

THE STATE OF NEW HAMPSHIRE  
SUPREME COURT

No. 2017-0443

State of New Hampshire

v.

Joel Martin

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

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BRIEF FOR THE DEFENDANT

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## QUESTIONS PRESENTED

1. Whether the court erred by failing to inquire whether Martin intended to invoke his constitutional right to represent himself.

Issue preserved by Martin's motion, A1-A2, the hearing, M 1-9, and the court's oral and written orders. M 9; A1\*.

2. Whether the court erred by failing to inquire how Martin intended to proceed if the court granted his motion to fire retained counsel.

Issue preserved by Martin's motion to withdraw, A1-A2, the hearing, M 1-9, and the court's oral and written orders. M 9; A1.

3. Whether the court erred by refusing to instruct the jury that it may consider evidence of intoxication in determining the reliability of an eyewitness identification.

Issue preserved by Martin's request for jury instruction, A17-A29, the hearing on the matter, T 963-64, the State's objection, T 963-64, and the court's ruling. T 963-64.

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\* Citations to the record are as follows:

"A" refers to the Appendix to this brief;

"M" refers to the transcript of the motion to withdraw hearing held on February 21, 2017;

"S" refers to the transcript of the sentencing hearing on June 28, 2017;

"T" refers to the transcript of trial held from February 27, 2017 to March 8, 2017;

## STATEMENT OF THE CASE

A Hillsborough County – North – grand jury indicted Joel Martin on two alternative counts of second degree murder, two counts of second degree assault, and one count of felon in possession. A3-A7. The indictments alleged that on May 9, 2015, Martin killed D.R. with a knife, assaulted J.S. and A.B. with a knife, and possessed or controlled that knife having been previously convicted of a qualifying felony. Id. Martin waived his right to a jury trial on the charge of felon in possession. T 8-9.

At trial's conclusion, the jury found Martin guilty of murder and the two assault charges, and the court (Brown, J.) found Martin guilty of felon in possession. T 1085-89; A22-A30. The court sentenced Martin to forty years to life on the murder conviction, ten to thirty years on each second degree assault conviction, one of which runs consecutively to the murder sentence, and five to ten years on the felon in possession conviction concurrent with the murder sentence. S 45-49; A22-A30.

## STATEMENT OF THE FACTS

On Friday, May 8, 2015, Joel Martin went to the Drynk nightclub in Manchester. T 899. Cameron Bernazzani, the security supervisor at the nightclub, met Martin at the entrance and checked him in as a VIP. Id. Martin went in and began socializing. T 250.

The nightclub, located across the street from the Southern New Hampshire University (SNHU) Arena, was swarming with a “sea of people.” T 475, 722. The club was “extremely crowded,” T 475, and busier than usual because SNHU was holding its graduation the following day. T 190. The club was dimly lit and strobe lights pierced the darkness. T 247, 771, 865, 922. “All sorts of lights [were] go[ing] on,” T 922, in the club. T 247, 771, 865. Two disc jockeys blared music through competing sound systems. T 247-48, 476. Much of the club was monitored by security cameras, but the “camera doesn’t really do it justice of how . . . flashy and chaotic it actually” was inside. T 247.

That night, three men stood together in a corner of the club. T 326. Martin spoke briefly with the men and a physical fight broke out. T 332, 334, 454. It is not known what precipitated the fight or how many people were involved. T 334, 454. Aleksander Dobrovic and Trevor Kapila, off-duty Drynk employees, were among those who broke up the altercation. T 335, 455. Dobrovic, who was celebrating his approaching college graduation, had consumed alcohol to the degree that Bernazzani would not have “allow[ed] Dobrovic] to drive [his] vehicle home.” T 911. See T 450, 478. Dobrovic knew



Martin and testified that he saw Martin leaving this altercation with a knife. T 457.

After the altercation, Kapila spoke with the men involved in the fight. T 337. Kapila testified that, while speaking with them, he saw Martin, who he knew by appearance but not by name, walk forward with a pocket knife in his hand and stab one of the men. T 338, 381. The man, identified as D.R., suffered an injury to his chest and buttock. T 687-693, 698-700. D.R. said that he had been stabbed, and collapsed to the floor. T 341, 343. D.R. died later that night from the chest wound. T 695-696.

Kapila yelled at the bartender to call 911. T 342. Kapila testified that Martin disappeared from view with a security guard. T 344. Dobrovic saw this second fight from a distance, but his view was obstructed, and he did not see who was involved. T 458.

After the stabbing, A.B., a security guard, became involved in an altercation, but testified he could not remember how it began. T 754. A.B. placed a man in a bear hug with the man's head buried in A.B.'s torso. T 754, 791. A.B. described the man only as non-white. T 754. "He could have been black, Spanish, Haitian. I have no idea." Id. A.B. felt a stab in his upper leg and disengaged with the unidentified man. T 756. A.B. later went to the hospital where he received stitches. T 758. The police took his shirt, pants, and shoes while he was at the hospital. T 760. The State Laboratory later examined several stains from A.B.'s clothing and concluded that Martin contributed DNA to blood stains on the front of A.B.'s jeans and the back of his shirt. T 653-55.

