

No. 23 - 5371

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AUG 11 2023

OFFICE OF THE CLERK  
SUPREME COURT, U.S.

In The  
**Supreme Court of the United States**

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Judith Tompson, *Petitioner*

v.

State of New Hampshire, *Respondent*

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On Petition For Writ of Certiorari  
To The United States Supreme Court  
From  
The New Hampshire Supreme Court

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**PETITION FOR WRIT OF CERTIORARI**

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QUESTIONS PRESENTED

1. Whether the NH Supreme Court should allow a NH district court judge to prosecute cases from the bench; as a former Conway prosecutor, while using active police officers as prosecutors at trial when NH requires all attorneys acting before the NH courts be NH licensed attorneys in the state with further requirements that attorneys licensed in other states be shadowed by a NH licensed attorney before the tribunal.
2. Whether a defendant receives a fair trial, while prosecuted by an active police officer at trial, with no license to practice law in the state after receiving a citation from the same police department the prosecuting police officer works in within the city when the complainant and witness is the City Mayor.
3. Whether the NH Supreme Court erred in determining harmless error.
4. Whether the NH Supreme Court erred in failing to strike Berlin NH Ordinance Section 13-4.
5. Whether the two (2) police officers issuing the citation violated state law RSA 105-D:2.
6. Whether defendant's privacy rights were violated by being videotaped on her private property twice without required Notice by the initial police officer as mandated by RSA 105-D:2.
7. Whether Police Officer Joshua White violated RSA 105-D:2 when he knowingly and admittedly failed to notify Defendant she was being recorded via police body camera on two separate occasions. Raised and preserved for appeal via Court Hearing dated 04/28/2022. Police Narrative Admission. Plain Error Issue. Hearing, p.5 §19-23. Trial, p. 40, §6-11. Trial, p. 49, §10-23.
8. Whether the NH courts erred in failing to issue an arrest warrant for Berlin Police Officer Joshua White for RSA 105-D:2 violations. Raised and preserved for appeal via Hearing dated 04/28/2022. Plain Error Issue.
9. Whether the NH Supreme Court erred in failing to reverse the case due to Police Misconduct of RSA 105-D:2 violations.
10. Whether the NH Supreme Court erred in allowing body camera photographs as evidence against Defendant in this case upon appellate review.
11. Whether the NH Supreme Court erred in failing to review Defendant's Motion to Dismiss Due to Police Violation of Law, dated 06/06/22. Raised and preserved for appeal via Hearing dated 04/28/22. Raised and preserved for appeal via filed Motion to Dismiss Due to Police Violation of Law, dated 06/06/22. Plain Error Issue. Trial, p. 47, §1-5.
12. Whether the NH Supreme Court erred in failing to address the police admission raised by Motion in Response to Plaintiff Objection, dated 06/10/22, to be discussed at trial as defense. The Motion was not denied by the Court. The Court stated, "Defendant shall not file any other pleadings prior to trial where she may present her defense." The Court refused to allow Defendant the right to address the issue at trial. The issue is a full Admission by police. Plain Error Issue. Trial, p. 47, §11-25.
13. Whether the NH Supreme Court erred in refusing to address the issues raised by Motion for Reconsideration to Strike Berlin Ordinance Section 13-4, dated 06/17/22, to be discussed at trial as defense. The Motion was not denied by the Court. The Court stated, "Defendant shall file no further pleadings prior to trial." The Court refused to allow Defendant the right to address the issue at trial. Plain Error Issue. Hearing p.4, §12-13. Trial, p. 47, §11-25.

## LIST OF PARTIES

A list of all parties to the proceeding *State of New Hampshire v. Judith Tompson*, Case No. 2022-0401, in the court whose judgment is the subject of this petition is as follows:

- The City of Berlin, New Hampshire
- The State of New Hampshire [AG Office declined action in Supreme Court appellate review]
- Judith Tompson

## RELATED CASES

Supreme Judicial Court of Massachusetts, *COMMONWEALTH v. Jerome MORRIS*, SJC-12835, Decided: July 25, 2023.

