

THE STATE OF NEW HAMPSHIRE
SUPREME COURT

No. 2017-0403

State of New Hampshire

v.

John T. Brawley

APPEAL FROM JUDGMENT OF THE ROCKINGHAM
COUNTY SUPERIOR COURT

BRIEF FOR THE STATE OF NEW HAMPSHIRE

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(15 minutes)

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

QUESTIONS PRESENTED FOR REVIEW 1

RELEVANT STATUTORY PROVISIONS 2

STATEMENT OF CASE AND FACTS 4

SUMMARY OF THE ARGUMENT 5

STANDARD OF REVIEW 7

ARGUMENT 8

 I. THE TRIAL COURT ERRED IN FINDING THAT IT NO LONGER
 HAD JURISDICTION OVER THE FORMER DEFENDANT AFTER
 ACQUITTAL 8

 II. THE TRIAL COURT ERRED BY RULING THAT THE NOTICE
 PROVISIONS OF RSA 604-A-9, I-c DID NOT APPLY AFTER THE
 DEFENDANT’S ACQUITTAL 11

CONCLUSION 14

APPENDIX TABLE OF CONTENTS 15

TABLE OF AUTHORITIES

Cases

Appeal of Parkland Med. Ctr., 158 N.H. 67, 72 (2008).....9

Appeal of Town of Nottingham (N.H. Dep't of Env'tl. Servs.), 153 N.H. 539, 554
(2006)..... 12

Curry v. Wilson, 853 S.W.2d 40 (1993)(Court of Criminal Appeals Texas)..... 10

ElderTrust of Fla. v. Town of Epsom, 154 N.H. 693 (2007) 7

Franklin Lodge of Elks v. Marcoux, 149 N.H. 581, 585 (2003)9

Kenison v. Dubois, 152 N.H. 448, 451 (2005) 12

Kimball Union Academy v. Genovesi, 165 N.H. 132, 136 (2013)7

Liam Hooksett, LLC v. Boynton, 157 N.H. 625, 628 (2008)9

State v. Haas, 155 N.H. 612 (2007)..... 8-9,10,12

State v. Whittey, 149 N.H. 463, 467 (2003)..... 12

United States v. Durka, 490 F.2d 478 (1978)..... 10-11

Statutes

RSA 604-A:10, IV	2
RSA 604-A:2	8
RSA 604-A:9	1-11,13
RSA 631:2-A	4

Constitutional Provisions

N.H. Const. pt. I, art. 15.....	8
---------------------------------	---

QUESTIONS PRESENTED FOR REVIEW

1. Did the trial court err in ruling that it no longer had jurisdiction over the former criminal defendant despite the fact that an order of repayment had been issued in the criminal matter in accordance with RSA 604-A:9, I?
2. Did the trial court err in determining that the service and notice provisions of RSA 604-A:9, I(c) are inapplicable because the defendant was acquitted on the criminal charges?
3. Did the trial court err in ruling that the State's right to repayment was a common civil debt collection action in contravention of the procedures set forth in RSA 604-A:9?

RELEVANT STATUTES

The relevant portions of the statute at issue in this appeal are set out below:

RSA 604-A:9 Repayment

I. Any adult defendant who has had counsel or a public defender assigned to the defendant at the expense of the state shall be ordered by the court under paragraph I-b to repay the state through the unit of cost containment, the fees and expenses paid by the state on the defendant's behalf according to a schedule established by the administrator of the cost containment unit with the approval of the administrative justices of the courts on such terms as the court may order consistent with the defendant's present or future ability to pay, such ability to be determined by the unit of cost containment. The state may collect from the defendant a service charge of up to 10 percent of the total amount of fees and expenses owed by such defendant. At no time shall the defendant be required to repay, for legal services, an amount greater than the state's flat rate for a contract attorney as established contractually pursuant to RSA 604-B. If the defendant is placed on probation or sentenced to a period of conditional discharge, the defendant shall repay the state, through the department of corrections, all fees and expenses paid on his behalf on such terms as the court may order consistent with the defendant's present or future ability to pay.

I-b. The court shall enter a separate order, pursuant to the rules adopted by the commissioner of administrative services under RSA 604-A:10, IV, setting forth the terms of repayment of fees and expenses to the state, or if the court finds that the defendant is financially unable to make such payment or payments setting forth the reasons therefor. A copy of each order shall be forwarded to the commissioner of administrative services. Any defendant subject to an order under this section may petition the court for relief from the obligation imposed by this section, which may be granted only upon a finding that the defendant is unable to comply with the terms of the court's order or any modification of the order by the court. If the court does not order full payment for representation under RSA 604-A, the commissioner of administrative services or his designee shall perform an investigation to determine the defendant's present financial condition and his ability to make repayment and may petition the court for a new repayment order at any time within 6 years from the date of the original order.

I-c. In a case where counsel has been appointed, the defendant shall be required to notify the clerk of the court and the office of cost containment of each change of mail address and actual street address. Whenever notice to the defendant is required, notice to the last mail address on file shall be deemed notice to and binding on the defendant.

III. If any repayment ordered pursuant to paragraph I becomes overdue, the court having originally appointed counsel may order any employer of a former defendant to deduct from that person's wages or salary the appropriate amount due and to pay such amount to the appropriate

department as determined under paragraph I, which shall refund such amount to the state, provided that no money, rights, or credits listed in RSA 512:21 shall be subject to deduction.

