

THE STATE OF NEW HAMPSHIRE
SUPREME COURT

No. 2017-0345

State of New Hampshire

v.

Brittany Boggs

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

BRIEF FOR THE DEFENDANT

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TABLE OF CONTENTS

	<u>Page</u>
Table of Authorities	ii
Text of Relevant Authorities	v
Questions Presented	1
Statement of the Case	2
Statement of the Facts	3
Summary of the Argument	7
Argument	
I. THE STATE INTRODUCED INSUFFICIENT EVIDENCE TO CONVICT BOGGS OF ISSUING A BAD CHECK.....	8
A. The TD Bank check conviction.	12
B. The Citizens Bank check conviction	17
C. Conclusion	20
II. THE COURT ERRED IN OVERRULING BOGGS'S OBJECTION TO A BURDEN-SHIFTING JURY INSTRUCTION.....	21
Conclusion.....	29
Appendix	A1-A36

TABLE OF AUTHORITIES

	<u>Page</u>
Cases	
<u>Bess v. State,</u> 226 S.E.2d 626 (Ga. App. 1976)	26
<u>Commonwealth v. Thomas,</u> 814 A.2d 754 (Pa. Super. 2002)	14
<u>Durham v. State,</u> 74 So. 3d 908 (Miss. App. 2011)	26
<u>Francis v. Franklin,</u> 471 U.S. 307 (1985)	24, 25, 26
<u>Hodges v. State,</u> 155 So. 2d 533 (Ala. App. 1963)	26
<u>Hogan v. Pat’s Peak Skiing, LLC,</u> 168 N.H. 71 (2015)	14
<u>Jackson v. Virginia,</u> 443 U.S. 307 (1979)	9
<u>Lupyan v. Corinthian Colleges, Inc.,</u> 761 F.3d 314 (3rd Cir. 2014)	14
<u>Olson v. The Bon, Inc.,</u> 183 P.3d 359 (Wash. App. 2008)	15
<u>People v. Gray,</u> 426 N.E.2d 290 (Ill. App. 1981)	26
<u>Sandstrom v. Montana,</u> 442 U.S. 510 (1979)	24, 26
<u>State v. Adams,</u> 443 N.E.2d 1047 (Ohio App. 1982)	26
<u>State v. Collyns,</u> 166 N.H. 514 (2014)	8, 9
<u>State v. Fitanides,</u> 141 N.H. 352 (1996)	11

<u>State v. Furgal,</u> 164 N.H. 430 (2012)	23
<u>State v. Gagne,</u> 163 N.H. 363 (2013)	12
<u>State v. Hall,</u> 148 N.H. 394 (2002)	24, 25, 26, 28
<u>State v. Hebner,</u> 697 P.2d 1210 (Idaho App. 1985)	26
<u>State v. Houghton,</u> 168 N.H. 269 (2015)	12
<u>State v. Johnson,</u> 666 P.2d 706 (Kan. 1983)	26
<u>State v. McBurney,</u> 484 A.2d 926 (Vt. 1984)	27, 28
<u>State v. Merriweather,</u> 625 S.W.2d 256 (Tenn. 1981)	27
<u>State v. Moore,</u> 12 N.H. 42 (1841)	10
<u>State v. Noucas,</u> 165 N.H. 146 (2013)	12, 23
<u>State v. Robinson,</u> 602 N.W.2d 730 (S.D. 1999)	27
<u>State v. Saunders,</u> 164 N.H. 342 (2012)	23
<u>State v. Stewart,</u> 155 N.H. 212 (2007)	9, 11
<u>State v. Williams,</u> 133 N.H. 631 (1990)	23, 26
<u>Ulster County Court v. Allen,</u> 442 U.S. 140 (1979)	24
<u>In re Winship,</u> 397 U.S. 358 (1970)	23

Statutes

13 V.S.A. § 2022 27, 28
RSA 625:11, I..... 10
RSA 638:4..... *passim*

Constitutional Provisions

New Hampshire Constitution Part I, Article 15 23
United States Constitution Fourteenth Amendment 9, 23

Other Authorities

W. LaFave, Substantive Criminal Law § 6.3(a) 10

TEXT OF RELEVANT AUTHORITY:

638:4 Issuing Bad Checks. –

I. A person is guilty of issuing a bad check if he issues or passes a check for the payment of money and payment is refused by the drawee, except in cases where a legal stop payment order has been issued or where the drawee refuses payment for any other reason through no fault of the person who issued or passed the check.

I-a. A person who issues or passes a bad check is subject to prosecution in the jurisdiction in which he issued or passed the check.

II. For the purposes of this section, as well as in any prosecution for theft committed by means of a bad check, a person who issues a check for which payment is refused by the drawee is presumed to know that such check would not be paid if he had no account with the drawee at the time of issue.

III. It is an affirmative defense that the actor paid the amount of the check, together with all costs and protest fees, to the person to whom it was due, within 14 days after having received notice that payment was refused. The actor's failure to make such payment within 14 days after receiving notice that payment was refused shall be prima facie evidence of a violation of paragraph I of this section.

IV. (a) Issuing a bad check is:

(1) A class A felony if:

(A) The face amount of the check exceeds \$1,500; or

(B) The defendant has 2 or more prior convictions under this section, the present and prior convictions were based on offenses committed within a 12-month period, and the aggregate face amount of the checks underlying the present and prior convictions exceeds \$1,500;

(2) A class B felony if:

(A) The face amount of the check exceeds \$1,000 but is not more than \$1,500;

or

(B) The defendant has 2 or more prior convictions under this section, the present and prior convictions were based on offenses committed within a 12-month period, and the aggregate face amount of the checks underlying the present and prior convictions exceeds \$1,000 but does not exceed \$1,500;

(3) A class A misdemeanor if the face amount of the check does not exceed \$1,000 and the actor has been convicted of an offense under this section within the previous 12 months; and

(4) A class B misdemeanor in all other cases.

(b) In any prosecution under subparagraph IV(a), the prosecutor shall prove that the person issued or passed the check knowing or believing that the check would not be paid by the drawee.

(c) Face amounts involved in the issuance of bad checks committed pursuant to one scheme or course of conduct may be aggregated in determining the grade of the offense.

V. In addition to any other sentence which it imposes, the court shall, if restitution is authorized under RSA 651:63, order any person convicted of a violation of this section to make restitution to the person to whom the check was due. Such restitution shall include the amount of the check and may include all reasonable costs and protest fees.

VI. (a) Notwithstanding any other provision of law to the contrary, in any judicial proceeding under this section, a notarized or sworn statement by the bank official who is the keeper of records of the bank upon which the check was drawn shall be admissible as evidence at trial to prove the status or account balance of the person's account on the date the check was issued or passed. The admission of this statement shall eliminate the need for the keeper of records to personally appear and testify before the court.

(b) Nothing in this paragraph shall prevent the person who issued the check for which payment was refused from securing the appearance of the keeper of the records before the court by subpoena or other legal process.

QUESTIONS PRESENTED

1. Whether the State presented sufficient evidence to convict Boggs on the two charges of issuing a bad check.

Issue preserved by defense motion to dismiss, the hearing on the motion, and the court's ruling. T 73-77.*

2. Whether the court erred by overruling Boggs's objection to a jury instruction that shifted the burden of proof.

Issue preserved by defense objection to the jury instruction, the hearing on the objection, and the trial court's ruling. T 89-98, 110.

* Citations to the record are as follows:
"A" refers to the Appendix to this brief;
"S" refers to the transcript of the sentencing hearing on May 17, 2017;
"T" refers to the transcript of the trial held on February 28, 2017.

STATEMENT OF THE CASE

In 2015, a Carroll County grand jury charged Brittany Boggs with two counts of issuing bad checks to Hobbs Tavern and Brewing Company, in violation of RSA 638:4. One charge alleged a class A felony, accusing Boggs of issuing a check in an amount exceeding \$1500, on or about December 11, 2014, drawn on a TD Bank account. A1; T 8. The second charge alleged a class B felony, accusing Boggs of issuing a check in an amount between \$1000 and \$1500, on or about December 13, 2014, drawn on a Citizens Bank account. A2; T 7.

Boggs stood trial on February 28, 2017, and a jury convicted on both counts. T 117. The court (Ignatius, J.) sentenced Boggs on the class A felony to a stand-committed term of four to eight years. S 29; A3-A4. For the class B felony, the court imposed a concurrent stand-committed term of one and a half to three years. S 30; A5-A6.

STATEMENT OF THE FACTS

On December 13, 2014, Boggs got married and had a reception at Hobbs Tavern and Brewing Company (hereinafter, "Hobbs Tavern" or "the Tavern"). T 61-62, 66. In anticipation of the wedding, she contracted with Hobbs Tavern to provide food, beverages, a space for the reception, and associated labor. T 62-66. Charles Fischbein, a proprietor of Hobbs Tavern, testified that the arrangements were relatively "extravagant," and some consultation and planning involving Boggs and Hobbs Tavern preceded the wedding day. T 60, 62, 64-66. Boggs and a representative of Hobbs Tavern signed the contract finalizing the arrangements on December 10. T 63. With respect to payment, Boggs paid a deposit in advance and, on the day of the wedding, wrote two checks to pay the balance. T 64, 67.

The larger check was drawn on a TD Bank account belonging to the Wolfeborough Diner,¹ a business with which Boggs and Jeffrey Boggs had some connection.² T 36. That check, for \$8517.27, covered all the costs of the wedding reception, except for alcohol. T 41, 68. Fischbein testified that, on the day of the wedding, after discussions with Boggs, Hobbs Tavern credited approximately \$600 against the bill to reconcile a complaint about a chicken dish served at the reception. T 64. The smaller check, for \$1315.73, was drawn

¹ The transcript spells the business as "Wolfeboro Diner," but the pleadings render it as "Wolfeborough Diner." Believing the latter to be correct, counsel uses that spelling.

² The jury heard no evidence about who Jeffrey Boggs is, in relation to Brittany Boggs, nor any evidence about the precise nature of their link to the diner. Counsel understands that Jeffrey is Brittany's father.

on Boggs's personal checking account at Citizens Bank, and was meant to cover the cost of alcohol served at an open bar at the reception. T 68.

In due course, Fischbein learned that the respective banks refused to pay the checks, and he reported the problem to Boggs. T 67-69. By December 31, with the debt still unpaid, Fischbein contacted the police. T 20-21.

Brian King, a Carroll County sheriff's department detective, contacted Boggs, who told him that the matter had been settled. T 19-21. King responded that the debt remained outstanding, T 21. In contemplation of the affirmative defense codified in RSA 638:4, III, King issued a "fourteen-day letter" advising Boggs that she had fourteen days in which to pay the debt. T 22-23. On January 5, at King's request, Boggs went to the police station to receive the letter. T 22-23, 26-27. King thereafter contacted Boggs on several occasions to see whether the debt had been paid, and he testified that Boggs "made several promises to pay." T 24-26. On or about January 29, payment not having been made, King referred the matter for criminal prosecution. T 26.

The defense did not deny that Boggs issued the checks, that the banks refused to pay them, and that the debt had not otherwise been settled. The dispute at trial instead centered on whether Boggs knew or believed, when she issued the checks, that the banks would not pay them. T 85-86. In the absence of a confession or other direct evidence of knowledge, both the State and the defense recognized that the jury heard only circumstantial evidence of the element of knowledge. T 76-77. To a significant extent, the State proposed to

supply the requisite evidence in the form of information about the two bank accounts.

With respect to the Wolfeborough Diner's TD Bank account, the State introduced evidence that both Brittany and Jeffrey Boggs were authorized signers of checks drawn on that account. T 36. The TD Bank manager further testified that bank records showed that that account closed, at the bank's initiative, on November 19, 2014. T 30, 39-40; A17. The State introduced no evidence about why the bank closed the account. See T 32-33 (State agreeing to withdraw question on that point, after defense counsel cited agreement that witnesses would not testify to matters not disclosed in discovery). The State likewise introduced no evidence that the bank sent out a notice of the closure of the account, or that, if sent, the notice would have reached Brittany Boggs, rather than Jeffrey Boggs.