After A.B. released the man, J.S., a fellow security guard, grabbed the man by the hand. T 758, 790-91. J.S. felt what he believed to be a knife give way and heard the man scream. T 791, 793. J.S. was poked in his palm and finger, and later received medical treatment. T 793, 795-96. J.S. put the man in a bear hug, his face pressed against the man's back. T 791-92. J.S. saw the man's back, but not his face. T 793. J.S. described the man only as a "dark-skinned person." Id. The Manchester Police Department seized J.S.'s bloody clothing, but did not test those items at the State Laboratory. T 293-94.

Bernazzani came to the back of the club and saw J.S. bringing a man out of the club. T 901. Bernazzani was familiar with Martin from prior visits to the club. T 908. Although he identified Martin as the person he checked into the club that night and as the defendant in court, Bernazzani did not believe that Martin was the person in J.S.'s grasp. T 908.

J.S. moved the man to the door, T 793, while Bernazzani began moving people out of the the club. T 907. As people became aware of what happened in the club, patrons began "yelling and screaming." T 112. A bystander approached Officer Ian Fleming of the Manchester Police Department, who was parked outside the club, and told him someone had been stabbed. T 107-08. Fleming and other officers went to the club. T 282, 583, 732, 837. Amidst the chaos, officers attended to D.R., conducted crowd control, and spoke briefly with people in the club. T 116-17, 585, 733, 762, 929, 930-33.

Police found Martin walking through a neighboring gas station parking lot. T 738. Police and emergency medical personnel spoke with Martin, and he

was hospitalized for treatment of lacerations to his neck and finger. T 570-72, 741-42. At the scene, Martin did not explain to the EMT what caused his injuries. T 543. At the hospital, Martin told police that he did not want to speak about the fight. T 587-88. Officers took Martin's clothing into evidence at the hospital. T 605. The State Laboratory later examined three stains from Martin's clothing and identified Martin as the source of the stain's DNA. T 644-48. The Lab did not find D.R.'s DNA on Martin's clothing. T 656-57.

## SUMMARY OF THE ARGUMENT

1. The court erred when it did not inform Martin of his right to self-representation during a colloquy about his options for representation. Once the court denied Martin's motion to fire his counsel and Martin asked whether he "ha[d] to go to trial" with retained counsel, the court had a duty to ascertain whether Martin wished to proceed *pro se*. The court erred in failing to do so.

2. The court erred when it did not ask Martin how he would proceed should the court grant Martin's request to fire retained counsel. Martin's constitutional right to counsel of choice included the right to fire retained counsel. In addressing a motion to fire retained counsel, the court must ask the defendant how he intends to proceed upon counsel's firing. By denying Martin's motion without such an inquiry, the court violated Martin's constitutional right to choice of counsel.

3. The court erred in refusing to instruct the jury that it may consider evidence of impairment from alcohol consumption in judging the reliability of eyewitness identification testimony. The court instructed the jury that it may consider certain factors in evaluating the reliability of eyewitness testimony. Martin asked the court to include alcohol impairment in that list given evidence that a witness identifying Martin had been under the influence of alcohol. In refusing to do so, the court erred.

I. THE COURT ERRED BY FAILING TO INQUIRE WHETHER MARTIN INTENDED TO INVOKE HIS RIGHT TO SELF-REPRESENTATION.

In mid-May, 2015, the circuit court arraigned Martin, concluded that he was eligible for appointed counsel, and assigned the New Hampshire Public Defender to represent him. A8-A10. On June 3, 2015, Attorney Paul Garrity, a private attorney, entered an appearance on Martin's behalf. A11-A13. Within a week, the Public Defender withdrew. A14-A15. On January 23, 2017, Attorney Justin Shepherd, another private attorney, entered an appearance as co-counsel. A16.

On February 18, 2017, Martin met with Garrity and requested that he and Shepherd withdraw from his case. A1. On February 21, counsel moved to withdraw. A1-A2. The motion sought no additional relief. Id.

The court held a hearing on Martin's motion the same day. M 1-10. The State and Garrity briefly addressed the court. M 2-3. The court then asked Martin to explain his dissatisfaction with counsel. M 3. Martin expressed concern about the timing of his counsel's visits, M 4-5, expressed displeasure with counsel's case preparation, M 4-6, and explained that he had not received timely or complete discovery. M 3. He argued that he "deserve[d] to be represented zealously in every aspect and [his attorneys] ha[d] not done that." M 6. Garrity addressed the court and explained his efforts to effectively represent Martin. M 6-7.

The court denied Martin's motion to remove his lawyers, stating, "[w]e're on the eve of trial and I haven't heard anything that meets the level that would draw me to the conclusion that there hasn't been effective assistance of

counsel, so we're going forward." M 7. After the court announced this ruling, Martin asked the court what options were available to him: "So I have to -- I have to go to trial with Paul Garrity is [that] what you're telling me, sir?" M 7-8. The court responded that it was not going to remove counsel "on the eve of trial based upon what" Martin presented at the hearing, noted it "does not take continuances, particularly a week before trial," affirmed its belief in the quality of counsel's work, M 8 (concluding that Martin's defense has been "competently [and] diligently pursued, [and] so motion to withdraw denied."), and sent Martin "downstairs." M 7-8. Attorneys Garrity and Shepherd represented Martin at trial and sentencing.

