

Docket No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

BRIM BELL—PETITIONER

VS.

STATE OF NEW HAMPSHIRE

RE: THE NEW HAMPSHIRE SUPREME COURT

Case No. 2019-0047

OPINION ISSUED: August 16, 2022

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APPENDIX A

AUG 26 2023

NOTICE: This opinion is subject to motions for rehearing under Rule 22 as well as formal revision before publication in the New Hampshire Reports. Readers are requested to notify the Reporter, Supreme Court of New Hampshire, One Charles Doe Drive, Concord, New Hampshire 03301, of any editorial errors in order that corrections may be made before the opinion goes to press. Errors may be reported by email at the following address: reporter@courts.state.nh.us. Opinions are available on the Internet by 9:00 a.m. on the morning of their release. The direct address of the court's home page is: <https://www.courts.nh.gov/our-courts/supreme-court>

THE SUPREME COURT OF NEW HAMPSHIRE

Strafford
No. 2019-0047

THE STATE OF NEW HAMPSHIRE

v.

BRIM BELL

Argued: February 17, 2022
Opinion Issued: August 16, 2022

Office of the Attorney General (Weston R. Sager, attorney, on the brief, and Elizabeth C. Woodcock, senior assistant attorney general, orally), for the State.

Anthony J. Naro, assistant appellate defender, of Concord, on the brief, and Thomas A. Barnard, senior assistant appellate defender, orally, for the defendant.

Brim Bell, the defendant, filed a supplemental brief with permission of the court.

HICKS, J. The defendant, Brim Bell, appeals his convictions, following a jury trial in Superior Court (Howard, J.), on four class A felony counts of theft by deception. See RSA 637:4, :11, I (2016). We affirm.

The jury could have found the following facts. The defendant ran a business at several New Hampshire locations restoring primarily Volkswagen vehicles. Between January 1, 2011 and November 17, 2015, each of the victims, A.M., J.M., J.K., and J.T., hired the defendant to restore a vehicle. During the time the defendant had their vehicles, he repeatedly asked each of the victims to send him more money, ostensibly for parts or other expenses related to the restoration of their vehicles. Each victim made a series of payments to the defendant, totaling the following amounts: \$81,900 from A.M.; \$24,100 from J.M.; \$11,521 from J.K.; and \$55,055 from J.T. None of the victims received a restored car back from the defendant.

The defendant testified to a series of events that negatively affected his business during 2010 and 2011 and increased his debt. As a result, at the end of 2011, the defendant started gambling at casinos. He testified that his “plan was to save the business.” The defendant admitted that he gambled with some of his customers’ money and that none of them gave him permission to do so. Instead, he “thought it made sense to keep it a classified situation” and “not something to advertise and boast to [his] clients about.” In 2016, the defendant left New Hampshire, owing the landlord of one of his facilities between \$150,000 and \$180,000.

In 2018, the defendant was indicted on six counts of class A felony theft by deception. The indictments were substantially similar, alleging, in relevant part, that “pursuant to one scheme or course of conduct,” the defendant:

obtain[ed] or exercise[d] unauthorized control over U.S. currency, the property of [the identified victim] by deception, with a purpose to deprive [the victim] thereof, in that [the defendant] created or reinforced the false impression that he was repairing [the victim’s] vehicle, which was false and which [the defendant] did not believe to be true, in order to continue to receive payments for repairs that were not being performed, the value of which exceeded \$1,500.00.

The State moved to join the offenses for trial, arguing that they were: (1) “part of a common scheme or plan”; (2) “so logically and factually connected that they cannot reasonably be separated for the purposes of trial”; and (3) “connected in a manner that does not solely demonstrate that the accused has a propensity to engage in criminal conduct.” See N.H. R. Crim. P. 20. The defendant objected. The trial court granted the State’s motion, concluding that “the charges are so clearly part of a common scheme or plan as to defy further explanation.”

Following a jury trial, the defendant was convicted on four counts and acquitted on two. He now appeals his convictions, arguing that the evidence was insufficient to convict him and that the trial court erred in granting the State's motion for joinder. He raises additional issues in a pro se supplemental brief filed with this court's permission. See State v. Belton, 150 N.H. 741, 750 (2004).

I. Sufficiency of the Evidence

We first address the defendant's challenges to the sufficiency of the evidence. "A challenge to the sufficiency of the evidence raises a claim of legal error; therefore, our standard of review is de novo." State v. Vincellette, 172 N.H. 350, 354 (2019). "To prevail upon a challenge to the sufficiency of the evidence, the defendant must prove that no rational trier of fact, viewing all of the evidence and all reasonable inferences from it in the light most favorable to the State, could have found guilt beyond a reasonable doubt." Id.

The defendant argues that "the State failed to prove beyond a reasonable doubt that [he] created or reinforced the false impression that he was repairing the alleged victims' vehicles when he obtained money from them" because the evidence failed to "establish that [he] was not working on each person's vehicle." More specifically, the defendant argues that because the indictments allege the deception element to be the creation or reinforcement of "the false impression that he was repairing [the victims'] vehicle[s]," the State was required to prove that he "had not done anything to 'repair' the cars when he represented that he had." He contends that the evidence established, to the contrary, that he "was working on each person's vehicle when he requested money from them" even though he was "moving at a snail's pace."

Contrary to the defendant's contention, the State was not required to prove that he had done nothing to repair the victims' cars. The State was required to prove that the defendant "obtain[ed] or exercise[d] control over property of another by deception and with a purpose to deprive him thereof." RSA 637:4. To prove the element of deception as charged, the State was required to prove that the defendant purposely "[c]reate[d] or reinforce[d] an impression which is false and which [the defendant] does not believe to be true, including false impressions as to . . . intention or other state of mind." RSA 637:4, II(a). As detailed below, the State proved that the defendant obtained money from each victim by creating or reinforcing the false impression that the money was going to be used to buy parts for, or otherwise applied to the repair of, the victim's vehicle, when, in fact, the defendant used the money for his own purposes, including gambling at a casino.

In addition, "to obtain a conviction for class A felony theft by deception, the State need only prove, in addition to the elements set forth in RSA 637:4, I, that the property taken was valued at more than [\$1,500]." State v. French,

146 N.H. 97, 100 (2001); see RSA 637:11, I(a). Thus, the jury need not have found that all of the money the defendant received from each victim was obtained in violation of RSA 637:4; rather, it need only have found that at least \$1,500 from each victim was so obtained. See French, 146 N.H. at 98-99, 105 (noting, in appeal from conviction for theft by deception of workers' compensation benefits, that "the State was not required to prove theft of the entire \$25,000 [lump sum settlement], and therefore the defendant's entitlement to a portion of the lump sum settlement is not inconsistent with a verdict of guilty of the offense charged").

With these principles in mind, we now examine the evidence with respect to each victim.

A. A.M.

The jury could have credited A.M.'s testimony that the defendant often asked her for more money, giving as reasons that "[p]arts [were] costing more," or "finding that more things that he needed would cost more than he had estimated." The jury heard extensive evidence of checks and wire transfers from A.M. posting to the defendant's bank account and withdrawals made at various casinos so close in time to those deposits that the jury could reasonably infer that the defendant intended to use that money for gambling and knew that the reasons he gave A.M. for needing that money were false. To give just one example, the jury could have found that on February 27, 2014, the defendant's bank account had a balance of "[n]egative \$255.48." On February 28, the defendant made two balance inquiries on that account at automated teller machines at Mohegan Sun Casino. That same day, a wire transfer from A.M. in the amount of \$2,500 posted to the defendant's account. Two withdrawals from that account were made that same day at Mohegan Sun in the amounts of \$2,000 and \$604.50. Accordingly, the evidence was sufficient to convict the defendant of class A felony theft by deception from A.M.

B. J.M.

The jury could have credited J.M.'s testimony that the defendant asked him for more money "[i]nitially, . . . because there was more rust in the car than he had anticipated," and later, "for various reasons: to buy parts or paint or that he needed the additional money to complete the car." As with regard to A.M., the jury heard evidence of checks and wire transfers from J.M. posting to the defendant's bank account, followed closely by withdrawals at various casinos. For example, the jury could have found that on February 19, 2013, the balance in the defendant's bank account was "[n]egative \$450.54." On February 21, the defendant made four balance inquiries on that account at Mohegan Sun. That same day, J.M. wire transferred \$2,000 into that account, and the defendant made a debit card purchase at Mohegan Sun in the amount

of \$1,065.95, and then a second in the amount of \$604.50. Accordingly, the evidence was sufficient to convict the defendant of class A felony theft by deception from J.M.

C. J.K.

The jury could have credited J.K.'s testimony that he sent his vehicle to the defendant's garage for restoration on November 17, 2015. The plan for restoration was to "sandblast [the car], get rid of and repair all the rust, the body work, the ruffles, paint it, and basically give [J.K.] back a show car." The original estimate for the job was \$8,000 plus an additional \$1,000 for sandblasting, for a total of \$9,000, with a payment schedule of \$1,000 per month. Nevertheless, J.K. testified, "[t]he first month, [the defendant] had already tried to hit me up twice for payments. Twice more the month after that." The defendant "would call [J.K.] up, requesting money for this, that, the other thing," getting "to the point where [the defendant] was harassing [him] for money." Between November 17, 2015 and May 3, 2016, J.K. made eleven payments totaling \$11,520.59 to the defendant with the understanding that the money "was going to work on [his] car."

The defendant verbally "gave [J.K.] indication that there was work being done on [his] car" and "sent [J.K.] false photos of cars that he claimed was [J.K.'s] car that he had done work on." At some point, J.K. told the defendant he was coming to inspect his car. The defendant said he needed another week, which J.K. gave him. When J.K. "went up and inspected [his] car, . . . what [he] found was not a sandblasted prime[d] car, which [the defendant] had sent [him] a photo of." The car was "stripped down to the bare shell" and all the defendant had done was take off the pan, cut off the rear apron and "just rubbed some paint thinner on it, some paint stripping, to make it look like he had been doing some work," but which J.K. thought anyone could have done in 45 minutes. J.K. gave the defendant 30 days to "get his act together and get some work done," but when J.K. picked up his car in June 2016, after the defendant's landlord told J.K. he had to retrieve his car, "maybe a half hour['s] worth of [additional] work" had been done.

From this evidence, the jury could have found that J.K., under the impression that the money "was going to work on [his] car," paid the defendant more than \$1,500 over: (1) the total contract price (\$9,000); (2) the total payments due between November 2015 and May 2016 (\$7,000); and (3) the established minimal value of the work the defendant performed on J.K.'s car. The jury also could have found that the defendant created the false impression that he was performing more work on J.K.'s car than he actually was, and that he needed more money to continue restoration work that was not actually being performed. In J.K.'s words, the defendant "sent me pictures of other people's cars and said it was mine to show that there was work being done on my car, which . . . clearly . . . there wasn't. To show me that hey, I'm doing

work, I need more money.” From this and other evidence, the jury could have found that the defendant acted purposely in putting over \$1,500 of J.K.’s money to his own personal use rather than toward repairing the car. Accordingly, the evidence was sufficient to convict the defendant of class A felony theft by deception from J.K.

D. J.T.

The jury could have credited J.T.’s testimony that he shipped his car to the defendant in January 2011 to modify it into a “hot rod.” The project included work “to replace the motor, and do some body work, and new interior, new top,” with an initial estimate of 8 to 12 months for completion and an initial budget of “around 25- to 30,000” dollars. Within three weeks of shipping the vehicle, J.T. paid the defendant \$20,000 to get the project started, thinking that “most of it would be for the motor and the body work.” Thereafter, the defendant asked J.T. for more money, “always for parts.” Sometimes the defendant asked J.T. to send the money to another person, ostensibly for parts for J.T.’s car. One of the third parties to whom J.T. was asked to send money “for parts” was J.K., although J.K. testified that he never sold car parts to the defendant. The evidence showed that between January 17, 2011, and August 2, 2016, J.T. made 24 payments totaling \$55,055 to the defendant or to others at the defendant’s direction.

The State introduced evidence of transactions posted to one of the defendant’s bank accounts through admission of the bank records as a full exhibit and the testimony of the detective who subpoenaed the defendant’s bank records, which highlighted certain transactions contained in those records. As detailed below, the jury could have found from that evidence that during a time frame in which the defendant was gambling at Mohegan Sun, he received a substantial sum of money from J.T. and used at least \$1,500 of it at the casino for his own purposes.

According to the detective’s testimony, the defendant’s bank records showed transactions at Mohegan Sun on September 5 and 6, 2013, leaving him with an account balance of “[n]egative \$184.33.” On September 9, a \$7,500 wire transfer from J.T. posted to the account. That same day, the defendant withdrew \$600 from an automated teller machine in Dover and then spent \$44.50 at Mohegan Sun. On September 10, there was a debit withdrawal from the account in the amount of \$2,800. Although the detective did not testify as to the location of the withdrawal, his testimony indicates that the location would have been shown on the bank records themselves. As the appealing party, the defendant had the burden to provide this court with a record sufficient to decide his issues on appeal. Bean v. Red Oak Prop. Mgmt., 151 N.H. 248, 250 (2004); see State v. Sachdev, 171 N.H. 539, 549 (2018) (citing same). Because the defendant failed to provide us with the bank account

exhibits, we must assume that the bank records support the jury's verdict. See Sachdev, 171 N.H. at 549. Accordingly, from this and other evidence, the jury could have found that the defendant used at least \$1,500 he obtained from J.T., under the false impression that it would be used to buy parts for J.T.'s car, in order to gamble. Thus, the evidence was sufficient to convict the defendant of class A felony theft by deception from J.T.

The defendant nevertheless argues that “[t]o the extent that the trial court relied on a finding that the evidence supported a finding, beyond a reasonable doubt, that the money was not used for parts, but rather to gamble, the State's indictments did not contain any such allegation.” The State was not required, however, to allege how the defendant ultimately used the money he obtained from his victims, because an indictment “need not state the specific means by which the crime was carried out.” State v. Hermsdorf, 135 N.H. 360, 366 (1992). Rather, “[a]n indictment is generally sufficient if it uses the language of the applicable statute.” Id. “The question is not whether the indictment could be more certain and comprehensive, but whether it contains the elements of the offense and enough facts to warn the accused of the specific charges against him.” Id. (quotations and ellipsis omitted). An allegation that the defendant used money he deceptively obtained from his victims “to gamble” was not required in order to meet that standard.

II. Joinder

The defendant next argues that the trial court erred in granting the State's motion for joinder. “We will uphold the trial court's decision to join the charges unless we conclude that the decision constitutes an unsustainable exercise of discretion.” State v. Breed, 159 N.H. 61, 68 (2009). “To show that the trial court's decision is unsustainable, the defendant must demonstrate that the ruling was clearly untenable or unreasonable to the prejudice of his case.” Id.

Rule 20 of the Rules of Criminal Procedure provides that “[i]f a defendant is charged with two or more related offenses, either party may move for joinder of such charges. The trial judge shall join the charges for trial unless the trial judge determines that joinder is not in the best interests of justice.” N.H. R. Crim. P. 20(a)(2). The rule further provides:

Two or more offenses are related if they:

- (A) Are alleged to have occurred during a single criminal episode; or
- (B) Constitute parts of a common scheme or plan; or
- (C) Are alleged to have occurred during separate criminal episodes,

but, nonetheless, are logically and factually connected in a manner that does not solely demonstrate that the accused has a propensity to engage in criminal conduct.

N.H. R. Crim. P. 20(a)(1).

Here, the trial court found that the charged offenses were “part of a common scheme or plan.” We have not yet had occasion to consider what constitutes a “common scheme or plan” under the rule. Prior to adopting a court rule regarding joinder of criminal charges, we adopted, as a matter of common law, the ABA standards for joinder and severance of criminal offenses in State v. Ramos, 149 N.H. 118, 127 (2003). See State v. Brown, 159 N.H. 544, 550 (2009) (Brown II) (outlining history of our joinder jurisprudence). Those standards “categorize offenses as either ‘related’ or ‘unrelated’” and “grant[] the prosecution and the defense an absolute right to sever unrelated charges.” Ramos, 149 N.H. at 125. “‘Related’ offenses are those based upon the same conduct, upon a single criminal episode, or upon a common plan” and “[u]nrelated’ offenses are those that are not ‘related.’” Id. (quotation omitted). Subsequently, in State v. McIntyre, 151 N.H. 465, 466-67 (2004), “we adopted the definition of common plan prescribed under New Hampshire Rule of Evidence 404(b).” Brown II, 159 N.H. at 550.

The defendant’s argument in this case relies upon our construction of the term “common plan” in cases decided prior to the adoption of Rule 20(a). Accordingly, for purposes of addressing the defendant’s argument, we assume without deciding that “common scheme or plan” under Rule 20(a)(1)(B) has the same meaning as “common plan” had under our common law joinder jurisprudence.

“The distinguishing characteristic of a common plan is the existence of a true plan in the defendant’s mind, which includes the charged crimes as stages in the plan’s execution.” Breed, 159 N.H. at 69 (decided under common law). Accordingly, we have noted that it is insufficient “[t]hat a sequence of acts resembles a design when examined in retrospect.” Id. Rather, “the prior conduct must be intertwined with what follows, such that the charged acts are mutually dependent.” Id.

The defendant attempts to avail himself of the requirement that the charged acts be “mutually dependent.” Id. He contends that the trial court erred in finding a “common scheme or plan” because it failed to find, and the State failed to offer evidence to support a finding of, “a mutual dependency between the charges.” He argues that “[e]ach indictment alleged a discrete offense against an individual alleged victim, and the success of no offense hinged on the success of others.”

"Historically, we have required a substantial degree of interconnectedness before offenses may be joined as mutually dependent." Petition of State of N.H. (State v. San Giovanni), 154 N.H. 671, 677 (2007). In some cases, we have found such interconnectedness when "the success of the later-occurring crimes depends upon the success of the earlier crimes." Id. at 675. Often, such cases involved the grooming of a sexual assault victim through "a clear progression in the level of abuse, allowing a reasonable person to make an objective finding of a common plan." McIntyre, 151 N.H. at 468; see also State v. Abram, 153 N.H. 619, 626 (2006) (noting that defendant's success in the final properly-joined offense "was dependent upon his having desensitized the [child victims] to engaging in sex by regularly subjecting them to severe acts of sexual abuse"). In such cases, we held that it was "reasonable to conclude that the acts . . . were mutually dependent, because the occurrence of the final assaults hinged upon the success of the earlier incidents." McIntyre, 151 N.H. at 467.