With respect to Boggs's Citizens Bank account, the State introduced evidence that, on December 12, the account had a balance of \$551.04. T 48-49; A19. On that day, somebody deposited \$4200 into the account. A19; T 56. Boggs issued the check for \$1315.73 on December 13. T 47. On December 15, the account's balance was \$3,024.72. T 51. On December 17, Boggs's account had a negative balance of \$574.37. T 50. The Tavern deposited the check on December 17, and on December 19, when the Tavern's bank presented it to Citizens Bank, Boggs's account had insufficient funds to pay it. T 47, 49, 51. On the basis of these facts, the defense argued that Boggs, mindful of the December 12 deposit, could have believed that the check for \$1315.73 would

be paid. T 80-82. The State argued both that people in general understand that deposited checks don't clear instantaneously, and that people generally are aware of the balance in their accounts and thus know, when they write a check, whether the funds in an account are sufficient to cover it. T 75, 87-89.

SUMMARY OF THE ARGUMENT

1. The State introduced insufficient evidence to prove the requisite mental state element for either check. RSA 638:4's mental state element obliged the State to prove that, at the time Boggs issued each check, she knew or believed that, when Hobbs Tavern presented it for payment, the bank would not pay. Here, as to both charges, the State introduced only circumstantial evidence to prove the requisite mental state. That circumstantial evidence failed to exclude, as a rational possibility, the conclusion that Boggs did not know or believe, when she issued the checks, that the banks would not pay them.

2. The trial court erred in instructing the jury that the mental state element of knowledge that a check would not be paid is presumed from the fact that the maker had no account at the bank at the time she issued the check. That instruction created an unconstitutional mandatory presumption in violation of Boggs's rights to due process under the United States and New Hampshire Constitutions. This Court must therefore reverse the conviction associated with the TD Bank check.

I. THE STATE INTRODUCED INSUFFICIENT EVIDENCE TO CONVICT BOGGS OF ISSUING A BAD CHECK.

After the State rested, the defense moved to dismiss both charges, arguing that the State presented insufficient evidence to prove that Boggs knew or believed that the checks would not be paid. T 73-77. The State objected. T 75-77. The court denied the motion, reasoning:

All right. Well, I think at this stage I'm going to deny the motion to dismiss. I think that a reasonable jury could find proof beyond a reasonable doubt on each of these. I think the elements are made out. It's a question of whether they're going to find knowing or not in both of the charges and that's what we've all known going into this. But I think there is evidence to support a finding of proof beyond a reasonable doubt on her knowledge and her belief that the check would be paid or not be paid. So I'm going to deny the motion as to both of the charges, all right. Thank you.

T 77.

After trial, but before sentencing, the defense moved to set aside the verdict. A26-A30. The motion renewed the insufficiency arguments counsel made during trial, and added a claim with respect to the Citizens Bank check that the verdict was against the weight of the evidence. *Id.* The State objected. A31-A36. By a notation order dated March 28, the court denied the motion. A26.

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. Collins*, 166 N.H. 514, 517 (2014). The conviction of a defendant on 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 638:4 defines the crime of issuing a bad check. Paragraph I provides that:

[a] person is guilty of issuing a bad check if he issues or passes a check for the payment of money and payment is refused by the drawee, except in cases where a legal stop payment order has been issued or where the drawee refuses payment for any other reason through no fault of the person who issued or passed the check.

RSA 638:4, I. A separate paragraph sets out rules for classifying a given instance of issuing a bad check as a class A or B felony, or A or B misdemeanor, depending on the value of the check or on the defendant's prior record. RSA 638:4, IV(a). With respect to the mental state element, the statute further provides that in "any prosecution under subparagraph IV(a), the prosecutor shall prove that the person issued or passed the check knowing or believing that the check would not be paid by the drawee." RSA 638:4, IV(b).

As described in the jury instructions, the crime has four elements: (1) the defendant issued a check for the payment of money; (2) the payment was refused by the bank on which the check was drawn; (3) the defendant knew or believed that the check would not be paid by the bank; and (4) the defendant acted knowingly. T 108-10; see also State v. Stewart, 155 N.H. 212, 214 (2007) (trial court defined crime as having five elements, including element of value of the check that serves to classify offense as A or B felony, or misdemeanor).

With regard to both checks, Boggs challenges the sufficiency of the evidence to prove that she knew or believed that the banks would not pay the checks. Two considerations combine to define the content of that *mens rea* element.

First, a general principle of criminal law holds that the *actus reus* and the *mens rea* must co-exist at some point in time, in the sense that the defendant's culpable mental state leads the defendant to commit the charged physical conduct. Many authorities agree on the point. See W. LaFare, Substantive Criminal Law § 6.3(a), at 451 (2d ed. rev. 2017) ("With those crimes that require some mental fault (whether intention, knowledge, recklessness, or negligence) in addition to an act or omission, it is a basic premise of Anglo-American criminal law that the physical conduct and the state of mind must concur. . . [and] there is concurrence when the defendant's mental state actuates the physical conduct"); see also RSA 625:11, I (defining "conduct" as an "action or omission, and its accompanying state of mind") (emphasis added); RSA 638:4, IV(b) (" . . . the prosecutor shall prove that the person issued or passed the check knowing or believing that the check would not be paid by the drawee"); State v. Moore, 12 N.H. 42, 46-49 (1841) (one who lawfully enters a house and then steals is not guilty of burglary unless he in fact intended to steal on entry; in criminal law, his intent to steal will not "relate back" to the entry).

At Boggs's trial, the jury instructions communicated that concept when explaining the general principles of act and mental state. T 107-08. Thus, to

convict, the State had to prove that Boggs had the requisite culpable mental state at the time, or no later than the time, that she issued the checks. The State could not prove its case merely by proving that Boggs, sometime after she issued the checks, came to know or believe that they would not clear.

Second, the mental state element of RSA 638:4 does not narrowly focus on the defendant's knowledge or belief about the sufficiency of the funds in the account at the precise moment of issuance of the check. See Stewart, 155 N.H. at 216 ("knowledge of insufficient funds at the time of issue is neither a legal presumption . . . , nor an element of the crime"). Rather, as the Stewart Court made clear, the element is concerned with the defendant's knowledge or belief about what will happen when the check's payee presents the check to a bank for payment or deposit. Id. ("plain language of this subsection focuses on the defendant's belief as to the eventuality of the check being honored, not on the defendant's knowledge of his account balance at the time of writing the check"). That focus on the defendant's knowledge or belief about what will happen when the recipient presents the check for payment means that a check's maker cannot defend a bad check charge by showing that, while knowing that the check would not clear when presented by the payee, the maker intended eventually to make good on the check at some later time after the bank rejected it. State v. Fitanides, 141 N.H. 352, 354 (1996).

In combination, these principles define the rule embodied in RSA 638:4's mental state element. In order to prove the element under the circumstances charged here, the State had to prove that, at the time Boggs issued each check,

she knew or believed that the bank would not pay when Hobbs Tavern presented the check for payment.

At trial, the prosecutor acknowledged the circumstantial nature of the State's evidence as to that mental state element. T 76-77. When the evidence as to any element is solely circumstantial, "it must exclude all reasonable conclusions except guilt." State v. Houghton, 168 N.H. 269, 271 (2015) (quotation omitted); State v. Gagne, 163 N.H. 363, 367 (2013). The "inferential chain of circumstances must be of sufficient strength that guilt is the sole rational conclusion." State v. Noucas, 165 N.H. 146, 151 (2013). The Court evaluates "the evidence in the light most favorable to the State and determine[s] whether the alternative conclusion is sufficiently reasonable that a rational juror could not have found proof of guilt beyond a reasonable doubt." Houghton, 168 N.H. at 271.

In finding the evidence sufficient, the trial court erred. Section A below sets out Boggs's claim with respect to the charge associated with the TD Bank check. Section B sets out the claim with respect to the charge associated with the Citizens Bank check.

A. The TD Bank check conviction.

Witness testimony and bank records established that TD Bank closed the Wolfeborough Diner account on November 19, approximately three weeks before Boggs wrote the check in question. The State introduced no evidence about general TD Bank procedures for notifying account-holders when the

bank closes their accounts, or about what procedures were followed when the bank closed the Wolfeborough Diner account. Moreover, while bank records established that both Boggs and Jeffrey Boggs were authorized signers of checks drawn on the account, the State introduced no other evidence about Wolfeborough Diner business procedures. For example, the jury heard no evidence about who at the Wolfeborough Diner received and examined bank documents mailed from TD Bank. In moving to dismiss the charge associated with the TD Bank check, the defense cited the lack of evidence of actual notice to Boggs of the closing of the account. T 73-74, 76; see also A29.

In response, the State cited a statutory presumption that a person who issues a check on a closed account knows that the bank will not pay the check. T 76 (referring to RSA 638:4, II). The State further argued that enough time had passed between the closure of the account on November 19 and Boggs's issuance of the check on December 13 to justify an inference or assumption that Boggs must have received notice via a bank statement mailed to the diner. T 76; see also A34.

Several considerations combine to establish that the circumstantial evidence does not exclude rational inferences consistent with Boggs's innocence. In the absence of any evidence proving that Boggs received notice of the closure of the TD Bank account, it is rational to infer that she did not receive notice. To infer that Boggs received notice, one must make two initial assumptions: (1) that TD Bank must have mailed the account-holder a document announcing the closure of the account; and (2) that somebody at the

Wolfeborough Diner received that document. The State's case thus initially rested on separate assumptions about TD Bank and postal service procedures.

Under the common law "mailbox" rule, "if a letter properly directed is proved to have been either put into the post-office or delivered to the postman, it is presumed that it reached its destination at the regular time, and was received by the person to whom it was addressed." Lupyan v. Corinthian Colleges, Inc., 761 F.3d 314, 319 (3rd Cir. 2014) (quotation marks omitted). Moreover a "'strong presumption' of receipt applies when notice is sent by certified mail, because it creates actual evidence of delivery in the form of a receipt." Id. (emphasis in original). A "'weaker presumption' arises where delivery is sent via regular mail, for which no receipt, or other proof of delivery, is generated." Id. "In the absence of actual proof of delivery, receipt can be proven circumstantially by introducing evidence of business practices or office customs pertaining to mail." Id.; see also Hogan v. Pat's Peak Skiing, LLC, 168 N.H. 71, 73-75 (2015) (discussing common law mailbox rule).

In Boggs's case, though, the State introduced no evidence either about any actual mailing of notice, or about TD Bank's business practices with respect to mail. In such circumstances, the inference that TD Bank mailed, and Wolfeborough Diner received, by the second week of December notice of the closure of the account on November 19, is not the only rational conclusion to be drawn from the evidence. See, e.g., Commonwealth v. Thomas, 814 A.2d 754, 758-59 (Pa. Super. 2002) ("it is axiomatic that for the presumption of the receipt of a letter to be triggered, as a threshold evidentiary requirement, the

party who is seeking the benefit of the presumption must adduce evidentiary proof that the letter was signed in the usual course of business and placed in the regular place of mailing. . . . A presumption that a letter was received cannot be based on a presumption that the letter was mailed”); Olson v. The Bon, Inc., 183 P.3d 359, 363-64 (Wash. App. 2008) (similarly finding insufficient evidence of mailing to invoke presumption of receipt).

Even if this Court were to decide that any rational jury must find both mailing and receipt of such notice, the State’s case demands yet another assumption for which no evidence was introduced. Because the State introduced no evidence of Wolfeborough Diner business practices or of the nature of Boggs’s connection with the Diner, the hypothesis that Boggs personally received notice of the closure of the account rests only on the fact that she was one of two authorized signers of checks drawn on that account. Her status as an authorized signer, though, indicates nothing about who, as between her and Jeffrey Boggs, opened correspondence from the bank, nor does it establish anything about the quality and timeliness of the communication between Jeffrey and Brittany Boggs on such matters. A rational fact-finder is therefore left to guess which of the two opened bank statements, and whether, if it was Jeffrey, he communicated information in a timely fashion to Brittany. The fact that the State’s case rests on unattested assumptions of that nature must lead to the conclusion that a rational fact-finder need not draw the incriminating inference.

