

STATE OF NEW HAMPSHIRE RECEIVED
ROCKINGHAM
SUPERIOR COURT

SUPERIOR COURT

ROCKINGHAM, SS.

2007 NOV 19 A 11:05
NOVEMBER, 2007

STATE OF NEW HAMPSHIRE

v.

MICHAEL V. BENTON

07-S-1394 & 1395

NOTICE OF DEFENSES

NOW COMES the defendant, MICHAEL BENTON, by and through counsel, and hereby gives notice that he may rely upon the defenses of self-defense and/or defense of another at trial.

In support of this Notice, the following is stated:

1. Michael Benton is indicted for First Degree Murder, and Conspiracy to Commit Capital Murder.
2. RSA 627:4 provides that a person is justified in using physical force in defense of a person, whether that individual is the defendant or a third person. The statute specifically authorizes the use of deadly force upon

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another person when the actor believes that the other person is about to use unlawful, deadly force against the actor or a third person.

3. Although an accused has no obligation to provide any evidence or assert any defense in a criminal case, N.H. Const. Pt. 1, art. 15, the defense hereby gives notice that it may rely upon the defense of self-defense or defense of another should this matter proceed to trial. The defendant submits that, to the extent he did commit any of the elements of the above-mentioned crimes, he was legally justified and/or privileged in doing so.

4. When the accused raises and presents "some evidence" of a justification defense, he is entitled to a jury instruction on that defense. State v. Hast, 133 N.H. 747, 749 (1990). When such evidence is presented, the State must disprove the defense beyond a reasonable doubt. State v. Soucy, 139 N.H. 349, 352-53 (1995).

5. Defense counsel has not completed its review of the discovery in this matter, now totaling over 21,000 pages, and anticipates receiving additional discovery materials. The defendant's assented-to motion to extend the deadline for notice of defenses to the date originally scheduled by the court was denied. To the extent this

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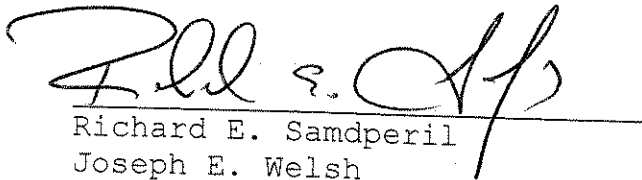
notice is considered untimely, the defense knows of no prejudice suffered by the State resulting from the delay and requests this Notice be entered and considered as if filed timely.

5. Accordingly, the defendant reserves the right to file additional pleadings supplementing this notice, to the extent that the discovery materials not yet reviewed or received provide an additional legal basis for doing so.

WHEREFORE, the defendant, Michael Benton, hereby gives Notice that he may rely upon those justification defenses set forth in RSA 627:4, and requests that the attendant rights and rules of law be accorded to him.

DATED: November 16, 2007.

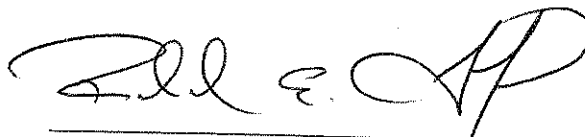
Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing NOTICE OF DEFENSES has been forwarded this 16th day of November, 2007, to the Office of the New Hampshire Attorney General.


Richard E. Samdperil