The defendant's argument presupposes that in order to find a common plan, the success of a defendant's later crimes must have depended upon the success of those preceding them. Admittedly, some of our cases could be read to support that view. See, e.g. State v. Brown, 156 N.H. 440, 442-44 (2007) (Brown I). We have not, however, relied upon that form of mutual dependency in all cases.

For instance, in State v. Schonarth, 152 N.H. 560 (2005), the defendant was convicted on seventeen counts of theft by deception. Schonarth, 152 N.H. at 561. The defendant falsely represented to the victim that he had filed a mortgage application in connection with his purchase of property from the victim. Id. "In the following years, the defendant asked [the victim] to lend him money to satisfy requirements allegedly imposed by [the bank] to obtain the loan." Id. He also asked the victim for other loans, each "in some way allegedly related to enabling the defendant to secure the mortgage for the purchase of [the victim's] property." Id. Eventually, the defendant told the victim that the bank would not finance his purchase of the property, but solicited additional funds from the victim for investment in a corporation that did not, in fact, exist. Id. at 561-62.

The trial court consolidated the seventeen indictments for trial, "finding that the acts constituted a common plan for purposes of joinder." Id. at 562. We affirmed that ruling on appeal, holding:

Viewed objectively, the defendant's actions demonstrated a prior design that included the charged acts as part of its consummation. The charges all involved the same elderly victim; all were based upon the defendant's efforts to defraud the victim of

his property through increasingly grandiose schemes connected to the defendant's alleged desire to repay his debt to the victim.

Id. (citation omitted). We said nothing about the success of the later frauds depending upon the success of the previous ones. See id.

Notwithstanding that Schonarth did not rely upon the "success of later crimes" theory, a fact we acknowledged in San Giovanni, 154 N.H. at 676, dicta in some of our subsequent cases attempts to fit Schonarth into that mold. For instance, in San Giovanni, we opined that even with no express reliance upon the theory, "there is no question that in Schonarth, the success of the later frauds depended upon the success of the earlier frauds." San Giovanni, 154 N.H. at 676. Similarly, in Brown I, we opined that "[e]ach time Schonarth attempted to defraud his victim, his success was dependent on his previous schemes such that the acts were so intertwined as to be mutually dependent." Brown I, 156 N.H. at 443. We now reiterate that the "success of later crimes" theory played no cogent part in Schonarth's holding.

Nor did we rely on that theory in State v. Breed. In that case, the defendant, a medical examiner in Massachusetts, was convicted on nine counts of fraudulent handling of recordable writings, two counts of theft by deception, and one count of theft by unauthorized taking. Breed, 159 N.H. at 63. His convictions stemmed from medical examiner services he provided to certain facilities including Bayview Crematorium (Bayview). Id.

On appeal, the defendant challenged, among other things, the joinder of the theft by deception and fraudulent handling offenses. Id. at 68. The theft by deception counts "alleged that, for the purpose of receiving medical examiner fees, the defendant had signed cremation certificates indicating he had viewed the remains of [certain] decedents when he had not done so." Id. at 64. Seven of the fraudulent handling indictments "alleged that the defendant, with a purpose to deceive, had signed certain cremation certificates that falsely indicated that he was a New Hampshire medical examiner." Id. at 63. The other two fraudulent handling indictments "alleged that he, with a purpose to deceive, had signed other cremation certificates indicating that he had viewed certain remains and had made personal inquiry into the cause and manner of death, when, in fact, he had not done so." Id. at 63-64.

The defendant challenged the trial court's ruling that "joinder was proper . . . because the theft and fraudulent handling offenses were part of a common plan," and contended, to the contrary, that those "offenses were independent and not mutually dependent or part of a common plan." Id. at 69 (quotation omitted). We upheld the trial court's ruling:

In the instant case, we are persuaded that the trial court reasonably could have found that the theft by deception and fraudulent handling charges constituted mutually dependent acts that were part of a prior design. The record supports the trial court's finding that the defendant strove to develop an exclusive relationship with the operators of Bayview to increase the number of examination fees he could collect. To do this, he maximized his availability to the crematory, by, for example, signing cremation certificates when he had not conducted the requisite examinations. The more fraudulent transactions he participated in, the more reliant Bayview's operators became upon his services to carry out their own ends of processing as many bodies as possible. Based upon these findings, the trial court reasonably found that each fraudulent transaction or theft in which the defendant engaged was part of an overarching plan of furthering his increasingly profitable relationship with Bayview, and, in this way, the charges were mutually dependent. The trial court reasonably could have found that the defendant was not merely taking advantage of opportunities as they arose, but instead was exhibiting forethought and premeditation in his scheming.

Id. at 70 (quotation and brackets omitted). As in Schonarth, we said nothing about the success of later charged offenses depending on the success of the earlier ones. Rather, the individual offenses constituted part of an "overarching plan" and, presumably, contributed not to the success of each other, but to the success of that plan's ultimate goal "of furthering [the defendant's] increasingly profitable relationship with Bayview." Id.; cf. State v. Kirsch, 139 N.H. 647, 655 (1995) (noting that, under the common plan exception to Rule of Evidence 404(b), the "other bad acts must be constituent parts of some overall scheme[;] . . . there must be some overall scheme of which each of the crimes is but a part" (quotation and citation omitted)).

In accordance with our decisions in Schonarth and Breed, we reject the defendant's premise that joinder of offenses under the "common plan or scheme" provision of Rule 20 of the Rules of Criminal Procedure requires, in all cases, a finding that the success of later charged offenses depended upon the success of earlier ones. We reiterate that "[t]he distinguishing characteristic of a common plan is the existence of a true plan in the defendant's mind, which includes the charged crimes as stages in the plan's execution." Breed, 159 N.H. at 69 (decided under common law). This analysis ensures that "the defendant was not merely taking advantage of opportunities as they arose, but instead was exhibiting forethought and premeditation in his scheming." Id. at 70 (quotation and brackets omitted); cf. State v. Melcher, 140 N.H. 823, 828 (1996) (noting, in Rule of Evidence 404(b) case, that "[v]iewed objectively, the other bad acts must clearly tend to show that the defendant had a definite

prior design or system which included the doing of the act charged as a part of its consummation" (quotation omitted)). Having rejected its premise, we necessarily reject the defendant's argument challenging joinder.

Finally, in his pro se supplemental brief, the defendant presents two questions for our review. The first is "[w]hether the evidence used at trial was admissible?" The State argues that the defendant failed to preserve this issue for appellate review.

"As the appealing party, the defendant has the burden of providing this court with a record sufficient to demonstrate that he raised all of his appeal issues before the trial court." State v. Adams, 169 N.H. 293, 299 (2016). The defendant asserts that he preserved this issue at his allocution during his sentencing hearing. We conclude that raising the issue at that time was insufficient to preserve it.

Our preservation requirement "reflects the general policy that trial forums should have an opportunity to rule on issues and to correct errors before they are presented to the appellate court." State v. Cavanaugh, 174 N.H. 1, 12-13 (2020). "Generally, a party should make an objection to evidence at the time it is offered, or at the earliest opportunity after the reason for objection becomes apparent." Broderick v. Watts, 136 N.H. 153, 168 (1992). Because the defendant failed to raise his challenge to the admissibility of evidence in a timely manner, it is not preserved and we will not address it. See id. at 169 (plaintiff's contention that defendant asked improper questions while cross-examining two of plaintiff's witnesses was not preserved when raised for the first time in a post-trial motion).

The second question is "[w]hether the Court erred by not allowing the Defendant to be present at all stages of trial?" Specifically, the defendant was not present when the trial court, prosecutor, and defense counsel discussed a question posed by the jury during its deliberations. Defense counsel opined at the time that the defendant need not be present. Accordingly, the defendant raises this issue as plain error.

"For us to find plain error: (1) there must be error; (2) the error must be plain; and (3) the error must affect substantial rights." State v. Pinault, 168 N.H. 28, 33 (2015) (quotation omitted). We need not address whether the first two prongs are met, because the defendant has failed to satisfy the third. See id. at 34 (assuming, without deciding, that the first two prongs were met and determining that the defendant failed to satisfy the third). "In order for a defendant to prevail under the third prong, the defendant must demonstrate that the error was prejudicial, *i.e.*, that it affected the outcome of the proceeding." Id. (quotation omitted). Here, we agree with the State that the defendant "does not articulate how . . . his absence affected the verdicts or otherwise prejudiced him." Accordingly, we conclude that the defendant failed

to meet his burden to show plain error. See id. (finding alleged deficiency in complaint was not shown to constitute plain error where defendant “made no showing, nor even argued, that the complaint limited her ability to prepare for trial or that she would have prepared for trial differently” absent the alleged deficiency (emphasis added)).

To the extent the defendant raises other issues in his pro se brief, we conclude that: he has failed to demonstrate that the issues are preserved, see Adams, 169 N.H. at 299; the issues are inadequately briefed, and therefore waived, see State v. Papillon, 173 N.H. 13, 28, n.1 (2020); or they lack merit and warrant no further discussion, see Vogel v. Vogel, 137 N.H. 321, 322 (1993).

Affirmed.

BASSETT, HANTZ MARCONI, and DONOVAN, JJ., concurred.

Docket No. _____

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BRIM BELL—PETITIONER

VS.

STATE OF NEW HAMPSHIRE

RE: THE NEW HAMPSHIRE SUPREME COURT

Case No. 2019-0047

RETURN FROM SUPERIOR COURT: STATE PRISON SENTENCE

January 2, 2019

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APPENDIX B

AUG 26 2023

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
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RETURN FROM SUPERIOR COURT – STATE PRISON SENTENCE

Case Name: **State v. Brim Bell**
Case Number: **219-2017-CR-00604**

Name: **Brim Bell, c/o Carroll HOC PO Box 688 Ossipee NH 03864**

DOB: [REDACTED]

Charging document: Indictment

Offense: **Theft by Deception \$1501+** GOC: **1544396C** Charge ID: **637:4** RSA: **January 01, 2011**

Disposition: Guilty/Chargeable By: Jury

A finding of GUILTY/CHARGEABLE is entered.

Conviction: Felony

Sentence: see attached

January 02, 2019

Date

Hon. Mark E. Howard

Presiding Justice

Kimberly T. Myers

Clerk of Court

MITTIMUS

In accordance with this sentence, the Sheriff is ordered to deliver the defendant to the **New Hampshire State Prison**. Said institution is required to receive the Defendant and detain him/her until the Term of Confinement has expired or s/he is otherwise discharged by due course of law.

Attest: _____
Clerk of Court

SHERIFF'S RETURN

I delivered the defendant to the **New Hampshire State Prison** and gave a copy of this order to the Warden.

Date

Sheriff

J-ONE: State Police DMV

C: Dept. of Corrections Offender Records Sheriff Office of Cost Containment
 Prosecutor Chelsea Elizabeth Lane, ESQ Defendant Defense Attorney Robert James Watkins, ESQ
 Sentence Review Board Sex Offender Registry Other _____ Dist Div. _____

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH

<http://www.courts.state.nh.us>

Court Name

Stratford County Superior Court

Case Name

State v. Brian Bell

Case Number
(if known)

219-2017-CR-1604

Charge ID Number: 15443918C

STATE PRISON SENTENCE

Plea/Verdict	Guilty	Clerk	A. Cote
Crime	WRT by DoCention	Date of Crime	11/1/2011 - 8/3/2012
Monitor	Leighton	Judge	Holmes

A finding of GUILTY/TRUE is entered.

The defendant has been convicted of Domestic Violence contrary to RSA 631:2-b. See attached RSA 631:2-b Sentencing Addendum.

1. The defendant is sentenced to the New Hampshire State Prison for not more than 10 years nor less than 5 years. There is added to the minimum sentence a disciplinary period equal to 150 days for each year of the minimum term of the defendant's sentence, to be prorated for any part of the year.

2. This sentence is to be served as follows. Stand committed Commencing _____

3. 5 years of the minimum sentence and 10 years of the maximum sentence is suspended. Suspensions are conditioned upon good behavior and compliance with all of the terms of this order. Any suspended sentence may be imposed after a hearing at the request of the State. The suspended sentence begins today and ends 10 years from today or release on 219-2017-CR-1604 (15443918C) (Charge ID Number).

4. _____ of the sentence is deferred for a period of _____ year(s). The Court retains jurisdiction up to and after the deferred period to impose or terminate the sentence or to suspend or further defer the sentence for an additional period of _____ year(s). Thirty (30) days prior to the expiration of the deferred period, the defendant may petition the Court to show cause why the deferred commitment should not be imposed, suspended and/or further deferred. Failure to petition within the prescribed time will result in the immediate issuance of a warrant for your arrest.

5. _____ of the minimum sentence shall be suspended by the Court on application of the defendant, provided the defendant demonstrates meaningful participation in a sexual offender program while incarcerated.

6. The sentence is consecutive to 219-2017-CR-1604 (15443918C) (Charge ID Number(s)) concurrent with 219-2017-CR-1606 (1544400C) & 219-2017-CR-1607 (1544430C) (Charge ID Number(s))

7. Pretrial confinement credit: _____ days

8. The Court recommends to the Department of Corrections:

- Drug and alcohol treatment and counseling
- Sexual offender program
- Sentence to be served at House of Corrections
-

If required by statute or Department of Corrections policies and procedures, the defendant shall provide a sample for DNA analysis.

Case Name: State v. Brian Bell

Case Number: 219-2017-CR-CWY

STATE PRISON SENTENCE

PROBATION

9 The defendant is placed on probation for a period of _____ year(s), upon the usual terms of probation and any special terms of probation determined by the Probation/Parole Officer.
Effective: Forthwith Upon Release _____
 The defendant is ordered to report immediately to the nearest Probation/Parole Field Office.

10 Subject to the provisions of RSA 504-A:4, III, the probation/parole officer is granted the authority to impose a jail sentence of 1 to 7 days in response to a violation of a condition of probation, not to exceed a total of 30 days during the probationary period.

11. Violation of probation or any of the terms of this sentence may result in revocation of probation and imposition of any sentence within the legal limits for the underlying offense.

OTHER CONDITIONS

12. Other conditions of this sentence are:

A. The defendant is fined \$ _____ plus statutory penalty assessment of \$ _____
 The fine, penalty assessment and any fees shall be paid Now By _____ OR
 Through the Department of Corrections as directed by the Probation/Parole Officer. A 10% service charge is assessed for the collection of fines and fees, other than supervision fees.
 \$ _____ of the fine and \$ _____ of the penalty assessment is suspended for _____ year(s). A \$25.00 fee is assessed in each case file when a fine is paid on a date later than sentencing.

B. The defendant is ordered to make restitution of \$ 63,751.79 to S [REDACTED] I [REDACTED]
 Through the Department of Corrections as directed by the Probation/Parole Officer. A 17% administrative fee is assessed for the collection of restitution.
 At the request of the defendant or the Department of Corrections, a hearing may be scheduled on the amount or method of payment of restitution.
 Restitution is not ordered because: _____

C. The defendant is to participate meaningfully in and complete any counseling, treatment and educational programs as directed by the correctional authority or Probation/Parole Officer.

D. Subject to the provisions of RSA 651-A:22-a, the Department of Corrections shall have the authority to award the defendant earned time reductions against the minimum and maximum sentences for successful completion of programming while incarcerated.

E. Under the direction of the Probation/Parole Officer, the defendant shall tour the
 New Hampshire State Prison House of Corrections

F. The defendant shall perform _____ hours of community service and provide proof to
 the State or probation within _____ days/within _____ months of today's date.

G. The defendant is ordered to have no contact with S [REDACTED] I [REDACTED] either directly or indirectly, including but not limited to contact in-person, by mail, phone, email, text message, social networking sites or through third parties.

H. Law enforcement agencies may destroy the evidence return evidence to its rightful owner.

I. The defendant and the State have waived sentence review in writing or on the record.

J. The defendant is ordered to be of good behavior and comply with all the terms of this sentence.

K. Other Defendant shall engage in Counseling within 90 days of release to address gambling addiction and comply with all recommendations provided by State within 90 days of release and every 90 days for 12 months

Date

Jan 7, 2019

Mark E. Howard
Presiding Justice

Mark E. Howard
Presiding Justice

D.O.B. [REDACTED]
LOE: B

RSA Ch. 637:4 & 637:11
Theft by Deception
A Felony
7 1/2 - 15 years, \$4,000 fine

STATE OF NEW HAMPSHIRE

STRAFFORD, SS.

SUPERIOR COURT

INDICTMENT

At the Superior Court holden at Dover, within and for the County of Strafford aforesaid, in the month of SEPTEMBER, in the year of TWO THOUSAND AND EIGHTEEN, the GRAND JURORS FOR THE STATE OF NEW HAMPSHIRE, on their oath present that:

BRIM BELL
L.K.A. 50 COUNTY FARM ROAD
OSSIPEE, NEW HAMPSHIRE 03864

Between the FIRST day of JANUARY in the year TWO THOUSAND AND ELEVEN and the THIRTY-FIRST day of AUGUST in the year TWO THOUSAND AND SIXTEEN, at STRAFFORD in the County of Strafford aforesaid, did commit the crime of THEFT BY DECEPTION, in that pursuant to one scheme or course of conduct he did obtain or exercise unauthorized control over U.S. currency, the property of J. T. by deception, with a purpose to deprive J. T. thereof, in that Brim Bell created or reinforced the false impression that he was repairing J. T.'s vehicle, which was false and which Brim Bell did not believe to be true, in order to continue to receive payments for repairs that were not being performed, the value of which exceeded \$1,500.00, contrary to the form of the Statute, in such case made and provided, and against the peace and dignity of the State.

This is a true bill.

Date: September 20, 2018


Forcperson

Thomas P. Velardi
Strafford County Attorney

by:



Chelsea E. Lane, Esq. NH Bar #266206
Assistant County Attorney

SSC#219 2017 CR 604
CHG ID# 1544396C

Verdict: Guilty
A. Date: 10-18
Sentenced
1/2/19

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
SUPERIOR COURT

Strafford Superior Court
259 County Farm Road, Suite 301
Dover NH 03820

Telephone: 1-866-212-1234
TTY/TDD Relay: (800) 735-2964
<http://www.courts.state.nh.us>

RETURN FROM SUPERIOR COURT – STATE PRISON SENTENCE

Case Name: **State v. Brim Bell**
Case Number: **219-2017-CR-00606**

Name: **Brim Bell, c/o Carroll HOC PO Box 688 Ossipee NH 03864**
DOB: **[REDACTED]**

Charging document: Indictment

Offense: **Theft by Deception \$1501+** GOC: Charge ID: **1544400C** RSA: **637:4** Date of Offense: **November 10, 2011**

Disposition: **Guilty/Chargeable By: Jury**

A finding of GUILTY/CHARGEABLE is entered.