Finally, this Court should reject the State's argument that a statutory presumption overcomes these difficulties. RSA 638:4, II provides:

For the purposes of this section, as well as in any prosecution for theft committed by means of a bad check, a person who issues a check for which payment is refused by the drawee is presumed to know that such check would not be paid if he had no account with the drawee at the time of issue.

RSA 638:4, II. In Argument Section II below, this brief examines that statute in the context of a challenge to a jury instruction quoting it. The brief incorporates herein by reference the points and authorities set out in detail there. On the basis of those points and authorities, as relevant to the sufficiency claim, Boggs contends that the statute enacts only a permissive inference. Accordingly, a jury may infer, from evidence that an account does not still exist, that the defendant knew that a check drawn on that closed account would not be paid. However, as in the case of all permissive inferences, a rational jury need not draw that inference.

Because the State relied entirely on circumstantial evidence to prove the mental state element, a permissive inference alone cannot satisfy the State's burden of disproving the existence of any rational conclusion consistent with innocence. A permissive inference signifies that a rational jury could draw the conclusion – here, knowledge or belief – from the proven fact – here, the non-existence of the account. The rationality of an inference of guilt, however, does not exclude the possibility that an inference of innocence is also rational. When, as here, the State relies wholly on circumstantial evidence to prove a disputed element, the defense need not prove that it would be irrational to

believe the defendant to be guilty. Rather, the State must prove that it would be irrational to believe the defendant to be innocent, or more precisely, that it would be irrational to doubt the defendant's guilt. Because the State did not carry that burden in this case, this Court must conclude that the evidence was insufficient to prove Boggs guilty beyond a reasonable doubt on the charge associated with the TD Bank check.

B. The Citizens Bank check conviction.

In moving to dismiss the charge associated with the Citizens Bank check, counsel emphasized that the records showed a balance of \$551 and a deposit of \$4200 on December 12. T 74. Moreover, the account showed a balance greater than \$3000 on December 15. Id. Under those circumstances, the State did not prove that Boggs knew that a check for \$1315 written on December 13 would not be paid when presented by Hobbs Tavern.

With respect to the \$4200 deposit, the State responded that people generally understand that deposited funds do not immediately become available for use in paying checks. T 74-75. In addition, the State argued that Boggs would have known that she wrote other checks that would deplete the \$4200 such that when Hobbs Tavern presented its \$1315 check for payment, the account would not have sufficient funds. T 75.

State's exhibit 8 documents the Citizens Bank account during the relevant time, and shows significant activity, both in terms of deposits and withdrawals. A18-A19. Boggs does not dispute that her financial resources

ultimately proved insufficient to pay the debts incurred on the checking account. The bank records, though, do not prove that Boggs foresaw that insufficiency of funds on December 13 when she wrote the check to the Tavern. On the contrary, the crucial event that left the checking account with insufficient funds to pay the check happened several days later, on December 17, when the \$4200 check deposited on December 12 into Boggs's checking account itself failed to clear. A21.

To prove the requisite mental state element, thus, the State had to prove that Boggs foresaw, on December 13 when she wrote the Hobbs Tavern check, that the \$4200 deposit into her checking account made on December 12 would fail to clear. To do that, the State needed to introduce evidence proving a culpable mental state vis-à-vis the \$4200 deposit. This the State did not do. The jury heard nothing about the identity of the maker of the \$4200 check, about the account on which it was drawn, or about who deposited it into Boggs's account. Indeed, the Citizens Bank manager testified that somebody other than Boggs could have deposited that check. T 56. For all the record reflects, therefore, the failure of that \$4200 check could have come as a surprise to Boggs. In that circumstance, she would not have had the requisite knowledge or belief, on December 13, that the Hobbs Tavern check would fail to clear.

In the alternative, and wholly apart from the preceding argument about the implications of the \$4200 check, Boggs advances a second point in support of her claim of insufficient evidence. To support the conviction, the State made

an assumption about human nature when it proposed that people in general keep abreast of their checking account balances. In the absence of any evidence about Boggs's own practice in that regard, the State's case depended on the hypothesis that people behave rationally with respect to their money, and do not hold overly optimistic views about their financial solvency. That hypothesis is crucial to the State's case because the State cannot convict Boggs merely on proof that she was negligent with respect to awareness of her bank balance; it rather had to prove that she knew or believed that the Hobbs Tavern check would not clear.

A rational fact-finder, though, need not accept the State's hypothesis. One might reasonably attribute to people in general a lower level of financial literacy, leading to a higher rate of incompetence in the management of their finances. Taking that view of human nature, one could rationally infer that Boggs was not aware, at the time she issued the check, that her bank would not pay it when the Tavern presented it.

For either or both of those reasons, a rational jury could draw an inference consistent with innocence, or rationally fail to draw the inference consistent with guilt. This Court must accordingly conclude that the State failed to prove the requisite mental state to support a conviction on the charge associated with the Citizens Bank check.

C. Conclusion.

Finally, the Court must reject the prosecutor's suggestion that the sufficiency of the State's case with regard to either check is rescued by Boggs's later statements to the police. Her statement of belief that the debt had been settled, and her promise to repay Hobbs Tavern upon learning that it had not been settled, do not prove a culpable mental state at the time of issuance of the checks. A rational jury could view the promise to pay as a rightful acknowledgement of a debt still owed to Hobbs, and the statement that the matter had been settled as expressing an honest but mistaken belief in the success of later efforts to transfer sufficient funds into the account. Ultimately, all that the State proved in this case is that Boggs did not pay her debt to Hobbs Tavern. For that failure to give rise to something more than a civil cause of action, the State had to prove that the failure was not attributable to an unanticipated lack of funds. Indeed, the State had to prove that, at the time she issued the checks, Boggs knew or believed that they would not clear. Because the State failed to do so, this Court must reverse the convictions.

II. THE COURT ERRED IN OVERRULING BOGGS'S OBJECTION TO A BURDEN-SHIFTING JURY INSTRUCTION.

With respect to the TD Bank check charge, the State asked the court to give a jury instruction quoting the language of RSA 638:4, II. T 89-90, 92. That paragraph provides:

For the purposes of this section, as well as in any prosecution for theft committed by means of a bad check, a person who issues a check for which payment is refused by the drawee is presumed to know that such check would not be paid if he had no account with the drawee at the time of issue.

RSA 638:4, II.

The defense objected. T 93-98. In light of the mandatory phrasing of the presumption together with the undisputed fact that TD Bank closed the account in November, the instruction would effectively decide for the jury the only disputed issue on that charge – whether Boggs knew that or believed that TD Bank would refuse to pay the check. Following the instruction, the jury need not deliberate about what Boggs knew or believed when she issued the check; the element would be proven just by evidence that the account in fact had closed by that time.

Citing the United States and New Hampshire Constitutions, the defense accordingly argued that the instruction shifted the burden of proof by absolving the State of the obligation to prove, beyond a reasonable doubt, Boggs's actual knowledge or belief on that matter. T 93-94, 97. Boggs argued that paragraph II, when properly and constitutionally interpreted, could at most signify that if the State proved that Boggs knew the account was closed at the time she

issued the check, then the jury could presume that she knew the check would not be paid. T 94, 96. In the absence of proof of Boggs's knowledge of the closing of the account, though, the jury could not find the mental state element proven simply because the bank closed the account in November.

The State argued that the enactment of paragraph II modified the crime's essential mental state element. T 95-96. In the view of the prosecutor, the defense interpretation of paragraph II would unjustifiably add to the statute words the legislature did not enact. T 95.

In addition to requesting that the court instruct using the text of paragraph II, the prosecution also asked that a phrase be added to the standard instruction defining the "knowingly" element. T 91 (requesting the addition of the phrase "or was aware of the circumstances under which she engaged in that conduct"). The court ultimately declined to add that phrase, saying "it's really tinkering with the mental states, that's kind of sacrosanct." T 96.

However, the court overruled the defense objection to a jury instruction quoting RSA 638:4, II. T 96-98. The court thus gave an instruction quoting the statute, altered only to omit the statute's gendered pronoun and irrelevant reference to theft prosecutions. See T 110 (instruction as given to jury). In so ruling, the court reasoned that the legislature "on the elements of crimes [can] amend those and modify them to meet the actual circumstances all the time" T 96. The court also declined to modify the statutory language to the effect that the presumption would be triggered only upon proof that Boggs knew the

account was closed. T 96-97. In overruling the defense objection to the instruction given, the court erred.

“Whether a particular jury instruction is necessary, and the scope and wording of the instruction, are within the sound discretion of the trial court.” State v. Noucas, 165 N.H. 146, 154 (2013). This Court accordingly reviews jury instructions on matters committed to the trial court’s discretion using the unsustainable exercise of discretion standard. Id. However, when the instructions arguably misstate a point of law, this Court reviews *de novo* the legal dispute centered on the instruction. See State v. Furgal, 164 N.H. 430, 435 (2012) (“whether a statute provides a basis for a requested jury instruction raises a question of statutory interpretation, which we review *de novo*”). Here, the question of whether the challenged instruction unconstitutionally shifted the burden of proof raises a question of law that this Court must review *de novo*.

Part I, Article 15 of the New Hampshire Constitution and the Fourteenth Amendment to the United States Constitution guarantee criminal defendants due process of law. Implicit in due process is the requirement that, to convict, the State must prove all elements of the offense beyond a reasonable doubt. In re Winship, 397 U.S. 358, 364 (1970); State v. Saunders, 164 N.H. 342, 349 (2012); State v. Williams, 133 N.H. 631, 633 (1990). The challenged jury instruction shifted the burden of proof in violation of Boggs’s due process rights under the United States and New Hampshire Constitutions by telling the jury that the law presumes that the culpable mental state element is proven

merely upon evidence establishing that the TD Bank account no longer existed at the time she issued the checks. That claim implicates the law governing jury instructions that define a presumption allowing the jury to infer an elemental fact from proof of a non-elemental or “basic” fact.

In a series of cases, the United States Supreme Court has developed a jurisprudence governing jury instructions about such presumptions. That jurisprudence distinguishes between mandatory presumption instructions – instructions that “tell[] the trier that he or they must find the elemental fact upon proof of the basic fact” – and permissive inference instructions – instructions that “allow[] but do[] not require . . . the trier of fact to infer the elemental fact from proof by the prosecutor of the basic fact.” Ulster County Court v. Allen, 442 U.S. 140, 157 (1979). Accordingly, the “threshold inquiry in ascertaining the constitutional analysis applicable to this kind of jury instruction is to determine the nature of the presumption it describes.” Francis v. Franklin, 471 U.S. 307, 313-14 (1985) (quoting Sandstrom v. Montana, 442 U.S. 510, 514 (1979)).

In classifying a given instruction as permissive or mandatory, a court considers “what a reasonable juror could have understood the charge as meaning.” Francis, 471 U.S. at 316; State v. Hall, 148 N.H. 394, 398 (2002). An instruction that tells the jury that “the law presumes” an element from a non-elemental or basic fact creates a mandatory presumption. Sandstrom, 442 U.S. at 515. Similarly, an instruction that tells the jury that an element “is presumed” from the basic fact imposes a mandatory inference. Francis, 471

U.S. at 316. In Boggs's case, the instruction told the jury that a person who issues a check when the person does not have an account "is presumed to know that such check would not be paid." T 110. At no point was the jury told anything that might suggest that it could fail to find the mental state element despite finding the basic fact that the TD Bank account no longer existed at the time Boggs issued the check. The instruction therefore created a mandatory presumption.

Mandatory presumptions "violate the Due Process Clause if they relieve the State of the burden of persuasion on an element of the offense." Francis, 471 U.S. at 314; see also Hall, 148 N.H. at 398 ("An instruction that creates a mandatory presumption of criminal intent violates the due process requirement that the State prove every element of a criminal charge beyond a reasonable doubt"). Even mandatory presumptions that are described in an instruction as rebuttable violate the Due Process Clause, because such instructions unconstitutionally shift the burden of persuasion. Francis, 471 U.S. at 317-18; see also Hall, 148 N.H. at 398-99 (finding error in mandatory presumption instruction, even though jury told presumption was rebuttable). By contrast, a "permissive inference does not relieve the State of its burden of persuasion because it still requires the State to convince the jury that the suggested conclusion should be inferred based on the predicate facts proved." Id. at 314. A permissive inference will only violate the Due Process Clause "if the suggested inference is not one that reason and common sense justify in light of the proven facts before the jury." Id. at 314-15.

