THE STATE OF NEW HAMPSHIRE
SUPREME COURT

No. 2017-0170

State of New Hampshire

v.

Michael Hanes

Appeal Pursuant to Rule 7 from Judgment
of the Merrimack County Superior Court

BRIEF FOR THE DEFENDANT

Christopher M. Johnson
Chief Appellate Defender
Appellate Defender Program
10 Ferry Street, Suite 202
Concord, NH 03301
NH Bar #15149
603-224-1236
(5 minutes 3JX oral argument)

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TABLE OF AUTHORITIES

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QUESTIONS PRESENTED

1. Whether the State presented sufficient evidence to convict Hanes of the crime of improper influence.

Issue preserved by defense motion to dismiss, the hearing on the motion, and the court's ruling. T 54-65.*

2. Whether the court plainly erred by failing *sua sponte* to strike part of a witness's testimony.

Issue raised as plain error pursuant to Supreme Court Rule 16-A.

* Citations to the record are as follows:
"A" refers to the Appendix to this brief;
"T" refers to the transcript of the trial, held on December 7, 2016.

STATEMENT OF THE CASE

In May 2016, a Merrimack County grand jury indicted Michael Hanes with the class B felony of improper influence, in violation of RSA 640:3. The indictment alleged that, on February 16, 2016, Hanes called the Pembroke Town Administrator and left a message "that he was going to shoot the Public Works Department's snow removal employees if they plowed snow on the sidewalk in front of his home." A1. Hanes stood trial on December 7, 2016. At the close of trial, the jury convicted him as charged. T 89-90. The court (McNamara, J.) sentenced Hanes to a term of twelve months, with all but seven days suspended. A3-A4.

STATEMENT OF THE FACTS

Michael Hanes lived on Front Street in Pembroke. T 20. His house sat on a street in an old part of the town, where the buildings pre-date the modern zoning requirement of a set-back distance between the house and the road. T 20-21, 40. As a result, when plows pushed snow out of the street in the direction of Hanes's house, the snow almost touched his house in such a way as to block his doorway. T 32-34.

About a year before February 2016, Hanes complained to Town Administrator David Jodoin about the manner of plowing on Front Street. T 11, 19-20, 32. As Town Administrator, Jodoin supervised the heads of the various municipal departments, including the police chief, the fire chief, the deputy tax assessor, the welfare office, and the public works director, among others. T 12, 23-24. Plowing snow on town roads falls within the responsibility of the public works director. T 21-24.

The elected town selectmen set the policies that the town administrator and other town officials execute. T 24-25. With regard to roads, the town has an advisory committee that reports its views to the selectmen after examining road-related issues. T 24-26. Jodoin does not sit on the roads advisory committee. T 25. Among the policies adopted by the selectmen is a Snow Removal Policy Plan. T 27-28. That plan identifies the sequence in which roads and sidewalks are plowed. T 28. The town administrator ensures that the details of the plan are known to, and followed by, the public works department. T 28-29. The town administrator tends also to receive complaints from the

public, and will "follow up" on those complaints with the appropriate department. T 29-31.

Early on the morning of February 16, 2016, upon seeing plowed snow again blocking his doorway, Hanes called the town administrator's office and left the following message on Jodoin's voicemail:

> Dave Jodoin this is Mike Hanes, my phone number is [number omitted]. Anyhow, I live on 52 Front Street. I called you last year because we were having a problem with the city plowing the snow right up onto my sidewalk. Well today, and this isn't a whole lot of snow that we're getting, but they, the little bit of snow, it's accumulated in front of my house over the winter, they pushed all of that and the snow from today, last night up onto my damn sidewalk. I got two feet of snow in my fucking front yard! I want Jimmy fired! I want to see somebody fired down there! I want you to fucking fire some goddamn plow drivers! You come and look in front of my goddamn house! I am fucking just mad as hell! I want a plow driver fired for this and I want Jimmy's fucking head on a goddamn stick! I'm gonna start shooting these bastards if they keep this up! I will kill every fucking plow driver in this mother fucking goddamn city if they do this one more fucking time! Thank you!