V. If the defendant is incarcerated in the state prison, orders for repayment, pursuant to paragraph I may be suspended until the time of the defendant's release. The adult parole board may make repayment of any order for repayment a condition of parole or early release. If the defendant has not been ordered to repay the state for expenses incurred on the defendant's behalf, at any time within 6 years of the time the defendant is released from the state prison the state may petition the superior court for repayment, and upon such petition the superior court shall order repayment unless the court finds the defendant is unable to comply with the terms of any order for repayment.

VI. At any time within 6 years of the disposition of an action in which the court finds at the time of disposition or thereafter that the defendant is not able to make payments to the state as provided in paragraph I, the state may petition the court for an order of repayment. The court shall order such repayment in whole or in partial payments, unless the court finds the defendant is unable to pay, in whole or in partial payments, the amounts paid on his behalf for fees and expenses pursuant to this chapter. Notice of each such order shall be forwarded to the commissioner of administrative services.

STATEMENT OF CASE AND FACTS

This case relates to the repayment obligations of a former criminal defendant, John Brawley, to the State of New Hampshire, Department of Administrative Services, Office of Cost Containment (“OCC”) for costs associated with the appointment of legal counsel. Mr. Brawley was charged with two counts of violations of RSA 631:2-A, Simple Assault in 2015. (Case No. 218-2015-CR-00900). App.¹ 1, 5. On September 17, 2015, Mr. Brawley was appointed a public defender as counsel in that criminal matter. App. 5. The trial court issued an order on that date that the defendant was liable to reimburse the State for legal expenses pursuant to RSA 604-A:9 and ordered him to contact OCC to verify his mailing address and make payment arrangements within 5 days of the order. *Id.* The order further stated that the minimum liability for legal expenses to OCC would be \$412.50. *Id.* Mr. Brawley was subsequently acquitted of all criminal charges.² App. 1.

Between the issuance of the repayment order in September of 2015 and December of 2016, OCC made efforts to contact Mr. Brawley to arrange repayment of this obligation. App. 6. This included a verification of Mr. Brawley’s address with the United States Postal Service. App. 7. Having received no response to these various efforts, OCC filed a Motion to Show Cause with the trial court in the criminal docket where the repayment order had been issued. App. 6. A hearing was scheduled on the motion for February 10, 2017; however, Mr. Brawley failed to appear. App. 8-9. In response, the trial court (*Schulman, J.*) issued an arrest warrant and set bail at \$50 which could be forfeited to OCC upon payment. App. 10. OCC received that bail payment on March 24, 2017. App. 10.³

¹ App. refers to the Appendix attached to this Brief.

² The underlying facts and circumstances of Mr. Brawley’s criminal case are irrelevant to this appeal.

³ At the time this bond payment was made, Mr. Brawley reported the same address on file with the court and OCC.

Mr. Brawley made no other payments and OCC verbally requested that the court hold a further hearing on their Motion to Show Cause. That hearing was scheduled for June 9, 2017. App. 11. Once again, Mr. Brawley was mailed notice of the hearing but failed to appear. *Id.* As it had done four months earlier, OCC requested an arrest warrant, which had been the only successful means of obtaining payment to date. App. 2. On this occasion, the trial court (*Schulman, J.*) declined to issue the warrant. App. 1-4. Instead, the trial court observed that Mr. Brawley had been discharged from the case by means of an acquittal and determined that the court no longer had jurisdiction over the defendant despite Mr. Brawley's continuous and blatant disregard of a court order within that criminal docket. App. 2-3. Additionally, the trial court ruled that OCC was merely a civil judgment creditor and that it must seek to enforce the judgment through a writ of execution, motion for periodic payments, or and/or motions for contempt. *Id.*

Finally, the trial court ruled that the service and notice provisions specifically set forth in RSA 604-A:9, I-c, which allow OCC to provide notice to the last address placed on file by the defendant, was inapplicable because the trial court no longer had jurisdiction over the defendant. App. 3. Specifically, the trial court ruled that OCC must obtain a summons from the court and serve the defendant in hand or by certified mail with a receipt of acceptance and demonstrate that proof of service for the court. *Id.* OCC has brought this appeal to challenge the trial court's rulings.

SUMMARY OF THE ARGUMENT

RSA 604-A:9 creates a statutory obligation for indigent defendants to re-pay the State for certain costs associated with appointment of a public defender or other court assigned counsel. Moreover, the statute provides specific measures which OCC may take to secure repayment of

these costs. These include giving OCC the right to seek a repayment order from the court up to six years after the issuance of the original repayment order, the disposition of the case, or the defendant's release from prison. Additionally, the statute permits the trial court to order employers of "former defendants" to withhold salary or wages for purposes of repayment of the debt. Finally, the statute provides that when notice is required to the defendant in any of these proceedings, it can be made by mailing to the last address provided by the defendant and need not be served in the typical manner.

The trial court's determination that it did not have jurisdiction over the defendant after acquittal is in contradiction with the plain language of RSA 604-A:9 and is in error. This court has previously determined that the repayment statute applies regardless of whether the defendant is convicted, acquitted, or otherwise dismissed from the underlying criminal matter. Moreover, the statute itself confers jurisdiction on the court to continue its jurisdiction over "former defendants" after the criminal case is disposed. As such, the trial court's determination that the defendant was unconditionally discharged from the case at the time of acquittal is in contradiction to the plain language of the statute. Moreover, this action is an abdication of the trial court's statutory authority over the former defendant with respect to the order on repayment.

