

THE STATE OF NEW HAMPSHIRE
SUPREME COURT

No. 2016-0441

State of New Hampshire

v.

Dominick Stanin, Sr.

Appeal Pursuant to Rule 7 from Judgment
of the Hillsborough County Superior Court - North

BRIEF FOR THE DEFENDANT

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(15 Minutes Oral Argument)

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QUESTIONS PRESENTED

1. Whether the court erred by denying Stanin's motion to dismiss the robbery charge.

Issue preserved by Stanin's motion to dismiss and the court's ruling. T2* 380-83.

2. Whether the court erred by denying Stanin's request that each juror be questioned independently after the court learned that several jurors had seen a photograph of a weapon in defense counsel's file.

Issue preserved by Stanin's request and the court's ruling. T3 544-45.

* Citations to the record are as follows:

"A" refers to the Appendix to this brief;

"T1 – T3" refers to the transcripts of the two-day trial held June 22 – 24, 2016;

"SH" refers to the transcript of the sentencing hearing, held on July 20, 2016.

STATEMENT OF THE CASE

Dominick Stanin, Sr. was charged in the Hillsborough County Superior Court – North with first degree assault, armed robbery, and being a felon in possession arising from an incident in which John Quinn was cut with a knife. T1 19-20, 26. He was convicted after a jury trial. T3 552-56. The court (Ruoff, J.) sentenced him to consecutive stand committed sentences totaling fifteen to thirty years in prison, with additional suspended prison time. A1-A6.

STATEMENT OF THE FACTS

On August 14, 2014, John Quinn lived at 287 Lowell Street in Manchester. T1 93. Ed and Krystal Gallien also lived there and numerous other people stayed there, including Dominick Stanin Sr., Dominick Stanin Jr., David McLeod, and Nicholas Cote. T1 69, 94-95, 112, 153-54; T2 398. Quinn went to work that morning but came home around 9:00 a.m. when given a break for several hours. T1 95-96, 132.

Quinn went into his bedroom on the first floor and closed the door behind him. T1 97. He was counting change in order to buy a soda when two men came into the room. T1 95, 97, 132. It was unusual for anyone to enter Quinn's room. T1 95. Quinn knew the men from the house but did not know their real names. T1 94, 98, 126. He described them to police as a "mulatto" father and son and gave their approximate ages, heights, and builds. T1 144; T2 257. He told police that one of them went by the "street" name "GT," "D," or "DT." T1 105; T2 258-59. He identified the father at trial as Stanin Sr. T1 100.

Quinn testified that the men asked him when he left the house that morning, while moving closer to where he was sitting. T1 95-96, 99. He testified that Stanin Sr. then pulled out a knife with a triangle-shaped blade, "r[a]n [the knife] up [Quinn's] back," and stabbed Quinn in the head while the son kicked Quinn. T1 96, 99-102, 105-06, 119; A7. Stanin Sr. yelled at his son to "do something." T1 100-01. Quinn testified that someone went through his pockets, spilling their contents on the floor. T1 96, 101, 123-26; T2 272.

Quinn ran from the room and out the back door. T1 96, 102. He testified that, as he ran, someone kicked his feet out from under him causing him to fall off the porch, scraping his forearms and knees. T1 96, 102-03, 119. He ran to Welcome Home, a group home abutting 287 Lowell Street. T1 102-04. There, he spoke with police before going to the hospital. T1 104. The police showed Quinn a photo line-up and Quinn identified Stanin Sr. T1 105-07, 121; T2 264. When Quinn returned home, he was missing some cash and his cell phone, which had been in his pockets. T1 101-02, 125-26.

A week later, Quinn went to the Manchester Police Department and said that the person police were seeking, Stanin Sr., as shown in the newspaper, looked similar to his assailant but was the wrong person. T1 108-11, 122, 129-31; T2 350-52. Detective Patrick Houghton spoke with Quinn about a month later. T1 111; T2 319-20, 341-42, 352-53, 366-68. At that time, Quinn said that he was feeling pressure in the community to take back his accusation against Stanin Sr. T1 110-12; T2 372-73.

On the day of Quinn's assault, Krystal Gallien told the police that she was not aware of the incident because she had been doing laundry. T1 77-78, 82-84; T2 358. However, at trial, she testified that she saw Quinn leave his room followed by Stanin Sr. and Stanin Jr. T1 72-75, 78-79, 82-83.