Conviction: **Felony**

Sentence: see attached

January 02, 2019

Date

Hon. Mark E. Howard

Presiding Justice

Kimberly T. Myers

Clerk of Court

MITTIMUS

In accordance with this sentence, the Sheriff is ordered to deliver the defendant to the **New Hampshire State Prison**. Said institution is required to receive the Defendant and detain him/her until the Term of Confinement has expired or s/he is otherwise discharged by due course of law.

Attest: _____
Clerk of Court

SHERIFF'S RETURN

I delivered the defendant to the **New Hampshire State Prison** and gave a copy of this order to the Warden.

Date

Sheriff

J-ONE: State Police DMV

C: Dept. of Corrections Offender Records Sheriff Office of Cost Containment
 Prosecutor Chelsea Elizabeth Lane, ESQ Defendant Defense Attorney Robert James Watkins, ESQ
 Sentence Review Board Sex Offender Registry Other _____ Dist Div. _____

THE STATE OF NEW HAMPSHIRE

JUDICIAL BRANCH

<http://www.courts.state.nh.us>

Court Name

Strafford County Superior Court

Case Name

State v. Brian Bell

Case Number
(if known)

219-2017-CR-104

Charge ID Number 1544400C

STATE PRISON SENTENCE

Final Verdict	Guilty	Clerk	A. G. Re
Crime	Theft by Deception	Date of Crime	11/01/2011 11/2017
Monitor	Leighton	Judge	Howard

A finding of GUILTY/TRUE is entered

The defendant has been convicted of Domestic Violence contrary to RSA 631:2-b. See attached RSA 631:2-b Sentencing Addendum.

1. The defendant is sentenced to the New Hampshire State Prison for not more than 10 years nor less than 5 years. There is added to the minimum sentence a disciplinary period equal to 150 days for each year of the minimum term of the defendant's sentence to be prorated for any part of the year.

2. This sentence is to be served as follows. Stand committed. Commencing _____

3. 5 years of the minimum sentence and 10 years of the maximum sentence is suspended. Suspensions are conditioned upon good behavior and compliance with all of the terms of this order. Any suspended sentence may be imposed after a hearing at the request of the State. The suspended sentence begins today and ends 10 years from today or release on 219-2017-CR-104 (1544418C) (Charge ID Number)

4. _____ of the sentence is deferred for a period of _____ year(s). The Court retains jurisdiction up to and after the deferred period to impose or terminate the sentence or to suspend or further defer the sentence for an additional period of _____ year(s). Thirty (30) days prior to the expiration of the deferred period, the defendant may petition the Court to show cause why the deferred commitment should not be imposed, suspended and/or further deferred. Failure to petition within the prescribed time will result in the immediate issuance of a warrant for your arrest.

5. _____ of the minimum sentence shall be suspended by the Court on application of the defendant provided the defendant demonstrates meaningful participation in a sexual offender program while incarcerated.

6. The sentence is consecutive to 219-2017-CR-104 (1544418C) (Charge ID Number(s))

concurrent with 219-2017-CR-104 (1544304C) & 219-2017-CR-107 (1544430C) (Charge ID Number(s))

7. Pretrial confinement credit _____ days

8. The Court recommends to the Department of Corrections.

- Drug and alcohol treatment and counseling
- Sexual offender program
- Sentence to be served at House of Corrections
-

If required by statute or Department of Corrections policies and procedures, the defendant shall provide a sample for DNA analysis.

Case Name: State v. Brim Bell

Case Number: 219-2017-CR-Lax

STATE PRISON SENTENCE

PROBATION

9. The defendant is placed on probation for a period of _____ year(s), upon the usual terms of probation and any special terms of probation determined by the Probation/Parole Officer.
Effective: Forthwith Upon Release _____
 The defendant is ordered to report immediately to the nearest Probation/Parole Field Office.

10. Subject to the provisions of RSA 504-A.4, III, the probation/parole officer is granted the authority to impose a jail sentence of 1 to 7 days in response to a violation of a condition of probation, not to exceed a total of 30 days during the probationary period.

11. Violation of probation or any of the terms of this sentence may result in revocation of probation and imposition of any sentence within the legal limits for the underlying offense.

OTHER CONDITIONS

12. Other conditions of this sentence are:

A. The defendant is fined \$ _____ plus statutory penalty assessment of \$ _____.
 The fine, penalty assessment and any fees shall be paid: Now By _____ OR
 Through the Department of Corrections as directed by the Probation/Parole Officer. A 10 % service charge is assessed for the collection of fines and fees, other than supervision fees.
 \$ _____ of the fine and \$ _____ of the penalty assessment is suspended for _____ year(s). A \$25.00 fee is assessed in each case file when a fine is paid on a date later than sentencing.

B. The defendant is ordered to make restitution of \$893.80⁰⁰ to A [REDACTED] N [REDACTED]
 Through the Department of Corrections as directed by the Probation/Parole Officer. A 17% administrative fee is assessed for the collection of restitution.
 At the request of the defendant or the Department of Corrections, a hearing may be scheduled on the amount or method of payment of restitution.
 Restitution is not ordered because _____

C. The defendant is to participate meaningfully in and complete any counseling, treatment and educational programs as directed by the correctional authority or Probation/Parole Officer.

D. Subject to the provisions of RSA 651-A.22-a, the Department of Corrections shall have the authority to award the defendant earned time reductions against the minimum and maximum sentences for successful completion of programming while incarcerated.

E. Under the direction of the Probation/Parole Officer, the defendant shall tour the
 New Hampshire State Prison House of Corrections

F. The defendant shall perform _____ hours of community service and provide proof to
 the State or probation within _____ days/within _____ months of today's date.

G. The defendant is ordered to have no contact with A [REDACTED] N [REDACTED]
either directly or indirectly, including but not limited to contact in-person, by mail, phone, email, text message, social networking sites or through third parties.

H. Law enforcement agencies may destroy the evidence return evidence to its rightful owner.

I. The defendant and the State have waived sentence review in writing or on the record.

J. The defendant is ordered to be of good behavior and comply with all the terms of this sentence.

K. Other Defendant shall engage in Counseling within 90 days of release to address gambling addiction, and comply with all recommendations - provide proof to State within 90 days of release and every 90 days for 12 months

Date

JAN. 2, 2019

Mark E. Howard
Presiding Justice

Mark E. Howard
Presiding Justice

D.O.B. [REDACTED]
LOE: B

RSA Ch. 637:4 & 637:11
Theft by Deception
A Felony
7 1/2 - 15 years, \$4,000 fine

STATE OF NEW HAMPSHIRE

STRAFFORD, SS.

SUPERIOR COURT

INDICTMENT

At the Superior Court holden at Dover, within and for the County of Strafford aforesaid, in the month of SEPTEMBER, in the year of TWO THOUSAND AND EIGHTEEN, the GRAND JURORS FOR THE STATE OF NEW HAMPSHIRE, on their oath present that:

BRIM BELL
L.K.A. 50 COUNTY FARM ROAD
OSSIPEE, NEW HAMPSHIRE 03864

Between the TENTH day of NOVEMBER in the year TWO THOUSAND AND ELEVEN and the FOURTH day of MAY in the year TWO THOUSAND AND SEVENTEEN, at STRAFFORD in the County of Strafford aforesaid, did commit the crime of THEFT BY DECEPTION, in that he did, pursuant to one scheme or course of conduct, obtain or exercise unauthorized control over U.S. currency, the property of A [REDACTED] M [REDACTED] by deception, with a purpose to deprive A [REDACTED] M [REDACTED] thereof, in that Brim Bell created or reinforced the false impression that he was repairing A [REDACTED] M [REDACTED]'s vehicle, which was false and which Brim Bell did not believe to be true, in order to continue to receive payments for repairs that were not being performed, the value of which exceeded \$1,500.00, contrary to the form of the Statute, in such case made and provided, and against the peace and dignity of the State.

This is a true bill.

Date: September 20, 2018


Foreperson

Thomas P. Velardi
Strafford County Attorney

by:


Chelsea E. Lane, Esq. NH Bar #266206
Assistant County Attorney

SSC#219 2017 CR 606

CHG ID# 1544400C

Surf Verdict: Guilty
A. Date 10/4/18
Sentenced
1/2/19

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
SUPERIOR COURT

Strafford Superior Court
259 County Farm Road, Suite 301
Dover NH 03820

Telephone: 1-866-212-1234
TTY/TDD Relay: (800) 735-2964
<http://www.courts.state.nh.us>

RETURN FROM SUPERIOR COURT - STATE PRISON SENTENCE

Case Name: State v. Brim Bell
Case Number: 219-2017-CR-00614

Name: Brim Bell, c/o Carroll HOC PO Box 688 Ossipee NH 03864

DOB: [REDACTED]

Charging document: Indictment

Offense:	GOC:	Charge ID:	RSA:	Date of Offense:
Theft by Deception \$1501+		1544418C	637:4	September 1, 2012

Disposition: Guilty/Chargeable By: Jury

A finding of GUILTY/CHARGEABLE is entered.

Conviction: Felony

Sentence: see attached

January 02, 2019
Date

Hon. Mark E. Howard
Presiding Justice

Kimberly T. Myers
Clerk of Court

MITTIMUS

In accordance with this sentence, the Sheriff is ordered to deliver the defendant to the New Hampshire State Prison. Said institution is required to receive the Defendant and detain him/her until the Term of Confinement has expired or s/he is otherwise discharged by due course of law.

Attest: Kimberly T. Myers
Clerk of Court

SHERIFF'S RETURN

I delivered the defendant to the New Hampshire State Prison and gave a copy of this order to the Warden.

Date

Sheriff

J-ONE: State Police DMV

C: Dept. of Corrections Offender Records Sheriff Office of Cost Containment
 Prosecutor Chelsea Elizabeth Lane, ESQ Defendant Defense Attorney Robert James Watkins, ESQ
 Sentence Review Board Sex Offender Registry Other _____ Dist Div. _____

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH

<http://www.courts.state.nh.us>

Court Name

Strafford County Superior Court

Case Name

State v. Brian Bell

Case Number
(if known)

219-2017-CP-614

Charge ID Number 1544418C

STATE PRISON SENTENCE

Plea/Verdict: <u>Guilty</u>	Clerk: <u>A. Cote</u>
Crime: <u>Theft by Deception</u>	Date of Crime: <u>9/1/2013</u> 10/27/2016
Monitor: <u>Leighton</u>	Judge: <u>Haward</u>

A finding of GUILTY/TRUE is entered.

The defendant has been convicted of Domestic Violence contrary to RSA 631:2-b. See attached RSA 631:2-b Sentencing Addendum.

1. The defendant is sentenced to the New Hampshire State Prison for not more than 10 years, nor less than 5 years. There is added to the minimum sentence a disciplinary period equal to 150 days for each year of the minimum term of the defendant's sentence to be prorated for any part of the year.

2. This sentence is to be served as follows: Stand committed Commencing 6 months of the minimum sentence and 10 of the maximum sentence is suspended. Suspensions are conditioned upon good behavior and compliance with all of the terms of this order. Any suspended sentence may be imposed after a hearing at the request of the State. The suspended sentence begins today and ends 10 years from today or release on 1544418C. (Charge ID Number)

4. The Court retains jurisdiction up to and after the deferred period to impose or terminate the sentence or to suspend or further defer the sentence for an additional period of 1 year(s). Thirty (30) days prior to the expiration of the deferred period, the defendant may petition the Court to show cause why the deferred commitment should not be imposed, suspended and/or further deferred. Failure to petition within the prescribed time will result in the immediate issuance of a warrant for your arrest.

5. 113 days of the minimum sentence shall be suspended by the Court on application of the defendant provided the defendant demonstrates meaningful participation in a sexual offender program while incarcerated.

6. The sentence is consecutive to 113 days. (Charge ID Number(s))

concurrent with 113 days. (Charge ID Number(s))

7. Pretrial confinement credit 113 days.

8. The Court recommends to the Department of Corrections:

- Drug and alcohol treatment and counseling
- Sexual offender program
- Sentence to be served at House of Corrections
-

If required by statute or Department of Corrections policies and procedures, the defendant shall provide a sample for DNA analysis.

Case Name: State v. Brian Bell

Case Number: 219-2017-CR-614

STATE PRISON SENTENCE

PROBATION

9 The defendant is placed on probation for a period of _____ year(s), upon the usual terms of probation and any special terms of probation determined by the Probation/Parole Officer.
Effective: Forthwith Upon Release _____
 The defendant is ordered to report immediately to the nearest Probation/Parole Field Office.

10 Subject to the provisions of RSA 504-A:4, III, the probation/parole officer is granted the authority to impose a jail sentence of 1 to 7 days in response to a violation of a condition of probation, not to exceed a total of 30 days during the probationary period.

11 Violation of probation or any of the terms of this sentence may result in revocation of probation and imposition of any sentence within the legal limits for the underlying offense.

OTHER CONDITIONS

12. Other conditions of this sentence are:

A The defendant is fined \$ _____ plus statutory penalty assessment of \$ _____
 The fine, penalty assessment and any fees shall be paid: Now By _____ OR
 Through the Department of Corrections as directed by the Probation/Parole Officer. A 10% service charge is assessed for the collection of fines and fees, other than supervision fees.
 \$ _____ of the fine and \$ _____ of the penalty assessment is suspended for _____ year(s). A \$25.00 fee is assessed in each case file when a fine is paid on a date later than sentencing.

B. The defendant is ordered to make restitution of \$ 24,481.90 to J. W. N.
 Through the Department of Corrections as directed by the Probation/Parole Officer. A 17% administrative fee is assessed for the collection of restitution.
 At the request of the defendant or the Department of Corrections, a hearing may be scheduled on the amount or method of payment of restitution.
 Restitution is not ordered because.

C The defendant is to participate meaningfully in and complete any counseling, treatment and educational programs as directed by the correctional authority or Probation/Parole Officer.

D Subject to the provisions of RSA 651-A:22-a, the Department of Corrections shall have the authority to award the defendant earned time reductions against the minimum and maximum sentences for successful completion of programming while incarcerated.

E Under the direction of the Probation/Parole Officer, the defendant shall tour the
 New Hampshire State Prison House of Corrections

F The defendant shall perform _____ hours of community service and provide proof to
 the State or probation within _____ days/within _____ months of today's date.

G. The defendant is ordered to have no contact with J. W. N. either directly or indirectly, including but not limited to contact in-person, by mail, phone, email, text message, social networking sites or through third parties.

H Law enforcement agencies may destroy the evidence return evidence to its rightful owner.

I The defendant and the State have waived sentence review in writing or on the record.

J The defendant is ordered to be of good behavior and comply with all the terms of this sentence.

K Other. Defendant shall engage in counseling within 90 days of release to address gambling addiction and comply with all recommendations - provide proof to state within 90 days of release and every 90 days for 12 months

Date

JAN 2, 2019

Presiding Justice

Mark E. Howard

Mark E. Howard
Presiding Justice

D.O.B. [REDACTED]
LOE: B

RSA Ch. 637:4 & 637:11
Theft by Deception
A Felony
7 1/2 - 15 years, \$4,000 fine

STATE OF NEW HAMPSHIRE

STRAFFORD, SS.

SUPERIOR COURT

INDICTMENT

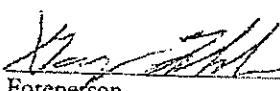
At the Superior Court holden at Dover, within and for the County of Strafford aforesaid, in the month of SEPTEMBER, in the year of TWO THOUSAND AND EIGHTEEN, the GRAND JURORS FOR THE STATE OF NEW HAMPSHIRE, on their oath present that:

BRIM BELL
REKA. L.K.A. 50 COUNTY FARM ROAD
OSSIPEE, NEW HAMPSHIRE 03864

Between the FIRST day of SEPTEMBER in the year TWO THOUSAND AND TWELVE and the TWENTY-SEVENTH day of OCTOBER in the year TWO THOUSAND AND SIXTEEN, at STRAFFORD in the County of Strafford aforesaid, did commit the crime of THEFT BY DECEPTION, in that pursuant to one scheme or course of conduct he did obtain or exercise unauthorized control over U.S. currency, the property of J. M. by deception, with a purpose to deprive J. M. thereof, in that Brim Bell created or reinforced the false impression that he was repairing J. M. vehicle, which was false and which Brim Bell did not believe to be true, in order to continue to receive payments for repairs that were not being performed, the value of which exceeded \$1,500.00, contrary to the form of the Statute, in such case made and provided, and against the peace and dignity of the State.

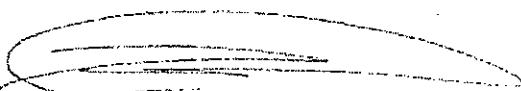
This is a true bill.

Date: September 20, 2018


Foreperson

Thomas P. Velardi
Strafford County Attorney

by:


Chelsea E. Lane, Esq. NH Bar #266206
Assistant County Attorney

*Joint Verdict: Guilty
H. Cote 10/4/18
Sentenced
1.2.19*

SSC#219 2017 CR 614
CHG ID# 1544418C

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
SUPERIOR COURT

Strafford Superior Court
259 County Farm Road, Suite 301
Dover NH 03820

Telephone: 1-855-212-1234
TTY/TDD Relay: (800) 735-2964
<http://www.courts.state.nh.us>

RETURN FROM SUPERIOR COURT – STATE PRISON SENTENCE

Case Name: **State v. Brim Bell**
Case Number: **219-2017-CR-00617**

Name: **Brim Bell, c/o Carroll HOC PO Box 688 Ossipee NH 03864**
DOB: **[REDACTED]**

Charging document: Indictment

Offense: Theft by Deception \$1501+	GOC:	Charge ID: 1544436C	RSA: 637:4	Date of Offense: October 1, 2015
--	------	------------------------	---------------	-------------------------------------

Disposition: Guilty/Chargeable By: Jury

A finding of GUILTY/CHARGEABLE is entered.

Conviction: Felony

Sentence: see attached

January 02, 2019

Date

Hon. Mark E. Howard

Presiding Justice

Kimberly T. Myers

Clerk of Court

MITTIMUS

In accordance with this sentence, the Sheriff is ordered to deliver the defendant to the **New Hampshire State Prison**. Said institution is required to receive the Defendant and detain him/her until the Term of Confinement has expired or s/he is otherwise discharged by due course of law.