Here, because it created a mandatory presumption, the challenged jury instruction violated Boggs's rights to due process, guaranteed by the United States and New Hampshire Constitutions. The presence of an unconstitutional mandatory presumption instruction requires reversal of a conviction, even though a jury is otherwise also told that the defendant is presumed innocent and that the burden of proof remains always on the prosecution. In Sandstrom and in Francis, the Supreme Court rejected arguments that those general instructions can undo or mitigate the harm of an unconstitutional mandatory presumption instruction. Francis, 471 U.S. at 318-20; Sandstrom, 442 U.S. at 518-19 n.7; see also Hall, 148 N.H. at 400 (describing such error as "not amenable to harmless error analysis"); Williams, 133 N.H. at 633-34 (to same effect).

Courts in other states, when confronted in bad check prosecutions with jury instructions based on similar statutory language, concur in the conclusion that the instructions violate due process. In a number of cases, courts have declared such instructions unconstitutional even when they mitigate, to a degree, the mandatory nature of the presumption by describing proof of the basic fact as constituting only *prima facie* proof of the element. See, e.g., Hodges v. State, 155 So. 2d 533 (Ala. App. 1963); Bess v. State, 226 S.E.2d 626, 627 (Ga. App. 1976); State v. Hebner, 697 P.2d 1210, 1212-14 (Idaho App. 1985); People v. Gray, 426 N.E.2d 290, 292-93 (Ill. App. 1981); State v. Johnson, 666 P.2d 706, 708-11 (Kan. 1983); Durham v. State, 74 So. 3d 908, 911-15 (Miss. App. 2011); State v. Adams, 443 N.E.2d 1047, 1051-53 (Ohio

App. 1982); State v. Robinson, 602 N.W.2d 730, 733-35 (S.D. 1999); State v. Merriweather, 625 S.W.2d 256, 256-58 (Tenn. 1981). Boggs's claim is stronger than the claims of error vindicated on appeal in those cases, because the instruction here contained no suggestion that the presumption established only *prima facie* evidence or could be rebutted.

A Vermont case illustrates how a court, if it felt a need to say anything about such a statute, might properly instruct a jury about it. At the time the issue arose in a bad check case, Vermont had a statute substantially identical to New Hampshire's in that it provided that a person "is presumed to know" that the check will not be paid if "the issuer had no account with the drawee at the time the check or order was issued. . . ." State v. McBurney, 484 A.2d 926, 927-28 (Vt. 1984) (quoting then-extant version of 13 V.S.A. § 2022). At the defendant's trial, however, the court instructed the jury on the point by saying, "you may draw an inference – you don't have to, but you can – draw an inference," and then also told the jury that the inference alone was "not enough to overcome the presumption of innocence." Id. at 928. Because that instruction converted the statute's unconstitutional mandatory presumption into a constitutionally-acceptable permissive inference, the Vermont Supreme Court upheld the conviction. Id. at 928-29. This line of reasoning is not available in Boggs's case, though, because the trial court here gave an instruction that left intact the statute's unconstitutional mandatory presumption. Vermont has since amended its statute so that the terms of the

statute conform to the permissive inference instruction upheld in McBurney.
See 13 V.S.A. § 2022 (2017).

Here, the trial court gave an instruction that imposed an unconstitutional mandatory presumption. As in Hall, that jury instruction eliminated Boggs's only defense. This Court must reverse the conviction associated with the TD Bank check.

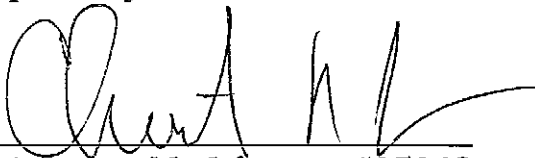
CONCLUSION

WHEREFORE, Ms. Boggs respectfully requests that this Court reverse her convictions.

Undersigned counsel requests fifteen minutes of oral argument before a full panel.

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

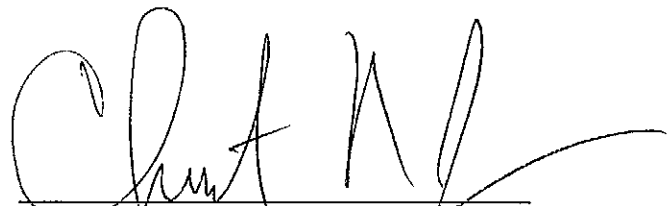
Respectfully submitted,

By 
Christopher M. Johnson, #15149
Chief Appellate Defender
Appellate Defender Program
10 Ferry Street, Suite 202
Concord, NH 03301

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: December 19, 2017

APPENDIX

APPENDIX – TABLE OF CONTENTS

	<u>Page</u>
Indictments.....	A1-A2
Sentencing documents.....	A3-A6
State’s exhibit # 3	A7-A17
State’s exhibit # 8	A18-A25
Defendant’s motion to set aside verdict	A26-A30
State’s Objection to motion to set aside verdict.....	A31-A36

638:4,IV(a)(1)
ISSUING BAD CHECKS
Class A Felony

THE STATE OF NEW HAMPSHIRE

CARROLL, SS.

At the SUPERIOR COURT holden at Ossipee, within and for the County of Carroll aforesaid on March 20, 2015

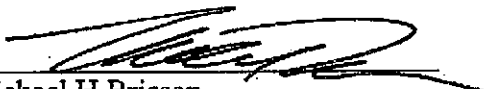
THE GRAND JURORS FOR THE STATE OF NEW HAMPSHIRE, upon their oath, present that:

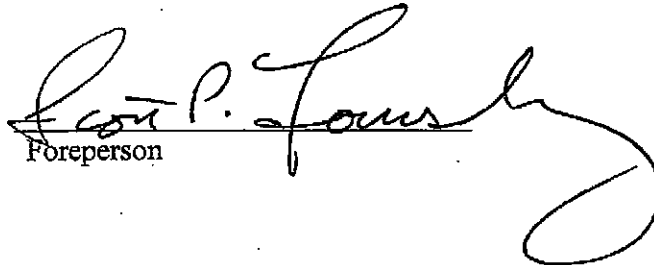
BRITTANY L BOGGS
DOB: 05/21/1982

of 1180 Witchtrot Road, Wakefield, NH 03872, on or about the 11th day of December 2014 at Ossipee in the County of Carroll aforesaid, did commit the crime of ISSUING BAD CHECKS in that she knowingly issued or passed a check for the payment of money—\$8,517.27 payable to Hobbs Tavern and Brewing Company in Ossipee, NH—knowing or believing that the check would not be paid by TD Bank, the bank on which the check was drawn, and for which payment was refused by TD Bank due to Brittany Boggs's account being closed. The face amount of the check exceeded \$1,500.

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.


Michael H Brisson
Asst. County Attorney


Foreperson

Docket #212- 2015-CR-054

Charge ID # 1058786C

2/20/17
Jury Verdict
of Guilty
Jen Bank
Deputy Clerk

638:4,IV(a)(2)
ISSUING BAD CHECKS
Class B Felony

THE STATE OF NEW HAMPSHIRE

CARROLL, SS.

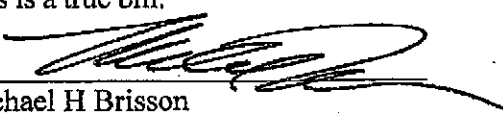
At the SUPERIOR COURT holden at Ossipee, within and for the County of Carroll aforesaid on March 20, 2015

THE GRAND JURORS FOR THE STATE OF NEW HAMPSHIRE, upon their oath, present that:

BRITTANY L BOGGS
DOB: 05/21/1982

of 1180 Witchtrot Road, Wakefield, NH 03872, on or about the 13th day of December 2014 at Ossipee in the County of Carroll aforesaid, did commit the crime of ISSUING BAD CHECKS in that she knowingly issued or passed a check for the payment of money—\$1,315.73 payable to Hobbs Tavern and Brewing Company in Ossipee, NH—knowing or believing that the check would not be paid by Citizens Bank, the bank on which the check was drawn, and for which payment was refused by Citizen's Bank due to Brittany Boggs's account having non-sufficient funds. The face amount of the check exceeded \$1,000, but was not more than \$1,500. 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.


Michael H Brisson
Asst. County Attorney


Foreperson

Docket #212- 2015-OR-054

Charge ID # 1055150C

2/28/17
Jury Verdict
of Guilty

Jean Banher
Deputy Clerk

INDICTMENT

A2

**THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH**

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

Court Name: Carroll Superior Court

Case Name: State v. Boggs

Case Number: 212-2015-CR-054 Charge ID Number: 1058786c
(if known)

STATE PRISON SENTENCE

Plea/Verdict: <u>Guilty</u>	Clerk: <u>Banks</u>
Crime: <u>Issuing Bad Check</u> A Fel.	Date of Crime: <u>12/11/2014</u>
Monitor: <u>Toule</u>	Judge: <u>Ignatius</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 8 years nor less than 4 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.
once parole set back is complete
- 2. This sentence is to be served as follows: Stand committed Commencing _____
- 3. _____ of the minimum sentence and _____ 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 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 _____ (Charge ID Number(s))
 concurrent with _____ (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
 - Focus Program

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

Case Name: State v. Brittany Boag
Case Number: 212-2015-CR-054 1058780C

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 \$ _____ 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 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 _____
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: _____

Date 5/17/2017

Amy Ignasi
Presiding Justice

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

Court Name: Carroll Superior Court

Case Name: State v. Boggs

Case Number: 212-2015-CR-054 Charge ID Number: 1055150C
(If known)

STATE PRISON SENTENCE

Plea/Verdict: <u>Guilty</u>	Clerk: <u>Banks</u>
Crime: <u>ISSUING BAD CHECK B Alarm</u>	Date of Crime: <u>12/13/2014</u>
Monitor: <u>Towle</u>	Judge: <u>Ignatius</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 3 years nor less than 1 1/2 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 once parole set back to complete
3. _____ of the minimum sentence and _____ 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 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 _____ (Charge ID Number(s))
 concurrent with 1058786C (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
 Focus

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

Case Name: State v. Brittany I Jgs
Case Number: 21A-2015-CR-054 1055/50C

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.
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 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.
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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 _____
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 - 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 _____
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: _____

Date 5/17/2017

Amy J. [Signature]
Presiding Justice



Bank

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E STATEMENT OF ACCOUNT

WOLFEBOROUGH DINER LLC
5 N MAIN ST
WOLFEBORO NH 03894-4485

Page: 1 of 6
Statement Period: Oct 01 2014-Oct 31 2014
Cust Ref #: 9245326924-717-J-***
Primary Account #: 924-5326924

TD Business Convenience Plus
WOLFEBOROUGH DINER LLC

Account # 924-5326924

ACCOUNT SUMMARY

Ending Balance	-45.51
----------------	--------

DAILY ACCOUNT ACTIVITY

Deposits		
POSTING DATE	DESCRIPTION	AMOUNT
10/22	DEPOSIT	1,700.00
10/28	DEPOSIT	200.00
10/29	DEPOSIT	5,000.00
10/30	DEPOSIT	1,200.00
Subtotal:		8,100.00

Electronic Deposits		
POSTING DATE	DESCRIPTION	AMOUNT
10/14	CCD DEPOSIT, MERCHANT BNKCD DEPOSIT 434528731889	659.02
10/14	CCD DEPOSIT, MERCHANT BNKCD DEPOSIT 434528731889	394.24
10/15	CCD DEPOSIT, MERCHANT BNKCD DEPOSIT 434528731889	271.24
10/16	ACH RETURNED ITEM, IRS USATAXPYMT 220468852976980	3,046.95
10/16	CCD DEPOSIT, MERCHANT BNKCD DEPOSIT 434528731889	202.05
10/17	CCD DEPOSIT, MERCHANT BNKCD DEPOSIT 434528731889	102.30
10/20	CCD DEPOSIT, MERCHANT BNKCD DEPOSIT 434528731889	435.26