David McLeod told the police and testified that he had been upstairs and did not witness anything. T1 155-56. However, he wrote Stanin Sr.'s counsel a letter indicating that he had seen Quinn and Stanin Jr. exit Quinn's room that day but that Stanin Sr. had not been present. T1 163-65, 183-84.

McLeod repeated this account under oath during the first part of a deposition. T1 179-80, 204. However, when the deposition resumed several months later, McLeod testified that the letter and his testimony from the first portion of the deposition were a lie. T1 179-81, 204-05, 237. He testified at trial that he had had contact with Stanin Sr. in prison. T1 160-61. Two weeks before Quinn's assault, McLeod was shot at 287 Lowell Street. T1 89-90, 161. Although Stanin Sr. was not one of the assailants, McLeod believed he was involved. T1 89-90, 161, 168-70, 207. When McLeod went to prison, he encountered his shooter. T1 161. McLeod asked Stanin, Sr. for help, believing that Stanin Sr. could protect him from the shooter. T1 161-62, 170. McLeod testified that Stanin Sr. asked him to write a letter to Stanin Sr.'s attorney and that the men drafted the letter together. T1 162-65.

Nicholas Cote was not home at the time of Quinn's assault. T2 398-99. However, he testified that he spoke with Quinn two or three days after the assault and that Quinn said he had lied to the police about Stanin Sr.'s involvement because he was worried Stanin Sr. would retaliate against Quinn for getting into a fight with Stanin Jr. T2 400-02. Quinn told Cote that he would go to the police and tell the truth. Id.

Michael McManus testified that he was at 287 Lowell Street at the time of Quinn's assault in order to obtain drugs from Ed Gallien or McLeod. T3 447-48, 450. While waiting for this transaction on the first floor, he heard an argument and fight in Quinn's room. T3 448-50. He then saw Quinn and Stanin Jr. rush from the room. T3 450-51, 458. He looked out the back door

and saw Quinn getting up from the ground at the bottom of the stairs. T3 450-51. McManus left the residence when police came to the area, as he had drugs in his possession and was, at that time, on bail for a drug offense. T3 451-52.

All of the lay witnesses had felony convictions. T1 81-82, 124, 159, 205-06; T2 397-98; T3 445-46. In addition, the jury heard a stipulation that Stanin Sr. had a felony conviction that prevented him from possessing deadly weapons. T2 379.

SUMMARY OF THE ARGUMENT

1. The court erred in denying Stanin's motion to dismiss the robbery charge. The evidence that the force used was "in the course of committing a theft" was insufficient. Rather, the assailants' motive, as shown by their words and actions, appear related to the assault and not a desire to steal.

2. A trial court has an unflagging obligation to adequately investigate nonfrivolous claims of juror taint. Here, each juror either saw a photograph of a weapon that was not admitted as evidence or heard other jurors discussing it in deliberations. Some jurors believed that the photograph was of the weapon used in the assault and some believed that the defense lawyer had deliberately shown it to the jurors. Despite concluding that a potentially tainting event had occurred, the trial court declined Stanin's request for individual *voir dire* of the jurors to explore the effect the incident had on them. The court's inquiry was inadequate and the State did not prove beyond a reasonable doubt that the incident was not prejudicial to Stanin.

I. THE COURT ERRED BY DENYING STANIN'S MOTION TO DISMISS THE ROBBERY CHARGE.

After the State rested, Stanin moved to dismiss the robbery charge, arguing that the evidence was insufficient to prove that the force was used in the course of committing a theft. T2 379-80. The State conceded that the evidence of that element was "not overwhelming," but argued that it was nevertheless sufficient. T3 381-82. The court agreed, citing Quinn's testimony that his pockets were emptied and some items from his pocket were missing when he returned from the hospital. T3 382-83. In so ruling, the court erred.

"To prevail upon his challenge to the sufficiency of the evidence," Stanin "must establish 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." State v. Wilson, ___ N.H. ___ (slip op. at 4) (decided April 25, 2017). Because a "challenge to the sufficiency of the evidence raises a claim of legal error," the Court's "standard of review is de novo." Id. at 3. When evidence of an element is "solely circumstantial, it must exclude all reasonable conclusions except guilt." State v. Morrill, ___ N.H. ___ (slip op. at 8) (decided March 10, 2017).