Supreme Judicial Court of Massachusetts, *COMMONWEALTH v. Charee RAINES*, SJC-13285, Decided: April 06, 2023.

*Curtatone v. Barstool Sports, Inc.*, 487 Mass. 655, 658-659, 169 N.E.3d 480 (2021).

*Commonwealth v. Morganti*, 455 Mass. 388, 395, 400-401, 917 N.E.2d 191 (2009).

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IN THE  
SUPREME COURT OF THE UNITED STATES  
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The opinion of the highest state court is the New Hampshire Supreme Court, which reviewed the merits. The opinion appears at Appendix A to the petition and is unpublished.

JURISDICTION

The date on which the highest state court decided the case was on 05/19/2023. A copy of that decision appears at Appendix A. The jurisdiction of this Court is invoked under 28 U. S. C. §1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

**TITLE 18, U.S.C., SECTION 242 states:** Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any person in any State, Territory, Commonwealth, Possession, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, ... shall be fined under this title or imprisoned not more than one year, or both; and if bodily injury results from the acts committed in violation of this section or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire, shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse, or an attempt to commit aggravated sexual abuse, or an attempt to kill, shall be fined under this title, or imprisoned for any term of years or for life, or both, or may be sentenced to death.

**RSA 105-D:2. Use of Body-Worn Cameras** states, in part: This chapter shall apply to any law enforcement agency that elects to equip its law enforcement officers with body-worn cameras (BWC). All BWCs shall be operated in a manner consistent with the provisions of this chapter. RSA 105-D:2(I). Officers shall activate the video and audio components of BWCs and start recording upon arrival on scene of a call for service or when engaged in any law enforcement-related encounter or activity, or, if so required by local policy, upon activation of lights and siren; provided, however, that in those cases set forth in subparagraphs VII(d) and (e), and paragraph IX in which an individual has a right not to be recorded, officers shall inform an individual of this option. If a citizen then declines to be recorded, the officer shall deactivate the audio and video functions. The officer shall document the reason why the camera was not activated in the associated police report. RSA 105-D:2(V). Recordings shall be specific to an incident. Officers shall not indiscriminately record entire duties or patrols. RSA 105-D:2(VI). In locations where an individual has a reasonable expectation of privacy, such as a residence, a restroom, or a locker room, a citizen may decline to be recorded unless the recording is being made while executing an arrest warrant,

or a warrant issued by a court, or the officer is in the location pursuant to a judicially-recognized exception to the warrant requirement. Officers shall inform an individual of this option. If a citizen then declines to be recorded, the officer shall deactivate the audio and video functions, and any images shall, as soon as practicable, be permanently distorted or obscured. The officer shall document the reason why the camera was not activated in the associated police report. RSA 105-D:2(IX).

The use of the word "shall" establishes a mandatory duty. *Ford v. N.H. Department of Trans.*, 163 N.H. 284, 296, 37 A.3d 436 (2012). New Hampshire recording law stipulates that it is a two-party consent state. The recording of oral or electronic communications between parties who were under a reasonable expectation of privacy without the consent of all involved is a felony offense. N.H. Rev. Stat. Ann. §570-A:2. In New Hampshire, to find plain error there must be error; the error must be plain; and the error must affect substantial rights. *State v. Thomas*, 168 N.H. 589, 604 (2016). The general rule is that evidence must be excluded if it is discovered as a result of police misconduct. *State v. Holler*, 123 N.H. 195, 199 (1983). "The exclusionary rule enjoins the Government from benefiting from evidence it has unlawfully obtained." *United States v. Crews*, 445 U.S. 463, 475 (1980).