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CCAO000026

A7



Bank

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STATEMENT OF ACCOUNT

WOLFBOROUGH DINER LLC

Page: 3 of 6
Statement Period: Oct 01 2014-Oct 31 2014
Cust Ref #: 9245326924-717-E-***
Primary Account #: 924-5326924

DAILY ACCOUNT ACTIVITY

Electronic Deposits (continued)		
POSTING DATE	DESCRIPTION	AMOUNT
10/21	CCD DEPOSIT, MERCHANT BNKCD DEPOSIT 434528731889	420.80
10/21	CCD DEPOSIT, MERCHANT BNKCD DEPOSIT 434528731889	341.46
10/23	CCD DEPOSIT, MERCHANT BNKCD DEPOSIT 434528731889	99.67
10/24	CCD DEPOSIT, MERCHANT BNKCD DEPOSIT 434528731889	94.81
10/27	ACH RETURNED ITEM, KOHL'S DEPT STRS CHG PYMT 99540790	197.91
10/28	ACH RETURNED ITEM, CAPITAL ONE MOBILE PMT 429739809258719	71.98
10/29	CCD DEPOSIT, MERCHANT BNKCD DEPOSIT 434528731889	582.25
10/30	CCD DEPOSIT, MERCHANT BNKCD DEPOSIT 434528731889	151.56
10/31	CCD DEPOSIT, MERCHANT BNKCD DEPOSIT 434528731889	200.77
Subtotal:		

Other Credits		
POSTING DATE	DESCRIPTION	AMOUNT
[REDACTED]		
10/14	RETURNED ITEM	7,394.25
10/14	RETURNED ITEM	1,400.00
10/14	RETURNED ITEM	289.16
10/16	RETURNED ITEM	1,400.00
10/16	RETURNED ITEM	382.50
10/16	RETURNED ITEM	289.16
10/16	RETURNED ITEM	53.97
10/17	RETURNED ITEM	1,008.32
10/17	RETURNED ITEM	171.13
10/17	RETURNED ITEM	76.98
10/20	RETURNED ITEM	1,831.45
10/20	RETURNED ITEM	1,092.50
10/20	RETURNED ITEM	1,000.00
10/20	RETURNED ITEM	382.50
10/20	RETURNED ITEM	362.18
10/20	RETURNED ITEM	171.13
10/20	RETURNED ITEM	152.89
10/21	RETURNED ITEM	2,300.00
10/22	RETURNED ITEM	1,088.43
10/22	RETURNED ITEM	1,000.00

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A9



Bank

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STATEMENT OF ACCOUNT

WOLFEBOROUGH DINER LLC

Page: 4 of 6
Statement Period: Oct 01 2014-Oct 31 2014
Cust Ref #: 9245326924-7174-***
Primary Account #: 924-5326924

DAILY ACCOUNT ACTIVITY

Other Credits (continued)

POSTING DATE	DESCRIPTION	AMOUNT
10/24	RETURNED ITEM	250.00
10/27	RETURNED ITEM	1,000.00
10/27	RETURNED ITEM	400.00
10/28	RETURNED ITEM	46.13
10/29	RETURNED ITEM	1,168.78
10/29	RETURNED ITEM	250.00
10/30	RETURNED ITEM	400.00

Subtotal:

Checks Paid

No. Checks: 55

For online bill pay customers, checks numbered "99XXXX" likely represent payments to a Biller that were delivered as a paper check. Funds were withdrawn from your account when the check was cashed. You can view these closed checks in the Account History section of Online Banking.
*Indicates check is serial sequence or check processed electronically and listed under Electronic Payments

DATE	SERIAL NO	AMOUNT	DATE	SERIAL NO.	AMOUNT
10/24			10/24	1110	400.00
10/29			10/29	1110	400.00
10/30			10/30	1112*	356.49
10/15	1083	382.50			
10/17	1083	382.50			
10/17	1086*	1,831.45	10/20	1424*	54.48
10/16	1087	171.13	10/10	1429*	1,400.00
10/17	1087	171.13	10/15	1429	1,400.00
10/16	1093*	76.98	10/15	1432	289.16
10/20	1093	76.98	10/20	1433	19.47
10/14	1095	595.00	10/15	1435*	53.97
10/21	1096	1,088.43	10/16	1439*	1,008.32
10/17	1097	1,000.00	10/17	1440	362.18
10/21	1097	1,000.00	10/21	1440	362.18
10/23	1098	701.15	10/20	1441	23.57
10/20	1100*	2,300.00	10/17	1442	152.89
10/24	1102*	1,000.00	10/17	1445*	1,092.50
10/29	1102	1,000.00	10/23	1447*	377.20
10/24	1105*	3,700.00	10/27	1448	46.13
10/23	1107*	250.00	10/23	1451*	333.17
10/28	1107	250.00	10/23	1452	219.31
10/28	1109*	1,168.78	10/30	1454*	282.14

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Bank Deposits 10/28 10/28 10/28 10/28 10/28 10/28 10/28 10/28 10/28 10/28

CCAO000029



Bank

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STATEMENT OF ACCOUNT

WOLFEBOROUGH DINER LLC

Page: 5 of 6
Statement Period: Oct 01 2014-Oct 31 2014
Cust Ref #: 9245326924-717-E-***
Primary Account #: 924-5326924

DAILY ACCOUNT ACTIVITY

Checks Paid (continued)

For online bill pay customers, checks numbered "99XXXX" likely represent payments to a Biller that were delivered as a paper check. Funds were withdrawn from your account when the check was cashed. You can view these cleared checks in the Account History portion of Online Banking.
*Indicates break in serial sequence or check processed electronically and listed under Electronic Payments

DATE	SERIAL NO.	AMOUNT
10/31	1456*	259.05

Subtotal:

Electronic Payments

POSTING DATE	DESCRIPTION	AMOUNT
10/14	CCD DEBIT, CAPITAL ONE MOBILE PMT 428439809094807	487.35
10/14	ELECTRONIC PMT-WEB, CAPITAL ONE MOBILE PMT 428439809087032	122.00
10/15	CCD DEBIT, IRS USATAXPYMT 220468852976980	3,046.95
10/22	ELECTRONIC PMT-WEB, CAPITAL ONE MOBILE PMT 429439809125786	96.50
10/24	ACH DEBIT, KOHL'S DUPT STRS CHG PYMT 99540790	197.91
10/27	ELECTRONIC PMT-WEB, CAPITAL ONE MOBILE PMT 429739809258719	71.98
10/30	ACH DEBIT, NEW HAMPSHIRE EL. PAYMENT 1184807	321.71
10/31	CCD DEBIT, IRS USATAXPYMT 220470423738384	240.08

Subtotal:

Other Withdrawals

POSTING DATE	DESCRIPTION	AMOUNT
10/14	OVERDRAFT RET	105.00
10/15	OVERDRAFT PD	70.00
10/16	OVERDRAFT RET	175.00
10/17	OVERDRAFT RET	105.00
10/20	OVERDRAFT RET	175.00
10/21	OVERDRAFT RET	35.00
10/22	OVERDRAFT RET	70.00
10/23	DEBIT	1,250.49
10/24	OVERDRAFT PD	105.00
10/24	OVERDRAFT RET	35.00

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A11



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STATEMENT OF ACCOUNT

WOLFEBOROUGH DINER LLC

Page 6 of 6
Statement Period Oct 01 2014-Oct 31 2014
Cust Ref # 9245326924-717-E-***
Primary Account # 924-5326924

DAILY ACCOUNT ACTIVITY

Other Withdrawals (continued)		
POSTING DATE	DESCRIPTION	AMOUNT
10/27	OVERDRAFT RET	105.00
10/27	OVERDRAFT PD	35.00
10/28	OVERDRAFT RET	70.00
10/29	OVERDRAFT RET	70.00
10/30	OVERDRAFT PD	35.00
10/30	OVERDRAFT RET	35.00
Subtotal:		455.00

Service Charges		
POSTING DATE	DESCRIPTION	AMOUNT
10/31	MAINTENANCE FEE	25.00
Subtotal:		25.00

DAILY BALANCE SUMMARY

DATE	BALANCE	DATE	BALANCE
		10/17	-4,995.79
		10/20	-2,217.38
		10/21	-1,640.73
		10/22	1,981.20
		10/23	-1,050.45
		10/24	-6,143.55
		10/27	-4,803.75
		10/28	-5,974.42
		10/29	-443.39
10/14	-228.73	10/30	277.85
10/15	-5,200.07	10/31	-45.51
10/16	-1,256.87		

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Bank Deposits FDIC Insured TD Bank N.A. Equal Housing Lender



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A12



America's Most Convenient Bank®

STATEMENT OF ACCOUNT

WOLFEBOROUGH DINER LLC
5 N MAIN ST
WOLFEBORO NH 03894-4485

Page 1 of 5
Statement Period: Nov 01 2014-Nov 19 2014
Cust Ref #: 9245326924-717-7-***
Primary Account #: 924-5326924

TD Business Convenience Plus
WOLFEBOROUGH DINER LLC

Account # 924-5326924

ACCOUNT SUMMARY

Beginning Balance	-45.51	Average Collected Balance	-1,986.75
Deposits	240.00	Annual Percentage Yield Earned	0.00%
Electronic Deposits	7,461.41	Days in Period	18
Other Credits	24,019.27		
Checks Paid	24,729.40		
Electronic Payments	5,315.65		
Other Withdrawals	1,630.12		
Ending Balance	0.00		

DAILY ACCOUNT ACTIVITY

POSTING DATE	DESCRIPTION	AMOUNT
11/13	DEPOSIT	140.00
11/13	DEPOSIT	100.00
	Subtotal:	240.00

Electronic Deposits

POSTING DATE	DESCRIPTION	AMOUNT
11/4	CCD DEPOSIT, MERCHANT BNKCD DEPOSIT 434528731889	341.15
11/5	ACH RETURNED ITEM, KOHL'S DEPT STRS CHG PYMT 99322340	414.31
11/5	ACH RETURNED ITEM, CAPITAL ONE MOBILE PMT 430739809006335	292.43
11/5	ACH RETURNED ITEM, CAPITAL ONE MOBILE PMT 430739809217762	191.81
11/5	ACH RETURNED ITEM, MERCHANT BNKCD DEPOSIT 434528731889	129.64
11/5	CCD DEPOSIT, MERCHANT BNKCD DEPOSIT 434528731889	58.81
11/6	CCD DEPOSIT, MERCHANT BNKCD DEPOSIT 434528731889	126.55
11/7	ACH RETURNED ITEM, CAPITAL ONE MOBILE PMT 430939809006090	206.29
11/7	CCD DEPOSIT, MERCHANT BNKCD DEPOSIT 434528731889	100.19
11/7	ACH RETURNED ITEM, CAPITAL ONE MOBILE PMT 430939809081004	20.63
11/10	CCD DEPOSIT, MERCHANT BNKCD DEPOSIT 434528731889	168.65
11/10	ACH RETURNED ITEM, CAPITAL ONE MOBILE PMT 431039809093207	141.57
11/12	CCD DEPOSIT, MERCHANT BNKCD DEPOSIT 434528731889	413.71
11/12	ACH RETURNED ITEM, CAPITAL ONE MOBILE PMT 431239809165281	335.40
11/12	ACH RETURNED ITEM, CAPITAL ONE MOBILE PMT 431239809089287	292.43
11/13	ACH RETURNED ITEM, KOHL'S DEPT STRS CHG PYMT 99829566	414.31
11/13	CCD DEPOSIT, MERCHANT BNKCD DEPOSIT 434528731889	292.99
11/14	CCD DEPOSIT, MERCHANT BNKCD DEPOSIT 434528731889	69.45
11/17	CCD DEPOSIT, MERCHANT BNKCD DEPOSIT 434528731889	92.57
11/18	ACH RETURNED ITEM, GREENBERG GRANT COLLECTION 0-488-519320421	2,877.03
11/18	CCD DEPOSIT, MERCHANT BNKCD DEPOSIT 434528731889	394.30
11/18	CCD DEPOSIT, MERCHANT BNKCD DEPOSIT 434528731889	63.81