To convict Stanin of armed robbery, the State needed to prove beyond a reasonable doubt that he and/or Stanin Jr. used physical force against Quinn, that Quinn was aware of the force, that the force was used "in the course of committing a theft," and that a deadly weapon was involved. RSA 636:1, I(a) and III(a). "An act shall be deemed 'in the course of committing a theft' if it occurs in an attempt to commit theft, in an effort to retain the stolen property

immediately after its taking, or in immediate flight after the attempt or commission.” RSA 636:1, II. The indictment alleged that force was used “while taking money and a cell phone” from Quinn. T1 19.

Quinn testified that his encounter with Stanin Sr. and Stanin Jr. began with the men asking him when he left the house that morning. T1 95-96, 99. Quinn then testified, “the next thing I know, I got a knife in my back, and I started getting stabbed in the head, went into my pockets.” T1 96; see also T1 101 (Quinn had his “pockets rifled through”), 125 (“[a]pparently” contents of Quinn’s pockets emptied on the floor). He testified that Stanin Sr. yelled to his son “do something, do something.” T1 100-01. Quinn had had two dollars and a cell phone in his pocket when he entered his room. T1 101, 124. He testified that he had “no clue” what happened to the two dollars but the money was gone when he came home from the hospital. T1 101, 123. When asked about the phone, he testified, “I didn’t have that on me, nothing because it all got pulled out of my pockets.” T1 102; see also T1 123. Quinn admitted that he did not see Stanin Sr. or Stanin Jr. take anything. T1 125-26.

Other witnesses testified that Quinn was followed closely by Stanin Jr. and, according to Krystal Gallien, Stanin Sr. T1 72-73; T3 450-51. The testimony established that there were as many as six other people in the house that morning besides Quinn, Stanin Sr., and Stanin, Jr. T1 72 (K. Gallien testified that she, Ed Gallien, and Cote’s daughter were present), 155 (McLeod testified that he and his daughter were present): T3 448-49 (McManus testified that he, K. Gallien, and McLeod were present).

Here, the evidence was insufficient to prove that the force used was “in the course of committing a theft” of money and a cell phone. The assailants’ actions are ambiguous as to their motive – the encounter began with a discussion of when Quinn left for work that morning and no statements were made during the assault that indicated a motive to commit theft. While Quinn’s pockets were emptied during the assault, there was no evidence that the assailants intended to take anything: they made no move towards the items once they were on the floor or towards any of Quinn’s other belongings in the room. Rather, they followed Quinn out of the room instead of staying to steal Quinn’s unattended property. Quinn believed that they continued to assault him on his way out of the house, indicating that they were motivated by a desire to hurt him and not a desire to steal from him. Moreover, a rational conclusion consistent with innocence explains the disappearance of Quinn’s property. The house contained numerous other people, many of whom were drug users, who could have taken his things. For these reasons, the court erred in denying Stanin’s motion to dismiss the robbery charge.

II. THE COURT ERRED BY DENYING STANIN'S REQUEST THAT EACH JUROR BE QUESTIONED INDEPENDENTLY AFTER JURORS DISCUSSED A PHOTOGRAPH OF A WEAPON IN DEFENSE COUNSEL'S FILE.

At trial, the State introduced Quinn's drawing of the knife used. T1 105-06; A7. The State did not introduce evidence that the weapon used in the assault was found. However, discovery contained a photo of a weapon that the police found on the internet depicting a knife consistent with Quinn's description. T3 523-25, 534-35, 551; A8.

At the beginning of jury deliberation, Juror 9 informed the court that she had seen something "inappropriate" – a photograph of "the weapon in question" in defense counsel's file. T3 521-23, 530. The court expressed willingness to excuse the juror and replace her with an alternate, but Stanin wanted to keep her if she could affirm that she would not consider the image in her deliberations. T3 524-26, 530-31. Juror 9 indicated that she could disregard the image and that it would not impact her deliberations. T3 257-59. However, she worried that other jurors may also have seen the image. T3 528-29. She reported that the jury had not discussed the image and that she would report to the court if the topic came up. Id.