A judge should maintain and enforce high standards of conduct and should personally observe those standards, so that the integrity and independence of the judiciary may be preserved. *Code of Conduct for U.S. Judges*, **Canon 1. A Judge should avoid Impropriety and avoid the Appearance of Impropriety**. A judge should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. *Code of Conduct for U.S. Judges*, **Canon 2(A)**. A judge should not allow family, social, political, financial, or other relationships to influence judicial conduct or judgment. *Code of Conduct for U.S. Judges*, **Canon 2(B). A Judge should perform the duties of the office fairly, impartially, and diligently**. The judge should perform those duties with respect for others, and should not engage in behavior that is harassing, abusive, prejudiced, or biased. *Code of Conduct for U.S. Judges*, **Canon 3**.

A trial error differs markedly from violations that are structural defects in the constitution of the trial mechanism and thus defy analysis by harmless-error standards. *Gideon v. Wainwright*, 372 U.S. 335, 83 S.Ct. 792, 9 L.Ed.2d 799. It is also not the type of error that transcends the criminal process. The elements of the defense of unclean hands are: (1) Plaintiff is guilty of conduct involving fraud, deceit, unconscionability, or bad faith; (2) This conduct by plaintiff directly relates to the matter at issue; (3) This conduct injured the defendant; and (4) This conduct affected the balance of equities between the litigants in such a way that, in light of plaintiff's conduct, plaintiff should not be permitted any remedy against defendant. *In re New Valley Corp.*, 181 F.3d 517, 523 (3d Cir. 1999). The principle of "unclean hands" dictates that "he who comes into equity must come with clean hands." *Thigpen v. Kennedy*, 238 So. 2d 744, 746 (Miss. 1970).

A driveway is a permanent structure attached to real property. 26 CFR §1.856-10(a) defines real property. The term real property means land and improvements to land. Further, local law definitions are not controlling for purposes of determining the meaning of the term real property. 26 CFR §1.856-10(b). The term inherently permanent structure means any permanently affixed building or other permanently affixed structure. Affixation may be to land or to another inherently permanent structure and may be by weight alone. If the affixation is reasonably expected to last indefinitely based on all the facts and circumstances, the affixation is considered permanent. 26 CFR §1.856-10(d)(2)(i). An expectation of privacy extends to the driveway as part of the home. The expectation of privacy test, originated from *Katz v. United States* is a key component of Fourth Amendment analysis. The Fourth Amendment protects people from warrantless searches of places or seizures of persons or objects, in which they have an subjective expectation of privacy that is deemed reasonable in public norms. The test determines whether an action by the government has violated an individual's reasonable expectation of privacy. In *Katz*, Justice Harlan created the Reasonable Expectation of Privacy Test in his concurring opinion. This test has been the main takeaway of the case. Justice Harlan created a two-part test: (1) An individual has exhibited an actual, subjective expectation of privacy; and (2) The expectation is one that society is prepared to recognize as reasonable. If both of these requirements have been met, and the government has taken an action which violates this "expectation," then the government's action has violated the individual's Fourth Amendment rights. *Katz v. United States*, 389 U.S. 347 (1967). According to the Supreme Court in *Rakas*, the "expectation of privacy must have a source outside of the Fourth Amendment either by reference to concepts of real or personal property law or to understandings that are recognized and permitted by society." *Rakas v. Illinois*, 439 U.S. 128 (1978).

The constitutionality of a statute is a question of law. *State v. Bortner*, 150 N.H. 504, 510, 841 A.2d 80 (2004). We therefore review the trial court's determination de novo. A statute "may be impermissibly vague because it fails to establish standards for the police and public that are sufficient to guard against the arbitrary deprivation of liberty interests." *Chicago v. Morales*, 527 U.S. 41, 52, 119 S.Ct. 1849, 144 L.Ed.2d 67 (1999). "Vagueness may invalidate a criminal law for either of two independent reasons." *Id.* at 56, 119 S.Ct. 1849. "First, if it fails to provide people of ordinary intelligence a reasonable opportunity to understand what conduct it prohibits." *Hill v. Colorado*, 530 U.S. 703, 732, 120 S.Ct. 2480, 147 L.Ed.2d 597 (2000). "Second, if it authorizes or even encourages arbitrary and discriminatory enforcement." *Id.* A statute encourages arbitrary enforcement where it promotes application on an "ad hoc and subjective basis." *Grayned v. City of Rockford*, 408 U.S. 104, 109, 92 S.Ct. 2294, 33 L.Ed.2d 222 (1972).