T 12-14, 31, 48, 51; A2.[1] Jodoin testified that Hanes began the message speaking in a reasonable tone, and then "it just went from like zero to sixty . . . within like three seconds. It was loud, yelling, screaming, threatening, wanting somebody fired, and then the threats came in." T 14.

Upon hearing the message, Jodoin called the police. T 15. In response to Jodoin's report, Pembroke police officer Michael Foster went to Hanes's house shortly before noon. T 45-46, 50-51. When speaking with Foster, Hanes

[1] A disk containing the recorded phone message has been transferred to this Court. A police report transcribing the message appears at appendix page 2.

acknowledged leaving the message and said that doing so had been a "mistake." T 46-47, 51. Foster arrested Hanes. T 47.

SUMMARY OF THE ARGUMENT

1. The State introduced insufficient evidence to convict Hanes of improper influence. First, the State failed to prove that Hanes's words portended any imminent harm. Second, insofar as the verb "threatens" implies an imminent injury or a purpose to terrorize, the evidence here failed to establish such elements. Finally, Hanes's words were constitutionally protected, and thus fell outside the reach of the prohibition codified in the improper influence statute.

2. The court plainly erred in failing *sua sponte* to strike that part of Foster's testimony in which he communicated his opinion that Hanes was guilty of the charged crime.

I. THE STATE INTRODUCED INSUFFICIENT EVIDENCE TO CONVICT HANES OF IMPROPER INFLUENCE.

After the State rested, the defense moved to dismiss the charge. T 54-65. Counsel argued that the State had not proved a "threat," as that term is generally understood in the criminal code. For example, RSA 631:4, the criminal threatening statute, defines the act of threatening as involving in most instances a fear of imminent injury or a purpose to terrorize. T 55. Counsel argued that such a purpose is proved only if the target of the threat is imminently susceptible to suffering the stated injury. T 55-56. Because here Hanes spoke the words only to Jodoin's voicemail, that immediacy did not exist. In addition, counsel called attention to the conditional nature of Hanes's words about shooting plow drivers in the future. T 55, 58. Counsel further argued that the State had not proved Hanes's words to fall outside constitutional protection, as they must for the State to convict him for speaking them. T 57, 61. Though it recognized that the argument was not "spurious" or "frivolous," the court ultimately denied the motion. T 64-65.

Evidence is legally insufficient to prove an element of the offense if "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. Collyns, 166 N.H. 514, 517 (2014). The conviction of a defendant on the basis of legally insufficient evidence violates the Due Process Clause of the Fourteenth Amendment. Jackson v. Virginia, 443 U.S. 307, 317-318 (1979). Sufficiency of the evidence is reviewed *de novo*. Collyns, 166 N.H. at 517.

RSA 640:3, I(a) defines the crime of improper influence as charged here. A1. Under that statute, a person commits a class B felony by:

> Threaten[ing] any harm to a public servant . . . with the purpose of influencing his action, decision, opinion, recommendation . . . or other exercise of discretion.

RSA 640:3, I(a). The statute further defines "harm" as meaning

> any disadvantage or injury, to person . . . including disadvantage or injury to any other person . . . in whose welfare the public servant . . . is interested, provided that harm shall not be construed to include the exercise of any conduct protected under the First Amendment to the United States Constitution or any provision of the federal or state constitutions.

RSA 640:3, II.

When interpreting statutes, this Court looks first to the statutory language, construing it, if possible, according to its plain and ordinary meaning. State v. Paige, __ N.H. __ (slip op. at 3) (August 15, 2017); State v. Dor, 165 N.H. 198, 200 (2013). It will "construe provisions of the Criminal Code according to the fair import of their terms and to promote justice." State v. Thiel, 160 N.H. 462, 465 (2010). Thus, in statutory interpretation, the Court's "goal is to apply statutes in light of the legislature's intent in enacting them, and in light of the policy sought to be advanced by the entire statutory scheme." Dor, 165 N.H. at 200. Consistent with that goal, the Court will avoid interpretations that would yield absurd or unjust results. Paige, __ N.H. at __ (slip op. at 3). If the statutory language is ambiguous, this Court consults legislative history. State v. Yates, 152 N.H. 245, 255 (2005). When the legislature fails to articulate its intent unambiguously, this Court will apply the

rule of lenity, resolving doubts in favor of the defendant. State v. Dansereau, 157 N.H. 596, 602 (2008). This Court reviews rulings on questions of law *de novo*. Dor, 165 N.H. at 200.