About an hour later, Juror 9 informed the court that the jury was discussing the photo of the weapon. T3 531. The court proposed to question Juror 9 first, to determine the scope of the "taint," a process to which the parties agreed. T3 531-32. After that, the court saw two options: question each juror individually about what they saw and its effect on the juror, or bring the entire jury in for an instruction not to consider whatever they may have

seen. T3 532-33. Juror 9 reported that another juror said that defense counsel's file "came open . . . almost deliberately" and he saw a photo of a weapon that he called by a specific name. T3 535. Other jurors then responded that they had also seen the photo. Id. The topic was discussed amongst all the jurors at the start of deliberations and the photo was described to those jurors who had not seen it. T3 536. None of the jurors brought up that they should not consider the photo of the weapon as evidence. Id.

Defense counsel expressed the concern that, if the jury thought he had intentionally displayed something that was not evidence, they would believe he was trying to sabotage Stanin's case. T3 537. Counsel maintained that he had not revealed the photograph intentionally. Id. The court agreed that that was an "issue" and proposed that the jury be brought back into court to be instructed not to consider the photo of the weapon. T3 537-38.

Stanin requested a mistrial. T3 540-41. Defense counsel noted that the other jurors discussed the photo without bringing it to the court's attention and feared that the jurors would use the incident as an adverse inference against Stanin. Id. The State argued that there was not enough evidence from Juror 9 to know whether the jury would use it as an adverse inference against Stanin or a positive inference. T3 541.

Although initially, the court had referred to the photograph as "something improper" for the jury to consider, T3 517, the court later said that conscientious jurors might think they could consider the photograph because jurors are allowed to consider what they see in the courtroom. T3 541-43; but

see T3 500-01 (jurors told they must only consider evidence in the case, *i.e.*, testimony of witnesses and exhibits). The court decided that the problem could be cured by a jury instruction to disregard whatever they saw. T3 543-44. At the State's request, the court agreed to poll each juror to ascertain whether each could continue deliberating without considering the photo. T3 544.

Stanin then requested that the court question each juror individually about what they saw and how it could affect them, again stressing his concern that one or more of the jurors thought counsel had shown them the photo intentionally. T3 544-45. The court denied that request. T3 546. As to the risk that the jury would draw an inference against Stanin from its conclusion that defense counsel had intentionally revealed the photo, the court found it ambiguous and that "it could go either way." Id. The court then instructed the jury that they could not consider whatever they saw as evidence in the case. T3 547-49. The court polled each juror and got affirmations from each that they could "continue to fairly and impartially deliberate based on the evidence that's admitted at this trial." T3 549-51. The jury returned with three guilty verdicts less than forty minutes later. T3 551-56. In failing to question each juror individually about what they saw or heard others discussing and its effect on their thinking, the court erred.

"It is axiomatic that a defendant has a right to be tried by a fair and impartial jury." State v. Lamy, 158 N.H. 511, 522 (2009). This right is protected by Part I, Article 15 of the State Constitution and the Sixth and Fifteenth Amendments to the United States Constitution. "[T]he New

Hampshire Constitution provides at least as much protection as does the Federal Constitution on this issue.” State v. Rideout, 143 N.H. 363, 365 (1999).

“Any juror found to be disqualified before or during trial should be removed.” Lamy, 158 N.H. at 522. “[W]hen there is . . . an allegation that a juror has been biased by extrinsic contact or communication, the trial court must undertake an adequate inquiry to determine whether the alleged incident occurred and, if so, whether it was prejudicial.” Id. (quotation omitted). “Generally, in a criminal case, a defendant alleging juror bias bears the burden to demonstrate actual prejudice.” Rideout, 143 N.H. at 366.

However, this Court presumes prejudice “when there are communications between jurors and individuals associated with the case or when the juror’s unauthorized communications are about the case.” Lamy, 158 N.H. at 522 (quotation omitted). A “more stringent standard” is appropriate when there is *ex parte* contact between a person associated with the case and jurors about the matters at issue in the case. United States v. Gaston Brito, 64 F.3d 11, 12 (1st Cir. 1995). The Court “extend[s] the same presumption [of prejudice] to a juror’s unauthorized view of the crime scene.” Lamy, 158 N.H. at 522. This is so because it presents the “same danger” as “when a juror is party to extraneous communications concerning the case. In both instances, the juror may base his or her decision upon evidence that the defendant never had any opportunity to examine and present to the jury.” Id. “[W]hen a juror is exposed to extraneous information sufficiently related to the

issues presented at trial, a presumption of prejudice is established, and the burden of proof shifts to the State to prove that the prejudice was harmless beyond a reasonable doubt.” Id. at 522-23; see also Gaston Brito, 64 F.3d at 12 (“Private communications with a deliberating juror create the concern that the juror may reach a verdict on the basis of the matters communicated, rather than the trial evidence.”).