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A13



Bank

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STATEMENT OF ACCOUNT

WOLFEBOROUGH DINER LLC

Page: 3 of 5
Statement Period: Nov 01 2014-Nov 19 2014
Cust Ref#: 9245326924-717-7-***
Primary Account #: 924-5326924

DAILY ACCOUNT ACTIVITY

Electronic Deposits (continued)

POSTING DATE	DESCRIPTION	AMOUNT
11/19	CCD DEPOSIT, MERCHANT BNKCD DEPOSIT 434528751889	23.60
	Subtotal:	7,461.41

Other Credits

POSTING DATE	DESCRIPTION	AMOUNT
11/4	RETURNED ITEM	1,420.00
11/4	RETURNED ITEM	1,400.00
11/4	RETURNED ITEM	1,214.80
11/4	RETURNED ITEM	650.00
11/4	RETURNED ITEM	550.00
11/6	RETURNED ITEM	1,420.00
11/6	RETURNED ITEM	1,400.00
11/6	RETURNED ITEM	550.00
11/6	RETURNED ITEM	250.00
11/7	RETURNED ITEM	300.00
11/7	RETURNED ITEM	45.00
11/7	RETURNED ITEM	29.85
11/10	RETURNED ITEM	446.97
11/10	RETURNED ITEM	305.00
11/10	RETURNED ITEM	271.14
11/10	RETURNED ITEM	63.40
11/12	RETURNED ITEM	915.12
11/12	RETURNED ITEM	793.41
11/12	RETURNED ITEM	250.00
11/12	RETURNED ITEM	188.18
11/13	RETURNED ITEM	1,017.60
11/13	RETURNED ITEM	800.00
11/13	RETURNED ITEM	196.89
11/14	RETURNED ITEM	2,980.00
11/14	RETURNED ITEM	559.90
11/17	RETURNED ITEM	196.89
11/17	RETURNED ITEM	196.79
11/17	RETURNED ITEM	156.00
11/17	RETURNED ITEM	115.20
11/18	RETURNED ITEM	2,980.00
11/18	RETURNED ITEM	1,400.00
11/18	RETURNED ITEM	957.13
	Subtotal:	24,019.27

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Bank Deposit - 02/14 Revised 11/13/14 N.C. Equal Housing Lender



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A15



Bank

America's Most Convenient Bank®

STATEMENT OF ACCOUNT

WOLFEBOROUGH DINER LLC

Page: 4 of 5
Statement Period: Nov 01 2014-Nov 19 2014
Cust Ref #: 9245326924-717-7-1**
Primary Account #: 924-5326924

DAILY ACCOUNT ACTIVITY

DATE	SERIAL NO.	AMOUNT	DATE	SERIAL NO.	AMOUNT
11/3	1092	650.00	11/14	1124	156.00
11/3	1101*	1,420.00	11/14	1125	115.20
11/5	1101	1,420.00	11/13	1126	2,980.00
11/5	1108*	550.00	11/17	1126	2,980.00
11/5	1108	550.00	11/13	1129*	300.00
11/5	1111*	250.00	11/6	1149*	300.00
11/10	1111	250.00	11/17	1431*	957.13
11/7	1114*	446.97	11/3	1438*	1,214.80
11/3	1115	1,400.00	11/12	1446*	1,017.60
11/5	1115	1,400.00	11/10	1453*	915.12
11/7	1116	305.00	11/16	1455*	25.73
11/7	1117	63.40	11/10	1458*	793.41
11/12	1117	63.40	11/7	1459-	271.14
11/6	1118	29.85	11/13	1460	74.87
11/6	1119	45.00	11/13	1463*	559.90
11/10	1120	188.18	11/13	1464	246.13
11/12	1121	196.89	11/14	1466*	196.79
11/14	1121	196.89	11/17	1468*	1,400.00
11/12	1123*	800.00			

Subtotal: 24,729.40

Electronic Payments

POSTING DATE	DESCRIPTION	AMOUNT
11/4	ACH DEBIT, KOHL'S DEPT STRS CHG PYMT 99322340	414.31
11/4	CCD DEBIT, CAPITAL ONE MOBILE PMT 430739809006335	292.43
11/4	ELECTRONIC PMT-WEB, CAPITAL ONE MOBILE PMT 430739809217762	191.81
11/4	CCD DEBIT, MERCHANT BNKCD DEPOSIT 434528731889	129.64
11/6	CCD DEBIT, CAPITAL ONE MOBILE PMT 430939809006090	206.29
11/6	CCD DEBIT, CAPITAL ONE MOBILE PMT 4309398090081004	20.63
11/7	CCD DEBIT, CAPITAL ONE MOBILE PMT 431039809093207	141.37
11/10	ELECTRONIC PMT-WEB, CAPITAL ONE MOBILE PMT 431239809165281	335.40
11/10	CCD DEBIT, CAPITAL ONE MOBILE PMT 431239809089287	292.43
11/12	ACH DEBIT, KOHL'S DEPT STRS CHG PYMT 99829566	414.31
11/17	ELECTRONIC PMT-TEL, GREENBERG GRANT COLLECTION 0-488-519320421	2,877.03

Subtotal: 5,315.65

Other Withdrawals

POSTING DATE	DESCRIPTION	AMOUNT
11/3	OVERDRAFT PD	35.00
11/4	OVERDRAFT RET	175.00

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A16



Bank

America's Most Convenient Bank®

STATEMENT OF ACCOUNT

WOLFEBOROUGH DINER LLC

Page 5 of 5
Statement Period: Nov 01 2014-Nov 19 2014
Cust Ref #: 9245326924-717-7-***
Primary Account #: 924-5326924

DAILY ACCOUNT ACTIVITY

Other Withdrawals (continued)		AMOUNT
POSTING DATE	DESCRIPTION	
11/5	OVERDRAFT RET	140.00
11/6	OVERDRAFT RET	140.00
11/7	OVERDRAFT RET	175.00
11/10	OVERDRAFT RET	175.00
11/12	OVERDRAFT RET	175.00
11/13	OVERDRAFT RET	140.00
11/14	OVERDRAFT PD	105.00
11/14	OVERDRAFT RET	70.00
11/14	SUSTAINED OD FEE	20.00
11/17	OVERDRAFT RET	140.00
11/18	OVERDRAFT RET	140.00
11/19	ACCOUNT CLOSED	0.12
Subtotal:		1,630.12

DAILY BALANCE SUMMARY

DATE	BALANCE	DATE	BALANCE
10/31	-45.51	11/12	-2,343.67
11/3	-5,315.31	11/13	-3,708.51
11/4	-942.57	11/14	-959.04
11/5	-3,615.57	11/17	-8,555.75
11/6	-610.79	11/18	-23.48
11/7	-1,311.71	11/19	0.00
11/10	-2,864.72		

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A17

Checking Account
Statement

1-800-922-9999

1 OF 3

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Beginning November 20, 2014
through December 15, 2014

US759 BR424 8 1
BRITTANY L BOGGS
PO BOX 786
WOLFEBORO FALLS NH 03896-0786

Checking

S U M M A R Y

BRITTANY L BOGGS
One Deposit Checking
331404-522-2

Balance Calculation

Previous Balance .00
Checks 5,079.84 -
Withdrawals & Debits 7,725.72 -
Deposits & Credits 15,830.28 +
Current Balance 3,024.72 =

The monthly maintenance fee of \$9.99 will be waived if at least 1 deposit is posted to your account before the end of your statement period.
Your account had at least 1 deposit posted during this statement period

Previous Balance

T R A N S A C T I O N D E T A I L S

00

Checks * There is a break in check sequence

Check #	Amount	Date	Item No	Check #	Amount	Date	Item No
101	1,400.00	12/12	096419491	107	765.77	12/16	050841326
102	200.00	12/03	032343768	107*	765.77	12/12	096891204
103	350.00	12/04	034726669	108	250.00	12/05	038843785
104	202.81	12/08	025304827	109	70.15	12/08	090439562
105	200.00	12/05	037050850	110	250.00	12/08	025356440
106	317.43	12/08	092248595	113*	307.91	12/12	086650741

Total Checks

5,079.84

Withdrawals & Debits

ATM/Purchases

Date	Amount	Description
12/01	488.40	4122 Ebt Purchase - 007292 Ski Works W Ossipee NH
12/01	120.00	4122 ATM Cash - NH4318 Citizens Wolfboro 2 Du, Wolfboro NH
12/01	20.00	4122 Ebt Purchase - 00msfq 7-Eleven Wolfboro NH
12/07	92.42	4122 POS Debit - 659775 Harvest Market Wolfboro F Allis
12/03	85.17	4122 Ebt Purchase - 754218 Buffalo Wild Wingsrochester NH
12/04	30.00	4122 Ebt Purchase - 260041 The Corner Store Wolfboro NH
12/04	370.00	4122 Ebt Purchase - 029871 Ultimate Locks 847-635-B1 21 IL
12/10	140.00	3783 ATM Cash - NH4318 Citizens Wolfboro 2 Du, Wolfboro NH
12/11	70.00	3783 Ebt Purchase - 230001 Carole K 07213 Ossipee NH
12/12	700.00	3783 ATM Cash - NH4318 Citizens Wolfboro 2 Du, Wolfboro NH
12/12	18.28	3783 POS Debit - 18604 Lovell Lake Po Sanbornval Re NH

Other Withdrawals & Debits

Date	Item No	Amount	Description
11/21	127080922	2,000.00	Withdrawal
11/24	025864228	300.00	Withdrawal

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A18

Checking Account
Statement

1-800-922-9999

2 of 3

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Beginning November 20, 2014
through December 15, 2014

Checking continued from previous page

Other Withdrawals & Debits (continued)

BRITTANY L BOGGS
One Deposit Checking
331404-522-2

Date	Item No.	Amount	Description
11/24	026311123	500.00	Withdrawal
11/25	028423492	500.00	Withdrawal
11/25	028423494	300.00	Withdrawal
11/25	028577301	270.00	Withdrawal
11/25	006469020	5.99	Deluxe Check Check/Acc. 141121
11/26	008699384	270.00	Wells Fargo Card Copymt 112514 98606713253103
12/01	003437002	85.46	NH Cash Con 8886422740 141129 3464
12/01	006020015	50.00	Scheduled Transfer 3372509219
12/03	031617144	300.00	Withdrawal
12/04	091203100	500.00	Online Transfer To Savings 3372509219
12/08	091202774	170.00	Online Transfer To Savings 3372509219
12/11		35.00	Overdraft Fee (1)
12/11		35.00	Returned Item Fee (1)
12/12	037562338	781.00	Withdrawal
12/12		35.00	Overdraft Fee (1)

Total Withdrawals & Debits

7,725.72

	Total For This Period	Total Year-To-Date
Total Overdraft Fees	70.00	70.00
Total Returned Item Fees	35.00	35.00

Deposits & Credits

Date	Item No.	Amount	Description
11/20	034523354	5,800.13	Deposit
12/02	028613103	250.00	Deposit
12/03	032343747	1,411.61	Deposit
12/03	091215932	200.00	Online Transfer From Savings 3372509219
12/08	091242750	300.00	Online Transfer From Savings 3372509219
12/08		390.09	Savings Overdraft Transfer From 3372509219
12/11	000841326	765.77	Return Item
12/12	037005875	4,200.00	Deposit
12/12	091226694	29.00	Online Transfer From Savings 3372509219
12/15	000419491	1,400.00	Return Item
12/15	000691204	765.77	Return Item
12/15	000590741	307.91	Return Item

Total Deposits & Credits

15,830.28

Current Balance

3,024.72

Daily Balance

Date	Balance	Date	Balance	Date	Balance
11/20	5,800.13	12/01	986.28	12/08	60.00
11/21	3,800.13	12/02	1,053.86	12/10	-845.77
11/24	3,000.13	12/03	2,089.30	12/11	-170.00
11/25	1,920.14	12/04	830.30	12/12	591.04
11/26	1,650.14	12/05	380.30	12/15	3,024.72

NEWS FROM CITIZENS

-We all have savings goals. Whether it's a new home, a child's education, retirement or preparing for unexpected expenses, Citizens Bank makes it easy and rewarding for you to start saving. We have a range of solutions from savings accounts, money markets, CDs and

Checking Account
Statement

1-800-922-9999

3 OF 3

Call Citizens' PhoneBank anytime for account information,
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Beginning November 20, 2014
through December 15, 2014

Checking continued from previous page

BRITTANY L. BOGGS
One Deposit Checking
331404-522-2

NEWS FROM CITIZENS (continued)
IRAs, to fit your needs. For more information on which accounts and programs are right for
you or to open a new account, call us at 1-888-821-3500, visit citizensbank.com, or stop by
your local branch.