Attest:

Clerk of Court

SHERIFF'S RETURN

I delivered the defendant to the **New Hampshire State Prison** and gave a copy of this order to the Warden.

Date

Sheriff

J-ONE: State Police DMV

C: Dept. of Corrections Offender Records Sheriff Office of Cost Containment
 Prosecutor Chelsea Elizabeth Lane, ESQ Defendant Defense Attorney Robert James Watkins, ESQ
 Sentence Review Board Sex Offender Registry Other _____ Dist Div. _____

THE STATE OF NEW HAMPSHIRE JUDICIAL BRANCH

<http://www.courts.state.nh.us>

Court Name

Case Name:

Case Number:
(If known)

Stamford County Superior Court
S.C. 100

State v. Ruth Bell

219-2017-CP-617

Charge ID Number: 15444316C

STATE PRISON SENTENCE

Plea/Verdict: <u>Guilty</u>	Clerk: <u>A. GOTZ</u>
Crime: <u>Theft by Deception</u>	Date of Crime: <u>10/12/05</u>
Monitor: <u>Leighton</u>	Judge: <u>M. HAWKES</u>

A finding of GUILTY/TRUE is entered

The defendant has been convicted of Domestic Violence contrary to RSA 631.2-b. See attached RSA 631.2-b Sentencing Addendum.

1. The defendant is sentenced to the New Hampshire State Prison for not more than 15 YEARS. There is added to the minimum sentence a disciplinary period equal to 150 days for each year of the minimum term of the defendant's sentence, to be prorated for any part of the year.

2. This sentence is to be served as follows. Stand committed. Commencing 5 years of the minimum sentence and 10 years of the maximum sentence is suspended. Suspensions are conditioned upon good behavior and compliance with all of the terms of this order. Any suspended sentence may be imposed after a hearing at the request of the State. The suspended sentence begins today and ends 10 years from today or release on 210-2017-CR-104 (1544418C) (Charge ID Number).

4. The Court retains jurisdiction up to and after the deferred period to impose or terminate the sentence or to suspend or further defer the sentence for an additional period of 30 year(s). Thirty (30) days prior to the expiration of the deferred period, the defendant may petition the Court to show cause why the deferred commitment should not be imposed suspended and/or further deferred. Failure to petition within the prescribed time will result in the immediate issuance of a warrant for your arrest.

5. 5 years of the minimum sentence shall be suspended by the Court on application of the defendant provided the defendant demonstrates meaningful participation in a sexual offender program while incarcerated.

6. The sentence is consecutive to 210-2017-CR-104 (1544418C) (Charge ID Number(s)). concurrent with 210-2017-CR-104 (1544396C) & 210-2017-CR-106 (1544400C) (Charge ID Number(s)).

7. Pretrial confinement credit: 0 days

8. The Court recommends to the Department of Corrections

- Drug and alcohol treatment and counseling
- Sexual offender program
- Sentence to be served at House of Corrections

If required by statute or Department of Corrections policies and procedures, the defendant shall provide a sample for DNA analysis.

Case Name: State v. Brian Bell

Case Number: 219-2017-CR-617

STATE PRISON SENTENCE

PROBATION

9. The defendant is placed on probation for a period of _____ year(s), upon the usual terms of probation and any special terms of probation determined by the Probation/Parole Officer.
Effective: Forthwith Upon Release _____
 The defendant is ordered to report immediately to the nearest Probation/Parole Field Office.

10. Subject to the provisions of RSA 504-A:4, III, the probation/parole officer is granted the authority to impose a jail sentence of 1 to 7 days in response to a violation of a condition of probation, not to exceed a total of 30 days during the probationary period.

11. Violation of probation or any of the terms of this sentence may result in revocation of probation and imposition of any sentence within the legal limits for the underlying offense.

OTHER CONDITIONS

12. Other conditions of this sentence are:

A. The defendant is fined \$ _____ plus statutory penalty assessment of \$ _____
 The fine, penalty assessment and any fees shall be paid: Now By _____ OR
 Through the Department of Corrections as directed by the Probation/Parole Officer. A 10% service charge is assessed for the collection of fines and fees, other than supervision fees.
 \$ _____ of the fine and \$ _____ of the penalty assessment is suspended for _____ year(s). A \$25.00 fee is assessed in each case file when a fine is paid on a date later than sentencing.

B. The defendant is ordered to make restitution of \$ 17,220.50 to J. K.
 Through the Department of Corrections as directed by the Probation/Parole Officer. A 17% administrative fee is assessed for the collection of restitution.
 At the request of the defendant or the Department of Corrections, a hearing may be scheduled on the amount or method of payment of restitution.
 Restitution is not ordered because: _____

C. The defendant is to participate meaningfully in and complete any counseling, treatment and educational programs as directed by the correctional authority or Probation/Parole Officer

D. Subject to the provisions of RSA 651-A:22-a, the Department of Corrections shall have the authority to award the defendant earned time reductions against the minimum and maximum sentences for successful completion of programming while incarcerated.

E. Under the direction of the Probation/Parole Officer, the defendant shall tour the
 New Hampshire State Prison House of Corrections

F. The defendant shall perform _____ hours of community service and provide proof to
 the State or probation within _____ days/within _____ months of today's date.

G. The defendant is ordered to have no contact with J. K. _____ either directly or indirectly, including but not limited to contact in-person, by mail, phone, email, text message, social networking sites or through third parties

H. Law enforcement agencies may destroy the evidence return evidence to its rightful owner.

I. The defendant and the State have waived sentence review in writing or on the record.

J. The defendant is ordered to be of good behavior and comply with all the terms of this sentence.

K. Other Defendant shall engage in Counseling within 90 days of release to address gambling addiction and comply with all recommendations - provide proof to State within 90 days of release and every 90 days for 12 months

Date

JAN. 2, 2019

Mark E. Howard
Presiding Justice

Mark E. Howard
Presiding Justice

D.O.B. [REDACTED]
LOE: B

RSA Ch. 637:4 & 637:11
Theft by Deception
A Felony
7 1/2 - 15 years, \$4,000 fine

STATE OF NEW HAMPSHIRE

STRAFFORD, SS.

SUPERIOR COURT

INDICTMENT

At the Superior Court holden at Dover, within and for the County of Strafford aforesaid, in the month of **SEPTEMBER**, in the year of **TWO THOUSAND AND EIGHTEEN**, the **GRAND JURORS FOR THE STATE OF NEW HAMPSHIRE**, on their oath present that:

BRIM BELL
LKA L.K.A. 50 COUNTY FARM ROAD
OSSIPEE, NEW HAMPSHIRE 03864

Between the **FIRST** day of **OCTOBER** in the year **TWO THOUSAND AND FIFTEEN** and the **SIXTEENTH** day of **AUGUST** in the year **TWO THOUSAND AND SIXTEEN**, at **STRAFFORD** in the County of Strafford aforesaid, did commit the crime of **THEFT BY DECEPTION**, in that pursuant to one scheme or course of conduct he did obtain or exercise unauthorized control over U.S. currency, the property of J [REDACTED] K [REDACTED] by deception, with a purpose to deprive J [REDACTED] K [REDACTED] thereof, in that Brim Bell created or reinforced the false impression that he was repairing J [REDACTED] K [REDACTED]'s vehicle, which was false and which Brim Bell did not believe to be true, in order to continue to receive payments for repairs that were not being performed, the value of which exceeded \$1,500.00, contrary to the form of the Statute, in such case made and provided, and against the peace and dignity of the State.

This is a true bill.

Date: September 20, 2018


Foreperson

Thomas P. Velardi
Strafford County Attorney

by:


Chelsea E. Lane, Esq. NH Bar #266206
Assistant County Attorney

SSC#219 2017 CR 617
CHG ID# 1544436C

*Final Verdict: Guilty
X Date 10/14/18
Sentenced
1-2-19*

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
SUPERIOR COURT

Strafford Superior Court
259 County Farm Road, Suite 301
Dover NH 03820

Telephone: 1-855-212-1234
TTY/TDD Relay: (800) 735-2964
<http://www.courts.state.nh.us>

RETURN FROM SUPERIOR COURT – STATE PRISON SENTENCE

Case Name: **State v. Brim Bell**

Case Number: **219-2017-CR-00614**

Name: **Brim Bell, c/o Carroll HOC PO Box 688 Ossipee NH 03864**

DOB: **[REDACTED]**

Charging document: **Indictment**

Offense:	GOC:	Charge ID:	RSA:	Date of Offense:
Theft by Deception \$1501+		1544418C	637:4	September 1, 2012

Disposition: **Guilty/Chargeable By: Jury**

A finding of GUILTY/CHARGEABLE is entered.

Conviction: **Felony**

Sentence: see attached

January 02, 2019
Date

Hon. Mark E. Howard
Presiding Justice

Kimberly T. Myers
Clerk of Court

MITTIMUS

In accordance with this sentence, the Sheriff is ordered to deliver the defendant to the **New Hampshire State Prison**. Said institution is required to receive the Defendant and detain him/her until the Term of Confinement has expired or s/he is otherwise discharged by due course of law.

Attest: Kimberly T. Myers
Clerk of Court

SHERIFF'S RETURN

I delivered the defendant to the **New Hampshire State Prison** and gave a copy of this order to the Warden.

Date

Sheriff

J-ONE: State Police DMV

C: Dept. of Corrections Offender Records Sheriff Office of Cost Containment
 Prosecutor Chelsea Elizabeth Lane, ESQ Defendant Defense Attorney Robert James Watkins, ESQ
 Sentence Review Board Sex Offender Registry Other _____ Dist Div. _____

Docket No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

BRIM BELL--PETITIONER

vs.

STATE OF NEW HAMPSHIRE

RE: THE NEW HAMPSHIRE SUPREME COURT

Case No. 2019-0047

COURT ORDER: IN CASE 2019-0047 ON NOVEMBER 18, 2022 DENIED DEFENSE
COUNSEL'S MOTION, FOR RECONSIDERATION or (rehearing)

Brim Bell (petitioner/pro se)
126 Lowell Street
Manchester, N.H. 03104
Tel. (603) 782-6127
Fax # (603) 627-5126

APPENDIX C
AUG 26 2023

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2019-0047, State of New Hampshire v. Brim Bell, the court on November 18, 2022, issued the following order:

After review of defense counsel's motion for reconsideration, the court modifies the slip opinion as set forth below. In all other respects, defense counsel's motion for reconsideration is denied.

The defendant has also filed a pro se motion for reconsideration. On April 21, 2022, we determined that we would not "rule on any future pro se motions that may be filed while the defendant is represented by counsel." We observe that, even if we were to rule on the pro se motion for reconsideration, we would deny it.

The slip opinion dated August 16, 2022, is modified by deleting the last sentence of the carry-over paragraph at the top of page 12. The following three new paragraphs are inserted after the revised carry-over paragraph:

With these principles in mind, we now examine whether joinder was proper in this case. The State alleged in its motion for joinder that "[e]ach of the cases has an almost identical fact pattern, occurred in the same time frame, and demonstrate[s] a common scheme or plan." The motion described various tactics the defendant allegedly used to solicit money from the victims and, in addition, recounted instances in which the defendant jointly involved some of the victims in his alleged scheme. Specifically, the motion alleged that the defendant twice directed J.M. to wire money to a "friend," who was actually another victim (J.T.), and that, at least once, the defendant told J.T. that he was buying parts for J.T.'s car from J.K. and directed J.T. to wire money to J.K. At the same time, the defendant told J.K. "that he was supposed to receive a money order from [J.T.], but for some reason it couldn't go through," so he asked J.K. "to take a 'wire' from [J.T.] and rewire it to the defendant." The State contended that "[t]he similar tactics used and the fact that [J.T.], [J.M.], and [J.K.] became unwittingly involved in each other's cases indicates that [the defendant] had a common purpose and plan when defrauding each of the named individuals."

The State further alleged that "[t]he commonality of the methods used to deprive the victims of their money and vehicles

demonstrates that the defendant had the same plan and purpose when soliciting the victims for money." Significantly, the State alleged that "[t]he defendant used a series of on-going deceptive tactics to procure money from the victims. After a while, the defendant stopped asking for money to work on the vehicles and began to desperately plead for money to keep his shop open," which the victims gave to him "believing that their vehicles were still being worked on."

Based on the foregoing, the trial court reasonably could have ruled that each theft from each of the victims "was part of an overarching plan" serving the defendant's ultimate purpose of "keep[ing] his shop open" by paying his expenses, but not working on the victims' cars. In this way, the charges were mutually dependent. Breed, 159 N.H. at 70. Under these circumstances, we cannot say that the trial court unsustainably exercised its discretion by joining the charges in this case. See id.

Reconsideration denied;
slip opinion modified.

Hicks, Bassett, Hantz Marconi, and Donovan, JJ., concurred.

Timothy A. Gudas,
Clerk

Distribution:

Strafford County Superior Court, 219-2017-CR-00604; 00606; 00614; 00617
Honorable Mark E. Howard
Honorable Tina L. Nadeau
Mr. Brim Bell
Thomas A. Barnard, Esq.
Appellate Defender
Elizabeth C. Woodcock, Esq.
Attorney General
Lin Willis, Supreme Court
File

Docket No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

BRIM BELL—PETITIONER

vs.

STATE OF NEW HAMPSHIRE

RE: THE NEW HAMPSHIRE SUPREME COURT

Case No. 2019-0047

PRO SE MOTION: FOR REHEARING OR RECONSIDERATION; BASED ON NEW HAMPSHIRE

SUPREME COURT: RULE 22

Brim Bell (petitioner/pro se)
126 Lowell Street
Manchester, N.H. 03104
Tel. (603) 782-6127
Fax # (603) 627-5126

APPENDIX D

AUG 26 2023

THE SUPREME COURT OF NEW HAMPSHIRE
OFFICE OF THE CLERK: Timothy A. Gudas
Re: Case No. 2019-0047

August 28, 2022

Dear Mr. Gudas,

Please enter into the [Court-Record], these (eight) copies of edited versions of Defendant's **MOTION: FOR REHEARING OR RECONSIDERATION**, dated August 23, 2022. With the Court's permission attach the included **MOTION: FOR JUDGEMENT OF ACQUITTAL**, dated July 26, 2022.

Also, please send a confirmation letter regarding the (hand-delivered) original-version that was [dropped off] at this Court, within the allotted [10 day] period, for submission on August 26, 2022. As well as the admission of this edited-version. See: (Attachments to this letter).

CC:

Weston R. Sager, Esq.
Attorney General's Office
Strafford County Superior Court
Thomas P. Velardi (County-Attorney)
State House (Governor)
File

My sincerest thanks...

Signature: _____


Brinn Bell (Pro Se Defendant)
One Perimeter Road
Concord, N.H. 03302
Tel: (603) 271-1945

THE STATE OF NEW HAMPSHIRE -SUPREME COURT-CASE NO. 2019-0047

STATE OF NEW HAMPSHIRE

v.

BRIM BELL

AUGUST 23, 2022

MOTION: FOR REHEARING OR RECONSIDERATION; BASED ON NEW HAMPSHIRE SUPREME COURT: RULE [22]

NOW COMES Pro se Defendant (Brim Bell); citing State and Federal case law relevant to reasons for this motion. Particularly, the points of Law or Facts that in the professional judgement of the (movant), the Court has overlooked or misapprehended.

1. **NOTICE OF APPEAL/ONE-ISSUE:** See: [Section 13]. "Whether Trial-Counsel erred by not calling as a Witness: Sergeant Randy Young of the Strafford Police Department." This issue was (raised) in Defendant's Pro se Supplemental-Brief & Pro se Reply Brief, as well as the State's Response Brief. This is the most basic and fundamental [Root] of the case. If Sergeant Young took the stand the opportunity to ask about the CHAIN OF CUSTODY of the evidence would have exposed (his) illegal entry into the Defendant's Home, Garage and Fenced-In Curtilage. Because, Defense-Counsel (Robert J. Watkins) planned to play the Audio-Recording, title; [CALL TO STRAFFORD POLICE] known as Exhibit-A/SMOKING-GUN: recorded by the Strafford County Sheriff's Department on January 31, 2017. If the Jury heard Sergeant Young's open confession to the items that [he] illegally seized, which includes: Serial Numbers, VIN numbers and Pictures of Everything? (All the parts) See: State v. Whittaker, 158 N.H. 762, 766 (2009) & Strickland v. Washington, 466 U.S. 688, 695 (1984) [Quoting-Whittaker]: "Defense-Counsel's [failure] to present Exculpatory-Evidence, is not a reasonable trial-strategy"!