All public roads, and sidewalks, are owned and operated by the city or town management in each New Hampshire jurisdiction. Municipalities have a duty to maintain Class IV and Class V roads and the bridges and sidewalks along those roads. RSA 231:59; RSA 231:62. Maintenance includes plowing, salting and sanding as needed to keep the roads passable. *Ritzman v. Kashulines*, 126 N.H. 286 (1985).

Municipalities have legal authority to spend public money to maintain only Class IV and Class V roads, sidewalks, and bridges. RSA 231:59.

A party is permitted to plead any claim, or defense, so long as it is not completely frivolous. *Sierra Madre Dev., Inc. v. Via Entrada Town Assn.*, 20 Ariz. App. 550, 554, 514 P.2d 503, 507 (1973). The exclusionary rule prevents the government from using most evidence gathered in violation of the United States Constitution. The recording of oral or electronic communications between parties who were under a reasonable expectation of privacy without the consent of all involved is a felony offense. N.H. Rev. Stat. Ann. §570-A:2. The evidence was tainted. We apply the following factors to determine whether any taint had been purged: (1) the temporal proximity between the police illegality; (2) the presence of intervening circumstances; (3) the purpose and flagrancy of the official misconduct. *Brown v. Illinois*, 422 U.S. 590, 603–04, 95 S.Ct. 2254, 45 L.Ed.2d 416 (1975). A theory of defense allows a defendant to point to facts that excuse, exonerate, or justify his actions such that he thereby escapes liability. *State v. Guaraldi*, 124 N.H. 93, 97 (1983). “Every subject shall have a right to produce all proofs that may be favorable to himself...and to be fully heard in his defense.” N.H. CONST. pt. I, art. 15. Fundamental fairness requires conduct conform to the community's sense of justice, decency and fair play. *Saviano v. Director, N.H. Div. of Motor Vehicles*, 151 N.H. 315, 320, 855 A.2d 1278 (2004).

#### STATEMENT OF THE CASE

In February 2022, the Defendant's driveway had been completely blocked after the City snowplow came through. Defendant moved the snow blocking her driveway to the left of the property. The snow was moved from the street in front of the egress to the left on top of existing snow on the street. The accumulation was from the entire snow season after two consecutive major snow-storms. The City Mayor, Paul Grenier, made a personal phone call to newly hired Chief of Police Daniel Buteau. The call was recorded by police as made by Mayor Paul Grenier, acting as Mayor, directly and personally to the Chief. The call was not made through the police station call center.

The Chief of Police was the former police prosecutor, as an active officer, and was promoted to Chief one (1) month prior to the incident in this case. Reportedly, the Chief is a community college graduate with a math degree. As told to Defendant by Chief Daniel Buteau via telephone: At approximately 5am the next morning, the current Chief of Police was driving in the area. Reportedly, the Chief called CityWorks. Via telephone with the Defendant, the Chief was angry he had to view a snow pile, and make the call to Cityworks, even though it is stated in the city snow policy manual that police call the city after hours.

The City Mayor personally called the newly hired Chief of Police over a pile of snow. Traffic moved on the street without incident, although the Mayor claimed obstruction. An officer was dispatched and parked in Defendant's driveway. Defendant was recorded on bodycam twice, once on 02/08/22 and once on 02/11/22, and was not informed by police either time. Two officers were present on 02/11/22.