CCAO000103

A20

Checking Account
Statement

1-800-922-9999

1 OF 3

Call Citizens' PhoneBank anytime for account information,
current rates and answers to your questions.

Beginning December 16, 2014
through January 16, 2015

US759 BR424 5 1
BRITTANY L BOGGS
PO BOX 786
WOLFEBORO FALLS NH 03896-0786

Checking

S U M M A R Y

BRITTANY L BOGGS
One Deposit Checking
331404-522-2

Balance Calculation

Previous Balance 3,024.72
Checks 3,400.53 -
Withdrawals & Debits 21,538.18 -
Deposits & Credits 20,795.18 +
Current Balance -1,118.81 =

The monthly maintenance fee of \$9.99 will be waived if at least 1 deposit is posted to your account before the end of your statement period.
Your account had at least 1 deposit posted during this statement period.

Your next statement period will end on February 17, 2015.

Previous Balance

T R A N S A C T I O N D E T A I L S

3,024.72

Checks * There is a break in check sequence

Check #	Amount	Date	Item No.	Check #	Amount	Date	Item No.
113	307.91	12/18	093253603	119	1,650.00	12/18	034767288
118*	1,315.73	12/18	093518993	122*	126.89	12/26	037450671

Total Checks

3,400.53

Withdrawals & Debits

Other Withdrawals & Debits

Date	Item No.	Amount	Description
12/17	051100845	4,200.00	Deposited Check Returned
12/18	089531354	48.00	Debit Memo
12/18	089531352	61.19	Debit Memo
12/18	089531353	63.00	Debit Memo
12/18	089531351	59.94	Debit Memo
12/18	089531350	60.37	Debit Memo
12/19		105.00	Returned Item Fee (3)
12/22	002952816	84.57	NH Cash. Com 8086422740 141219 3464
12/22		6.99	Service Charge
12/23		6.99	Service Charge
12/23		35.00	Returned Item Fee (1)

CCAO000104

A21

Checking Account
Statement

1-800-922-9599

Call Citizens' PhoneBank anytime for account information,
current rates and answers to your questions.

2 OF 3

Beginning December 16, 2014
through January 16, 2015

Checking continued from previous page

Other Withdrawals & Debits (continued)

Date	Item No.	Amount	Description
12/24		6.99	Service Charge Sustained Overdraft Fee
12/26		6.99	Service Charge Sustained Overdraft Fee
12/29	001196294	109.57	NH Cash.Com 8886422740 141226 3464
12/29		6.99	Service Charge Sustained Overdraft Fee
12/29		35.00	Returned Item Fee (1)
12/30		6.99	Service Charge Sustained Overdraft Fee
12/30		35.00	Returned Item Fee (1)
01/13	051100489	16,599.00	Deposited Check Returned

BRITTANY L BOWEN
One Deposit Checking
331404-522-2

Total Withdrawals & Debits

21,538.18

	Total For This Period	Total Year-To-Date
Total Overdraft Fees	41.94	111.94
Total Returned Item Fees	210.00	245.00

Deposits & Credits

Date	Item No.	Amount	Description
12/16	094390311	.91	Credit Memo Account Closures Transfer From Sav # 3372509219
12/17	031413444	600.00	Deposit
12/19	000767288	1,650.00	Return Item
12/19	000518993	1,315.73	Return Item
12/19	000253603	367.91	Return Item
12/23	000552816	84.57	NH Cash.Com 8886422740 141219 3464
12/29	000450671	126.89	Return Item
12/30	000196294	109.57	NH Cash.Com 8886422740 141226 3464
01/08	034750490	16,599.00	Deposit
01/13	011949751	50	Credit One Bank Payment 150111 00000093261313
01/13	011949750	10	Credit One Bank Payment 150111 00000093261312

Total Deposits & Credits

20,795.18

Current Balance

-1,118.81

Daily Balance

Date	Balance	Date	Balance	Date	Balance
12/16	3,025.63	12/22	-1,964.03	12/29	-1,186.99
12/17	-574.37	12/23	-1,021.45	12/30	-1,119.41
12/18	-8,141.11	12/24	-1,028.44	01/08	15,479.59
12/19	-972.47	12/26	-1,162.32	01/13	-1,118.81

M E M O

--A Note About Fees Shown on Your Statement
If you have paid Overdraft Fees, Sustained Overdraft Fees, Insufficient Available Funds Fees or Returned Item Fees, your account statement includes a table that shows the total amount of these fees that you paid, net of any rebates, for both the statement period and calendar year to date. Transaction descriptions for fees paid in Total Overdraft Fees include "Overdraft Fee" and "Sustained Overdraft Fee". Transactions labeled "Insufficient Available Funds Fee" or "Returned Item Fee" are included in Total Returned Item Fees.

CCAO000105

A22

Checking Account
Statement

1-800-822-9959

2 OF 3

Call Citizens' PhoneBank anytime for account information,
current rates and answers to your questions.

Beginning December 15, 2014
through January 15, 2015

Checking continued from previous page

BRITTANY J. BOGGS
One Deposit Checking
331404-522-2

MEMO (continued)

For your January 2015 statement, this table (if shown) provides information about two distinct time periods. Any amount listed in the "Total for This Period" section includes fees paid during your current statement period. Dates for this period are listed at the top of this statement. Any amount listed in the "Total Year to Date" section includes only fees paid in calendar year 2014. Any fees paid in January 2015 are not listed in the "Total Year to Date" section of this statement, but will be included in this section beginning with your February 2015 statement.

NEWS FROM CITIZENS

Let us help you earn more. Our highly competitive rates on Money Markets and Circle K[®] Banking(R) CDs are designed to help you maximize your earnings and reach your financial goals. Whether you're saving for a home purchase, child's education, retirement or a rainy day, we can help you get there. For more information on which accounts and programs are right for you or to open a new account, visit your local branch today or call 1-888-821-3900. Member FDIC. See a banker for FDIC coverage amounts and transaction limitations.

CCAO000106

A23

Savings Account
Statement

1-800-922-9599

Call Citizens' PhoneBank anytime for account information,
current rates and answers to your questions.

1 OF 1

Beginning November 20, 2014
through December 31, 2014

VB702 BR424

BRITTANY L BOGGS
PO BOX 786
WOLFEBORO FALLS NH 03896-0786

Savings

S U M M A R Y

BRITTANY L BOGGS
Green Savings
3372-509219

Balance Calculation		Balance	
Previous Balance	.00	Average Daily Balance	147.67
Withdrawals & Debits	920.00 -	Interest	
Deposits & Credits	920.00 +	Current Interest Rate	.01%
Interest Paid		Annual Percentage Yield Earned	.00%
Current Balance		Number of Days Interest Earned	33
		Interest Earned	.00
		Interest Paid this Year	.00

You can waive the monthly maintenance fee of \$4.95 by maintaining a minimum daily balance
of \$200 in your account.

Your minimum daily balance used to qualify this statement period is \$0

A New Account waiver is active on your account so monthly maintenance fees are not currently
being assessed. Your first four monthly maintenance fees will be waived as a courtesy

Previous Balance

T R A N S A C T I O N D E T A I L S

00

Withdrawals & Debits

Other Withdrawals & Debits

Date	Item No.	Amount	Description
12/03	091200000	200.00	Online Transfer To Checking 3314045222
12/08		398.09	Savings Overdraft Transfer To 3314045222
12/08	091200000	300.00	Online Transfer To Checking 3314045222
12/12	091200000	29.00	Online Transfer To Checking 3314045222
12/16	094304109	.91	Account Closure Transfer To ODA # 3314045222

Total Withdrawals & Debits

920.00

Deposits & Credits

Date	Item No.	Amount	Description
11/20	034623363	200.00	Deposit
12/01	006027318	50.00	Scheduled Transfer
12/04	091200000	500.00	Online Transfer From Checking 3314045222
12/08	091200000	170.00	Online Transfer From Checking 3314045222

Total Deposits & Credits

920.00

Current Balance

00

CCAO000108

A24

Savings Account
Statement

1-800-922-9999

2 OF 2

Call Citizens' PhoneBank anytime for account information,
current rates and answers to your questions

Beginning November 20, 2014
through December 31, 2014

Savings continued from previous page

Daily Balance			BRITTANY L BOGGS		
Date	Balance	Date	Balance	Date	Balance
11/20	200.00	12/04	550.00	12/12	91
12/01	250.00	12/08	29 91	12/16	.00
12/03	50.00				

CCAO000109

A25

CARROLL, SS.

THE STATE OF NEW HAMPSHIRE

SUPERIOR COURT

State of New Hampshire

v.

Brittany Boggs

212-2015-CR-54

DEFENDANT'S MOTION TO SET ASIDE VERDICT

NOW COMES the defendant, Brittany Boggs, by counsel, Dennis P. O'Connor, Esq., and respectfully requests that the Honorable Court set aside the verdicts in this matter. The verdicts must be set aside because: (1) the evidence was insufficient to sustain both verdicts, and (2) the verdict on Charge ID 1055150C was also against the weight of the evidence. This motion is based on Part I, Article 15 of the New Hampshire Constitution and the 6th and 14th Amendments to the United States Constitution.

In support of this motion the following is stated:

1. Ms. Boggs was found guilty on two indictments that alleged Issuing Bad Checks. Indictment number 1058786C alleged Ms. Boggs issued or passed a check for \$8,517.27 to Hobbs Tavern and Brewing Co. on or about December 11, 2014. This was written on a TD Bank business account for the Wolfeborough Diner. The indictment stated payment was refused because the account was closed. Indictment number 1055150C alleged Ms. Boggs issued or passed a check for \$1,315.73 to Hobbs Tavern and Brewing Co. on or about December 13, 2014. This was from a Citizens Bank personal account. The State alleges payment was refused because that account did not have sufficient funds.

Motion DENIED. See record transcript
of 3/28/2017.

Amy L. Ignatius
3/28/2017
Amy L. Ignatius
Presiding Justice 26

48

2. The central issue at trial was whether Ms. Boggs acted knowingly, that is whether she knew or believed that the bank would not pay each check. See RSA 638:4, IV (b). The State did not present direct evidence of Ms. Boggs's knowledge or belief. For example, there was no evidence that Ms. Boggs admitted having the requisite knowledge when the check was passed. There was no evidence that she received specific notification from either bank prior to passing the checks. Proof of knowledge was entirely based on circumstantial evidence. At trial, the State relied on records from each bank and argued knowledge can be inferred from the records. But to be sufficient to convict, the totality of the circumstantial evidence had to exclude all rational conclusions other than guilt. (See jury instructions). As applied to the element at issue, the totality of the circumstantial evidence had to exclude all rational conclusions other than Ms. Boggs knew or believed each bank would not pay each check. The circumstantial evidence was insufficient as a matter of law. The jury verdict on Charge ID 1055150C was against the weight of the evidence.

Charge ID 1055150C; Citizens Bank

3. The State submitted a multi page packet of bank statements for account # 331 404 5222. (State's Exhibit 8, pgs. 101-109). The State also submitted the check at issue, numbered 118 and dated December 13, 2014. (State's Exhibit 9). Even considering this evidence in the light most favorable to the State, these documents do not exclude the rational conclusion that Ms. Boggs did not know or believe the bank would not pay the check. To the contrary, the documents establish a rational basis to believe the bank would honor the check.