The Sixth Amendment provides that "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defence." U.S. Const. amend. VI. The New Hampshire Constitution guarantees that "every subject shall have a right to . . . be fully heard in his defense, by himself, and counsel," and the right to have "counsel at the expense of the state if need is shown; this right he is at liberty to waive, but only after the matter has been thoroughly explained by the court." N.H. Const. pt. I, art. 15; see generally, N.H. Const. Convention Jour. 177-82 (1964).

Both Part I, Article 15 and the Sixth Amendment guarantee a criminal defendant the right to self-representation. State v. Ayer, 150 N.H. 14, 25 (2003); Faretta v. California, 422 U.S. 806, 832-836 (1975).

To invoke the right to self-representation, a defendant need not "recite some talismanic formula." Indeed, such a requirement would contradict the right it was designed to protect as a defendant's constitutional

right of self-representation would then be conditioned upon his/her knowledge of the precise language needed to assert it. However, it is generally incumbent upon the courts to elicit that elevated degree of clarity through a detailed inquiry. That is, the triggering statement in a defendant's attempt to waive his right to counsel need not be punctilious; rather, the dialogue between the court and the defendant must *result in* a clear and unequivocal statement.

State v. Sweeney, 151 N.H. 666, 670 (2005) (citations, quotes, and brackets omitted) (emphasis in original). If the defendant makes a “triggering statement” and the court fails to inquire into his interest in self-representation, a defendant’s constitutional rights have been violated. Id. at 672. “Such an error is not subject to harmless error review and requires a new trial.” Id.

In Sweeney, the defendant was charged with aggravated felonious sexual assault. Id. at 668. Before the jury was sworn, the defendant asked to address the court. Id. The court discouraged him from speaking, noting that the defendant’s appointed attorney was “very, very competent.” Id. at 668, 672. Sweeney asked the court, “*Well, sir, do I have a right to fire my lawyer?*” Id. at 669 (emphasis in original). The court responded, “*At this point, no. We are on the verge of starting the jury trial.*” Id. (emphasis in original). Sweeney informed the court that he did not “believe” he was “getting a fair trial because of” his attorney’s representation, but the court “disagree[d]” and ended the exchange. Id.

On appeal, the State argued that the defendant’s question did not clearly and timely assert his right to self-representation. Id. at 670-71. This Court found that Sweeney’s request to discharge appointed counsel was “sufficient to

trigger the court’s duty to inquire further,” and the “trial court had the duty to eliminate the ambiguity the question presented.” Id. (citation omitted). See also State v. Towle, 162 N.H. 799, 813 (2011) (Lynn, J., concurring) (“Sweeney clearly held that the duty of inquiry applied *regardless* of whether the defendant’s ‘[D]o I have the right to fire my lawyer?’ remark was an expression of dissatisfaction with counsel or a request to proceed *pro se.*”) (emphasis in original). As Sweeney makes clear, the court cannot avoid its obligation to inquire into the defendant’s right to self-representation because of linguistic imprecision. 151 N.H. at 670-71; Towle, 162 N.H. at 812 (Lynn, J. concurring). The Court rejected the State’s untimeliness argument because “a request to proceed *pro se* is timely if made before the jury is empaneled.” Sweeney, 151 N.H. at 671.

This Sweeney Court concluded that, although courts need not inform *all* defendants of their right to proceed *pro se*, the trial court had “the duty to eliminate the ambiguity of the question” Sweeney posed by “asking the defendant *why* he wanted to fire his counsel and *how* he wished to proceed if permitted to do so.” Id. (second emphasis added). The Court noted that Sweeney, “having been told that he had no right to fire his attorney . . . could have assumed that he had no choice but to continue with appointed counsel.” Id. at 672. Under the law, though, Sweeney had another choice – the constitutional right to proceed *pro se*. This Court found that the trial court violated Sweeney’s constitutional rights by not clarifying which rights he was attempting to exercise. Id.



Trial courts may be inclined not to inform defendants of their constitutional rights because they prefer defendants to have counsel:

At the same time, however, courts must be vigilant to avoid adopting procedures for invoking the right of self-representation that have the effect of relegating it to a “disfavored” status in the constitutional hierarchy . . . . [P]aternalistic instincts and/or considerations of judicial convenience must not lead us to countenance a sort of “don’t ask — won’t tell” policy regarding self-representation, under which courts are tempted to ignore all but the clearest expressions of a desire to proceed *pro se* in the hopes that, by not asking follow-up questions, the defendant will fail to provide the court with sufficient clarification of his wishes as to require the court to grant his request of self-representation. Such an approach would seriously undermine the respect for human dignity and individual autonomy that lies at the heart of Faretta.

Towle, 162 N.H. at 814 (Lynn, J. concurring). The court’s preferences, however, do not justify sidestepping this required inquiry.

In the present case, Martin asked to fire his retained counsel prior to the empaneling of the jury. Martin (“I have to go to trial with Paul Garrity, is [that] what you are telling me, sir?”) like Sweeney, (“Well, sir, do I have a right to fire my attorney?”) asked the court to explain his rights moving forward. Although the court allowed Martin to explain his dissatisfaction with counsel, Martin’s concluding question created the same ambiguity that was present in Sweeney. The court did not inform Martin of his options nor determine whether Martin wished to proceed *pro se*.