As relevant to this appeal, the crucial term is the verb, "threatens." RSA 640:3, I(a). Often, when called upon to articulate the plain and ordinary sense of a word, the Court will consult a dictionary. State v. Fedor, 168 N.H. 346, 350 (2015). The dictionary defines "threaten" to mean "to utter threats against: promise punishment, reprisal or other distress to." Webster's Third New International Dictionary 2382 (unabridged ed. 2002). "Threat," in turn, means:

> an indication of something impending and usu[ally] undesirable or unpleasant as a/ an expression of an intention to inflict evil, injury, or damage on another usu[ally] as retribution or punishment for something done or left undone; b/ expression of an intention to inflict loss or harm on another by illegal means and esp[ecially] by means involving coercion or duress of the person threatened.

Id. (emphasis added). The dictionary definition of "threat" thus incorporates the idea that the speaker indicates consequences that are "impending." The dictionary further defines "impending" as something "that is about to occur: imminent." Id. at 1132; see also Elonis v. United States, __ U.S. __, 135 S.Ct. 2001, 2008 (2015) (reviewing dictionary definitions of "threat"; interpreting statute there at issue as requiring proof of criminal mental state; crime not proved merely on evidence that reasonable person would regard defendant's communications as threats).

That sense of "threat" as incorporating the idea of imminence finds further support in decisions defining the elements of criminal threatening

under RSA 631:4. RSA 631:4, I(a), requires proof of a purpose to place the victim in fear of imminent bodily injury. State v. McCabe, 145 N.H. 686, 692 (2001). The dictionary defines "imminent" as "ready to take place; near at hand: impending; hanging threateningly over one's head: menacingly near." Webster's Third New International Dictionary 1130 (unabridged ed. 2002). Evidence of a threat to injure a person on some indefinite future occasion, and then only after the occurrence of a pre-condition, does not prove imminence.

Here, Hanes's message foretold violence only upon the occurrence of a hypothetical future event – another episode of plowing that left snow blocking Hanes's house. See also Watts v. United States, 394 U.S. 705, 708 (1969) (*per curiam*) (noting conditional nature of threat as tending to defeat prosecution's proof that defendant voiced a "true threat"). Moreover, the fact that Hanes left a voice message, rather than spoke to Jodoin, tended to undermine the extent to which the message manifested a purpose to instill fear of imminent injury.

Insofar as the verb "threatens" implies a purpose to terrorize, the evidence here failed to establish such a purpose. This Court has defined a purpose to terrorize as meaning more than "alarm, fright, dread or the apprehension of hurt." State v. Fuller, 147 N.H. 210, 213 (2001). Rather, the concept involves a purpose to cause "extreme fear." Id. Here, the conditional nature of Hanes's statement, combined with the fact that, as Jodoin understood, Hanes was in the moment overcome with anger, together support the conclusion that Hanes's purpose was not to cause "extreme fear," but rather to use strong terms to convey his frustration. See T 14 (Jodoin's

testimony, speaking of Hanes's message, that "it just went from like zero to sixty . . . within like three seconds . . . ."); see also Hurley v. Hurley, 165 N.H. 749 (2013) (finding insufficient evidence of criminal threatening in husband's text message to wife in which he wrote "[w]ish you would die in a fiery crash"); Fuller, 147 N.H. at 214 (recognizing distinction between purpose to terrorize and purpose to express "transitory anger").