We should [conclude], that EXHIBIT-A would have caused a more favorable verdict for the Defendant. See: State Constitution; Part 1, Article 19, and Federal Constitution; Amendments IV, V, VI and XIV. Also See: State v. Canelo, 139 N.H. 376 (1995) and Mapp v. Ohio, 367 U.S. 643 GL ed 1081, 81 S. Ct. 1684, 84 A.L.R. 2d 933 (June 19, 1961) 'THE COURT RECORDS CONFIRM, SEARCH-WARRANTS DO NOT EXIST'. See: State v Blackmer, 149 N.H. 47, 49, 816 A. 2d 1014 (2003); Sup. Ct.R.16 (3)(b). [Quoting-Blackmer] "Nor will we review issues that were not raised in a NOTICE OF APPEAL." 'FARCICAL-CASE EXPOSED [by] EXHIBIT-A'

2. **REPLY-BRIEF & PRO SE REPLY-BRIEF:** were not raised in this Court's opinion. Considering the numerous errors that are raised, from the trial-record & sentencing? Which includes numerous crucial facts; (1) Ineffective Assistance of Counsel (2) Prosecutorial Misconduct (3) Illegal Search & Seizure (4) Mistrial (5) Unfair Trial (6) Extortion by Sergeant Randolph H. Young (7) Criminal Threats by Sergeant Young (8) Due Process Violations (9) Abuse of Discretion (10) Altered Exhibits by the State (11) Self Help

Eviction (12) Local Law Enforcement Allowed The Illegal Release of Private-Property.
See: Finan v. Sokorelis, 2016 N.H. LEXIS 81 (2016) [quoting-Sokorelis]: "It is a longstanding (rule) that parties are not entitled to Judicial-Review of issues that they did not [raise] in the Trial-Court." '**UNCONSTITUTIONALLY OBTAINED EVIDENCE IS INADMISSABLE; WHICH DEEMS IT [INSUFFICIENT] TO CONVICT**' See: Fahy v Connecticut, 375 U.S. 85 (1963)

3. **MOTION/FOR RECONSIDERATION**: "The Trial-Court must have had the opportunity to consider (any) issues asserted on appeal; thus, any issues which, could not have been presented to the [Trial-Court] prior to its decision must be presented to it in a MOTION: **FOR RECONSIDERATION**. See: N.H. Dep't of Corrections v. Butland, 147 N.H. 676, 679, 797 A. 2d 860 (2002).
4. **BRADY VIOLATIONS**: were raised on the trial-record. On sentencing day, January 2, 2019 the Defendant raised Prosecutorial Misconduct. He stated Chelsea E. Lane (State Prosecutor) hid the truth from the jury and misled the jury repeatedly. This was relevant to States-Witness (Jason Konopaci's) false testimony. Mr. Konopaci was asked to read part of [EXHIBIT-25]. This was to knowingly mislead the jury, in the State's favor. However: the Exculpatory (last-line) of Exhibit-25 was not read; quote: "I'm fucking with you". Which does contradict Konopaci's entire testimony, regarding his car. Specifically was the photograph on Exhibit-25 of his car. During (jury-deliberations) the "ALTERED-EXHIBIT-25" was in question? Quoting Jury-Note/Docket#17-CR-604. Date: 10-4-18. "On State's Exhibit-25 the last cut-off line was not presented to us, and changes the (context) of the evidence. Can we use the last line in our deliberation?" 10/4/18 P.J.M. 2:15 p.m. (end quote). See: Brady v. Maryland, 3373 U.S. 83, 87, 10 L Ed. 215, 218, 83 S. Ct. 1194, 1196-97 (1963). '**THE JURY MUST BE QUESTIONED; TO FIND OUT WHAT JUDGE HOWARD INSTRUCTED THEM TO DO'**
5. **MARK E.HOWARD**: (Presiding-Justice) entered the jury room, to retrieve [jury-note]; alone. Remember, this was during live-deliberations? After a supplemental jury instruction was formed in Open-Court, without the Defendant [present]. Judge Howard, once again violated the sanctity of live-deliberations by taking the Courts response back to the (jury-room) alone. If the Defendant was present for Trial on October 3 & 4, 2018, objections would have been made. Because the trial-transcripts clearly reveal numerous U.S. Constitutional Rights Violations, that are substantial enough to affect the verdict. Obviously, the Court did not want the Defendant to interrupt. Especially Judge Howards' bias comment regarding the [jury-note] that was read out loud in 'OPEN-COURT'. The

Jury was brought back out into the Court-Room, for this Supplemental-Instruction. However the Defendant was left at the jail. [Quoting-Judge Howard] "Boy it sure does, doesn't it!?" This most egregious error, is an (Automatic) reversible, 'PLAIN-ERROR'!

Because it is forbidden in (any) Jury-Trail, for the Judge to make personal opinion remarks regarding the evidence presented at trial. Also include; slurs, facial expressions and body language. See: N.H. CODE OF JUDICIAL CONDUCT/RULE 2.3 'Bias, Prejudice and Harassment', and Plain-Error: N.H. Sup.Ct.R.16-A/Fed. R.Crim. P.52(b). See: U.S. v. Gagnon, 470 U.S. 522 (1985) 'DUE PROCESS CLAUSE OF THE FOURTEENTH-AMENDMENT'.

Note: 'PRESIDING-JUSTICE KNOWINGLY, WILLINGLY & PURPOSELY, [TAINTED] THE DEFENDANT'S CASE'. (This Court should vacate its' opinion; August 16, 2022 and Reverse/Remand).

WHEREFORE Pro se Defendant prays for the following from this Honorable Court;

- A. **Grant** a (oral-argument) 'REHEARING', to shed light on the multitude of reversible errors.
- B. **Grant** the Defendant's (Motion) for 'RECONSIDERATION', regarding the Court's most recent opinion; Dated: August 16, 2022.
- C. **Grant** this, and any other relief that this Court deems just and proper.

Respectfully Submitted,

Brim Bell (Pro se Defendant)
One Perimeter Road
Concord, N. H. 03302
Tel. (603) 271-1945

Signature: _____

Brim Bell (Pro se Defendant)

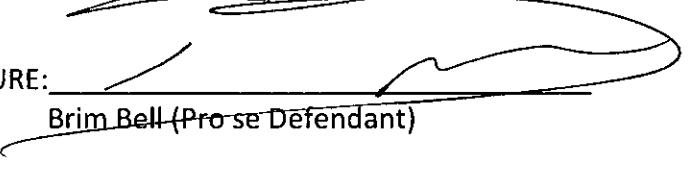
August 23, 2022
Page 4

cc:

Weston R. Sager, Esq.
Attorney General's Office
Strafford County Superior Court
Thomas P. Velardi (County-Attorney)
State House
File

CERTIFICATE OF SERVICE

"I, Brim Bell, certify that a copy of this (motion), was forwarded to Weston R. Sager (Assistant-Attorney General) @ The Attorney General's Office, on this date via: U.S. POSTAL-SERVICE (First Class Mail). I also sent a copy to Kimberly T. Myers (Clerk) @ The Strafford County Superior Court."

DATED: August 28, 2022 SIGNATURE: 

Brim Bell (Pro se Defendant)

Clerk's Notice of Decision
Document Sent to Parties
on 08/30/2022

THE STATE OF NEW HAMPSHIRE
Case Number : 219-2017-CR-OD604

STRAFFORD COUNTY

2021 AUG 19 PM 12:38
SUPERIOR COURT

Order: Upon review, motion denied. The Motion restates or recharacterizes the numerous non-meritorious issues raised in prior pleadings which the court has already addressed. To the extent any issues here **STATE OF NEW HAMPSHIRE** could be construed as new, the issues lack merit and do not support a judgment of acquittal.

Mark E. Howard

v.

July 26, 2022

Honorable Mark E. Howard
August 29, 2022

BRIM BELL

**MOTION: FOR JUDGMENT OF ACQUITTAL; [CONTRARY TO LAW]
BASED ON INSUFFICIENCY OF THE EVIDENCE**

NOW COMES Pro se Defendant (Brim Bell); citing State & Federal caselaw, relevant to the illegality presented in this case. The State's Prosecution, was built Solely on Hearsay and Unconstitutionally Obtained Evidence. See: State Constitution; part 1, article 19, & Federal Constitution; amendments IV, XIV.

1. MECHANICAL BONDAGE : of an invalid construction (relevant) to a Unconstitutional - Prosecution. Used for the Malicious - Manufacturing of this farcical, Travesty of Justice. See: (f-n 1) [Smoking-Gun] does in fact, supersede (all) evidence presented to the jury, and every piece of tainted-evidence that the State - erroneously admitted into evidence, at Brim Bell's trial... Trial-Counsel (Robert J. Watkins) just sat in his chair (without) any objections, in relation to the admissibility of the State's - Witnesses, or the Defendant's Bank - Records, Text - Messages, and E - mails. Watkins Knew, (four - months) prior to trial, that Chelsea E. Lane, Esq. (State - prosecutor) failed to disclose the necessary Search - Warrants to validate (all) the evidence that derived from Officer Randolph H. Young's Search & Seizure from the [first - day] of his investigation on Brim Bell... Dated: October 20, 2016. see: 23 U.S.C. § 2106

(f-n 1) Chelsea E. Lane made silly faces & chose to laugh in front of the Jury, during Defendant's testimony. Trial-Counsel allowed this. Humiliation of his client, without objection to the obvious, Mockery of Justice...

July 26, 2022

2. STRAFFORD COUNTY SHERIFF'S OFFICE: on January 31, 2017, recorded the [CALL TO STRAFFORD POLICE]. Made by Brim Bell, to Sgt. Randolph H. Young / Strafford P.D.. This colloquy clearly reveals the crucial facts. That Officer Young illegally entered the Defendant's Home/Garage & Curtilage, based solely on hearsay. See: (f-n 2)

3. MOTION FOR ACQUITTAL: HN1 "An Appellate-Court's reversal for Insufficiency of the Evidence is in effect, a determination that the Government's (case) against a defendant was so lacking that the Trial-Court should have entered a Judgment of Acquittal. Because a reversal for Insufficiency of the Evidence is EQUIVALENT to a Judgment of Acquittal" such a reversal bars a retrial." See: McDaniel v. Brown, 558 U.S. 120 (2010) & State v. Spinale, 156 N.H. 456 (2007)

4. STATE v. BALL, 124 N.H. 226 (1983) HN2 "The New Hampshire Constitution is the Fundamental-Charter of the State. The Sovereign people gave limited powers to the State-Government & the Bill of Rights in N.H. Constitution; part 1, protects the people from Governmental-Excesses & potential abuses! When State-Constitutional issues are raised, an Appellate-Court has a responsibility to make an independent determination of the protections afforded in the New Hampshire Constitution... If an Appellate-Court ignores this [DUTY] the Court fails to LIVE-UP TO IT'S OATH to defend the Constitution, and the Court helps to- [destroy] the Federalism that must be so carefully safeguarded by the people..." See: (f-n 3)

(f-n 2) [definition] HEARSAY: n. 1 rumor; gossip. 2 [Law] the report of another person's words by a witness, usually disallowed as evidence in a Court.

(f-n 3) [definition] FEDERALISM: n. 1-a often cap: the federal principle of organization b: support or advocacy of this principle 2 cap: the principles of the Federalists...

July 26, 2022

5. SUFFICIENCY OF EVIDENCE: HN2 "An Appellate-Court reviews evidentiary Sufficiency claims (de novo). A District-Court's DENIAL of a MOTION: FOR ACQUITTAL must be affirmed unless the evidence (viewed) in the light favorable to the Government, could not have persuaded (any) trier of fact of the defendant's GUILT, beyond a reasonable doubt." The [verdict] can - not be upheld, if there is a lack of (any) Plausible-Rendition of the record. See: U.S. v. Bristol-Martir, 570 F. 3d 29 (2009).

6. UNCONSTITUTIONALLY OBTAINED EVIDENCE: HN2 "Where the erroneous admission of Unconstitutionally Obtained Evidence, at a Defendant's-Trial was 'PREJUDICIAL', the (error) is not HARMLESS', & the conviction must be REVERSED'... The question is [not] whether there was sufficient evidence, on which a defendant could have been convicted (without) the evidence complained of? The question [is], whether there is a reasonable possibility that, the evidence complained of (might) have contributed to the conviction"? See: Fahy v. Connecticut, 375 U.S. 85 (1963) [quoting-Fahy]"Presumptively, it's admission was 'ERROR', because evidence obtained by an Illegal Search & Seizure was inadmissible under the MAPP-RULE."

7. MAPP v. OHIO, 367 U.S. 643 GL ed 1081, 81 S. Ct. 1684, 84 A.L.R. 2d 933 (June 19, 1961) [quoting-Mapp]: "On appeal, the Court reversed the State Supreme Court decision. The Court held, that the DUE PROCESS CLAUSE of the FOURTEENTH AMENDMENT extended to the States; (fourth amendment right) against Unreasonable Searches and Seizures. And, as necessary to[ensure] such rights, as the [MAPP EXCLUSIONARY-RULE], Which prohibited the introduction into evidence of (material - seized) in violation of the 'FOURTH-AMENDMENT', likewise, applied to the State's-Prosecution of State-Crimes."...

8. STATE v. CANELO, 139 N.H. 376 (1995) [quoting-Canelo]: "In 1961 The UNITED STATES SUPREME COURT required State-Courts to apply the Federal Exclusionary-Rule in State-Prosecutions. Recognizing the obvious futility of relegating the 'Fourth-Amendment' to the protection of other remedies... The Court held that (all) evidence obtained by Searches & Seizures in violation of the Constitution is, by that - same authority, inadmissible in a State-Court. Id. at 655. The Court reiterated that the Exclusionary-Rule was mandated by the Constitution to provide a remedy to those, whose 'Fourth-Amendment Rights' are [violated]. In addition, the Court noted: that the 'Exclusionary-Rule Served to deter Fourth-Amendment Violations' & protect JUDICIAL-INTEGRITY"..., 367 U.S. at 658-59.

July 26, 2022

9. STATE v. CHAISSON, 125 N.H. 810, 819, 486 A.2d 297, 34 (1984) [quoting - Chaisson] "We hold that Defendant's Right to be FREE from an Unreasonable Seizure under; part 1, article 19, had been (violated) & ordered that (any) evidence obtained in violation of this right, cannot be used at trial... See: State v. Santana, 133 N.H. 798, 809, 586 A.2d 77, 84 (1991) [quoting - Santana] "ILLEGAL WARRANTLESS ENTRY in violation of part 1, article 19 requires — [SUPPRESSION OF THE EVIDENCE]..."

10. OUTCOME OF MAPP: "The Court reversed the judgment of the State Supreme Court & remanded the cause for further proceedings (not) inconsistent with the Court's opinion..." See: 'MAPP EXCLUSIONARY-RULE [sets] PRECEDENT'.

WHEREFORE Pro Se Defendant prays for the following from this Honorable Court;

- A. Grant a JUDGMENT OF ACQUITTAL; for the reasons precisely articulated in this motion: July 26, 2022.
- B. Grant the Defendant's assertion for the [termination] of Thomas A. Barnard (senior appellate defender), due to his failure to raise the most egregious - error, titled; 'COLOR OF STATE LAW'. Investigating Officer violated Defendant's Constitutional Right to PRIVACY. On October 20, 2016, Sgt. Randy Young forced entry into Defendant's HOME, GARAGE & FENCED-IN CURTIAGE, (without) Probable-Cause.
- C. Grant copies of transcripts from the [first-phase] of Defendant's invalid-trial, titled; JURY - SELECTION / September 25, 2018.
- D. Grant County-Jail Phone-Transcripts, of (all) calls made by Brim Bell, pre & post trial. "JURY WAS MISLED REPEATEDLY [by] — STATE-PROSECUTORS / TRIAL-COUNSEL & THE COURT"...
- E. Grant copies of (all) PHOTOGRAPHS-TAKEN by Sgt. Young, on his(first-day) of the investigation, which was an 'Untainted Fishing-Expedition' into Brim's Home, Garage, & Business Files.
- F. Grant a copy of the SEARCH-WARRANT & ITEMS SEIZED by Detective/Sergeant John Sunderland of Somersworth, P.D., on Sept. 21, 2018. This Detective [confide] to the Jury that (he) executed this fictitious-warrant, while under OATH!

July 26, 2022

- G. Grant (all) legalese of PRE GRAND-JURY PROCEEDINGS, in this Court. (include grand-jury witness list) NOTE: State Prosecutor Knowingly elicited false testimony from the State's Chief-Witness; Officer Randolph H. Young of Strafford P.D..
- H. Grant INCIDENT-REPORTS; that document numerous illegal entries into Defendant's Home & Garage by [both] Strafford, & Somersworth P.D., prior to Sham-Trial.
- I. Grant the Defendant (all) NOTES made, while State Prosecutor [Chelsea E. Lane] privately interviewed the alleged-victims and Officer Young, pre Grand-Jury & pre-Trial. See: MOTION: TO COMPEL THOMAS P. VELARDI / December 6, 2021...
- J. Grant a (full-copy) of all JURY-QUESTIONNAIRES from the first-phase of trial, on September 25, 2018 (please include Voir-dire testimony records) 'DUE PROCESS VIOLATION'
- K. Grant copies of (all) the SUBPOENAS served in this case. Especially; the [writ of subpoena] that was served to Defendant's Star-Witness; Officer Randolph H. Young. This case was illegally manufactured by Sgt. Young, but he never took the [STAND] to give testimony, at Defendant's illegal, invalid-trial?
- L. Grant a NEUTRAL-JUDGE that (rules) within the confines of State & Federal-Constitutions. Mark E. Howard (presiding justice) is in violation of the New Hampshire Code of Judicial Conduct. See: Rule 2.11 'Disqualification'. Howard (exposed) his 'Personal-Interest' regarding alleged victim [Christine Tibbatts Esquire]. Brim Bell is a first-hand witness to Judge Howard's acknowledgement, to the illegality before us; 'CONFLICT of INTEREST'... (only need a hint) See: [pre-trial bail-hearings transcripts, for confirmation].
- M. Grant this and any other relief, that this Court deems just & proper.

CC:

STRAFFORD COUNTY ATTORNEY'S OFFICE
Professional Conduct Committee
Supreme Court of United States
American Bar Association (D.C.)
Attorney General's Office (D.C.)
Judicial Conduct Committee
Federal Bureau of Investigation
Supreme Court of New Hampshire
Robert J. Watkins, Esq.
Chelsea E. Lane, Esq.
The State House
The White House
File

Respectfully submitted,
Brim Bell #116957
(pro se defendant)
One Perimeter Road
Concord, N.H. 03302
Tel. (603) 271-1945

July 26, 2022

CERTIFICATION OF SERVICE

"I, Brim Bell, hereby certify that a copy of this (motion) has, on this date, been forwarded to Thomas P. Velardi @ The Strafford County Attorney's Office; via U.S. POSTAL-SERVICE (first - class mail)."

Dated: July 26, 2022

Brim Bell

STATE OF NEW HAMPSHIRE

STRAFFORD, SS.

SUPERIOR COURT
219-2017-CR-604; et
al.

STATE OF NEW HAMPSHIRE

v.

BRIM L BELL

STATE'S OBJECTION TO DEFENDANT'S PRO SE MOTION FOR JUDGMENT OF
ACQUITTAL

NOW COMES the State of New Hampshire, by and through the Office of the Strafford County Attorney, and states as follows:

1. The Defendant filed a motion on or about August 22, 2022 listing numerous prayers for relief, including a judgment of acquittal.
2. Consistent with the Court's prior orders in this case, the State will respond if so ordered to do so by the Court.

WHEREFORE, the State requests that this Honorable Court:

- A. Deny the Defendant's motion without a hearing; or
- B. Order the State to respond to any or all arguments; or
- C. Hold a hearing on the matter; or
- D. Grant any other relief deemed proper and just.

Respectfully Submitted,
STATE OF NEW HAMPSHIRE

August 29, 2022

/s/ Patrick Conroy

Patrick Conroy
Assistant County Attorney
New Hampshire Bar # 269058
Strafford County Attorney's Office
259 County Farm Road
Suite 201
Dover, NH 03820

(603) 749-2808

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing State's Pleading has on this date been forwarded to pro se Defendant Brim Bell, #116957, One Perimeter Road, Concord, NH 03302.