Martin asked the court what options were available to him, and the court’s answers misled him to believe that the Constitution afforded “no choice but to continue with” present counsel. Sweeney, 151 N.H. at 672. Where the

court's statements obscure or mislead, the trial court has not done "its duty to eliminate the ambiguity of the questions presented." Id. at 671. By failing to clarify the ambiguity raised by Martin's question, the court committed reversible error.

II. THE COURT ERRED BY DENYING MARTIN'S MOTION TO FIRE RETAINED COUNSEL WITHOUT ASKING HOW HE WISHED TO PROCEED.

The Sixth Amendment right to counsel includes two distinct rights: a right to adequate representation, and a right to choose one's own counsel. United States v. Gonzalez-Lopez, 548 U.S. 140, 146-48 (2006). The intention of the first right is to ensure a fair trial; the intention of the second right "is not that a trial be fair, but that a particular guarantee of fairness be provided – to wit, the accused be defended by the counsel he believes to be best." Id. at 146. The latter right, "[t]he right to select counsel of one's choice [is] regarded as the root meaning" of the Sixth Amendment. Id. at 147. Accord Powell v. Alabama, 287 U.S. 45 (1932).

In Gonzalez-Lopez, the Court explained why the right to counsel of one's choosing is Constitutionally protected:

Different attorneys will pursue different strategies with regard to investigation and discovery, development of the theory of defense, selection of the jury, presentation of the witnesses, and style of witness examination and jury argument. And the choice of attorney will affect whether and on what terms the defendant cooperates with the prosecution, plea bargains, or decides instead to go to trial. In light of these myriad aspects of representation, the erroneous denial of counsel bears directly on the framework within which the trial proceeds, or indeed on whether it proceeds at all.

548 U.S. at 150 (quotation and citation omitted). The defendant's right to counsel of his choice is violated at the time his choice is denied, and thus his right is abridged "regardless of the quality of representation" he ultimately receives at trial. Id. at 148-49.

Although the right to retain counsel of one's choosing is the bedrock of the Sixth Amendment, it is not without limits. Wheat v. United States, 486 U.S. 153, 158 (1988). A defendant's right to select his counsel may give way to the "trial court's interest in the ethical, fair, and orderly administration of justice." State v. Gonzalez, \_\_\_ N.H. \_\_\_, slip op. at 6 (decided Oct. 27, 2017). See also Wheat, 486 U.S. at 158 ("Federal courts have an independent interest in ensuring that criminal trials are conducted within the ethical standards of the profession and that legal proceedings appear fair to all who observe them."). Courts have found that concerns for the administration of justice limit a defendant from retaining an advocate who is not a member of the bar, an advocate who declines to represent him, an advocate with a conflict of interest, or an advocate whose participation would interfere with the demands of the court calendar. Wheat, 486 U.S. at 159; Gonzalez-Lopez, 548 U.S. at 152.

A defendant's desire to fire retained counsel implicates the right to counsel of choice. Gonzalez-Lopez, 548 U.S. at 147. See United States v. Brown, 785 F.3d 1337, 1344-45 (9th Cir. 2015) ("[W]hether the defendant may *discharge* the attorney whom he retained . . . implicate[s] the Sixth Amendment right to counsel of choice," rather the right to effective assistance of counsel). The right to choice of counsel includes the right to hire *and* fire retained counsel. United States v. Rivera-Corona, 618 F.3d 976, 980 (9th Cir. 2010). "A corollary of the right to hire is the right to fire: The right to choose counsel is incomplete if it does not include the right to discharge counsel that one no

longer chooses.” Ronquillo, 404 P.3d 264, 270 (Colo. 2017) (quotation omitted).<sup>1</sup>

The prevailing constitutional rule is that a defendant seeking to fire retained counsel invokes the right to choice-of-counsel and therefore need not demonstrate constitutionally inadequate performance. Ronquillo, 404 P.3d at 267, 269 (joining the “lopsided split of national authority,” in favor of this approach and concluding that it was “aware of no other court” other than one federal Circuit to publish a contrary opinion). See Rivera-Corona, 618 F.3d at 983; Brown, 785 F.3d at 1348 (“[The defendant’s] *reasons* for wanting to discharge his retained lawyer were not properly the court’s concern at all. He had the right to “fire his retained . . . lawyer *for any reason or for no reason.*”) (citation and brackets omitted) United States v. Jiminez-Antunez, 820 F.3d 1267, 1271 (11th Cir. 2016) (“Because a defendant who moves to dismiss his retained counsel maintains his right to counsel of choice, a district court cannot require the defendant show good cause.”); People v. Ortiz, 800 P.2d 547, 555 (Cal. 1990) (“[T]he trial court erred by requiring defendant to demonstrate