Even assuming, *arguendo*, that the statutory language is unclear on the issue of jurisdiction, the court is nevertheless in error. Other courts have determined that a criminal court's jurisdiction over the defendant does not end at the conclusion of criminal charges but continues until all of the issues that arise from the initial action have been resolved. While the criminal charges were resolved, there remains a valid court order requiring payment to OCC for legal expenses. The defendant blatantly and repeatedly refused to comply with this obligation. The trial court's order requires OCC to initiate a new civil action in order to enforce an

unresolved court order in the criminal docket. This failure of the trial court to enforce its own orders and to place the burden on OCC to collect this statutory and court ordered obligation like any other judgment creditor is a violation of the clear intent of the repayment statute and against public policy.

Finally, the trial court's imposition of extra-statutory service obligations on OCC is in error. RSA 604-A:9, I-c places the burden on the defendant to inform OCC and the court of his current residence and mailing address. Moreover, the statute specifically provides that whenever notice is necessary to the defendant under the provisions of the statute, a mailing to that address is deemed to be sufficient. The trial court ruled, without citing any authority, that this statutory provision no longer applies after disposition of the criminal charges. This position is unsupported by the plain language of the statute and the public policy considerations at issue.

STANDARD OF REVIEW

This case presents questions regarding the interpretation of the provisions of RSA 604-A:9 and determinations of the trial court's jurisdiction over the defendant. The trial court's determination of personal jurisdiction, when made without an evidentiary hearing, is reviewed by this court de novo. *Kimball Union Academy v. Genovesi*, 165 N.H. 132, 136 (2013). The interpretation and application of a statute presents questions of law, which the supreme court reviews de novo. *ElderTrust of Fla. v. Town of Epsom*, 154 N.H. 693, 696 (2007).

ARGUMENT

The issues in dispute in this appeal are narrow but significant. In denying OCC's renewed Motion to Show Cause, the trial court acknowledged that OCC held a legal right to repayment of criminal defense costs from Mr. Brawley. The issues in dispute, therefore, are limited to (1) whether the trial court erred in determining that it no longer had jurisdiction over the defendant after an acquittal, and (2) whether the notice provisions set forth in RSA 604-A:9, I-c apply after an acquittal.

I. THE TRIAL COURT ERRED IN FINDING THAT IT NO LONGER HAD JURISDICTION OVER THE FORMER DEFENDANT AFTER ACQUITTAL.

The State is constitutionally and statutorily obligated to provide indigent criminal defendants with legal counsel. *See* RSA 604-A:2; N.H. Const. pt. I, art. 15. The legislature has required, however, that these defendants be ordered to repay the State some portion of those costs in accordance with established guidelines on the person's ability to pay. RSA 604-A:9, I. In each instance where the court appoints counsel to an indigent defendant, it must enter "a separate order" setting forth the terms of repayment. RSA 604-A:9, I-b. In the present case, the trial court entered an order of repayment obligating the defendant to pay at least \$412.50 to OCC. App. 5. That order further required that the defendant contact OCC within 5 days of the order to verify his address and make payment arrangements. *Id.*

While the defendant was eventually acquitted of the criminal charges in this case, the repayment obligation is not in any way related to the outcome of the underlying criminal matter. This court took up that specific issue in the case of *State v. Haas*, 155 N.H. 612 (2007). The appellant in that case, Joseph Haas, was a former criminal defendant whose charges were dismissed. *Id.* at 612. When he was nonetheless ordered to re-pay defense costs pursuant to RSA

604-A:9, he challenged the constitutionality of the statute. This court rejected the challenge, finding that the government had a legitimate interest in recouping costs for public defense whether or not the defendant is convicted. *Id.* at 613.

In the present case, the trial court did not rule that the acquittal negates the repayment order, but rather that the acquittal stripped the trial court of jurisdiction to enforce the repayment order without the initiation of a new civil matter. This determination is not consistent with the plain language of RSA 604-A:9. In interpreting a statute, this court is the final arbiter of the legislature's intent as expressed in the words of the statute considered as a whole. *Appeal of Parkland Med. Ctr.*, 158 N.H. 67, 72 (2008). The court first examines the language of the statute, and, where possible, ascribes the plain and ordinary meaning to the words used. *Id.* When a statute's language is plain and unambiguous, the court need not look beyond it for further indication of legislative intent, and will not consider what the legislature might have said or add language that the legislature did not see fit to include. *Id.* The court also interprets a statute in the context of the overall statutory scheme and not in isolation. *Liam Hooksett, LLC v. Boynton*, 157 N.H. 625, 628 (2008). Words and phrases should not be considered in isolation, but within the context of the statute as a whole. *Franklin Lodge of Elks v. Marcoux*, 149 N.H. 581, 585 (2003). This enables the court to better discern the legislature's intent and to interpret statutory language in light of the policy or purpose sought to be advanced by the statutory scheme. *Id.*

The plain language of RSA 604-A:9 confers a continuing jurisdiction on the case outside of the underlying criminal matter. The statute does not condition the repayment of legal fees to the results of underlying criminal action. Rather, the statute expressly indicates that the court must issue a "separate" order of repayment. *See* RSA 604-A:9, I-b. Moreover, the statute identifies several areas where the court may take action after the criminal proceeding is

completed. Specifically, RSA 604-A:9, III confers upon “the court having originally appointed counsel” the ability to order the deduction of wages or salary from a “former defendant.” This language plainly contemplates that the criminal court will retain jurisdiction after the completion of the criminal case in order to issue these orders. Moreover, the statute grants OCC the right to petition for repayment within six years of the disposition of the matter or within six years of the release of a former defendant from prison. *See* RSA 604-A:9, V, VI. A similar provision in RSA 604-A:9, I-b also allows the State to petition for a new repayment order within six years of a finding of an inability to pay. These provisions demonstrate the legislature’s intent that the court retain jurisdiction over the issues of repayment long after the underlying criminal case is resolved.