Respectfully Submitted,
STATE OF NEW HAMPSHIRE

August 29, 2022

/s/ Patrick Conroy

Patrick Conroy
Strafford County Attorney's Office



U.S. Department of Justice

**United States Attorney
District of New Hampshire**

Federal Building
53 Pleasant Street, 4th Floor
Concord, New Hampshire 03301

603/225-1552

September 1, 2022

Mr. Brim Bell
One Perimeter Road
Concord, NH 03302

Re: July Correspondence

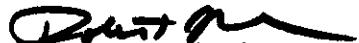
Dear Mr. Bell:

This Office is in receipt of your July 2022 correspondence. The envelope was addressed to me. The envelope stated: "Note: N.H. Supreme Court Is In Violation of RSA 91-A (right to know law)," and "DEFENDANT NEEDS PUBLIC-RECORDS; oral-argument transcripts [February 17, 2022]." It appears from your handwritten notes on the May 20, 2022 letter from the United States District Court for the District of New Hampshire that you are requesting records pursuant to NH RSA 91-A.

This Office represents the federal government, which was not a party to the Strafford Superior Court case, State of New Hampshire v. Brim Bell, 219-2017-CR-00604, or to the New Hampshire Supreme Court appeal. As such, this Office is not in possession of the records that you seek. Because your inquiry refers to a state court appeal, you may wish to address your request to the New Hampshire Attorney General's Office.

Sincerely,

JANE E. YOUNG
United States Attorney


By: Robert J. Rabuck
Robert J. Rabuck
Chief, Civil Division
Assistant U.S. Attorney

THE CLERK'S OFFICE OF

THE SUPREME COURT OF THE UNITED STATES OF AMERICA: May 26, 2023

Dear Clerk of Courts,

Enclosed: please find for filing;

1. MOTION: FOR A 60 DAY EXPANSION OF TIME/TO PROPERLY & EFFECTIVELY FRAME & FILE A PETITION FOR A WRIT OF CERTIORARI/DUE TO EXTRAORDINARY CIRCUMSTANCES/UNDER U.S. SUPREME COURT RULE; 30.4/THIS MOTION SHOWS THE BASIS FOR FEDERAL JURISDICTION; (or late-file writ of certiorari; until July 15, 2023).
2. ATTACHMENT: AFFIDAVIT OF BRIM BELL (composed by petitioner/pro se)
3. TABLE OF CONTENTS: for Affidavit of Brim Bell (exhibits only)

Please note that I am a pro se prisoner, and have no meaningful access to a law library. In numerous U.S. Supreme Court cases, it is well established that pro se inmates, can not be held to the same standards as people with all their liberties of The United States, still in tack. Therefore, I will pray that this Honorable Court finds all documents sufficient, to be filed and considered by this Court.

'Thank you for your attention in this matter'.

RECEIVED

JUN 12 2023

OFFICE OF THE CLERK
SUPREME COURT U.S.

Signature: _____

Brim Bell

My sincerest thanks. . .
Brim Bell (petitioner/pro se)
126 Lowell Street
Manchester, N.H. 03104
Tel. (603) 782-6127

APPENDIX E

Docket No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

BRIM BELL—PETITIONER

vs.

STATE OF NEW HAMPSHIRE

RE: THE NEW HAMPSHIRE SUPREME COURT

Case No. 2019-0047

MOTION: FOR A 60 DAY EXPANSION OF TIME/TO PROPERLY & EFFECTIVELY FRAME & FILE A PETITION FOR A WRIT OF CERTIORARI/DUE TO EXTRAORDINARY CIRCUMSTANCES/UNDER U.S. SUPREME COURT RULE: 30.4/THIS MOTION SHOWS THE BASIS FOR FEDERAL JURISDICTION; (or late-file writ of certiorari until July 15, 2023).

Brim Bell (petitioner/pro se)
126 Lowell Street
Manchester, N.H. 03104
Tel. (603) 782-6127
Fax # (603) 627-5126

NOW COMES Brim Bell (petitioner/pro se) in the above referenced matter, and moves this Honorable Court. To allow a sixty-day Extension of Time; to file a Writ of Certiorari. Pursuant to 28 U.S.C.S. § 1257(a). Petitioner asks that The Court Grants, an Expansion of Time up to April 15, 2023. Or alternatively, allow Petitioner to Late-File the Petition for Writ of Certiorari up to July 15, 2023.

As reasons therefore, Petitioner states that, as set forth more fully in the Affidavit of Brim Bell:

1. The State of New Hampshire has denied & deprived Mr. Bell of his Constitutional-Rights to Due Process of Law. As guaranteed by The Fourteenth Amendment to The United States Constitution. Through a sham of a trial. In which, The State of New Hampshire;

a) allowed a Strafford County Police Officer, one/Randolph H. Young to commit perjury; during his testimony at a Grand-Jury Hearing to obtain an indictment; (See: attached affidavit and exhibits), and

b) permitted Sgt. Young to present evidence derived from several Warrantless-Searches of Mr. Bell's auto business and residence. During his search, Young took photographs of items in Brim's Auto-Shop & Home. [NOTE: Brim Bell had operated a antique motor vehicle restoration business, for over twenty-years.] Sgt. Young also took V.I.N. numbers from the vehicles. Searched through Brim's business-records; and used that evidence to contact Brim's clients. Whom Young, then persuaded to believe that Brim Bell was committing Thefts by Deception, to obtain money from them. [NOTE: Sgt. Randolph H. Young, had been contacted by one—James N. Lund (Brim's Landlord) and a close-friend of Mr. Young.

Ironically, Sgt. Young is a former-tenant of Mr. Lund.] Also, Mr. Lund was seeking assistance from Sgt. Young, to remove Mr. Bell from his rental-property and collect back-rent, which the legal-tenant (Brim Bell) owed Mr. Lund. While The State alleged and portrayed his Warrantless Search of Brim's Auto-Shop and Home, as an "investigation". There had been NO Criminal-Complaints filed by any of Brim's Clients; that would have triggered probable-cause to permit Young to enter Mr. Bell's auto-business, residence, or curtilage, and conduct a search & seizure. See: Affidavit of Brim Bell; at ¶¶ 6-11 & Incident-Report 8/13/2018.

c) In preparation for trial, The State indicated that Sergeant Randy Young would be testifying. Id. at ¶ 7.

d) Based upon the fact that Young had been the person whom, searched Brim's Leased—Building. That Sgt. Young's Warrantless-Search, resulted in every piece of evidence The State intended to present at Brim's-Trial. Mr. Bell's Court Appointed Attorney (Robert J. Watkins) framed Mr. Bell's Defense in belief that Sgt. Young was The State's Chief-Witness. Also, would be able to confront, and cross-examine Young. Id. at 111 7-8.

e) During Defense-Counsel's Opening-Statement, Watkins told the jury, that they would hear-testimony from Sergeant/Randy Young. And— intimated that the jury would hear evidence of improper-conduct, as well as illegal-acts, committed by Sgt. Randy Young. Id. at 118.

f) Immediately upon concluding The Defense's Opening-Statement, The State-Prosecutor (Chelsea E. Lane) objected to The Defense's comments relating to expected testimony from Randy Young. Was somehow improper; and could NOT be used as evidence. On the reasoning that The State, after discovering that Young may have given False-Testimony to The Grand-Jury, did NOT intend to put Sgt. Young on the stand. See: Affidavit of Brim Bell; at 11111, also see EXHIBIT-B & C/Memo 8/15/2018 From: A.C.A. Lane. Prosecutor Lane contended that — [quoting/MS. LANE:] "If The Defense were to call Randy Young themselves, I don't see how that evidence comes in as NOT HEARSAY"... See: Affidavit/Trial-Transcripts; pg. 37/lines 9-16. The Court over-ruled The State's Objection; and made it clear that Criminal-Procedure allows that, Defense-Attorney's can call witnesses that The State has decided not to call, stating; [quoting/THE COURT:] "No, he can call him—and say did you get a call from Mr. Bell? —Yes. What'd you tell him? He can do that. You do it (all) the time. . . . Everybody, does it all the time". Id. pg. 37/lines 22-25.

2. Petitioner was deprived of his Constitutional-Right to Effective Assistance of Counsel. As guaranteed by The Fifth, Sixth, & Fourteenth Amendments to The United States Constitution, See: Strickland v. Washington, 466 U.S. 668 (1984) & United States v. Cronic, 446 U.S. 648 (1984);

as will be argued in the Petition for Writ of Certiorari. Court Appointed Counsel (Robert J. Watkins) representation was Constitutionally Ineffective Assistance of Counsel. And that, Watkins' performance as Mr. Bell's (defense-counsel) was deficient and inclusive of procedural errors, that deprived Petitioner of the most Fundamental-Rights of an accused person; The Right to Confront and Cross-Examine his accuser. As guaranteed by The Sixth-Amendment, to The U.S. Constitution and to present evidence in his Defense. The trial-record shows that Watkins' representation fell below an objective standard of reasonableness. Also, committed Egregious-Errors, resulting in prejudice that were unprofessional and cannot be considered reasonable trial-strategy, including;

- a) despite having evidence that Sgt. Young had no Probable-Cause to Warrantless-Search, of Brim's Auto and residence. As well as, all the evidence presented by The State, had been obtained through the Warrantless-Search. Watkins refused to file for a SUPPRESSION-HEARING, (See: Petitioner's Affidavit, at ¶ 5); and
- b) withholding information from Brim Bell, that The Court had GRANTED The Defense a "Richard's-Hearing" to permit defense-counsel, to inquire whether Sgt. Young intended to invoke his Fifth Amendment Right to refuse to answer questions relating to Young's-Testimony before The Grand-Jury. Also, whether Young Attempted to Extort Mr. Bell during a telephone conversation with Bell. [NOTE: It was not until the colloquy with The Court, relating to The State's Objection to The Defense's reference to Sgt. Young's illegal-conduct in his Opening-Statement. That, the Petitioner learned that counsel had been granted a "Richard's-Hearing". However, for reasons not disclosed, the hearing was never held, and Watkins never demanded the hearing.] Petitioner asserts that the Memo/page 790 from A.C.A. Chelsea E. Lane, dated: 8/15/2018 (Re: Testimony Review), in which, The State notified Watkins that Young had made contradictory-statements from the testimony Sgt. Young gave to The Grand-Jury. Supports a basis to conclude, that Young mislead The Grand-Jury. And that, Sgt. Young's animus to conduct a Warrantless-Search, was to extort Brim Bell. As a favor to James N. Lund; Randy Young's (friend). (See: Affidavit at ¶ 8 & EXHIBIT-B).

Despite the plainly obvious relevance, for the Defense to engage in a line of questioning regarding Sgt. Young's Grand-Jury Testimony. To show his motive, for conducting a Warrantless Search, and his Attempt to Extort Brim Bell. But Watkins' abandoned all lines of questioning. In doing so, abandoned his duty to his client (Brim Bell) to subject The State's Case, to the meaningful Adversarial-Testing. Which, the Sixth Amendment requires from a defense attorney, depriving Mr. Bell of the Effective Assistance of Counsel;

c) that upon The Prosecutrix's Objection to Defense-Counsel's Opening-Statement, wherein Watkins' told the jury that they would hear testimony from Sgt. Randy Young. Stating, "Young would testify about a conversation with Brim. That had been recorded, and which Sgt. Young told Mr. Bell "you've got to come up with a couple of \$100,000 dollars, or your going to prison for a long time", See: Petitioner's Affidavit at ¶ 11; see also EXHIBIT-B (Trial-Transcript of Opening-Statement at pg. 32/lines 4-11); and The State informed The Court, and Defense, that Randy Young would NOT be called to testify for The State. When The Prosecutrix stated that her objection to The Defense's Opening-Statement was that, because The State did NOT intend to call Young to testify. The Defense's references to Sgt. Young would be (hearsay and not admissible). The Court explained to The State Attorney, that The Defense could call Sgt. Young and that Young's-Testimony would NOT BE HEARSAY. Despite the facts; Randy Young was the person (who) provided the evidence used by The State, including misleading statements to The Grand-Jury. That there was evidence, that Young had attempted to (extort Brim Bell). As well as a "Richard's-Hearing", been Granted to permit Sgt. Young to assert his 'Fifth Amendment Privilege' to questions. Which, answers from Young would expose him to JEOPARDY. More relevant is the fact that Watkins' Opening-Statement to the jury, was indeed, Watkins' entire defense for Brim Bell. That was, the conduct and questionable evidence, that derived from the Warrantless-Search. Watkins'—without explanation did not convene the 'Richard's-Hearing'. Also, did not call Sgt. Young to permit examination of The State's Chief-Witness (Randolph H. Young). Watkins' failure to call Randy Young, as a witness, after telling the jury they would hear testimony from Young was an egregious, MONUMENTAL ERROR that undermined Brim's-Defense. And constructively, deprived Mr. Bell of the 'Effective Assistance of Counsel';

and Watkins' failure to call Young as a witness, cannot be considered a (reasonable trial-stategy). Furthermore, fell below the Standard of Reasonableness. Depriving Brim Bell of the most Fundamental Constitutional Protection for an accused person: "The Right to Confront & Cross-Examine his accuser". The prejudice resulting from Watkins' errors is plainly obvious. It's highly probable, that absent Watkins' failure to examine Randy Young. The verdict: would have been favorable to Brim Bell, and it cannot be (ignored) —— that the entirety of The State's Evidence, including testimony from Brim's Clients — were derived directly from Officer Young's Warrantless-Search. Under the facts and circumstances of this case, NO reasonable attorney could have decided, that not calling Randy Young as a witness, was a prudent Trial-Strategy;

d) on January 2, 2019, prior to being sentenced, Petitioner presented his Allocution to The Court, See: Petitioner's Affidavit, ¶ 16; and

'when' addressing The Court, Mr. Bell asserted that Attorney Watkins' had failed to provide (effective-assistance). Specifically that, as stated above at ¶ 2-c, the failure to call Sgt. Young to permit The Defense to Confront and Cross-Examine the person that conducted the Warrantless-Search of Brim's Auto-Shop & Home. Illegally seized: client information and gave misleading testimony at The Grand-Jury. Id. ¶ 11. As Brim Bell asserted and listed the errors Watkins committed, Attorney Watkins stood up without comment, and moved away from The Defense-Table. Taking the case file, and sat at a table behind Mr. Bell. Id. at 17. Attorney Watkins never spoke to Brim Bell again. Also, refused his phone calls and ignored (all) certified-letters from former client. Requesting exculpatory documents from Robert J. Watkins, that were never forwarded to Brim Bell. But, the missing key documents were part of the original case file. Shortly thereafter, Watkins filed two motions in regard to Brim Bell's case: (1) A motion to withdraw, in which Watkins indicated that Mr. Bell "blamed undersigned counsel for his convictions. Citing trial-strategy errors, and collusion with The State". Which Watkins (denied) without any comment on the 'Trial-Strategy' by failing to question Randy Young. But acknowledged that "there has been a breakdown in the attorney-client relationship". Id. ¶ 18, see also EXHIBIT-H Motion to Withdraw at ¶¶ 3-4; & filed a Rule 7: NOTICE OF MANDATORY-APPEAL.

NOTE: Petitioner respectfully requests that this Honorable Court note that Attorney Watkins raised only one question in the 'NOTICE of APPEAL'; (see section 13) "Whether Trial-Counsel erred by not calling as a witness, Sergeant Randy Young of the Strafford Police Department"? Id. See: Petitioner's Affidavit, at ¶ 18, see also EXHIBIT-I:/ RULE 7: NOTICE OF MANDATORY APPEAL, at ¶ 13.

3. Subsequently The New Hampshire Supreme Court appointed an attorney from The New Hampshire Appellate Defender Program. One, Thomas A. Barnard as Mr. Bell's Appellate-Counsel. See: Petitioner's Affidavit; at ¶ 19. The N.H. Appellate Defender is an (ancillary-office) of The N.H. Public Defender Program. See: State v. Veale, 154 N.H. 730, 732-733 (2007). It has been determined that attorney's with The N.H. Appellate Program cannot represent defendant's that have asserted 'Ineffective Assistance' claims against an attorney working in The N.H. Public Defenders Office. Id. Brim Bell had no knowledge of the Veale decision at the time Attorney Barnard was appointed as his Appellate-Counsel. See: Petitioner's Affidavit, at ¶ 19. However, upon their initial meeting Mr. Bell attempted to discuss the errors of Attorney Watkins. The Ineffective Assistance Issue that Watkins raised in his Rule 7: NOTICE of APPEAL. The failure to challenge the Warrantless-Search. The failure to Confront Sgt. Young, etc., etc., and Appellate Counsel (Thomas Barnard) told Mr. Bell that "it is too late to raise those issues". Also, adamantly refused to brief the 'Ineffective Assistance of Counsel Claim'—against Watkins. Id. at ¶ 20. Ironically, Attorney Barnard actually told Brim Bell, that he "cannot raise ineffective assistance because—that would be a Conflict of Interest". Id. at ¶ 20. The ineffective assistance claim, became a contentious subject between Mr. Bell and Attorney Barnard. Id. at ¶ 21. Which prompted the Petitioner to file several motions for New-Counsel. But The Court, summarily denied. Id. Until The Supreme Court issued an order giving Mr. Bell permission to file a Supplemental Pro se Brief; to permit Brim Bell to present the 'Ineffective Assistance of Counsel Issues', relating to Trial-Counsel Watkins. See: Petitioner's Affidavit, at ¶ 22/ see also EXHIBIT-L. New Hampshire Supreme Court ORDER Nov. 5, 2020. Court appointed appellate counsel, raised only two issues: (1) Improper Joinder of the crimes; (2) The evidence was Insufficient to Convict. There was no mention of the ineffective issue; raised by Robert J. Watkins in the Rule 7: NOTICE of APPEAL, that he filed himself. See: Affidavit at ¶ 23.

4. On November 18, 2022, The New Hampshire Supreme Court issued it's opinion. See: Petitioner's Affidavit, at ¶ 28, see also EXHIBIT-M.

The N.H. Supreme Court—final/opinion, The State of New Hampshire v. Brim Bell; dated November 18, 2022. The opinion was 14 pages long, and 12 of those pages addressed the Sufficiency of the Evidence. Also, the Joinder-Issues raised by Thomas A. Barnard. See: EXHIBIT-M.

The Court devoted (one page & two short paragraphs to Petitioner's Supplemental-Brief), addressing only two of the 10 issues raised in Brim Bell's Pro se Supplemental-Brief. See: Affidavit Exhibit-L.