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<sup>1</sup> Defendants represented by retained counsel enjoy a right to effective assistance of counsel *and* a right to an attorney of their choosing. Cuyler v. Sullivan, 446 U.S. 335, 344 (1985) (applying effective assistance standard to private counsel as well as court appointed counsel); Gonzalez-Lopez, 548 U.S. at 147-48. Defendants represented by appointed counsel enjoy a constitutional right to effective assistance of counsel, but not a right to an attorney of their choice. Caplin & Drysdale, Chartered v. United States, 491 U.S. 617, 624 (1989). Because a defendant represented by appointed counsel has a right to effective assistance, but not counsel of his choosing, a defendant seeking replacement of appointed counsel must show that his counsel is providing a constitutionally inadequate defense. State v. Moussa, 164 N.H. 108, 114 (2012) (the standard for examining motions to substitute appointed counsel includes “whether the conflict between the defendant and his counsel was so great that it . . . prevent[ed] an adequate defense.”). See also Rivera-Corona, 618 F.3d at 979 (attempts to replace appointed counsel are governed by a test intended to “determine whether the attorney-client conflict is such that it impedes the adequate representation that the Sixth Amendment guarantees to all defendants”). A defendant seeking to fire retained counsel asserts a different right.

the incompetence of [his retained attorneys] before allowing him to discharge them); People v. Abernathy, 926 N.E.2d 435, 444 (Ill. App. Ct. 2010) (adopting the rationale from Ortiz); Dixon v. Owens, 865 P.2d 1250, 1252 (Okla. Crim. App. 1993) (same); State v. Barber, 206 P.3d 1223, 1235 (Utah Ct. App. 2009) (same). But see United States v. Mota-Santana, 391 F.3d 42 (1st Cir. 2004) (defendant seeking to replace retained counsel with appointed counsel show good cause for that substitution).

As a defendant represented by retained counsel need not show cause to fire his counsel, the court's inquiry must instead focus on how the defendant wishes to proceed after firing counsel. Jiminez-Antunez, 820 F.3d at 1272 (“[B]efore granting a motion to dismiss retained counsel, a district court must determine that the criminal defendant either will be represented by counsel, or has made a knowing and voluntary waiver of the right to counsel.”). Where trial is fast approaching and removal of counsel would interfere with the administration of justice, the court may limit the defendant to two options: (1) proceeding *pro se* with an appropriate waiver of counsel, or (2) continuing with existing counsel. See United States v. Gallop, 838 F.2d 105, 109-10 (4th Cir. 1988) (where the defendant is “trying to obstruct the orderly procedure of the court,” the court “can insist that the defendant choose between continuing representation by his existing counsel and appearing *pro se*.”); United States v. Padilla, 819 F.2d 952, 956 (10th Cir. 1987) (concluding, where a motion to withdraw was filed for purpose of delay, “the choice given defendant between continuing with retained counsel or proceeding *pro se* was constitutionally

permissible”); see, e.g., Moussa, 164 N.H. at 112 (“After hearing from the defendant, the court stated: ‘Well, here’s where we are. [I]f you don’t want [your attorney] to represent you, I’m not going to force it on you, but I am not going to continue the case either, you’re going to represent yourself. If you want to do that, you can.’”).

When presented with a motion to fire retained counsel, the court cannot, as the trial court did here, limit the analysis to the adequacy of counsel’s performance. Rather, the court must determine how a defendant seeking to fire retained counsel would proceed if his motion were granted. If substitute counsel’s need for a continuance would impair the orderly administration of justice, the court must inquire whether the defendant intends to proceed *pro se* or with existing counsel. The court appears to have assumed, without discussion or inquiry, that Martin would not proceed *pro se* if permitted to fire his attorney.

If the appearance of new counsel would not impair the orderly administration of justice, the court must inquire how the defendant intends to proceed: *pro se*, with original counsel, or with new counsel. In this situation, an indigent defendant may fire retained counsel and use appointed counsel. See Jiminez-Antunez, 820 F.3d at 1271 (citing Brown, 785 F.3d at 1337, for the conclusion “that when a defendant wishes to discharge retained counsel and substitute appointed counsel, the right to counsel of one’s choice is implicated.”) (bracket and quotation omitted); see also Ortiz, 800 P.2d at 555; Rivera-Corona, 618 F.3d at 981; Ronquillo, 404 P.3d at 270-71.

Here, the court did not ask Martin what he would do if the court allowed him to fire retained counsel. In so doing, the court appears to have assumed, without discussion or inquiry, that Martin (a) did not want appointed counsel; (b) was not entitled to the appointed counsel; or (c) was not entitled to new counsel because changing attorneys would interrupt the trial schedule.

At the initiation of his case, Martin qualified for and was represented by two attorneys from the New Hampshire Public Defender’s Office. A8-A10, A14, A15. In considering Martin’s motion, the court should have inquired into the availability of his public defenders, their familiarity with his case, and their ability to try the case on short notice.<sup>2</sup> Martin may have been sufficiently disillusioned with retained counsel’s advocacy that he felt his original public defenders—operating with several weeks familiarity and a week of preparation—would more effectively represent him than retained counsel.

Dismissing Martin’s request to fire his attorney without ascertaining Martin’s preferences as to what would follow, violated his right to choice-of-counsel. As this error was structural, the Court must reverse. Gonzalez-Lopez, 548 U.S. at 150 (“We have little trouble concluding that erroneous deprivation of the right to counsel of choice, with consequences that are necessarily

---

<sup>2</sup> Brown is instructive on this point. In Brown, the defendant was found in possession of 900 child pornography files and charged with advertising, transporting, receiving, and possessing child pornography. 785 F.3d at 1340. He moved to discharge his retained counsel less than 20 days prior to trial and the parties were heard on the issue “on the eve of trial.” Id. at 1341. An attorney from the Federal Public Defender’s Office appeared at the motion hearing in case the court appointed that office. Id. at 1343. After hearing from the defendant and his counsel, the court denied the motion and refused to discharge counsel. Id. at 1342. The Ninth Circuit, which ultimately reversed, was critical of the trial court’s failure to “ascertain how long the newly appointed attorney would likely need to prepare for trial.” Id. at 1349.



unquantifiable and indeterminate, unquestionably qualifies as structural error.”) (quotations omitted).