Finally, the State cannot convict Hanes if his words enjoy constitutional protection under the First Amendment or under the free speech clause of Part I, Article 22 of the New Hampshire Constitution. See RSA 640:3, II (defining element of "harm" as not including "the exercise of any conduct protected under the First Amendment to the United States Constitution or any provision of the federal or state constitutions"). The First Amendment to the United States Constitution provides that "Congress shall make no law . . . abridging the freedom of speech." U.S. Const. amend. I. See Gitlow v. New York, 268 U.S. 652, 666 (1925) (applying First Amendment to states via Fourteenth Amendment). In certain narrow circumstances, however, the First Amendment is not violated when acts of speech are criminalized. See, e.g., New York v. Ferber, 458 U.S. 747, 754 (1982) (child pornography not constitutionally protected); Miller v. California, 413 U.S. 15, 23 (1973) (obscenity not constitutionally protected); Chaplinsky v. New Hampshire, 315 U.S. 568, 571-73 (1942) ("fighting words" not constitutionally protected).

As relevant here, the Supreme Court has held that states may, without violating the Constitution, criminalize "true threats." Virginia v. Black, 538 U.S.

343 (2003). In defining that limitation on First Amendment protection, the Court held that the "true threat" category "encompass[es] those statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals." Id. at 359. Here, the State failed to prove that Hanes meant to communicate a serious expression of such intent.

Guidance appears in Watts. In that case, the government prosecuted Watts for saying, during a discussion at a public rally, "now I have received my draft classification as 1-A and I have got to report for a physical this Monday coming. I am not going. If they ever make me carry a rifle, the first man I want to get in my sights is L.B.J. They are not going to make me kill my black brothers." Watts, 394 U.S. at 706. Reversing Watts's conviction, the Supreme Court held that such "political hyperbole" does not constitute a true threat. Here, Hanes's words similarly constituted hyperbole. His expression of a desire to have "Jimmy's head on a stick" cannot reasonably be taken literally. Its presence in Hanes's message accordingly casts a shadow of hyperbole over his immediately following words about shooting Pembroke's plow drivers.

For all the reasons stated above, the facts, viewed in the light most favorable to the State, do not prove, beyond a reasonable doubt, all of the essential elements of improper influence. This Court must therefore reverse Hanes's conviction.

II. THE COURT COMMITTED PLAIN ERROR IN FAILING *SUA SPONTE* TO STRIKE PART OF OFFICER FOSTER'S TESTIMONY.

During Foster's direct testimony, the prosecutor asked what Foster did after listening to the message on Jodoin's answering machine. T 45. Foster answered:

> Well, the voicemail was somewhat threatening towards the Town Administrator and the plow truck operators for the town, and based off what was said in it, we believe that it constituted basically an obstacle or a threat that was designed to prevent the plow truck drivers from completing their duties and based off the nature of the threat and the immediacy of it, we went to Mr. Hanes's residence on Front Street.

T 45-46. The question called only for Foster to say that the police went to Hanes's residence. Foster's opinion about Hanes's message had no tendency to prove any material or disputed fact. See R. Ev. 401. Moreover, the above-quoted testimony was unfairly prejudicial, within the sense of Rule 403, because it communicated Foster's opinion that Hanes's words constituted an "immedia[te]" threat, and thus proved his guilt of the charged crime.

This Court has long recognized the inadmissibility of a witness's testimony that the witness believes the defendant to be guilty. See, e.g., State v. Wargo, 83 N.H. 532, 145 A. 456, 458 (1929) (error in admission of evidence "tendency [of which] to prejudice the jury in giving them the opinion of the witness that the defendant was guilty is not doubtful"). The Court has also held inadmissible analogous testimony that does nothing more than convey, directly or indirectly, a witness's opinion about the defendant's guilt. See, e.g., State v. McDonald, 163 N.H. 115, 121 (2011) (witnesses not permitted to give lay

opinion testimony regarding credibility of witness, as such testimony invades province of jury); State v. Huard, 138 N.H. 256, 259 (1994) ("Generally, expert opinion of a witness's credibility is inadmissible because such testimony carries prejudicial risks that are likely to outweigh any probative value"); State v. Reynolds, 136 N.H. 325, 327-29 (1992) (reversible error to permit police officer to give opinion about whether discrepancies in victim's account of assault were significant); State v. Ober, 126 N.H. 471, 472 (1985) (results of polygraph tests not admissible because of "the unreliability of such tests, as well as the danger that a jury will rely upon them to establish the truth or falsity of a witness' statements").

