

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss.
ASSIGNED: JUDGE FRENIERE

SUPERIOR COURT DEPT.
NO. 2382CR00091

COMMONWEALTH

v.

BRIAN WALSH

DEFENDANT'S MOTION TO CONTINUE TRIAL

Now comes counsel for the defendant, Brian Walshe, and pursuant to Mass. R. Crim. P. 10 respectfully moves to continue the trial of this matter until .

This request is grounded in three reasons:

1. The defendant was violently assaulted while in the custody of the Norfolk County Sheriff's Department on September 11, 2025 and is mentally and physically unable at this time to fully participate in his defense and to tolerate the physical requirements of attending full days of trial at this time;
2. The Commonwealth, without notice to the defendant, decided to conduct additional DNA forensic testing on the eve of trial and it is not known when any results will be produced and whether, depending on the results produced, if there is sufficient time for the defense to respond to the testing and have the defendant exercise his right to retest any of the newly tested samples; and,
3. Based on the Commonwealth's unexplained delay in addressing the need to search evidence in its possession for evidence "favorable to" the defendant pursuant to Rule 14, it is believed that now that the belated Rule 14 examination was performed and it has been reported that favorable evidence was located, that it has to date still not been disclosed and without the information the defendant is not able to evaluate the evidence and take whatever steps are necessary in response to the favorable information in the possession of the Commonwealth.

In support hereof, the defendant submits the affidavits attached hereto.

A failure to grant the continuance will likely result in a miscarriage of justice based on the three circumstances set forth above. This case is both unusual and complex, because of the nature of the allegations and circumstances. Furthermore, it is unreasonable to expect adequate preparation of the case at the time given the last minute decision of the Commonwealth without notice to the defendant regarding the subsequent forensic DNA testing that is ongoing and the failure of the Commonwealth to exercise due diligence in examining evidence in its possession for over 18 months for favorable evidence, and now having reportedly found favorable evidence, has yet to produce it.

A court's "discretion cannot be exercised so as to impair the constitutional right to prepared counsel; a 'myopic insistence upon expeditiousness in the face of a justifiable request for delay can render the right . . . an empty formality.'" See Reporter's Notes to Mass. R. Crim. P. 10, citing Commonwealth v. Cavanaugh, 371 Mass. 46, 51 (1976).

As grounds therefore, in the interests of justice and for cause, based on the three circumstances and the affidavits in support, the defendant's reasonable request for a continuance for 30 days should be granted. Failure to continue this matter results in a violation of the defendant's rights to fully participate in preparing for and participating in his trial, to have favorable evidence produced presently in the possession of

the Commonwealth, in violation of his rights to due process, a fair trial and the right to confront evidence and witnesses against him and to present evidence in his favor established by the 6th and 14th amendments to the Federal Constitution, art. 12 of the Massachusetts Declaration of Rights, and the common law and Mass. R. Crim. P. 10.

BRIAN WALSH

By his attorneys:

Larry Tipton

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DATED: October 3, 2025