Defendant realized Paul Grenier, as Mayor, filed the complaint only after receiving discovery. Defendant realized she had been videotaped only when she received discovery. The videocam CD improperly stated "Arrest" on the disk. The body camera video was not introduced as evidence. However, photographs from the bodycam video were produced, and admitted as evidence, above Defendant's objections. Prior to trial, all Motions filed by Defendant were denied without hearing. Two Motions were not documented as denied; however, the Court refused to hear/address the issues. There were no scheduled opening or closing statements at trial. Defendant requested to be heard and was allowed to speak briefly only prior to sentencing. The Court denied Defendant's Motions to Compel Production of Documents. The Court denied/refused to allow Defendant to produce any evidence at trial. The Judge refused to review the City Ordinance upon filed Motions. On 04/29/22, trial ensued with a guilty verdict. Photos from the body camera were admitted by the Court. One photograph was reportedly of the Defendant, in this case, standing in her driveway. The police prosecutor is not a licensed NH attorney, but an active police officer. The prior prosecutor was Daniel Buteau, the current Chief. As a former attorney and Conway prosecutor, in bias agreement with police, the Court convicted Defendant and issued a fine; which was ordered by the Court to be paid in full on the date of trial. The NH Supreme Court stated harmless error and affirmed.

At the initial hearing, on 04/28/22, on record Defendant informed the Court that she was not told she was videotaped by police body camera. Hearing, p.5, 18-24. At the initial hearing, the Court had an obligation to instruct the prosecution to report back to the Court to verify the statement made by Defendant regarding police violation of law. No instruction was given. The RSA 105-D:2 violation indicates the officer broke the law related to the case at bar. The Court dismissed the issue in its entirety. At Hearing, the Court responded: "Okay...that will be something to bring up at trial or in a pretrial motion." Hearing, p.5, §25. Hearing, p.6, §1. The Court denied all pretrial motions filed without any hearings on any motions filed by Defendant. The Court refused to allow Defendant to cross-examine the officer regarding the bodycam video at trial. The Officer violated state statute, which should have been addressed by the Court upon notice on record. The issue was preserved for appeal via hearing and motions filed. The NH Supreme Court ignored the issue upon review.

In its Supplemental Narrative, Officer White wrote: "On Thursday, 06/02/22, I learned that I forgot to advise...[Defendant] that she was being recorded by my body-worn camera...This interaction took place outside of her home, primarily in her driveway and roadway." In fact, the photographs taken, from the police body camera, were filmed in Defendant's driveway. Officer Joshua White knew he recorded Defendant on two occasions. Officer Nathan Roy knew, or should have known, Officer White was actively recording Defendant in his presence. Officer Roy outranks Officer White. Chief Daniel Buteau knew Defendant filed subsequent written complaints against the two officers for statute violations. The Chief failed to respond and improperly allowed prosecution to commence. The photographs, improperly admitted as evidence, were tainted and should not have been admitted at trial. This is error.

## REASONS FOR GRANTING THE PETITION

Petitioner filed a nineteen (19) page Brief to the appellate court for review. The Brief was accompanied by a sixty-nine (69) page Appendix with Exhibits A through Z and Exhibits AA through JJ attached.

Sixteen (16) Motions were filed by Defendant with the trial court. Defendant was denied the admission of any Exhibits submitted at trial. All Trial Transcripts are on record with the NH Supreme Court in this case. The police admitted Defendant had not been told she was being recorded via police body camera in its supplemental narrative. [Appendix: Exhibit O, p.29]. The NH Supreme Court ignored the issue of police violation of state law and the privacy issue of unknowingly being filmed on her private property.

The trial court erred in denying all Motions filed by the Defendant, which includes: The Motion to Strike Evidence, dated 05/31/22. Preserved for appeal via motion. The Motion for Reconsideration to Strike Evidence, dated 06/17/22. Preserved for appeal via motion. The Motion to Strike Berlin Ordinance Section 13-4, dated 05/26/22. Preserved for appeal via motion. The Motion for Reconsideration to Strike Berlin Ordinance Section 13-4, dated 06/17/22. Preserved for appeal via motion. The Motion to Dismiss Due to Mootness, dated 06/06/22. Preserved for appeal via motion. The Motion for Reconsideration to Dismiss the Case, dated 06/17/22. Preserved for appeal via motion. The Motion for City Cease and Desist Order, dated 06/06/22. Preserved for appeal via motion. The Motion for Reconsideration for a City Cease and Desist Order, dated 06/17/22. Preserved for appeal via motion. The Motion in Response to Plaintiff Objection, dated 06/17/22. Preserved for appeal via motion. The Motion to Compel Production of Documents, dated 06/06/22. Preserved for appeal via motion. The Motion for Reconsideration to Compel Production of Documents, dated 06/17/22. Preserved for appeal via motion. The Motion to seal All Court Documents, dated 05/12/22. No objection to the motion was filed by the plaintiff. Preserved for appeal via motion. The NH Supreme Court failed to address the trial court's refusal to address all motions filed by Defendant or why all motions were denied without a hearing.