This interpretation is bolstered by the relevant case law on the topic. In *State v. Haas*, this court upheld a court order on repayment which was issued after an order of dismissal of the criminal charge. *See State v. Haas* 155 N.H. 612. While the issue of jurisdiction was not raised in that matter, this court expressed no misgivings on the validity of an order issued after dismissal of the criminal charge. Moreover, other courts have expressly rejected this jurisdictional defense. In *Curry v. Wilson*, 853 S.W.2d 40 (Tex. Crim. App. 1993), the former criminal defendant sought to enjoin the county from collecting legal fees after his acquittal. The court rejected this jurisdiction argument, stating that “although a court may have ultimately decided the merits of a party’s claim, it does not lose it’s (sic) general jurisdiction to act until all of the issues which arise as a result of the initial action have been resolved.” *Id.* at 44. The United States Court of Appeals for the Seventh Circuit reached a similar conclusion in *United States v. Durka*, 490 F.2d 478 (1978), allowing the court to enter an order affecting the property rights of a defendant three months after the disposition and discharge of the defendant.

In this case, there remains an open order of repayment which the trial court acknowledges is binding on the former defendant. It follows based on the plain language of the statute and the relevant case law that the trial court retains jurisdiction over the defendant to issue all orders relevant to the litigation, including the order of repayment despite the acquittal of the defendant. As such, this case should be remanded to the trial court to take action on the State's Motion to Show Cause relating to Mr. Brawley's non-compliance with the repayment order.

II. THE TRIAL COURT ERRED BY RULING THAT THE NOTICE PROVISIONS OF RSA 604-A-9, I-c DID NOT APPLY AFTER THE DEFENDANT'S ACQUITTAL.

In finding that it no longer held jurisdiction over Mr. Brawley, the trial court concluded that OCC must seek a new summons and personally serve the defendant as this action had transformed into a civil judgment recovery action. App. 3. This ruling is directly contradictory to the language of RSA 604-A:9. That statute provides, in part, that:

In a case where counsel has been appointed, the defendant shall be required to notify the clerk of court and the office of cost containment of each change of mail address and actual street address. **Whenever** notice to the defendant is required, notice to the last mail address on file shall be deemed notice to and binding on the defendant.

RSA 604-A:9, I-c (emphasis added). The trial court acknowledged this provision but stated that the language "cannot apply after the court loses jurisdiction over the defendant by virtue of jury verdict of not guilty." App. 3. The trial court provided no statutory or case law to support this assertion.

As set forth at length above, there is no basis in the language of the statute to find that provisions of this chapter cease to be applicable after the acquittal of a defendant. This court has recognized in *State v. Haas* that the repayment obligations of a defendant survive the dismissal of the criminal charges. Conversely, there is strong evidence in the language of the statute to

support the position that the notice provision applies after the criminal matter is complete. The statute allows OCC to petition the court at any time six years after the issuance of a court order on re-payment, disposition of the case, or release of the former defendant from jail. These events, by their nature or timing, will occur after the criminal matter has been resolved. Moreover, the statute allows the court to impose wage garnishment on “former defendants.” This language manifests the intent of the legislature to impose the re-payment obligation and jurisdiction to enforce that obligation after the criminal matter has been resolved.

Additionally, the legislature included a specific notice provision in this statute which allows the OCC to “provide notice” by mailing to the last address reported by the defendant. Based on the plain language of the statute, this provision applies “whenever notice to the defendant is required.” When statutory terms are undefined, this court must ascribe to them their plain and ordinary meaning.” *Kenison v. Dubois*, 152 N.H. 448, 451 (2005). Plainly, the term “whenever” refers to any time when notice is required under the statute and is not defined relative to the disposition of the criminal matter. Additionally, the court’s interpretation of the statutory term “whenever” must be guided by the context in which the term appears. *Appeal of Town of Nottingham (N.H. Dep’t of Env’tl. Servs.)*, 153 N.H. 539, 554 (2006). In particular, the court’s “goal is to apply statutes in light of the legislature’s intent in enacting them, and in light of the policy sought to be advanced by the entire statutory scheme.” *State v. Whittey*, 149 N.H. 463, 467 (2003). In this statute, the term “whenever” in the notice section is in the context of statutory language permitting proceedings relating to “former defendants” and the statutory right to petition for repayment six years after disposition of cases or even the release of the defendant from prison. Based on the plain language of the statute, when read as a whole, this notice provision applies to proceedings both before and after the disposition of the criminal matter.

Accordingly, the trial court's ruling that the notice provisions of RSA 604-A:9 did not apply is in error.

