency evaluation was ordered. Dr. Paul Cotton was selected by the Department of Mental Health [DMH] to conduct such an examination, however due to Defendant's unwillingness to participate, no examination or findings were accomplished.
3. On August 23, 2016, at the request of Defense counsel and the State, and after a hearing, another attempt at a competency examination was granted by the Court and Dr. Cotton was again selected as the DMH forensic psychiatrist to complete the examination. Meanwhile, Defense counsel hired Dr. David Rosmarin to evaluate Defendant for competency and sanity.
4. On January 24, 2017, after a hearing, the Court found (final entry order dated March 20, 2017) that Defendant "understands the fundamentals of

court procedure and process but at this time does not have an ability to consult with her attorney with a reasonable degree of rational understanding", and was therefore found not to be competent to stand trial.

5. On April 4, 2017 the parties engaged in a hospitalization hearing and on April 10, 2017 the Court issued findings and a hospitalization order. Pursuant to 13 V.S.A. 4822, Defendant was then and there committed to the care and custody of the Commissioner of Mental Health, to be hospitalized for an indeterminate period.
6. On January 18, 2018, the parties agreed that Defendant was competent to stand trial.
7. On March 1, 2018, Defendant informed the State that she intended to use an insanity defense at trial. In support, Defendant disclosed a report by Dr. David Rosmarin, a forensic psychiatrist, in which he opined with a reasonable degree of psychiatric certainty and based on all the information available to him, that Defendant lacked the adequate capacity to conform her behavior to the requirements of law, and that this inability was due to a major mental illness. Specifically, Dr. Rosmarin diagnosed Defendant with Schozoaffective Disorder. He opined that at the time of the shooting, Defendant was paranoid, highly delusional, terrified, and suffering from a formal thought disorder with extremely concrete thinking; were it not for the combination of her chronic and then-active psychosis, she would not have shot the victim.
8. In response, the State retained Dr. Jonathan Weker, a forensic psychiatrist. Dr. Weker, after a careful review of the records available to him, also opined with a reasonable degree of psychiatric certainty that Defendant lacked the adequate capacity to conform her behavior to the requirements of law, and that this inability was due to a major mental illness.

9. This case presents the issue of whether Defendant was criminally responsible at the time of the alleged offenses. Lack of criminal responsibility is commonly referred to as legal insanity. Before such a defense is considered, the State must prove each essential element of the offenses charged beyond a reasonable doubt. If the State meets this burden, it is Defendant's burden to prove by a preponderance of the evidence that he was insane at the time the crimes were committed and is therefore not criminally responsible. Proof by a preponderance of the evidence means that the defense is more likely than not true. This burden of proof is less than the burden of proof beyond a reasonable doubt.
10. Consequently, in order to obtain a conviction after an initial showing by defense that Defendant was legally insane at the time of the offenses, the State must rebut the issue of insanity with admissible evidence that tends to show Defendant was sane at the time of the alleged offense. The issue is then ultimately decided by a jury. However, if the State does not have sufficient evidence to rebut Defense counsel's evidence that Defendant was insane at the time of the offense, it is the State's belief that they have a prosecutorial duty not to go forward with the charge.
11. In this case, in light of the opinions of Dr. Rosmarin and Dr. Wecker, Defense counsel has substantial admissible evidence to prove by a preponderance of the evidence that Defendant was insane at the time the crimes were committed and is therefore not criminally responsible. The State does not have sufficient evidence to rebut this insanity defense. Therefore, the State cannot meet its burden of proving the Defendant is guilty beyond a reasonable doubt; rather, the evidence shows that Defendant was insane at the time of the alleged offenses.
12. Further, Defendant is currently in the custody of DMH and has been since April of 2017. The Commissioner of DMH confirmed that it makes no difference to DMH, as far as treatment and discharge determinations, whether Defendant is found not guilty by reason of insanity after a trial or

if the criminal charges are dismissed. It is the State's expectation that DMH will maintain custody over Defendant until the community can be assured that she is no longer a risk of harm to himself or others, and the interests of justice have been served. The State has given DMH access to all discovery materials in this case to aid them in making their determinations.

DATED: May 31, 2019.

Sarah F. George Esq.
State's Attorney

cc: Jessica Brown, Esquire
William Kidney, Esquire