III. THE COURT ERRED IN REFUSING TO INSTRUCT THE JURY THAT IT MAY CONSIDER EVIDENCE OF INTOXICATION IN EVALUATING THE RELIABILITY OF EYEWITNESS TESTIMONY.

Martin requested that the court instruct the jury how to evaluate eyewitness identification testimony as follows:

The value of identification testimony depends on the opportunity the witness had to observe the person who committed the crime at the time of the crime and to make a reliable identification later. In appraising the identification testimony of a witness, you should consider the following:

1. Did the witness have the capacity and an adequate opportunity to observe the person in question at the time of the crime? In determining this, you may consider such factors as:

a. The length of time available for the observation;

b. The distance between the witness and the person observed;

c. The lighting conditions;

d. The witness's degree of attention to the person observed;

e. The accuracy of any prior description of the alleged perpetrator;

f. Whether the witness had an occasion to see or know the person identified in the past;

*g. Whether, at the time of the observation, the witness was under the influence of alcohol and, if so, to what degree.*

A14-A21 (emphasis added). Martin argued that an instruction that omits paragraph (g) does “not fully inform[] the jury on which . . . issues they can take into account such as impairment.” T 963. He noted that “hearing it from the [c]ourt” via an instruction differed from hearing it from counsel during

argument. Id. The State objected to the instruction, saying that Martin could argue the point in closing. T 963-64. The court denied Martin’s requested instruction on intoxication and omitted paragraph (g) from its instructions. T 964, 1062-63. In so doing, the court erred.

“The purpose of the trial court’s charge is to state and explain to the jury, in clear and intelligible language, the rules of law applicable to the case.” State v. Mueller, 166 N.H. 65, 68 (2014). In reviewing jury instructions, this Court “evaluate[s] allegations of error by interpreting the disputed instructions in their entirety, as a reasonable juror would have understood them, and in light of all the evidence in the case.” Id. In general, jury instructions are “within the sound discretion of the trial court” and are reviewed for an unsustainable exercise of discretion. State v. Sprague, 166 N.H. 29, 33 (2014). “To show that the trial court’s decision is not sustainable, the defendant must demonstrate that the court’s ruling was clearly untenable or unreasonable to the prejudice of his case.” Id.

In State v. Burke, the trial court refused to instruct the jury on the circumstances to consider when evaluating the reliability of eyewitness identification. 122 N.H. 565, 571 (1982). Although this Court affirmed that ruling, it viewed with “grave concern the failure to give specific and detailed instructions on identification” . . . where identification of the defendant is at issue. Id. (quoting United States v. Dodge, 538 F.2d 770, 784 (8th Cir. 1976), cert. denied, Alvarado v. United States, 429 U.S. 1099 (1977)). This Court “suggest[ed]” that courts be “guided by” a more detailed identification

instruction provided in United States v. Telfaire, 469 F.2d 552 (D.C. Cir. 1972). Burke, 122 N.H. at 571.

Although the instruction in Burke did not inform jurors of what they should consider in evaluating eyewitness evidence, it did not misinform jurors or limit juror consideration of relevant factors. By not informing jurors of *any* surrounding circumstances worthy of consideration, the parties were free to argue *all* reasonably relevant circumstances on equal footing. Martin's case differs. Here, the court provided jurors with a list of circumstances to consider, but omitted the circumstance – alcohol impairment – that the defense argued undermined the identification's reliability.

The law recognizes that alcohol may impair mental functioning. See, e.g., RSA 626:4 (acknowledging that intoxication, although not a defense, may be relevant to negate an element of an offense); State v. Caldrein, 115 N.H. 390, 392 (1975) (“the jury may consider whether intoxication could prevent the formation of the requisite intent.”). The court's instruction did not. The State acknowledged alcohol consumption was a relevant factor in this case, agreeing that Martin could argue impairment in his closing, but objected to its inclusion in the instruction. T 963-64.

Jurors must accept the law as set forth by the court. See T 1056 (the court instructed jurors that “[i]f the lawyers have stated the law differently from the law as I explain it to you in these instructions, then you must follow these instructions and ignore the statements of the lawyers.”). When the court provided a list of factors, it told jurors that the law considers the enumerated

items to be the most pertinent, if not the only, considerations. Accordingly, a reasonable juror could conclude that the court, and thus the law, regarded the impact of intoxication as less important than the listed factors. The absence of a catch-all factor tends to corroborate this interpretation. Cf. State v. Gribble, 165 N.H. 1, 29-32 (2013) (affirming an instruction with a list of factors that informed jurors they “may consider all of these things, some of them, or none of them, or whatever else you think is pertinent to the issue.”).