If this court were to adopt the interpretation of the trial court, it would undermine the purpose of the statutory scheme. The clear intent of the legislature as manifested in this language is to empower OCC to collect repayment within the criminal docket. The statute requires the entry of a separate order of repayment and provides a timeframe substantially longer than the criminal matter to issue additional orders on repayment. Moreover, the statute grants the trial court the right to garnish wages when a former defendant has not paid his debt. Further, the legislature put the onus on the defendant owing the debt to be responsible for reporting his location, and refused to place the burden on OCC to effect service in the typical manner. Taken together this statutory scheme is clearly an attempt to make the repayment of indigent defense costs something more than a mere civil judgment to be chased like any other debt. Rather, it specifically created a scheme that eases the burden on the State in recovery of this money and places the primary responsibilities on the defendant to respond to proceedings relating to repayment of the action.

The trial court's conclusion that this matter is merely a regular civil action for recovery of a judgment undercuts the clear statutory purpose. Additionally, such a determination would place tremendous financial and manpower burdens on the State to track down former defendants and serve them in hand in order to re-gain jurisdiction. Such an outcome is not consistent with the terms of the statute or the public policy behind this scheme.

CONCLUSION

For the foregoing reasons, the State of New Hampshire, through its Department of Administrative Service, respectfully requests that this Court reverse the ruling of the trial court and remand this matter for further proceedings on the State's Motion to Show Cause.

The Department requests oral argument (15 minutes) to be presented by Assistant Attorney General John J. Conforti on behalf of the State of New Hampshire.

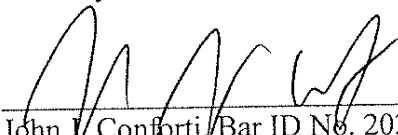
Respectfully submitted,

State of New Hampshire

By its attorneys,

Gordon J. MacDonald
Attorney General

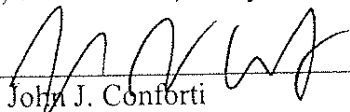
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Certificate of Service

I certify that two copies of the foregoing have, on this 22nd day of September, 2017, been sent via U.S. Mail, postage prepaid to John Brawley, 7 Briar Lane, Derry NH, 03038.



John J. Conforti

APPENDIX TABLE OF CONTENTS

TRIAL COURT ORDER DATED JUNE 15, 2017.....1

NOTIFICATION OF ELIGIBILITY, APPOINTMENT OF COUNSEL,
DATED SEPTEMBER 17, 2015 5

MOTION TO SHOW CAUSE, DATED DECEMBER 30, 20166

ADDRESS INFORMATION REQUEST7

NOTICE OF OCC REIMBURSEMENT HEARING FOR FEBRUARY 10, 2017...8

ARREST WARRANT, DATED FEBRUARY 15, 20179

WAIVER OF COURT APPEARANCE FOR PAYMENT OF FINE.....10

NOTICE OF OCC REIMBURSEMENT HEARING FOR JUNE 9, 2017.....11

STATE OF NEW HAMPSHIRE
SUPERIOR COURT

Rockingham, ss

STATE OF NEW HAMPSHIRE

v

JOHN BRAWLEY

218-2015-CR-900

ORDER

The matter before the court is a motion for a bench warrant that was filed by the N.H. Division of Administrative Services, Office of Cost Containment ("OCC"). For the reasons set forth below, the motion is DENIED.

I. Procedural History and Factual Background

Defendant John Brawley was charged in the Derry District Court Division of the Circuit Court with two counts of simple assault. He transferred the case to this court for a jury trial. He was then acquitted on both charges by a Superior Court jury.

Because Mr. Brawley was indigent, he was given a public defender to assist him at both the Circuit Court and the Superior Court levels. Pursuant to RSA 604-A:9, Mr. Brawley must repay the State \$453.75 for this service. This is, of course, far less by an order of magnitude than what it would have cost to retain competent counsel in a felony case. Additionally, Mr. Brawley may pay this amount over time, commensurate with his ability to pay. OCC acts as the State's collection agency.

OCC has filed a motion to show cause (Docket Document 20) alleging that Mr. Brawley did not comply with his payment obligations or provide any cause for his

noncompliance. The motion requested a show cause hearing. The motion also requested the issuance of a criminal arrest warrant with cash bail set in the amount of \$435 if Mr. Brawley did not appear for the hearing.

Notice of the hearing was sent by first class mail to Mr. Brawley at an address provided by OCC. Unsworn paperwork filed by OCC suggests that OCC verified that mail is delivered by the U.S. Post Office to this address. OCC did not, however, verify that Mr. Brawley presently receives mail at this address.

The court scheduled a show cause hearing June 9, 2017 and sent notice of the hearing to the address provided by OCC. Mr. Brawley did not appear for the hearing.

OCC now seeks the issuance of an arrest warrant. More particularly, OCC seeks to have Mr. Brawley arrested, taken into custody and jailed until either (a) he pays \$435.75 (i.e. the full amount of the debt) or (b) somebody who is not responsible for the debt posts this amount as bail, but with the understanding that the funds will be forfeited to OCC or (c) Mr. Brawley remains in jail for three days before being allowed to have a bail hearing.

II. Analysis

Mr. Brawley was unconditionally discharged from this case when he was acquitted by the jury. His debt to OCC is not a sanction for a criminal offense. It is a purely civil debt. Thus, Mr. Brawley is functionally a civil judgment debtor. Indeed, if OCC chose, it could have its repayment order entered as a civil judgment and enforced nationwide.