The presumption of prejudice applies in this case. The jury saw a photograph of a weapon that at least one juror believed was the weapon used in the assault. In addition, the jury discussed whether defense counsel had deliberately shown them the photo. Had they concluded that defense counsel intentionally showed them the photo, this would constitute an unauthorized communication between the jury and someone associated with the case. See, e.g., id. at 12-13 (government agent at counsel table may have made gesture, which would have been a communication to the jury). Even if not a communication, the jury was exposed to extraneous information related to the case and the presumption of prejudice applies. The State did not meet its burden to show that the incident was harmless beyond a reasonable doubt.

“When a party makes a colorable claim that a jury may be biased or tainted by extrinsic contact or communication, the court must undertake an adequate inquiry to determine whether the alleged incident occurred and, if so, whether it was prejudicial.” Rideout, 143 N.H. at 365 (citation omitted). Regardless of the source or type of taint, “a trial court has an unflagging duty adequately to probe a nonfrivolous claim of jury taint.” United States v. Zimny,

846 F.3d 458, 464 (1st Cir. 2017). “The law on the subject is well settled.” Gaston Brito, 64 F.3d at 12. “The trial court has broad, though not unlimited, discretion to determine the extent and nature of its inquiry.” Rideout, 143 N.H. at 365. “This is a fact-specific determination, which [the Court] review[s] for an unsustainable exercise of discretion.” Lamy, 158 N.H. at 523.

[S]o long as the district judge erects, and employs, a suitable framework for investigating the allegation and gauging its effects, and thereafter spells out his findings with adequate specificity to permit informed appellate review, his determination that the jury has not been soured deserves great respect and should not be disturbed in the absence of patent abuse of discretion.

Gaston Brito, 64 F.3d at 13 (quotation, brackets, and ellipsis omitted).

“The most common approach is to remove the offending juror and undertake individual *voir dire* of the panel.” Lamy, 158 N.H. at 523. “*Voir dire* examination serves to protect the defendant’s right to an impartial jury by exposing possible biases, both known and unknown, of jurors.” State v. Goupil, 154 N.H. 208, 218 (2006). This Court has found that a trial court “should generally” conduct individual *voir dire* in cases involving intrajury misconduct, which is “less serious than extrinsic contact because the prejudice to the deliberation process is self-contained and there is no reason to doubt that the jury will base its ultimate decision only on the evidence formally presented at trial.” State v. Bathalon, 146 N.H. 485, 488 (2001) (quotation and brackets omitted). Thus, where an allegation of improper jury contact has occurred, this Court has sustained the trial court’s denial of motions for a mistrial or a new trial when the court has conducted individual *voir dire* of the

jurors. See, e.g., State v. Flagg, 2010-0390 (decided October 19, 2011) (non-precedential 3JX decision); Lamy, 158 N.H. at 521-23; State v. Brown, 154 N.H. 345 (2006); Goupil, 154 N.H. at 214-20.

However, where the trial court does not conduct individual *voir dire*, the record may not sufficiently establish that the jury was untainted. For example, in Rideout, this Court reversed after a State's witness, Officer Hood, provided medical assistance to a juror, Juror 5, during deliberations. Rideout, 143 N.H. at 364-68. The trial court questioned the juror about any effect the assistance by the State's witness may have had on his deliberations but did not question the remaining jurors. Id. at 364.

The Rideout Court enunciated the factors relevant to determining whether the incident prejudiced the jury:

(1) whether the matter pending before the court was discussed; (2) whether the party involved was connected with the case and whether the juror knew of the connection; (3) whether the party involved had a substantial role in the case; (4) whether other jurors became aware of the communication or contact; (5) whether the communication or contact extended over a prolonged period of time; and (6) the point in deliberations the communication or contact occurred.