The instruction directed jurors away from considering an eyewitness’s level of intoxication in evaluating the reliability of his identification. The court’s denial of Martin’s instruction was unreasonable. Furthermore, misidentification was Martin’s defense. T 978-992. The State’s case hinged largely on the identification of Martin by two eyewitnesses. T 1000-05. The court’s instruction as given prejudiced Martin’s case, and thus the Court must reverse his convictions.

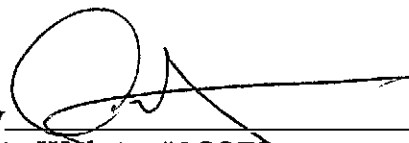
CONCLUSION

WHEREFORE, Joel Martin respectfully requests that this Court vacate his convictions.

Undersigned counsel requests 15 minutes of oral argument.

The appealed decision relating to the first and second questions is in writing and is appended to the brief. The appealed decision relating to the third question was not in writing and, therefore, is not appended to the brief.

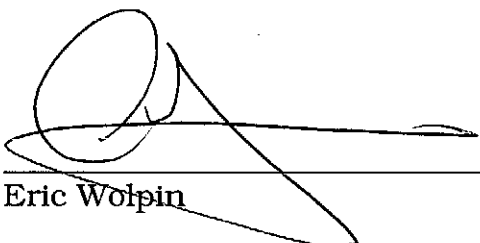
Respectfully submitted,

By   
Eric Wolpin #18372  
Assistant 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

  
Eric Wolpin

DATED: March 7, 2018

# A P P E N D I X

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STATE

V.

JOEL MARTIN

**MOTION TO WITHDRAW**

NOW COMES Attorneys Paul Garrity and Justin Shepherd, attorneys for the accused, Joel Martin, and move this Court for Authorization to Withdraw from further representation of the accused.

In support of this Motion, Attorney Garrity and Attorney Shepherd state as follows”


1. The above attorneys represented the accused, Joel Martin.
2. On February 18, 2017 Attorney Garrity met with the accused at the New Hampshire State Prison. During this meeting, the accused requested that Attorney Garrity and Attorney Shepherd withdraw from his case.
3. On February 18, 2017 Attorney Garrity notified the State that he would be filing a Motion to Withdraw on February 21, 2017.

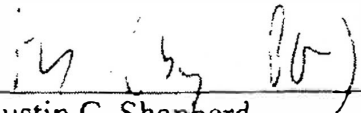
WHEREFORE, Attorney Garrity and Attorney Shepherd respectfully request that his Court grant their motion and authorize them to withdraw from further representation of the accused.

*after Hearing - Motion  
to withdraw denied  
KCR  
2/21/17*

Respectfully submitted  
Joel Martin  
By his Attorneys.

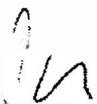
Date: February 21, 2017

  
\_\_\_\_\_  
Paul J. Garrity  
Bar No. 905  
14 Londonderry Road  
Londonderry, NH 03053  
603-434-4106

  
\_\_\_\_\_  
Justin C. Shepherd  
Bar No. 14611  
Shepherd & Osborne, PLLC  
351 Main Street  
Nashua, NH 03060  
603-595-5525

**CERTIFICATE OF SERVICE**

I, Paul J. Garrity, herein certify that on this 21<sup>st</sup> day of February, 2017, a copy of the within Motion was mailed, postage pre-paid, to the Attorney General Office, John Kennedy and John McCormack, and Joel Martin.

  
\_\_\_\_\_  
Paul J. Garrity

THE STATE OF NEW HAMPSHIRE  
INDICTMENT

HILLSBOROUGH, SS.  
Northern District

NOVEMBER TERM, 2015

INSC #216 2015 CR 690  
CHG ID# 1076075C

At the Superior Court, holden at Manchester, within and for the County of HILLSBOROUGH  
aforesaid, on the 19<sup>th</sup> day of November in the year of our Lord two thousand and fifteen

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

**JOEL MARTIN**  
(DOB: 11/04/1988)

of Salem, New Hampshire, in the State of New Hampshire, on or about May 9, 2015, at  
Manchester in the County of Hillsborough aforesaid, with force and arms, did commit the crime  
of

**SECOND-DEGREE MURDER.**  
(RSA 630:1-b, I(b))

in that, Joel Martin did recklessly cause the death of Darrell Robinson under circumstances  
manifesting an extreme indifference to the value of human life, by stabbing him with a knife.

aid acts being contrary to the form of the Statute, in such case made and provided, and against  
the peace and dignity of the State.

Jury Verdict Guilty  
Date 3-8-17  
Judge Brown  
Reporter Corcoran  
Clerk Cyr

[Signature]  
John J. Kennedy, NH Bar #19557  
Assistant Attorney General

is a true bill.

[Signature] 11/19/15

erson

HILLSBOROUGH, SS.  
Northern District

NOVEMBER TERM, 2015

HNSC #216 2015 CR 650  
CHG ID# 116034/C

At the Superior Court, holden at Manchester, within and for the County of HILLSBOROUGH aforesaid, on the 19<sup>th</sup> day of November in the year of our Lord two thousand and fifteen

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

**JOEL MARTIN**  
(DOB: 11/04/1988)


of Salem, New Hampshire, in the State of New Hampshire, on or about May 9, 2015, at Manchester in the County of Hillsborough aforesaid, with force and arms, did commit the crime of

**SECOND-DEGREE MURDER**  
(RSA 630:1-b, I(a))


in that, Joel Martin did knowingly cause the death of Darrell Robinson, by stabbing him with a knife.