Generally, civil judgments may be enforced by writs of execution, motions for periodic payments and motions for contempt of periodic payment orders. When a

judgment creditor requests a periodic payment hearing, the creditor must serve the judgment debtor in-hand or by certified mail. Superior Court Rules 51(c). When a judgment creditor requests a contempt hearing to enforce a payment order, the court will require the judgment creditor to serve the judgment debtor in the same manner unless there have been recent proceedings in which the judgment debtor appeared. See Vermont National Bank v. Taylor, 122 N.H. 442 (1982) (holding that the use of an *ex parte* *capias* to initiate a civil contempt proceeding for failure to pay a judgment violates Part 1, Article 15 of the New Hampshire Constitution).

The court sees no reason why the same due process safeguards should not be required in this case. To be sure, RSA 604-A:9,1-c provides that:


In a case where counsel has been appointed, the defendant shall be required to notify the clerk of the court and the office of cost containment of each change of mail address and actual street address. Whenever notice to the defendant is required, notice to the last mail address on file shall be deemed notice to and binding on the defendant.

However, this statute cannot apply after the court loses jurisdiction over the defendant by virtue of jury verdict of not guilty.

This is a civil case and OCC must pursue civil remedies. It may do so under this docket number, but it must (a) request a summons for a particular hearing date and (b) either serve the defendant in-hand or (c) serve the defendant by certified mail. If the certified mail is returned unclaimed, the defendant must be served in-hand, as is required for post-judgment proceedings in all other civil cases. In either event, OCC must file a return of service by the time of the scheduled hearing.

The court does not reach the question of whether any of the bail conditions requested by OCC would have been consistent with Part 1, Articles 15 and 33 of the New Hampshire Constitution (relating to due process and excessive bail). The only purpose of bail for an OCC violation is to ensure the defendant's appearance for a show cause hearing. OCC requested bail in the full amount of the debt. This amount has no relationship to the amount of bail necessary to ensure the defendant's appearance. Further, OCC requested a bail condition that would require the bail to be paid to OCC even if it was posted by a family member or friend who had no obligation to pay the debt. Finally, OCC requested a three-day period of incarceration to see if the defendant could raise the full amount of the debt before he would be brought before the court. This suggests that the bail conditions may have been intended as a punitive means of collection rather than a means of assuring appearance. Cf. *Investigation of the Ferguson Police Department*, U.S. Department of Justice, Civil Rights Division (March 4, 2015), p. 3 (suggesting that a municipal court routinely violated the federal civil rights of defendants by "[m]ost strikingly . . . issu[ing] municipal arrest warrants not on the basis of public safety needs, but rather as a routine response to missed court appearances and required fine payments.").

June 15, 2017


Andrew R. Schulman
Presiding Justice

0004

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
SUPERIOR COURT

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NOTIFICATION OF ELIGIBILITY, APPOINTMENT OF COUNSEL
NOTIFICATION OF LIABILITY AND REPAYMENT ORDER (ADULT/CR)

Case Name: **State v. John T Brawley**
Case Number: **218-2015-CR-00900**
431-2014-CR-01749

Check if an Appeal
 Amended date: _____

Superior Court Case Number: _____ Date Superior Court affirmed appointment: _____

The Petition/Affidavit having been considered pursuant to the New Hampshire Code of Administrative Rules Chapter Adm. 1000 as adopted by the Department of Administrative Services, the Court finds:
The defendant is eligible for appointed counsel.

COUNSEL APPOINTMENT Check only one category

John T Brawley charged with a violation of the following:
Charge ID 1002983C Charge RSA: 631:2-A Charge Degree: Class A Misdemeanor
1002984C 631:2-A Class A Misdemeanor

Witness or Victim representation. Name of Witness or Victim _____

Other**: Probation Violation, Parole Revocation, etc. Specify _____
** To be checked when counsel is otherwise appointed to protect constitutional rights

Counsel appointed is: Public Defender. Name, address, phone number of attorney appointed to represent you:

Name:	Eliana Forciniti, ESQ	Phone Number:	603-778-0526
Address:	NH Public Defender 142 Portsmouth Avenue PO Box 679 Stratham NH 03885-0679		

Defendant is responsible for contacting Attorney. (Note: Liability begins with this appointment – not the trial)

Hearing is scheduled for Final Pretrial 12/4/15 8:30AM
Additional hearing is scheduled for Trial 12/14/15 9AM
Additional hearing is scheduled for

Defendant is detained on \$ bail at Choose from list _____

NOTICE TO THE APPLICANT: Pursuant to RSA 604-A:9, you are liable to reimburse the state for legal expenses based on the appointment of counsel. You are ordered to contact the Office of Cost Containment (OCC) located at State House Annex, Room 400, 25 Capitol Street, Concord, NH 03301, (603) 271-1436 within 5 days of this order to verify your address and make payment arrangements as follows:

MINIMUM liability for your legal expense \$ **412.50**. Pursuant to statute you may also be liable for other costs of representation and additional legal expenses at the end of your trial or hearing.

Your first payment due within five days of this order is \$ N/A. Unless you make other arrangements with OCC or they determine a different ability to pay, you are to pay this monthly until the minimum liability is repaid.

FAILURE TO COMPLY WITH THIS ORDER MAY RESULT IN THE ISSUANCE OF A CONTEMPT CITATION, THE DEDUCTION OF WAGES SUBJECT TO THE PROVISIONS OF RSA 152:12, OR BOTH.