Supreme Court Rule 16-A allows the Court to consider, as plain error, claims not raised at trial. This Court has identified four essential elements of a successful claim of plain error: "(1) there must be error; (2) the error must be plain; (3) the error must affect substantial rights; and (4) the error must seriously affect the fairness, integrity or public reputation of judicial proceedings." State v. MacInnes, 151 N.H. 732, 737 (2005). The Court explained that the plain error rule "should be used sparingly, its use limited to those circumstances in which a miscarriage of justice would otherwise result." Id. at 736-37.

In the context of a claim of plain error relating to the introduction of inadmissible evidence, this Court has characterized the "pertinent question [as] whether the trial court erred in failing *sua sponte* to strike or issue a curative instruction" with respect to the testimony. State v. Thomas, 168 N.H. 589, 604

(2016); State v. Cooper, 168 N.H. 161, 168 (2015); State v. Rawnsley, 167 N.H. 8, 12 (2014); State v. Noucas, 165 N.H. 146, 161 (2013). Though it has not yet reversed a conviction on plain error review of the admission of evidence, the Court has not ruled out the possibility of doing so. In Rawnsley, the Court acknowledged that "conceivably, a trial court would have such an obligation [*sua sponte* to strike testimony] when there could be no dispute that certain testimony impaired the defendant's substantial rights and adversely affected the fairness, integrity, or public reputation of judicial proceedings. . . ." Rawnsley, 167 N.H. at 12.

The first prong considers whether there was error. Under the cases described above, Foster's testimony relating his opinion that the call communicated an imminent threat was inadmissible. The second prong of the plain error test involves an inquiry into whether the error was "plain." This Court has described the second prong as follows:

> Plain is synonymous with clear or, equivalently, obvious. At a minimum, a court of appeals cannot correct an error . . . unless the error is clear under current law. Thus, an error is plain if it was or should have been obvious in the sense that the governing law was clearly settled to the contrary . . . . Generally, when the law is not clear at the time of trial, and remains unsettled at the time of appeal, a decision by the trial court cannot be plain error.

Noucas, 165 N.H. at 161 (citation omitted). The authorities cited above establish not only that the admission of the testimony was error, but also that that error was plain.

In Noucas, this Court noted that "defense counsel may have had strategic reasons for not objecting" to the allegedly improper testimony because

a part of the witness's answer conveyed exculpatory information. Noucas, 165 N.H. at 161-62; see also Thomas, 168 N.H. at 604-06 (similarly noting possibility of strategic reasons for not objecting to inadmissible testimony); Rawnsley, 167 N.H. at 13 (same). By contrast, here, no such strategic reason existed because Foster's testimony characterizing Hanes's message as stating an imminent threat was unequivocally incriminating.

The third plain error prong addresses whether the error affected substantial rights. "Generally, to satisfy the burden of demonstrating that an error affected substantial rights, the defendant must demonstrate that the error was prejudicial, i.e., that it affected the outcome of the proceeding." State v. Moussa, 164 N.H. 108, 118 (2012) (quotation and citation omitted); see also State v. Pinault, 168 N.H. 28, 34 (2015) (discussing third prong; clarifying that it focuses on question of whether error affected outcome of proceeding). Here, the error affected the outcome of the proceeding.

To appreciate the influence of Foster's inadmissible testimony, one must first recognize the particular nature of the essential dispute in the case. A person commits the charged crime of improper influence through spoken words. Here, the words alleged to constitute the crime were recorded in a voicemail that the jury heard and there was no dispute about what Hanes said. Rather, the case turned on a dispute about the legal significance of Hanes's words. The State took the position that Hanes's act of speaking the words constituted a threat of harm in violation of the improper influence statute. The defense contended that those words could not be defined as criminal, for by

them Hanes merely meant to express in hyperbolic terms his transitory anger and frustration.

Confronted with such a dispute and believing that a police officer will have a more informed opinion, based on broad experience of comparable cases, a jury will be tempted to defer its judgment to the officer's. In Reynolds, this Court made an analogous point:

> Upon hearing a law enforcement officer, experienced in investigating alleged sexual assaults of children, express an opinion bolstering the credibility of the child witness, the jurors here may well have felt relieved that they would not have to make this difficult judgment themselves, and may have transferred the obligation to the officer.