The NH Supreme Court allowed the trial court to violate the Defendant's right to a fair trial in denying every motion filed by Defendant; refusing to allow discovery by Defendant; refusing to admit any evidence presented by Defendant; Court discontinued cross-examinations; and pre-judged guilt before asking Defendant if she was to testify. Plain Error Issue. Hearing p. 3, §11-12. Hearing p.4, §10-11. Hearing p.5, §3-5. Hearing p.5, §12-13. Hearing, p.7 §2-6. Trial, p. 26, §10-12. Trial, p. 34, §9-25. Trial, p. 40, §12-14. Trial, p. 50, §1-6. Trial, p. 61, §5-9. Trial, p. 61, §17-21. Trial, p. 62, §2. Trial, p. 64, §2-8. Trial, p. 65, §9-25. Trial, p. 64, §24-25. Trial, p.65, §9-10. Trial, p. 66, §1-16. Trial, p. 66, §24. Trial, p. 67, §1-2. Trial, p. 69, §14-18. Trial, p. 70, §5. At trial, the Defendant was prosecuted by an active police officer not licensed to practice law in the state and actively employed by the same police department issuing the citation in this case. The state eyewitness was the City Mayor. The state witness was the officer that videotaped Defendant without the mandated state notification.

Photos from the police body-camera were admitted into evidence even though police violated state statute RSA 105-D:2. Petitioner requested the NH Supreme Court determine plain error and/or judicial misconduct; reverse and/or overturn the conviction; strike Berlin Ordinance §13-4; determine Police Violations of RSA 105-D:2; and grant any further relief as deemed proper, just, and equitable.

### CONCLUSION

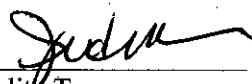
The NH Supreme Court erred in determining harmless error. The right to privacy in and around one's home is fundamental. The NH police knowingly violated RSA 105-D:2. Upon Notice, the Chief of Police failed to investigate the issue. The trial court ignored the police violations. The NH Supreme Court failed to address the issues presented by Petitioner on appeal. The Berlin NH Ordinance §13-4 should be stricken as vague, overbroad, and unconstitutional. The issue was ignored by both New Hampshire presiding courts. It is unclear why the trial court refused to review the ordinance, upon filed motions, as it was the basis of the violation accusation in the case. The NH Supreme Court has sole responsibility to review established law and ignored the request upon filed Brief and Appendix in this case. The Appendix was a complete case file of all motions filed in the lower court. More disturbing is that the state's highest court ignored review of the obvious and admitted police misconduct. "Forgetting" to disclose videotaping someone on their private property, which is mandated by state statute, by an officer under the color of law, is egregious. Petitioner knew she had been videotaped only when she received discovery in preparation for trial. Had the case not gone to trial, Petitioner never would have known she was recorded twice, once in her driveway and once on her back porch, by police required to disclose the body-camera recording in the State of New Hampshire. The repeated officer omissions culminate to police misconduct and a reckless, willful, and shocking abuse of power.

Petitioner respectfully requests the United States Supreme Court determine plain error and/or judicial misconduct; reverse and/or overturn the conviction; strike Berlin Ordinance §13-4; determine Police Violations of RSA 105-D:2; and grant any further relief as deemed proper, just, and equitable.

The petition for a writ of certiorari should be granted.

Signed this 11<sup>th</sup> day of August 2023.

Respectfully Submitted,

  
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Judith Tompson, pro se