Liable Party Current Information – VERIFY YOUR MAILING ADDRESS:

Name:	John T Brawley 7 Briar Ln	Phone Number: Home:	██████████	Work:	██████████
Address:	Derry NH 03038	DOB:	██████████	██████████	██████████

September 17, 2015
Date

/s/
Tina L. Nadeau, Chief Justice

Court ~~State~~ Appointed Counsel Defendant

0005

THE STATE OF NEW HAMPSHIRE
Department of Administrative Services
Office of Cost Containment

Rockingham County, SS

Superior Court

Case Number 15-CR-0900
State v. John Brawley

MOTION TO SHOW CAUSE

NOW COMES The State of New Hampshire, by the Department of Administrative services, Office of Cost Containment, and moves that the Honorable Court order the defendant to show cause why he should not be held in contempt for failure to comply with the Court's orders regarding attorney fees, plus all other approved costs of Court appointed representation and in support of this motion states:

1. On 9/17/2015 the Court found the Defendant liable for the costs of court appointed representation and ordered that he contact the Office of Cost Containment (OCC) to determine his ability to repay the State and make payment arrangements. It also ordered the Defendant to keep the Court and OCC informed of his current mailing address.
2. OCC records show that the balance presently owing is \$453.75.
3. The Defendant has not complied with the Court's order regarding payment, nor has he shown OCC any cause for noncompliance.
4. OCC has made every reasonable effort to induce the defendant to comply without success. Mail sent to the defendant's last known mailing address; 7 BRIAR LN DERRY NH 03038, has not been returned by the USPS.

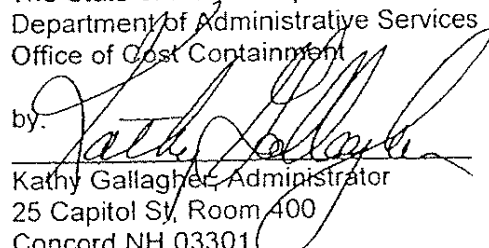
WHEREFORE, the State respectfully requests that the court:

- A. Schedule a hearing for the Defendant to show cause why he should not be held in contempt of the Court's orders.
- B. On failure to appear at any hearing, issue a Warrant for the Defendant's arrest with Cash Bail set at \$453.75.
- C. Grant such further relief as justice may allow.

Respectfully Submitted,

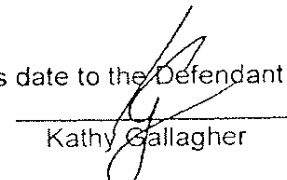
The State of New Hampshire
Department of Administrative Services
Office of Cost Containment

by:


Kathy Gallagher, Administrator
25 Capitol St, Room 400
Concord NH 03301
(603) 271-1436

12/30/2016

I hereby certify that a copy of this Notice was mailed this date to the Defendant postage prepaid.


Kathy Gallagher

0006



State of New Hampshire

DEPARTMENT OF ADMINISTRATIVE SERVICES
OFFICE OF COST CONTAINMENT
State House Annex - Room 400
25 Capitol Street
Concord, New Hampshire 03301

POSTMASTER
PO BOX 9998
DERRY NH 03038

Date: November 8, 2016
Agency Code: 218/15-CR-0900

Address Information Request

Please furnish this agency with the new address, if available, for the following individual or verify whether the address given below is one at which mail for this individual is currently being delivered. If the following address is a post office box, please furnish the street address as recorded on the box holder's application form.

Name: Brawley, John
Last Known Address: 7 BRIAR LN
DERRY NH 03038

I certify that the address information for this individual is required for the performance of this agency's official duties.

Kathy Gallagher (handwritten signature)

Kathy Gallagher
Administrator
(603) 271-1415

FOR POST OFFICE USE ONLY

[X] MAIL IS DELIVERED TO ADDRESS GIVEN

[] NOT KNOWN AT ADDRESS GIVEN

[] MOVED, LEFT NO FORWARDING ADDRESS

[] NO SUCH ADDRESS

[] OTHER (SPECIFY):

NEW ADDRESS

BOXHOLDER'S STREET ADDRESS

Postmark/Date Stamp

NOV 8 2016 (stamp)

OFFICE OF COST CONTAINMENT
25 CAPITOL ST ROOM 400
CONCORD NH 03301-6324

OR FAX 603-271-7099

0007

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
SUPERIOR COURT

Rockingham Superior Court
Rockingham Cty Courthouse/PO Box 1258
Kingston NH 03848-1258

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

NOTICE OF
OCC REIMBURSEMENT HEARING

FILE COPY

Case Name: State v. John T Brawley
Case Number: 218-2015-CR-00900 431-2014-CR-01749

The above referenced case(s) has/have been scheduled for:

Hrg on OCC Viol of Court Order

Date: February 10, 2017

Time: 1:00 PM

Time Allotted: 15 Minutes

Location: Room: See List at Court -- Rockingham
Superior
10 Route 125
Brentwood, NH 03833

NOTICE TO DEFENDANT: At this hearing, the Court will determine your present ability to reimburse the State for legal fees you incurred in this case. If you pay the balance in full or reach a written agreement with the Office of Cost Containment (OCC) to pay this obligation in installments, the hearing may be cancelled. You can speak with an OCC representative by calling 603-271-1436.

FAILURE OF DEFENDANT TO APPEAR, NOTIFY THE COURT OF AN AGREEMENT WITH OCC OR PROPERLY OBTAIN A CONTINUANCE FROM THE COURT MAY RESULT IN AN ORDER FOR YOUR ARREST.

Multiple cases are scheduled during this session. Please notify the court immediately if the hearing is expected to last longer than the allotted time.