Id. at 366 (citations omitted). "Finally, the court should consider the effect of any pertinent instructions." Id. While it was clear from the record that several of the factors supported a finding of no prejudice, the Court also noted that "[s]everal factors tend to show that the encounter *could have* affected the verdict." Id. at 367 (emphasis added). The Court concluded that the encounter:

may well have contaminated the jury with extraneous information, threatening the integrity of its deliberations, and hence, its verdict. Because the State offered no evidence for the court to determine whether Juror 5 disclosed his encounter with Officer Hood to the other jurors and what effect, if any, such a disclosure would have had, the State failed to rebut the presumption of prejudice arising from the incident.

Id. at 368.¹

“Notwithstanding [the court’s] broad discretion [to determine what type of investigation to mount] . . . , a [trial] judge does not have discretion to refuse to conduct any inquiry at all regarding the magnitude of the taint-producing event and the extent of the resulting prejudice if confronted with a colorable claim of juror misconduct.” Zimny, 846 F.3d at 465 (quotation omitted). In Zimny, the First Circuit concluded that the trial court erred in failing to conduct individual *voir dire* when the defendant presented evidence that the entire jury had heard potentially prejudicial extrinsic information. Id. at 461-68; see also Gaston Brito, 64 F.3d at 12-13.

Here, the State cannot bear its burden of proving the incident was harmless beyond a reasonable doubt because the trial court denied Stanin’s request that each juror be individually questioned about the impact of the incident. Several of the relevant factors support a finding that the incident was prejudicial and may well have prejudiced Stanin’s jury. Each juror was exposed to the prejudice of the extraneous information because it was

¹ Also significant to the Court’s decision was the importance of Officer Hood’s testimony to the State’s case and the fact that the jury returned quickly after the incident with a guilty verdict. Id. at 367-68.

discussed during deliberations. Moreover, the information came from Stanin's lawyer, a person who played a substantial role in the case and who the jury would connect with Stanin.

Finally, that the information came from Stanin's lawyer, and that the jury speculated it had been revealed intentionally, created a grave risk to Stanin. The jury may have concluded that Stanin's lawyer had a picture of the weapon used because, although the police had not recovered it, Stanin had shown it to his lawyer. See, e.g., T1 28 (in State's opening statement, prosecutor said "And [Quinn] will describe the knife for you. We don't have it. The Defendant left with it."). No person would have more intimate knowledge of a defendant's culpability than the defendant's own lawyer. In Gaston Brito, the First Circuit reversed when a government agent appeared to indicate knowledge of the defendants' culpability beyond what the evidence established. Gaston Brito, 64 F.3d at 12-13. Because the indication was made by a government agent, "whom the jury might reasonably have presumed to have access to inside information," "the jury might well have given it substantial credence." Id. at 13. A similar risk existed here.

The trial court's instruction was insufficient to cure the possible prejudice. In no case has this Court held that a cautionary instruction alone, without probing the extent of prejudice from extrinsic jury contact or information, was sufficient. See, e.g., Lamy, 158 N.H. at 523 ("trial court's procedure, the jurors' testimony and the curative instruction" together established no prejudice). Rather, the effect of "pertinent instructions" is a

final consideration after considering the six factors enumerated in Rideout. Rideout, 143 N.H. at 366.

“[T]here are some contexts in which the risk that the jury will not, or cannot, follow instructions is so great, and the consequences of failure so vital to the defendant, that the practical and human limitations of the jury system cannot be ignored.” Bruton v. United States, 391 U.S. 123, 135 (1968). In Bruton, the Supreme Court found that hearing a codefendant’s unchallenged statements implicating the defendant was the kind of situation where a limiting instruction was ineffectual, despite the fact that codefendants have obvious motives to incriminate each other. Id. at 135-36. Here, the incriminating information came from Stanin’s lawyer, who had no obvious motivation to incriminate him other than the desire to see the guilty punished. If that was the inference any juror drew from the incident, the prejudice was beyond the reach of a curative instruction.

While the trial court speculated that the jury may have thought the incident reflected favorably on Stanin, the actual inference the jury took from the incident was unknown because the court did not conduct an adequate inquiry. Such speculation “cannot stand unless supported by an adequate inquiry, for unauthorized communication between a juror and someone associated with the case is deemed prejudicial unless it is completely unrelated to the case or otherwise shown to be harmless.” Gaston Brito, 64 F.3d at 13 (quotation omitted). “[I]t was the [trial] court’s obligation to develop the relevant facts on the record, not merely presume them.” Id.