The New Hampshire Supreme Court indicated that Mr. Bell had "failed to demonstrate, that the issues are preserved"..."are inadequately briefed, and therefore waived"..."or they lack merit, and warrant no further discussion", Id;

and Petitioner asserts that The N.H. Supreme Court's rulings, relating to questions presented within his pro se Supplemental-Brief, are unsustainable exercises of discretion; that ignore the fact that Mr. Bell on numerous occasions, raised the issue of (ineffective-assistance) of both his Trial-Counsel (Robert J. Watkins), and Court Appointed Appellate Counsel (Thomas A. Barnard), both verbally in his allocution & in actual pro se motions for New-Trial based upon the errors of Watkins (set out supra) and the plainly apparent Conclict of Interest. Resulting by the appellate-counsel's relationship to trial-counsel. Also, Barnard's abject refusal to raise the errors of Trial-Counsel Watkins. As Mr. Bell directed Barnard to do, and despite the fact that, in his MOTION: TO WITHDRAW and the Rule 7: NOTICE of MANDATORY APPEAL, trial-counsel informed The Trial-Court that "there has been a breakdown in the Attorney/Client relationship". See: Petitioner's Affidavit, at ¶ 19/ see also EXHIBIT-H MOTION: TO WITHDRAW. As well as, the Rule 7: Notice of Appeal, Watkins asserted only (one Question) for appeal; "whether trial counsel erred by not calling as a witness, Sergeant Randy Young of The Strafford Police Department"? (see notice of appeal/section 13). Petitioner contends that the Exhibit-Attached to the instant motion belie The N.H. Supreme Court's holding that Mr. Bell failed to preserve his "Ineffective Assistance of Counsel Issues", to the Trial-Court. Also that, Brim Bell failed to challange the admissibility of the evidence. As averred in his Affidavit, Brim Bell consistantly directed trial and appellate counsel, to raise challanges to the evidence. To request Evidentiary Hearings, challange Sgt. Young's Warrantless Search. Indeed, Petitioner in his allocution, pointed out to The Trial-Court that Trial-

Counsel told the jury that they would be receiving testimony from Sgt. Young, that would exculpate the Defendant. And that, after The State indicated that Sgt. Young (whose evidence was used by The State to indict and convict Brim Bell) was not being called by The State. Watkins had an obligation to call, confront and cross-examine Sgt. Young. Also, Attorney Watkins' failure to call Young, was not a reasonable trial-strategy. In which, deprived Mr. Bell of The Defence Evidence, Watkins told the jury they would be receiving. See: Petitioner's Affidavit, at ¶ 10/see also EXHIBITS-B. Orders of The New Hampshire Supreme Court, and the transcript of Watkins' Opening-Statement. Which includes; The State's Objection to The Defense's reference to Sgt. Young's recorded conversation with Mr. Bell. Id. Exhibits-A/B at pg. 13 to 43 of A.

Petitioner asserts that the record-evidence of this case, more than indicates that The State of New Hampshire, deprived Brim Bell of Fundamental Constitutional Rights. That proves, there was a concerted effort to deprive Petitioner of his Sixth Amendment Right to 'Effective Assistance of Counsel'. But even more egregious, The New Hampshire Supreme Court plainly erred in denying Mr. Bell, any relief by misstating the facts, and record of the case. That unequivocally show, that Mr. Bell was deprived of 'Effective Assistance of Counsel'. As well as, Defense Counsel's failure to call Mr. Young as a witness, was not a reasonable trial-strategy; but an error that deprived Mr. Bell of The Defense that Watkins told the jury, they would hear.

5. Petitioner's instant MOTION: FOR EXTENSION OF TIME & LATE-FILE TO (July 15, 2023) to properly and effectively frame & file his Writ of Certiorari. Is made necessary, due to The State's conduct in taking, & withholding all of Petitioner's Trial-Record. Therefore, the Petitioner implores this Honorable Court to consider that he could not reasonably have prepared a PETITION: FOR WRIT OF CERTIORARI, without the record-evidence. That Brim Bell has included in this motion. Without the documents referenced herein, any Petition challenging The New Hampshire Supreme Court's opinion, or conduct, would have been futile in that Mr. Bell would have asked this Honorable Court to accept his assertions absent any evidence.

6. As averred within his Affidavit, the petitioner's case-file was being withheld by The State. Id. at ¶ 30. He did not gain access to the documentary evidence until February 27, 2023. This was five-months after the seizure of all legal-work & typewriter, which occurred on September 26, 2022. Id. ¶ 29. Petitioner contends that it would be a further Miscarriage of Justice, if this Honorable Court refused to examine The State of New Hampshire's, obvious disregard to Brim Bell's 'Fundamental Constitutional-Rights', which permitted Mr. Bell to be Convicted. Based upon a trial, in which Petitioner's Defense-Counsel deprived him of The Defense that his attorney, told the jury that would be forthcoming.

WHEREFORE, Pro se Petitioner (Brim Bell) prays that this Honorable Court GRANT Petitioner's;

- A. MOTION: FOR EXPANSION OF TIME or LATE—FILE HIS PETITION FOR WRIT OF CERTIORARI up to July 15, 2023.
- B. Request for all forms that are necessary, to notify all the respondents. Regarding docket numbers, and dates of the current filings in this Court. See: U.S. Supreme Court Rule 29.
- C. Request for this and any other relief, that this Court deems just and proper.

May 26, 2023

Respectfully submitted,



Brim Bell (petitioner/pro se)
126 Lowell Street
Manchester, N.H. 03104
Tel. (603) 782-6127
Fax # (603) 627-5126

AFFIDAVIT OF BRIM BELL

I, Brim Bell, hereby depose and state:

1. I am the Petitioner in the above-referenced matter. And I make these averments based upon personal knowledge of the facts therein and as to those averment based upon information and belief, I believe them to be true;

2. I was convicted in the town of Dover New Hampshire, by a Strafford County Jury of Theft by Deception on October 4, 2018;

3. prior to my trial, it was necessary for me to request that, The Court remove my Court Appointed Public-Defender (Kristen Guilmette). Because she refused to challange The State's Evidence, or even discuss my Defense against the charges. The public-defender would consistantly try to persuade me to enter into a plea-agreement; telling me that "I would be convicted upon the evidence, The State had". The Court (Steven M. Houran) granted my request. However, another attorney affiliated with The New Hampshire Public Defender Program, was appointed to represent me. The third attorney appointed by The Court, was Robert J. Watkins, Esq. . Who, remained my trial-counsel throughout the proceeding of my case;

4. at the outset of his representation, we discussed My Defense and I told him that I wanted him to subpoena several of my former-clients whose vehicles were restored at my auto-shop, but Mr. Watkins refused. He also refused to call other expert auto-restoration professionals to testify. That the restoration of classic-cars, can entail delays of months to locate and obtain original-parts. As well as, exceed the original estimated costs and time. Attorney Watkins told me that "we don't need other witnesses; we have Randy Young. In which, his testimony will be enough to undermine The State's Case";

5. I also told Attorney Watkins to request that, The State provide a copy of the Search-Warrant, authorizing Sgt. Young to conduct a search of my auto-business, and residence. When it became clear that Sgt. Young had not obtained a Search-Warrant, I directed Watkins to move

to suppress any evidence Young obtained from his warrantless-search & seizure. Which include; photographs of my client's vehicles, the interior of my restoration shop and home, my business & personal records, with my client's contact information. Also, the V.I.N. numbers from these vehicles. But, Defense-Counsel (Robert J. Watkins) ignored my demands;

6. I learned that Sgt. Young had been contacted by James N. Lund, the owner of the property, that I had been renting for over 15 years. As both my auto-shop and home, and that Lund had asked Young to help him to pressure me to pay him some of the rent. That I had fallen into arrears for. It became clear that, although Sgt. Young stated in his reports, and in conversations that were recorded. He was conducting a "Criminal-Investigation", when he entered my business and residence. In which, he seized my business-records at the behest of James N. Lund. But, not in response to any "Criminal-Complaint" from any of my clients. In fact, it was not until Sgt. Young obtained my client's contact information, and convinced them that they were the "Victims of Fraud". Also told them, that if they "don't contact County-Attorney (Chelsea E. Lane), they would most likely never see their vehicles again". I suggested to Mr. Watkins 'since there had been no criminal-complaints by my clients, prior to Sgt. Young's Warrantless-Search & Seizure of my business records and private dwelling. Sgt. Young had no Probable-Cause to support the issuance of a Search-Warrant. Much less, to enter and search my auto-business & home. After Mr. Lund cut the locks, of my leased-building'. Again, Attorney Watkins ignored my directions;

7. in the months leading up to my trial, Attorney Watkins' demeanor toward My Defense began to mutate, e.g. . Initially, Mr. Watkins was confident that once the jury learned about Randy Young's illegal-conduct, aswell as his Attempt to Extort me, for "a couple of \$100,000 — to make the charges go away". See: Exhibit-A/transcript 1-31-17 at pg. 22. However, after numerous conferences with Assistant County Attorney (Chelsea E. Lane), Mr. Watkins began to discuss my entering a "Plea-Agreement", that I rejected. This appeared to cause much "Consternation in Watkins", even to the point that Watkins stood-up and asked me "what is this about; what are you trying to prove"? When I rejected a $1\frac{1}{2}$ to 3 year plea offer. Despite his attempts to persuade me to enter a plea-agreement. Attorney Watkins maintained his belief, that Sgt. Young would be a witness for The State. But, his testimony would provide My-Defense;

8. on the day of my trial, when Watkins made The Defense's Opening-Statement. He told the jury, that they would hear testimony from James N. Lund and Randolph H. Young. That I had moved my auto-business into a warehouse building. Owned by Mr. Lund, renting at first a small section of the building. But eventually "took over the entire building". I have attached the trial-transcript to this affidavit to verify these facts. See: Exhibit-B at pg. 29/line 16 & pg. 30/line 7. He told the jury that James Lund would tell them how I continuously worked and struggled to keep up with my debts, Id. at pg. 30/line 8 & pg. 31/line 2; that I worked with Lund trying to keep paying my arrearage, Id. pg. 30/line 23 & pg. 31/line 15; that my debts by 2012 climbed to "over \$100,000 in back-rent", Id.; and in "late summer of 2016" I was facing eviction, and had to find a way to make money, or I was going to lose my auto-business. Therefore, I left the State on a business-trip. But, while I was out of State, I continued to make rent payments. Furthermore, we had "conversations about keeping [my] business going", Id.; that Lund "viewed my going out of State, as abandoning the leased-property". Id. at pg. 31/line 23 & pg. 32/line 1. There was an Incident-Report dated 8-13-18, that ADA Lane sent Attorney Watkins on 8-15-18 prior to my trial. Informing Mr. Watkins that she had spoken "with Sgt. Randy Young of The Strafford Police Department regarding his testimony [in] the case State of New Hampshire v. Brim Bell". See: Exhibit-C/Memo; dated 8-15-18 TO: Robert Watkins, Esq. FROM: Chelsea E. Lane, A.C.A. . Attorney Watkins explained that, the "testimony" Ms. Lane referred to was Sgt. Young's-Testimony at The Grand-Jury. In which, issued the indictments against me. Mr. Watkins also explained that contrary to what ADA Lane asserted, the information was not only relevant to my case, but it was Exculpatory-Evidence for My-Defense. Because it was evidence that Sgt. Young gave False-Testimony at The Grand-Jury. More importantly, it was evidence that Randy Young was called by James Lund, for legal-advice about "whether he could sell the parts of my client's vehicles, to recoup some of the rent he was owed" and not to (investigate any alleged crimes) relating to my auto-business, or my client's property. Watkins told me that, 'since I had not been evicted, James Lund had no right to (cut the locks on my leased-property)'. And that, because there was no "Criminal-Complaints" from any of my clients'. But, Sgt. Young was at the property because, Mr. Lund wanted to know "what could be done to get his space back"? (Id. Memo/Exhibit-C at ¶ 4).

Sgt. Young needed a Warrant to enter and search my auto-business & home. Truth be told, he had no Probable-Cause to obtain a Warrant, because there was actually no "Open Criminal-Investigation";

9. on August 14, 2018, Attorney Watkins took a "Deposition from James Lund". Present at the deposition, was ADA Lane. During the deposition, Mr. Lund stated that "although I was behind with the rent, I was consistently paying him money to forestall eviction. See: Exhibit-D Deposition of James Lund at pg. 18/line 16-19. That I had given him money prior to being arrested, Id. at pg. 25/line 6-26; that I was constantly working on my client's vehicles, and even praised my skill at restoration, Id. at pg. 35/line 17 & pg. 36/line 5;

10. Robert J. Watkins, also had possession of a transcript of a recorded phone conversation between Sgt. Young and I. The transcript contains statements by Young, that "if I could come up with \$200,000— everything would be resolved, and I would not spend a day in jail". See: Exhibit-A at pg. 43/line 15-23. Sgt. Young, also stated that "he had been at my auto-business, while unidentified people were showing up and taking vehicles, parts, and tools from my business". I believe that, was the reason ADA Lane handed over the 8-15-18 Memo, REGARDING: Young's Testimony was, despite Ms. Lane's self-serving assertion, that she (The State) "does not concede that the information is necessarily relevant, and/or admissible" in my case. The statements that Sgt. Young made during his Grand-Jury Testimony, and his statements in the record of the phone conversation with me. Are conflicting, also contrary to statements James Lund made about Randy Young's illegal-conduct and appearances, at my auto-business. The information in the 8-15-18 Memo plainly is relevant to my case. Because, it tends to impeach James N. Lund's credibility. Mr. Watkins and I discussed this point, and he said 'it was good for My Defense'. Watkins stated numerous times, that "Sgt. Young will be our best-witness";

11. as I stated above, Attorney Watkins' Opening Statement to the jury was that 'Sgt. Young would give certain testimony'. See: T-T Exhibit-B at pg. 27/line 6-18 & pg. 32/line 5-16. Immediately after Mr. Watkins' Opening-Statement, ADA Lane asked to approach The Bench.

She told The Court, that she "just wanted to note for the record, The State's Objection to the Defendant's Opening-Statement. In reference to the Randy Young phone call". Ms. Lane told The Court that "The Defense is aware, that The State is not going to call Randy Young", Id. pg. 37/ line 9-16; and that "if The Defense were to call Randy Young themselves, I—don't see how that evidence comes in as not hearsay... . Id. The Court overruled The State's Objection. Also informed, both the ADA and Trial-Counsel, that The Defense could call Randy Young. Even if, The State chose not to call Randy Young to testify, Id;

12. the trial began, and The State called several of my clients as witnesses. One of those witnesses was Jason Konopacki. Mr. Konopacki and I had engaged in numerous conversations relating to the progress of restoring his vehicle. Just prior to my business-trip, Mr. Konopacki texted me. To inquire about the progress on his vehicle's restoration, and requested photos of the vehicle. I took a photo of his vehicle to show him that the body of the vehicle had been stripped and primed, and ready to start the welding-work. See: Exhibit-E/The State's Exhibit-25: a screen shot of part of the text-chat, between Mr. Konopacki and me. For reasons, I could not understand Konopacki asked questions, that suggested that the vehicle in the photos was not his. Stating; "that's not an oval rear window" my reply was, "Jay, this is your car. WTF". Was answered by Mr. Konopacki texting "I'm Fucking With You". That was the end of our text-chat;

13. The State entered the screen-shot of the partial text-chat, between Mr. Konopacki and me. Then admitted Exhibit-25 as State's-Evidence. See: T-T at pg. 321/line 21 & pg. 322/line 6. The Prosecutrix (Ms. Lane) questioned Jason Konopacki, regarding the context of the colloquy. Konopacki told the jury, "he sent me a picture of a car, that is not mine". Id. pg. 321/line 1-3. Attorney Watkins Objected, and after Konopacki testified that, (as stated in the text to me) he, "could tell by the back window, that was not [his] car". The State entered the text with the photo as Exhibit-25. Neither Attorney Watkins, nor me, had a copy of that document. Furthermore, Mr. Watkins asked The Court, if he could see the document. He looked at it with a perplexed demeanor. Then suddenly said "NO OBJECTION".

During his Cross-Examination of Mr. Konopacki, Mr. Watkins never asked Konopacki about the context of the text-chat. Nor, did Watkins point-out or note, that the last-sentence of the Exhibit-25 "had not been presented to the jury". However, the jury did note, that the Exhibit-25 had been altered (falsified-evidence). Therefore, they chose to send a question to The Court (Mark E. Howard). See: Court's Exhibit-No. 3 attached as Exhibit-F. The jury stated that "on State's Exhibit-25 the last cut-off line, was not presented to us and changes the context of the evidence. Can we use the last-line in our deliberation"? The Court told the jury, that they "should consider all the evidence admitted during the trial". Id. But, until the jury gets questioned by a high Court, we can not be 100% sure, as to what Judge Howard instructed the jury to consider. Because, Mark E. Howard was alone with the jury during this "Supplemental Jury Instruction";

14. all of the above facts relating to the jury's question, occurred while I was not present. Watkins never told me that, the last-line of the text, had been falsified. In fact, I did not obtain a copy of the Exhibit-25 or the jury question, until January 26, 2021. Some, two-years and 24 days after I was sentenced. While, I can not prove who altered State's Exhibit-25? Circumstantially, I believe the only person who could have falsified the exhibit, would be Chelsea E. Lane, A.C.A. . Also, the circumstances support the inference that the exhibit-25 was falsified —— because, as the jury noted, the omission of Jason Konopacki's Statement from the Exhibit-25 "Changes the Context";

15. I believe that Attorney Watkins, upon learning that the Exhibit-25 had been altered, erred by failing to move for a mistrial. Because the alteration of State's Exhibit-25 was not disclosed until the trial had ended and the jury began their deliberation. As the jury noted; "that last-line changes the context of Konopacki's text messages". My Defense Attorney, or any reasonable attorney, must see that the FALSIFIED — EXHIBIT-25 is exculpatory, and understand that The Defense was denied the ability to argue that. Just as Mr. Konopacki texted, that he was "Fucking With Me" by The State using the altered-exhibit and permitting Konopacki to mislead the jury to believe that I had somehow misappropriated his vehicle. ADA Lane, allowed Jason Konopacki to "Fuck With The Jury".

I am not an attorney. However, I believe that, because ADA Lane introduced the Falsified Exhibit-25, and used it to knowingly mislead the jury with falsified-evidence. In which, I was seriously prejudiced. Despite the fact that, the jury noted that there was a statement that had been cut-off of the State's Exhibit-25 after the case was given to the jury. As I contended above, my defense-attorney was prevented from arguing; that the falsified-evidence did indeed, change the context of text message. Therefore, Jason Konopacki's entire testimony regarding the text message, was intentionally distored from the truth, to mislead the jury. (See: foot-note 1.)

f-n 1.

