

Shift in strategy could mean Jennifer Dulos case goes to trial this year

By Lisa Backus



Norm Pattis, attorney for Fotis Dulos, speaks to the media at State Police Troop G in Bridgeport, Conn. Jan. 7, 2020.

A sudden shift in the defense's strategy could mean the Jennifer Dulos homicide case heads to trial this year.

Defense attorney Norm Pattis, representing Fotis Dulos on murder, felony murder, kidnapping and other charges in

connection with his estranged wife's death, said he will waive his client's right to a probable cause hearing when they appear Thursday in state Superior Court in Stamford.

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Pattis said last week he planned to request the probable cause hearing. He acknowledged there was a “low probability” the judge would rule in their favor, but said it was a “chance to hold Mr. Dulos’ accusers accountable.”

Pattis said the decision shifted this week based on legal strategy and his client’s desire for a quick trial.

In this case, the probable cause hearing would have been before Stamford Superior Court Judge John Blawie, who already felt there was enough probable cause for the charges when he signed the arrest warrants for Fotis Dulos.

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A probable cause hearing would likely have given Fotis Dulos’ legal team a little more information and the opportunity to attack the state’s evidence in his estranged wife’s homicide, according to defense attorneys who are not associated with the

case.

But they said convincing a judge to drop the murder charges is a different story.

“You’ve got nothing to lose by going ahead with (a probable cause hearing),” said Elliot Warren, a Westport defense attorney who mostly handles federal cases.

Probable cause hearings in murder cases were routine decades ago, said longtime criminal defense attorney Richard R. Brown. But in the last 10 to 15 years, defense attorneys have invoked the right to these hearings more sparingly, he said.

“There isn’t any question that (a judge) is going to find probable cause, the hearings were designed as a protection,” Brown said.

But defense attorneys realized the hearings could create future problems by introducing testimony from witnesses who may no longer be around when the trial occurs, he said.

Brown said he always waives his client’s right to a probable cause hearing, instead waiting for the prosecutor to turn over all evidence as required by law.

Every defendant in Connecticut charged with a crime carrying a life sentence or a life sentence without the possibility of parole

is eligible for a probable cause hearing, according to state law. Defendants can waive the right based on whether their attorney thinks it's a good strategic move.

"There are clearly times when you should waive it," said Gerald Klein, a Hartford defense attorney who is not associated with the Dulos case. "For instance, in a case where the primary witnesses are street people who are likely to be in the wind two years from now when the trial occurs, because even if they aren't there, the state can bring up their transcripts from the probable cause hearing."

A man police described as homeless who was spotted on videos taking what appeared to be a bloody pillow out of a trash can in Hartford could have posed a risk to the defense if he testified in the probable cause hearing.

The man told police he saw the bloody pillow in the trash where police say Fotis Dulos was caught on video dumping garbage bags that were found to contain his wife's blood and clothing, according to arrest warrants.

Police surmise in arrest warrants that the pillow was taken from the garage of Jennifer Dulos' home as part of the crime cleanup and later dumped in Hartford by Fotis Dulos along with the other bloodstained items, the arrest

warrants said.

The man is the type of witness who Klein said could come back to haunt a defense attorney. If the man testifies in the probable cause hearing, but doesn't show up for the trial, his remarks could still be used during the proceedings.

"I learned that the hard way 30 years ago," Klein said. "Barring that type of scenario, I always have a probable cause hearing. You're getting a preview of the state's case."

Under the hearing, a prosecutor must present enough evidence and testimony to allow a judge to determine whether probable cause exists to continue the case. Probable cause is a much lower standard than beyond a reasonable doubt, which is the standard juries must consider when convicting someone of a crime.

Defense attorneys usually seek a probable cause hearing for an arrest based on a police report or if a client is being held on bond, Warren said. The hearing gives a defense attorney an opportunity to argue for a lower bond during cross-examination based on the strength of the evidence, Warren said.

Pattis has been vocal about his theories about what happened to Jennifer Dulos, including suggesting she purposely vanished like the main character

in the novel "Gone Girl" to seek revenge against her estranged husband.

According to arrest warrants, police said Fotis Dulos was linked to the crime by video footage, witness statements and DNA samples found in his estranged wife's home.

His former girlfriend, Michelle Troconis, 45, has been charged with conspiracy to commit murder, tampering with evidence and hindering prosecution. His close friend and former attorney, Kent Mahwinney, 54, has been charged with conspiracy to commit murder. ■