Reynolds, 136 N.H. at 328-29. In a similar way, Foster's inadmissible testimony thus could have affected the outcome of the trial.

The fourth plain error prong evaluates whether the error seriously affected the fairness, integrity or public reputation of judicial proceedings. In connection with that prong, this Court has held that it will "limit [its] exercise of discretion under the fourth prong to those circumstances in which a miscarriage of justice would otherwise result." State v. Mueller, 166 N.H. 65, 72 (2014). The fourth prong resembles the third in that the Court has declared that it is met when "there is the very real prospect that the jury would have returned different verdicts" had the error not occurred. Id. Hanes accordingly incorporates here the observations made under the third prong, with respect to the focused nature of the dispute at this trial. In addition, a concern for the integrity and public reputation of judicial proceedings arises when, as here,

testimony is introduced that this Court has on a number of prior occasions clearly proscribed.

For the reasons stated above, Hanes's claim meets all four prongs of the plain error analysis. This Court must accordingly reverse his conviction.

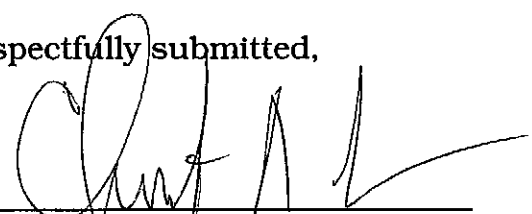
CONCLUSION

WHEREFORE, Mr. Hanes respectfully requests that this Court reverse his conviction.

Undersigned counsel requests five minutes of oral argument before a 3JX panel.

The appealed decision was not in writing and therefore is not appended to the brief.

Respectfully submitted,



By_____
Christopher M. Johnson, #15149
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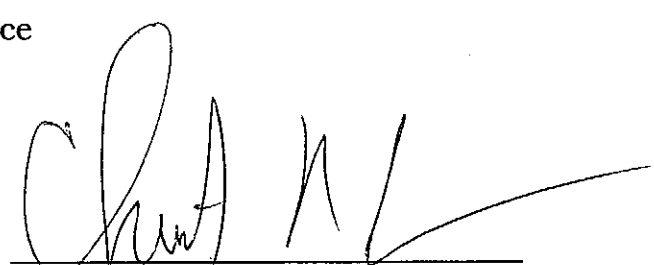
CERTIFICATE OF SERVICE

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



Christopher M. Johnson

DATED: August 25, 2017

APPENDIX

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THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS. *SUPERIOR COURT* *MAY TERM, 2016*

INDICTMENT

At the Superior Court, held at Concord, in the County of Merrimack on the 19th day of MAY, 2016, the Grand Jurors for the State of New Hampshire, upon their oath, present that

MICHAEL HANES
of PEMBROKE, NEW HAMPSHIRE

did commit the crime of **IMPROPER INFLUENCE**
contrary to RSA 640:3, a CLASS B FELONY

on or about the 16th day of FEBRUARY, 2016
at PEMBROKE, New Hampshire

In that:

1. **Michael Hanes, with a purpose to influence a public servant's action, decision, opinion, recommendation or other exercise of discretion did threaten any harm to a public servant, employees of the Pembroke Public Works Department, by calling the Pembroke Town Administrator leaving a message that he was going to shoot the Public Works Department's snow removal employees if they plowed snow on the sidewalk in front of his home;**

2. **Michael Hanes committed the above acts purposely.**

contrary to the form of the statute, in such cases made and provided, and against the peace and dignity of the State. This is a true bill.