If you will need an interpreter or other accommodations for this hearing, please contact the court immediately.

Please be advised (and/or advise clients, witnesses, and others) that it is a Class B felony to carry a firearm or other deadly weapon as defined in RSA 625.11, V in a courtroom or area used by a court.

BY ORDER OF THE COURT

January 05, 2017

Maureen F. O'Neil
Clerk of Court

(834)

C: Office of Cost Containment; John T Brawley

FILE

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
SUPERIOR COURT

Rockingham Superior Court
Rockingham Cty Courthouse/PO Box 1258
Kingston NH 03848-1258

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

ARREST WARRANT

Case Name: **State v. John T Brawley**
Case Number: **218-2015-CR-00900**

SCN: _____

Arrest warrant issued for: **John T Brawley**
Address: **7 Briar Ln Derry NH 03038**

DOB: **[REDACTED]**

Personal Identifiers on File: (Provide in Criminal Cases Only)	Gender: Male	Height: 5 Ft. 8 In.	Weight: 160 Lbs.
	Race: White	Hair: Blond or Strawberry	Eyes: Green
THE ABOVE IDENTIFIERS ARE FOR LAW ENFORCEMENT USE ONLY			

An arrest warrant for the above-named individual has been issued for the following reason(s):
Failed to appear for a hearing on February 10, 2017

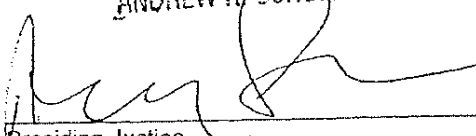
The following bail order is made:

- The above-named individual is held without bail or bond. Bail will be set by the Court upon apprehension.
- Bail is set in the amount of \$ 50.00 Cash Cash/Surety Personal Recognizance
- The defendant shall be released upon payment of \$ 50.00, which SHALL MAY be forfeited without a further hearing to:
 - Office of Cost Containment Department of Corrections Court Judgment Creditor
- The Defendant posted recognizance and was notified to appear. A \$50.00 default fee is imposed.
- Should the defendant fail to appear within 45 days of today's date, bail previously posted will be forfeited to the State. If corporate surety is forfeited, the Court shall notify the NH Bureau of Securities Regulation.
- Other bail conditions: If the defendant fails to post bail after 7 days, the defendant shall be brought before the court for a bail hearing.

ANDREW R. SCHULMAN

SO ORDERED.

2-15-17
Date


Presiding Justice

RECEIVED
ROCKINGHAM
SUPERIOR COURT

The State of New Hampshire

2017 MAR 15 A 8:40

WAIVER OF COURT APPEARANCE FOR PAYMENT OF FINE

NH 0080933

I hereby waive my right to appear before the ROCKINGHAM SUPERIOR COURT
District Court on a warrant for my arrest for nonpayment of fines or fees owed to the
State of New Hampshire.

I understand that the money paid may not satisfy the full obligation owed to the
court and that the court may contact me to satisfy any outstanding balances, or fees, or
to schedule an additional hearing on the issue if necessary. I also understand that there
may be a delay of several days between when the money is paid by me and the time
that the court issues a notice clearing the outstanding default. I further understand that I
may come into court during business hours to claim the default receipt or I may wait for
the court to mail the receipt to me.

I understand that I am not authorized to drive until the Department of Safety
formally reinstates my driving privileges and that it is my obligation to contact the
Department of Safety at (603) 271-3101 to determine what may be necessary.

Finally, I attest that my correct mailing address is listed on this form and that if
my address changes between now and when I receive a receipt from the court that it is
my obligation to notify the court of this change in address.

Date: 3/9/17

[Signature]
Defendant's signature

Amount Paid: 50.00

JOHN T BRADLEY
Print defendant's name

Docket Number(s) 218-2015-CR-009900 03/24/1991
Date of Birth

SCW: 807790

7 BRIAR LN D
Defendant's street address

[Signature]
Bail Commissioner

DETRY, NH 03038
City / State / Zip Code



7-203-A/R
F: 40.00
E: 6:15 PM

0040

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
SUPERIOR COURT

Rockingham Superior Court
Rockingham Cty Courthouse/PO Box 1258
Kingston NH 03848-1258

Telephone: 1-855-212-1234
TTY/TDD Relay: (800) 735-2964
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NOTICE OF
OCC REIMBURSEMENT HEARING

FILE COPY

Case Name: State v. John T Brawley
Case Number: 218-2015-CR-00900 431-2014-CR-01749

The above referenced case(s) has/have been scheduled for:

Hrg on OCC Viol of Court Order

Date: June 09, 2017

Time: 1:00 PM

Time Allotted: 15 Minutes

Location: Room: See List at Court -- Rockingham
Superior
10 Route 125
Brentwood, NH 03833

NOTICE TO DEFENDANT: At this hearing, the Court will determine your present ability to reimburse the State for legal fees you incurred in this case. If you pay the balance in full or reach a written agreement with the Office of Cost Containment (OCC) to pay this obligation in installments, the hearing may be cancelled. You can speak with an OCC representative by calling 603-271-1436.

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Please be advised (and/or advise clients, witnesses, and others) that it is a Class B felony to carry a firearm or other deadly weapon as defined in RSA 625.11, V in a courtroom or area used by a court.

BY ORDER OF THE COURT

March 27, 2017

Maureen F. O'Neil
Clerk of Court

(845)

C: Office of Cost Containment; John T Brawley