Here, the trial court did not find that there was no prejudice to Stanin from the incident. Rather, the court saw the prejudice inherent in the incident and was willing to strike Juror 9 when she first brought the matter to the court's attention. However, when the court learned that every juror was exposed to the same information, and that no other juror had felt obligated to decline to consider the evidence or bring it to the court's attention, the court reversed course, speculating that the incident may not have prejudiced Stanin. The court's inquiry was inadequate to gauge the effect on the jury of the potentially prejudicial incident. As a result, the State did not bear its burden of proving beyond a reasonable doubt that there was no prejudice to Stanin. This Court must reverse.

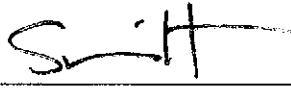
CONCLUSION

WHEREFORE, Dominick Stanin, Sr. respectfully request that this Court vacate and remand for a new trial.

Undersigned counsel requests fifteen minutes of oral argument.

The appealed decisions were not in writing and therefore are not appended to the brief.

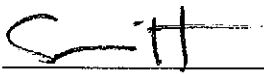
Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that two copies of the foregoing Brief have been mailed, postage prepaid, to:

Criminal Bureau
New Hampshire Attorney General's Office
33 Capitol Street
Concord, NH 03301


Stephanie Hausman

DATED: June 5, 2017

APPENDIX

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THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH

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

Court Name: Hillsborough County Superior Court - Northern District

Case Name: State v. Dominick Aaron Stanin, Sr.

Case Number: 216-2014-CR-00934

Charge ID Number: 976238C

(if known)

STATE PRISON SENTENCE

Plea/Verdict: GUILTY	Clerk:
Crime: First Degree Assault	Date of Crime: 08/14/14
Monitor:	Judge:

A finding of **GUILTY/TRUE** is entered.

- ☒ 1. The defendant is sentenced to the New Hampshire State Prison for not more than **15** year(s), nor less than **7 1/2** year(s). 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 see below
- ☐ 3. _____ of the minimum sentence is suspended.
_____ 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 _____ years from ☐ today or ☐ release on charge ID: _____.
- ☐ 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 ~~#976240C~~ 216-13-CR-614 (793831C)
☐ concurrent with _____.
- ☒ 7. Pretrial confinement credit: 71 days.
- ☐ 8. The Court recommends to the Department of Corrections:
- ☐ A. Drug and alcohol treatment and counseling
 - ☐ B. Sexual offender program
 - ☐ C. Sentence to be served at the House of Corrections
 - ☐ D. Other: _____

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

Pursuant to RSA 499:10:a, the clerk shall notify the appropriate health care regulatory board if this conviction is for a felony and the person convicted is licensed or registered as a health care provider.

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 _____ years(s).
☐ A \$50.00 fine is imposed for a domestic violence crime under RSA 631:2-b.
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 \$ _____ plus statutory 17% administrative fee to: _____.
☐ Through the Department of Corrections as directed by the Probation/Parole Officer.
☐ 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 meaningfully participate 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 with a registered charity and provide proof to ☐ the State or ☐ probation within _____ of today's date.
- ☐ G. The defendant is ordered to have no contact with _____ 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 evidence in the case ☒ return evidence in this case to its rightful owner. *upon exhaustion of appeal*
- ☐ 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:

7-20-16
Date

Dani L. PM
Presiding Justice

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
http://www.courts.state.nh.us

Court Name: Hillsborough County Superior Court - Northern District

Case Name: State v. Dominick Aaron Stanin, Sr.

Case Number: 216-2014-CR-00934

Charge ID Number: 976239C

(if known)

STATE PRISON SENTENCE

Plea/Verdict: GUILTY	Clerk:
Crime: Robbery	Date of Crime: 08/14/14
Monitor:	Judge:

A finding of **GUILTY/TRUE** is entered.

- ☒ 1. The defendant is sentenced to the New Hampshire State Prison for not more than 15 year(s), nor less than 7 1/2 year(s). 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 See below
- ☒ 3. ~~10~~ of the minimum sentence is suspended.
~~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 charge ID: 976239C
- ☐ 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 #976238C.
☐ concurrent with _____.
- ☐ 7. Pretrial confinement credit: _____ days.
- ☐ 8. The Court recommends to the Department of Corrections:
- ☐ A. Drug and alcohol treatment and counseling
 - ☐ B. Sexual offender program
 - ☐ C. Sentence to be served at the House of Corrections
 - ☐ D. Other: _____

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

Pursuant to RSA 499:10:a, the clerk shall notify the appropriate health care regulatory board if this conviction is for a felony and the person convicted is licensed or registered as a health care provider.