Grand Jury Foreman

Scott W. Murray
Merrimack County Attorney

Michael Hanes
52 Front Street
Pembroke, New Hampshire 03275

GBW

State v. Michael Hanes
Date of Birth: 12/10/60

Jury Verdict: Guilty
Date: 12-7-16
Time: 4:01 pm
Judge: RB McNamara
Dep Clerk: K Frazier
Monitor: L Mitchell

MCSC #217 16 CR 449
CHG ID# 1228991 C

2016 MAY 20 PM 12:43
SUPERIOR COURT

029170

INDICTMENT:

Entered: 02/17/2016 @ 0724 Entry ID: AA
Modified: 02/17/2016 @ 0744 Modified ID: AA

PHONE MESSAGE
RECEIVED AT PEMBROKE TOWN HALL
02-16-2016

CALLER: Dave Jodoin this is Mike Haynes, my phone number is 603-210-5500. Anyhow, I live on 52 Front Street. I called you last year because we were having a problem with the city plowing the snow right up onto my sidewalk. Well today, and this isn't a whole of snow that we're getting, but they, the little bit of snow, it's accumulated in front of my house over the winter, they pushed all of that and the snow from today, last night up onto my damn sidewalk. I got two feet of snow in my fucking front yard! I want Jimmy fired! I want to see somebody fired down there! I want you to fucking fire some goddamn plow drivers! You come and look in front of my goddamn house! I am fucking just mad as hell! I want a plow driver fired for this and I want Jimmy's fucking head on a goddamn stick! I'm gonna start shooting these bastards if they keep this up! I will kill every fucking plow driver in this mother fucking goddamn city if they do this one more fucking time! Thank you!

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

Court Name: Merrimack Superior Court

Case Name: State v. Michael Haines

Case Number: (if known) 16-CR-449 Charge ID Number: 1228991

HOUSE OF CORRECTIONS SENTENCE

Plea/Verdict: Guilty	Clerk:
Crime: Improper Influence	Date of Crime: 2-16-16
Monitor:	Judge:

A finding of GUILTY/TRUE is entered.

This conviction is for a ☑ Felony ☐ Misdemeanor ☐ Violation of Probation

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

☐ The defendant has been convicted of a misdemeanor, other than RSA 631:2-b, which includes as an element of the offense, the use or attempted use of physical force or threatened use of a deadly weapon, and the defendant's relationship to the victim is:

☐ (1) Current or former spouse ☐ (2) Parent ☐ (3) Guardian ☐ (4) Child in common
OR Cohabiting or cohabited with victim as a ☐ (5) spouse ☐ (6) parent ☐ (7) guardian
OR A person similarly situated to ☐ (8) spouse ☐ (9) parent ☐ (10) guardian

☑ 1. The defendant is sentenced to the House of Corrections for a period of 12 months.

☑ 2. This sentence is to be served as follows:

☑ Stand committed ☐ Commencing _____

☐ Consecutive weekends from _____ PM Friday to _____ PM Sunday beginning _____

OBM ☑ all but 7 days of the sentence is suspended during good behavior and compliance with all terms and conditions of this order. Any suspended sentence may be imposed after hearing at the request of the State. The suspended sentence begins today and ends 1 years from ☑ today or ☐ release on _____.

(Charge ID Number)

☐ _____ of the sentence is deferred for a period of _____.
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 _____.
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. Failure to petition within the prescribed time will result in the immediate issuance of a warrant for the defendant's arrest.

☐ Other: _____

☐ 3. The sentence is ☐ consecutive to _____
(Charge ID Number)
☐ concurrent with _____
(Charge ID Number)

☐ 4. Pretrial confinement credit: _____ days.

☐ 5. The court recommends to the county correctional authority:
☐ Work release consistent with administrative regulations.
☐ Drug and alcohol treatment and counseling.
☐ Sexual offender program.
☐ _____

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

NHJB-2312-S (01/27/2017)

Case Name: _____
Case Number: _____
HOUSE OF CORRECTIONS SENTENCE

PROBATION

☐ 6. 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.

☐ 7. 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.

☐ 8 **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

☑ 9. 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 $ _____ to _____
☐ 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 and complete any counseling, treatment and educational programs as directed by the correctional authority or Probation/Parole Officer.

☐ D. The defendant's ☐ license ☐ privilege to operate in New Hampshire is revoked for a period of _____ effective _____

☐ 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 _____ 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, e-mail, text message, social networking sites and/or third parties.

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

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

☑ J. Other:
Defendant shall have no unofficial contact with the employees of the Town of Pembroke
The Defendant shall surrender on March 8, 2017 at 9 AM.

3/1/17
Date

Richard B McNamara
Signature of Judge

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