I did not receive the trial-transcript until July 16, 2019. When I reviewed the transcript, I discovered that the question from the jury and the colloquy between The Court, The Prosecutor, and Attorney Watkins occurred in my absence. I also noted that my defense-attorney exposed prior knowledge, that there were multiple versions of that text message. And, that there were at least two versions of the State's Evidence, and that both versions had been altered. Please compare State's Exhibit-25 and Exhibit-26? I also believe that my defense-attorney exposed the fact that he was aware that The Prosecutrix (Chelsea E. Lane) had falsified the evidence. Which implies, the act of collusion with Ms. Lane to mislead the jury. When, after The Trial-Judge (Mark E. Howard) informed Lane and Watkins that the jury had a question relating to State's Exhibit-25, Watkins stated; "we have a copy of what we intended for them to see". .. "We don't know that, that's what they have". . . Id. T-T at page 840 line 2-5.

16. I was convicted on October 4, 2018. On January 2, 2019, prior to being sentenced, I was allowed to read my Allocution. During my allocution, I asserted that I had not been given a fair-trial and denied 'Effective Assistance of Counsel'. See: S-T pg. 40 & 51/line 22-23. I listed all the errors that Mr. Watkins had made. I also asserted, that ADA Lane engaged in Prosecutorial-Misconduct. I asked The Court to Grant a mistrial; for both 'Ineffective Assistance & Prosecutorial Misconduct'. See: ALLOCATION at pg. 39-52. The Court (Mark E. Howard) became irate, and called me derogatory names. Also stated; "Attorney Watkins conduct at trial was exemplary, aswell as the State Prosecutor (Chelsea E. Lane)". See: Exhibit-B of the attached exhibits, also see S-T pg. 54-64;

17. as I began listing the errors, and refusals Attorney Watkins had made while acting as my defense-attorney. Mr. Watkins stood up, took my case-file and moved from the defense-table, to sit behind me, at a different table. Robert J. Watkins, never spoke with or to me since that time. Judge Howard denied my request for a mistrial;

18. without consulting with me, Mr. Watkins filed 2 motions; (1) MOTION: TO WITHDRAW, stating that there had been a breakdown in the Attorney/Client Relationship. Because, I "blamed [him] for my convictions; citing Trial-Strategy Errors and Collusion with The State". See: Exhibit-H Defense-Counsel's Motion To Withdraw. Attorney Watkins, also filed (2) Rule 7: NOTICE OF MANDATORY APPEAL. And raised only one question "whether trial-counsel erred by not calling as a witness, Sergeant Randy Young of The Strafford Police Department"? See: Exhibit-I Rule 7: NOTICE OF MANDATORY APPEAL at (section 13);

19. Shortly after Robert J. Watkins Withdrew, The Court appointed Thomas A. Barnard as my appellate-counsel. Attorney Barnard is affiliated with The New Hampshire Appellate Defender Program, taking on cases as needed. The N.H. Appellate Defender is an ancillary-office of The New Hampshire Public Defender Program. See: State v. Veale, 154 N.H. 730-733 (2017). It has been determined, by The New Hampshire Supreme Court that attorney's with The N.H. Appellate Defender Program, cannot represent defendants that have asserted 'Ineffective Assistance Claims' against The N.H. Public Defender Office. Id. At the time, Mr. Barnard was appointed to my case, I was not aware of the Veale case. Also, I believed that Attorney Barnard would brief and argue the 'Ineffective Assistance Claim'. Because, that was the (only issue/question) that my Trial-Attorney (Robert J. Watkins) had asserted in the Rule 7: NOTICE OF MANDATORY APPEAL, See: Exhibit-I;

20. upon our initial meeting, I attempted to discuss the 'Ineffective Assistance Claim'. I pointed out the errors Watkins had made; refusing to challenge the Warrantless-Search of my auto-business and residence. The false, misleading testimony to The Grand-Jury; and I explained how Attorney Watkins framed my Defense to the jury. Upon the expected testimony of Sgt Young, telling the jury that they would hear from Young. About a phone conversation between Officer Young and I. That had been recorded and transcribed, in which Sgt. Young stated; "if you can come up with \$200,000—I can guarantee you, that you won't spend a day in jail". Furthermore, after The State indicated that Randy Young would not be called to testify, and the Trial-Court denied ADA Lane's objection to Mr. Watkins' referencing Sgt. Young in the Opening-Statement. Telling both Watkins & Lane, that defense-counsel can call Randy Young. Attorney Watkins, never called Sgt. Young to be questioned. In fact, during my trial, the only time Sgt. Young's name was mentioned was when my landlord (James N. Lund) testified. That he had called Sgt. Young to assist him, in taking back the property. In which, I had been legally-renting at this date & time. Mr. Lund testified that Young had helped him to remove other tenants from his rental-properties. See: Exhibit-A T-T at pg. 32/line6-15 & S-T at pg. 39-52. Attorney Barnard stated; "it is too late to raise those issues". He refused to brief the 'Ineffective Assistance of Counsel Issue'. In fact, Mr. Barnard stated; "he cannot raise the ineffective assistance claim because, that would be a CONFLICT OF INTEREST";

21. therefore, the ineffective assistance of counsel issue became, a matter of contention with Attorney Barnard. To the point, that I filed several motions for New-Counsel in both the Trial-Court, and The New Hampshire Supreme Court. Each motion for New-Appellate Counsel was denied without explanation. See: Exhibit-J. As can be seen, I made it crystal-clear that Attorney Barnard refused to even discuss the claim for 'Ineffective Assistance of Counsel', Id;

22. I attempted to fire Thomas A. Barnard; and have him taken off my case. I filed another motion for New-Trial Hearing/Due to Ineffective Assistance of Counsel. Indicating that Attorney Barnard refused to raise claims that I believe, my Trial-Attorney Robert J. Watkins' erred, in not asserting prior to and during my trial. See: Exhibit-I, 1 at ¶¶ 5-6. I asked that the Trial-Court "replace appellate-counsel with a contract attorney". The Court (Mark E. Howard) ruled that my motion was "not ripe for adjudication in this Court";

23. during the time that I was seeking to have Mr. Barnard removed or replaced, I also asked The New Hampshire Supreme Court to allow me to file a Supplemental-Appeal Brief. With the sole purpose of raising, the ineffective assistance of counsel and assert the acts, or omissions of Attorney Watkins. Both The N.H. Supreme and Trial Court vacillated, and wavered in their rulings and opinion; I was told that 'I could not raise the ineffective assistant claim on Direct-Appeal'. But—had to have raised ineffective assistance of counsel at The Trial-Court (Strafford-Superior). The N.H. Supreme Court, also contended that "I had not preserved the issue". See: Exhibit-J. I submitted a copy of my trial-transcript, containing my allocution before Howard, wherein, I repeatedly raised the 'Fundamental-Errors' committed by Watkins. Particularly, the failure to call and question Sgt. Randy Young, after The State indicated that Young, The State's Chief-Witness: was not being put on the stand by the prosecution—as stated above. See: ¶ 8. Attorney Watkins told the jury that they would hear his testimony—and Watkins assured me that my entire Defense, would be made through his Cross-Examination of Sergeant/Randolph H. Young. Id. ¶¶ 8-11 Supra. After repeated pleas to The N.H. Supreme Court, I was allowed to file a claim for 'Ineffective Assistance', with the Trail-Court. See: Exhibit-K: 4.

Judge Howard issued an Order; denying the motion. Indicating that there was "insufficient credible facts to warrant a hearing, or otherwise the issues would not result in a new-trial". See: Exhibit-J; July 6, 2021 "MOTION: FOR NEW TRIAL HEARING STATUS/BASED ON NEWLY DISCOVERED-EVIDENCE (that supports) INEFFECTIVE ASSISTANCE OF TRIAL-COUNSEL:

24. further, after numerous attempts to have The N.H. Supreme Court either ORDER my appellate-attorney, to submit an 'Ineffective Assistance of Trial-Counsel Claim', or to appoint new-counsel not affiliated with The N.H. Public Defender Firm . . . The N.H. Supreme Court allowed me to file a pro se 'Supplemental-Brief'. See: Exhibit-K N.H. Supreme Court Order, dated: April 21, 2022.

25. I am not an attorney. My life and career have been dedicated to my skills in restoration of classic-automobiles. In which, I took pride in and therefore, I attained some recognition from the trade media. I have had very minimal interaction with Courts, and no experience in criminal legal matters. That would avail me, of an ability to write legal-pleadings. While, it is plainly obvious to me that The State of New Hampshire's (justice-system is inherently corrupt)—police are allowed to commit perjury, conduct warrantless-searches, and then indemnified by The Courts and State-Attorney's; prosecutors are permitted to alter-evidence, have State-Witnesses give misleading and/or false-testimony; Court Appointed Defense-Attorney's ignore the 'Rules of Professional Conduct'; refuse to discuss trial-strategy options with their clients, fail to subject The State's-Case to a meaningful adversarial-testing, even to the confrontation of the police-officer whom conducted a Warrantless-Search, who acted in collusion with the prosecutor and allowed The State to 'Falsify Documentary-Evidence' and enter two (altered versions of the evidence for the jury to consider); The N.H. Supreme Court ignores serious, and blatant 'Miscarriages of Justice' in the form of appointing appellate-attorneys to represent defendants that have meritorious ineffective assistance of trial-counsel claims against Court Appointed Trial-Counsel. Whom, are affiliated with the same firm, and ignor the 'Conflict of Interest' resulting when the trial-attorney himself, presents only an 'Ineffective Assistance of Counsel Claim' and The Court Appointed Appellate-Counsel (Thomas A. Barnard) refuses to argue or raise the issue.

Also, The New Hampshire Supreme Court refuses to consider the defendant's pro se 'Ineffective Assistance Claim'. Solely, upon the fact that a pro se petitioner did not adequately brief the issues, and they were "therefore waived". . . "or they lack merit and warrant no futher discussion—I am not trained in legal-writing, and I made my best effort to present my 'Constitutional-Claims'; particularly the ineffective assistance of counsel—both my trial-attorney and the appellate-attorney. I filed my pro se 'Supplemental-Brief', and I believe that I gave The N.H. Supreme Court sufficient facts, upon which that Court could recognize that my trial-attorney committed serious errors and/or actually acted in collusion with The State Prosecutor, to render my trial nothing more than a sham. I clearly stated the 'Fundamental-Violations of my Rights' under the Sixth-Amendment (effective assistance of counsel) and the Fourteenth-Amendment to The United States Constitution (due process of law). Including, the trial-attorney's failure to challange the warrantless search of Sgt. Randy Young. Aswell as Officer Young's False-Testimony before The Secret/Grand-Jury. Sgt. Young's recorded telephonic attempt to extort \$200,000 in cash, from Brim Bell. Attorney Watkins' failure to hold a 'Richard's-Hearing' to confront Sgt. Young relevant to his Criminal/Unconstitutional-Conduct. Trial-Counsel's failure to call Young as a defense-witness after The State informed The Court, that Sgt. Young would not be called to testify, and the defense-attorney had told the jury during 'The Defense's Opening Statement' that Young would—
TESTIFY;

26. further, I also raised the issue regarding The State's introduction of falsified-evidence. Which, had been altered by the prosecutor. My trial-attorney, clearly was aware of the fact that there were at least (two-versions of a document, and both versions were altered). See: Exhibit-E State's Exhibit-25; Exhibit-F Court's Exhibit No. 3; T-T pg. 840/line 2-23.

I asserted that Watkins had colluded with The Prosecutrix (Ms. Lane) and that he had made a statement to The Court during the colloquy regarding the altered-evidence. That, "we have a copy of what we — intended for them to see. . . We don't know that, that's what they have". Id. Exhibit-B T-T pg. 840/line 17-21. I believe that my (supplemental-brief sufficiently framed a meritorious claim, that I was deprived of a fair-trial) by The State of New Hampshire. Also, the acts and omissions of my trial-attorney undermined my rights, under the Sixth and Fourteenth Amendments to The U.S. Constitution, to the effective assistance of counsel. Based upon the case-law decisions that other prisoners have directed my attention to. Attorney Watkins' representation in my case fell way below an objective standard of reasonableness, and seriously prejudiced my trial. It was not, a reasonable trial-strategy for Watkins' failure to question Sgt. Young, and there is absolutely no reasonable excuse for Watkins' allowing the prosecutor to introduce 'Falsified-Evidence' and not seeking a mistrial. I believe, that the errors that Watkins made in my trial and which I repeatedly asserted in my pleadings to The Superior & Supreme Court of New Hampshire. Also raised in my pro se 'Supplemental-Brief', See: Exhibit-L at pg. 16-24, 40, were plainly obvious and unreasonable under any standard. I also believe, that The N.H. Supreme Court ruling on my ineffective assistance of counsel issues were not adequately briefed or "they lack merit, and warrant no further discussion" was a disingenuous ploy to avoid addressing the blatant 'Miscarriage of Justice'. As well as, the deprivation of my Federal Constitutional Rights in The Strafford County Superior Court;

27. I filed my pro se 'Supplemental-Brief' on December 30, 2020. As I stated above, I have no prior experience in filing legal-pleadings, nor am I skilled in briefing a legal-argument. I did the best I could, to point-out all of the errors that trial-counsel committed. I also believe, that I sufficiently asserted a claim of 'Ineffective Assistance of Trial-Counsel' for The Supreme Court of New Hampshire to understand the cardinal-issue—in fact my trial-counsel himself recognized that his failure to call and question my accuser. Who built the entire case for the Strafford County Attorney's Office, by conducting a warrantless-search of my auto-business and home. Who 'Attempted to Extort' me, GAVE FALSE MISLEADING TESTIMONY before The Grand-Jury. Also, was present when unidentified people were removing my clients' property from my auto-shop.

Robert J. Watkins, Esq. stated only one question in my Rule 7: NOTICE OF MANDATORY APPEAL—"Whether Trial-Counsel erred by not calling as a witness; Sergeant/Randy Young of the Strafford Police Department"? See: Exhibit-I NOTICE OF APPEAL/SECTION 13 (list of specific questions to be raised on appeal). "I believe the facts I have presented in this affidavit, and the various Superior and Supreme Court of New Hampshire rulings on the numerous motions, grounded upon 'Ineffective Assistance of Counsel' exposes a deliberate and concerted effort by The State—County Attorney, Superior Court Judge (Mark E. Howard), Court Appointed Appellate-Counsel, and The Supreme Court of N.H. itself—to evade the plainly obvious deprivation of my rights under the Sixth and Fourteenth Amendments to The United States Constitution; not only the ineffective assistance claim, but, also The State's introduction of falsified-evidence. Depriving me, of a fair-trial which is, the result of my trial-attorney allowing me to be convicted on Unconstitutional-Evidence;

28. on November 18, 2022 The Supreme Court of New Hampshire issued a final-opinion on my Direct-Appeal. See: Exhibit-M November 18, 2022. Although The Supreme Court of N.H.'s opinion was 14 pages long, 12 of the pages address only the questions and argument presented by the appellate attorney. Whom, I had demanded to either be removed from my appeal, by N.H. Supreme or to remove himself from my appeal. The Supreme Court of New Hampshire devoted only 1 page and 2 short paragraphs to the issues raised within my 'Supplemental-Brief'. As can be seen from the opinion, The N.H. Supreme Court ignored and/or refused to even consider my ineffective assistance claims. Despite the long and contentious dispute, I had with the Court to be permitted to raise (ineffective assistance of both my trial & appellate counsel). In fact, The Supreme Court of N.H. did not even make any reference, whatsoever to 'Ineffective Assistance of Counsel' other than to state that, "as to the extent that the defendant raises other issues in his pro se brief, we conclude that: he has failed to demonstrate that the issues are preserved, See: Adams, 169 N.H. at 229; the issues are inadequately briefed, and therefore waived, See: State v. Papillon, 173 N.H.13, 28,(2020); or they lack merit & warrant no further discussion, See: Vogel v. Vogel, 137 N.H. 321,322 (1993)".

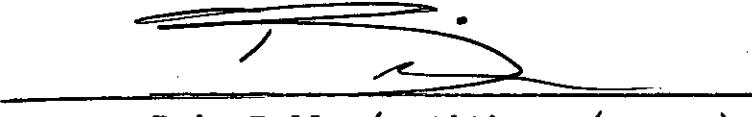
29. After receiving The N.H. Supreme Court opinion, I began gathering my trial-records and documents to prepare a Petition: FOR CERTIORARI. Organizing the documents from my trial, and making notes of the evidence, that shows all the errors my trial-attorney made. As well as, 'The Prosecutor's Malfeasance' regarding the introduction of altered-evidence, and withholding evidence from Attorney Watkins that shows how Sgt. Randy Young knowingly misled The Grand-Jury. During the time, I was compiling the record, I was housed in the (North-End House in Concord New Hampshire) a minimum work-release facility. September 26, 2022; I was charged with a rule violation, and The Department of Correction transferred me, back into The State Prison. At this point, The State confiscated all of my property, including all my legal-files from my trial. February 27, 2023; is the day All my legal-work was returned. See: Exhibit-N. The State kept me from having access to my legal-documents, obstructing me from drafting this motion, and The Petition for Certiorari. I have diligently worked at putting together this motion, and preparing the petition to the best of my ability, and as timely as possible.

30. I was prevented by The State, through the agency of The Department of Correction to withhold my legal case-file. I did not have access to any of my documents to use as evidence, to present the 'acts & omissions' or support my claim of (ineffective assistance of counsel). Unless, this Honorable Court grants this motion, I will be denied of presenting the Petition for Certiorari; by the conduct of The State of New Hampshire. That withheld my entire case-file, and prevented me from exposing 'The Miscarriage of Justice', I have suffered. Also convicted, on Unconstitutional evidence that proves the trial to be a sham. In which, my trial-attorney made egregious-errors and was 'Constitutionally Deficient' by failing to call a witness, that he told the jury they would receive—testimony. Also allowed The State, to introduce altered and/or falsified-evidence. Resulting, in my conviction for a crime fabricated by Sergeant Randolph H. Young; of The Strafford Police Department.

'AFFIDAVIT OF BRIM BELL'

"Subscribed and sworn to under pain and penalty for perjury".

DATE: September 12, 2023



Brim Bell (petitioner/pro se)
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Tel. (603) 782-6127

T-T means: Trial-Transcript
S-T means: Sentencing-Transcript

**Additional material
from this filing is
available in the
Clerk's Office.**