4. The first statement submitted covered the period from November 20, 2014 to December 15, 2014. (State's Exhibit 8, pgs. 101-103). State's witness Shannon Morrissette testified to the authenticity of this statement. She also identified the check. The records are clear. Page 102 of State's Exhibit 8 shows the following: (1) December 12, 2014 began with a balance of

\$551.04; (2) A deposit of \$4200 was made on December 12, 2014; (3) The balance on December 15, 2014 was \$3024.72. The check at issue for \$1315.73 was dated December 13, 2014. (State's Exhibit 9). Accordingly, the evidence supports a conclusion that Ms. Boggs did not know or believe payment would be refused. That conclusion is rationally based on the evidence submitted. While a jury could reach other conclusions, that rational conclusion, inconsistent with guilt, is not foreclosed by the circumstantial evidence.

5. Because the circumstantial evidence cannot exclude rational conclusions inconsistent with guilt (knowledge or belief the bank would refuse payment), the evidence is insufficient as a matter of law. Considering all the evidence and all reasonable inferences therefrom in the light most favorable to the State, no rational trier of fact could find guilt beyond a reasonable doubt that Ms. Boggs knew or believed the check would not be paid by the bank. See State v. Spinale, 156 N.H. 456, 463 (2007).

6. The jury verdict must also be set aside because the verdict is against the weight of the evidence. "Determining the weight of the evidence 'is basically a determination of the trier of fact that a greater amount of credible evidence supports one side of an issue or cause than the other.....[and] whether the State has appropriately carried its burden of persuasion'." State v. Durgin, 165 N.H. 725, 733-34 (2013). The \$4200 deposit on December 12, 2014 and the \$3024.72 balance on December 15, 2014 were uncontested. The bank records submitted by the State show sufficient funds to cover the check. Ultimately, the deposit was rejected and payment on the check was refused. But no evidence was presented to show Ms. Boggs had knowledge that result would occur when the check was issued. Accordingly, the jury verdict is contrary to the weight of the evidence.

Charge ID 1058786C; TD Bank

7. This indictment alleged Ms. Boggs knew or believed the check would not be paid and that the check was not paid because the account was closed. The State submitted TD Bank records on the Wolfeborough Diner account from October 1, 2014 to November 19, 2014 (State's Exhibit 3, pgs. 26-36), a record of the closeout (State's Exhibit 6), and a copy of the check (State's Exhibit 5). These records do show the Wolfeborough Diner account was closed on November 19, 2014. But the records do not show that Ms. Boggs knew or believed the account was closed.

8. State witness Cecile Chase testified to the authenticity of the records and confirmed the account was closed on November 19, 2014. But Ms. Chase testified the "institution" closed the account. No evidence was submitted that would show TD Bank or anyone else notified Ms. Boggs of the closure.

9. Again, no direct evidence was produced to prove Ms. Boggs knew or believed the bank would refuse payment because the account was closed. The circumstantial evidence of knowledge consists of the above stated records and testimony by Ms. Chase. The State argued the records showed Ms. Boggs must have known or believed the check would be refused. But because the evidence produced to show knowledge was entirely circumstantial, the evidence had to exclude all rational conclusions inconsistent with guilt. One rational conclusion firmly based on the evidence presented is that the account was closed by the bank, Ms. Boggs was not notified of this, and Ms. Boggs did not know or believe that the bank would refuse payment.

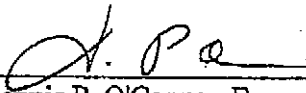
10. Because the circumstantial evidence cannot exclude rational conclusions inconsistent with guilt (knowledge or belief the bank would refuse payment), the evidence is insufficient as a matter of law. Considering all the evidence and all reasonable inferences therefrom in the light most favorable to the State, no rational trier of fact could find guilt beyond a reasonable

doubt that Ms. Boggs knew or believed the check would not be paid by the bank. See State v. Spinale, 156 N.H. 456, 463 (2007).

WHEREFORE, Ms. Boggs, through counsel, respectfully requests the Honorable Court set aside the verdicts in this matter and:

- A. Dismiss Charge ID 1055150C; Citizens Bank for insufficient evidence, or
- B. Order a new trial on Charge ID 1055150C; Citizens Bank because the verdict was against the weight of the evidence, and
- C. Dismiss Charge ID 1058786C for insufficient evidence, or
- D. Hold a hearing on this motion.

Respectfully submitted,



Dennis P. O'Connor, Esq.
Law Office of Dennis P. O'Connor, PLLC
Box 2789
Conway, NH 03818
(603) 447-1115

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Motion were forwarded this date to Kimberly J. Tessari, Esq. Assistant Carroll County Attorney.



Dennis P. O'Connor, Esq.

STATE OF NEW HAMPSHIRE

CARROLL, SS.

SUPERIOR COURT
212-2015-CR-054

STATE OF NEW HAMPSHIRE

v.

BRITTANY L BOGGS

STATE'S OBJECTION TO DEFENDANT'S MOTION TO SET ASIDE VERDICTS

NOW COMES the State of New Hampshire, by and through the Office of the Carroll County Attorney, Kimberly Tessari, Assistant County Attorney and states as follows:

1. The defendant was found guilty of two counts of issuing bad checks pursuant to RSA 638:4 on February 28, 2016. The defendant presents two arguments to support the conclusion that this verdict should be set aside. First, she argues that the evidence submitted at trial is not sufficient to sustain the verdicts. Second, she argues that the verdict on Charge ID 1055150C was against the weight of the evidence. The defendant main arguments center around the knowledge requirement, i.e. that the defendant knowingly issued bad checks.

STANDARD

2. In considering a motion to set aside the verdict based upon the sufficiency of the evidence, the trial Court must consider the evidence, including all reasonable inferences which arise from the evidence, in the light most favorable to the State. State v. Taylor, 121 N.H. 489, 491 (1981) (citing State v. Goodwin, 118 N.H. 862, 866 (1978)).

3. If there is evidence in the record from which a reasonable jury could come to the conclusion which has been reached, a defendant's motion to set aside the verdict should be denied. State v. Reed, 106 N.H. 140, 141 (1965).
4. In making a determination that a conviction is contrary to the weight of the evidence, the trial court is not ruling that acquittal was the only acceptable verdict. State v. Spinale, 156 N.H. 456, 465 (2007). Rather, the trial court is essentially sitting as a "thirteenth juror." Id. Though the trial court has great discretion in this role, "the trial court should exercise its discretion with caution and invoke its power to grant a new trial only in exceptional cases in which the evidence preponderates heavily against the verdict and where a miscarriage of justice may have resulted." Id. (citations omitted).
5. The weight given to any evidence depends upon the particular circumstances and is generally not relevant to the question of sufficiency. State v. Spinale, Id. at 465, citing 29A Am.Jur.2d supra § 1430. "The weight of the evidence is its weight in probative value, not the quantity or amount of evidence. It is not determined by mathematics, but depends on its effect in inducing belief." Id., citing 32A C.J.S. supra § 1303(a). It is basically "a determination of the trier of fact that a greater amount of credible evidence supports one side of an issue or cause than the other." Id. citing 29A Am.Jur.2d supra § 1430. Thus, in contrast to sufficiency where the court determines whether a rational juror could have found guilt, a verdict conclusively against the weight of the evidence is "one no reasonable jury could return," Spinale, Id., citing State v. Pepin, 156 N.H. 269, ---, 940 A.2d 221, 2007 WL 2989819 (2007) and also Mullin v. Joy, 145 N.H. 96, 96, 749 A.2d 826 (2000). However, "the jury verdict must be an unreasonable one before the [trial court] may set it

aside." *Id.*, citing *Panas v. Harakis & K-Mart Corp.*, 129 N.H. 591, 603, 529 A.2d 976 (1987) (citation omitted).

6. The necessary mens rea for passing a bad check and knowledge of the amount of money in an account are not necessarily the same under New Hampshire Law. In *State v. John Reed Stewart d/b/a J.R.S. Interiors*, the Supreme Court of New Hampshire examined an appeal for a conviction under RSA 638:4. 155 N.H. 212, 215 (2007). Specifically, the Court examined an answer to a question from the jury: "The State does not have the burden to prove the defendant never intended to pay the amount owed. Rather, the State has the burden to prove beyond a reasonable doubt that at the time the defendant issued the check to Mr. Auger, the defendant knew there were insufficient funds to cover the check, and that the bank would not honor the check." *Id.*

ARGUMENT

7. The State asserts it did foreclose any doubt that the defendant knew the check would not be honored. The evidence that the State presented included testimony and exhibits showing the defendant's mental state. Detective King testified to the fact that the defendant was formally made aware of her bad checks via a fourteen day letter. He testified that her response was to make a series of promises and tell Det. King that the problem had already been taken care of. Ash Fischbein testified to the minutiae of the planning and effort with the defendant that went into his contract with her. Finally, the State presented records that, the defendant admits, show that a number of deposits that would have allowed the Citizen's Bank check to be negotiated were rejected. See Def. Motion par. 6. The defendant would have the Court examine one piece of evidence in a vacuum and vacate her entire conviction as a result. However, taken together, these pieces of evidence inexorably lead to the conclusion that the

defendant approached her wedding thoughtfully and then, equally thoughtfully, lied even to law enforcement about her intention to pay her debts. Therefore, the evidence was not insufficient as a matter of law.

8. Finally, the evidence of Charge ID 1058786C was not insufficient because, contrary to what the defendant argues, the evidence shows that the defendant knew or believed the check would not be paid. Under RSA 638:4, II, "a person who issues a check for which payment is refused by the drawee is presumed to know that such check would not be paid if he had no account with the drawee at the time of issue." As the defendant admits, the State presented sufficient evidence to show that the defendant did not have an account with TD Bank at the time the check was issued. See Def. Motion par. 8. This fact was reflected in the instructions that were ultimately presented to the jury. As a result, the defendant was presumed to know that the check would not be paid. Even without this presumption, attempting to draw over \$8,000.00 from a closed account, coupled with Det. King's testimony and Mr. Fischbein's testimony, inevitably leads to the conclusion that the defendant knew that check would not be paid. Therefore, the defendant's claim that the State's evidence on this charge was insufficient is without merit.
9. In arguing that her conviction was against the weight of the evidence, the defendant has essentially presented another argument in favor of insufficiency of the evidence. She has presented no arguments to suggest that the evidence either preponderates heavily against the verdict or that a miscarriage of justice has occurred. Therefore, this claim is without merit.
10. The defendant misconstrues the knowledge requirement. In *State v. John Reed Stewart d/b/a J.R.S. Interiors* the Court, first citing RSA 638:4, IV(b), "[t]he prosecutor is required to

'prove that the person issued or passed the check knowing or believing that the check would not be paid to the drawee.'" Id. at 216. The Court then concluded that "[t]he plain language of this section focuses on the defendant's belief as to the eventuality of the check being honored, not on the defendant's knowledge of his account balance at the time of writing the check." Id.


11. The Court went on to conclude that the trial court's answer "added an element to the crime that does not exist, and in so doing, may have misled the jury." Id. at 217. The Court noted that "in many cases, a jury may find that the mens rea element is satisfied solely by the State's evidence of insufficient funds at the time the check was issued." Id.
12. For all these reasons, the defendant's Motion to Set Aside Verdict should be denied.

WHEREFORE, the State requests that this Honorable Court:

- A. Deny the Defendant's Motion without a hearing; or
- B. Hold a hearing on the matter; or
- C. Grant any other relief deemed proper and just.

March 16, 2017

Respectfully Submitted,
STATE OF NEW HAMPSHIRE



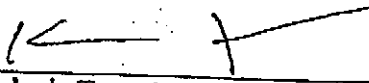
Kimberly Tessari
Assistant County Attorney
New Hampshire Bar # 264847
Carroll County Attorney's Office
95 Water Village Road
Ossipee, NH 03864
(603) 539-7769

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing State's Pleading has on this date been forwarded to defense counsel Dennis P. O'Connor, attorney for defendant, at 16 Washington Street PO Box 2789, Conway, NH 03818.

March 16, 2017

Respectfully Submitted,
STATE OF NEW HAMPSHIRE



Kimberly Tessari
Carroll County Attorney's Office