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 _____ years(s).
☐ A \$50.00 fine is imposed for a domestic violence crime under RSA 631:2-b.
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 \$ _____ plus statutory 17% administrative fee to: _____.
☐ Through the Department of Corrections as directed by the Probation/Parole Officer.
☐ 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 meaningfully participate 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 with a registered charity and provide proof to ☐ the State or ☐ probation within _____ of today's date.
- ☒ G. The defendant is ordered to have no contact with J.Q. (8.1.1959) 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 evidence in the case ☒ return evidence in this case to its rightful owner. *upon exchange of appeal*
- ☐ 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:

7-28-16
Date

Don L. P...
Presiding Justice

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
http://www.courts.state.nh.us

Court Name: Hillsborough County Superior Court - Northern District

Case Name: State v. Dominick Aaron Stanin, Sr.

Case Number: 216-2014-CR-00934

Charge ID Number: 976240C

(if known)

STATE PRISON SENTENCE

Plea/Verdict: GUILTY	Clerk:
Crime: Felon in Possession	Date of Crime: 08/14/14
Monitor:	Judge:

A finding of **GUILTY/TRUE** is entered.

- ☒ 1. The defendant is sentenced to the New Hampshire State Prison for not more than 7 year(s), nor less than 3 1/2 year(s). 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. 411 of the minimum sentence is suspended.
411 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 charge ID: 976239C
- ☐ 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 216-13-CR-00011 (7938310). 976239C if imposed
☐ concurrent with ____.
- ☐ 7. Pretrial confinement credit: ____ days.
- ☐ 8. The Court recommends to the Department of Corrections:
- ☐ A. Drug and alcohol treatment and counseling
 - ☐ B. Sexual offender program
 - ☐ C. Sentence to be served at the House of Corrections
 - ☐ D. Other: ____.

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

Pursuant to RSA 499:10:a, the clerk shall notify the appropriate health care regulatory board if this conviction is for a felony and the person convicted is licensed or registered as a health care provider.

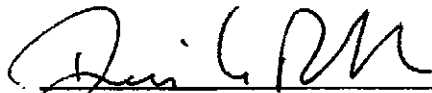
PROBATION

- ☐ 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.
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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 _____ years(s).
☐ A \$50.00 fine is imposed for a domestic violence crime under RSA 631:2-b.
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☐ 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 meaningfully participate 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 with a registered charity and provide proof to ☐ the State or ☐ probation within _____ of today's date.
- ☒ G. The defendant is ordered to have no contact with JL 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 evidence in the case ☒ return evidence in this case to its rightful owner. *upon exhaustion of appeal*
- ☐ 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:

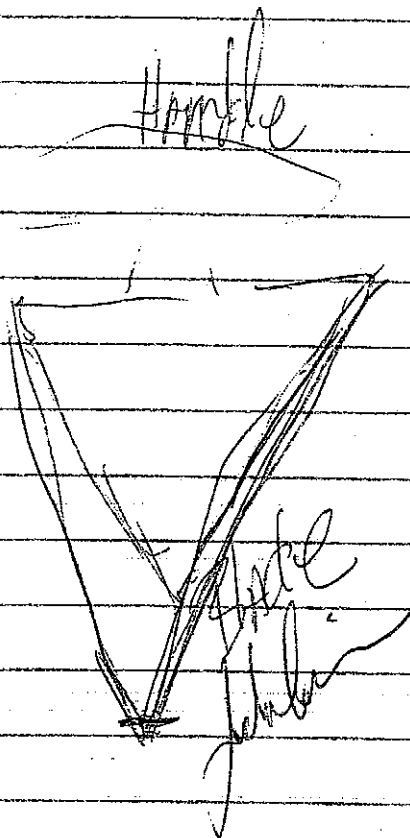
7-20-16
Date


Presiding Justice

14-12148 Pb-7

Graville

[Signature]
8/14/14



US COURT'S
EXHIBIT NO. 2
IDENTIFICATION/EVIDENCE
DKT. # 14-CR-934
DATE: 6/24/16

14-101-10

COLD STEEL

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KNIVES TOOLS & GEAR

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