Said acts being contrary to the form of the Statute, in such case made and provided, and against the peace and dignity of the State.

Jury Verdict Guilty  
Date 3-8-17  
Judge Brown  
Monitor Coccoran  
Clerk Cyr

  
John J. Kennedy, NH Bar #19557  
Assistant Attorney General

This is a true bill.

 11/19/15

Foreperson

HILLBOROUGH, SS.  
Northern District

NOVEMBER TERM, 2015

FILE # 2015 CR 650  
FILING # 11003420

At the Superior Court, holden at Manchester, within and for the County of Hillsborough aforesaid, on the 19<sup>th</sup> day of November in the year of our Lord two thousand and fifteen

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

JOEL MARTIN  
(DOB: 11/04/1988)


of Salem, New Hampshire, in the State of New Hampshire, on or about May 9, 2015, at Manchester in the County of Hillsborough aforesaid, with force and arms, did commit the crime of

**SECOND-DEGREE ASSAULT**  
(RSA 631:2, 1(b))

in that, Joel Martin did recklessly cause bodily injury to James Santiago by means of a deadly weapon, to wit, by stabbing or cutting him with a knife.

Said acts being contrary to the form of the Statute, in such case made and provided, and against the peace and dignity of the State.

Jury Verdict: Guilty  
Date: 3-8-17  
Judge: Brown  
Monitor: Corcoran  
Clerk: Cyr

  
John J. Kennedy, NH Bar #19657  
Assistant Attorney General

This is a true bill.

 11/19/15

Foreperson

INDICTMENT SHIRE

HILLSBOROUGH, SS.  
Northern District

NOVEMBER TERM, 2015

HNSC #216 2015 CR 450  
CHG ID# 1160343c

At the Superior Court, holden at Manchester, within and for the County of HILLSBOROUGH aforesaid, on the 19<sup>th</sup> day of November in the year of our Lord two thousand and fifteen

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

**JOEL MARTIN**  
(DOB: 11/04/1988)


of Salem, New Hampshire, in the State of New Hampshire, on or about May 9, 2015, at Manchester in the County of Hillsborough aforesaid, with force and arms, did commit the crime of

**SECOND-DEGREE ASSAULT**  
(RSA 631:2, I(b))

in that, Joel Martin did recklessly cause bodily injury to Alex Blaisdell by means of a deadly weapon, to wit, by stabbing him with a knife.

Said acts being contrary to the form of the Statute, in such case made and provided, and against the peace and dignity of the State.

Jury Verdict Guilty  
Date 3-8-17  
Judge Brown  
Monitor Carcera  
Clerk Cy

  
John J. Kennedy, NH Bar #19567  
Assistant Attorney General

This is a true bill.

  
R. Esch

Foreperson

THE STATE OF NEW HAMPSHIRE  
INDICTMENT

HILLSBOROUGH, SS.  
Northern District

NOVEMBER TERM, 2016

HNSC #210 2015 CR 650  
CHG ID# 1302290C

At the Superior Court, holden at Manchester, within and for the County of HILLSBOROUGH aforesaid, on the 18<sup>th</sup> day of November in the year of our Lord two thousand and sixteen

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

JOEL MARTIN  
(DOB: 11/04/1988)

of Salem, New Hampshire, in the State of New Hampshire, on or about May 9, <sup>2015</sup>~~2014~~, at Manchester in the County of Hillsborough aforesaid, with force and arms, did commit the crime of

FELON IN POSSESSION OF A DEADLY WEAPON  
(RSA 159:3; 625:11, V)

in that, Joel Martin did knowingly have in his possession or under his control a knife, a deadly weapon as defined by RSA 625:11, V, having previously been convicted on or about June 16, 2008, of any one of three counts of Sale of a Controlled Drug, a felony under RSA 318-B, in the Hillsborough County Superior Court, Northern Judicial District, and/or having previously been convicted on or about July 26, 2007, of Armed Robbery, a felony against the person of another, in Hillsborough County Superior Court, Northern Judicial District, and/or having previously been convicted on or about September 22, 2008, of any one of four counts of Robbery, a felony against the person of another, in the Rockingham County Superior Court.

Said acts being contrary to the form of the Statute, in such case made and provided, and against the peace and dignity of the State.

  
John J. Kennedy  
Assistant Attorney General

This is a true bill.

  
Foreperson 11-18-16

Judge \_\_\_\_\_  
Verdict Guilty  
Date 3-8-17  
Judge Brown  
Monitor Corcoran  
Clerk Gyr

THE STATE OF NEW HAMPSHIRE  
JUDICIAL BRANCH  
NH CIRCUIT COURT

5/27

9th Circuit - District Division - Manchester  
35 Amherst Street  
Manchester NH 03101

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

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

Case Name: **State v. Joel Martin**  
Case Number: **456-2015-CR-02703**

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**

- Joel Martin charged with a violation of the following:  
Charge ID 1076075C Charge RSA: 630:1-Bb Charge Degree: Class A Felony
- 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:

<b>Name:</b>	NH Public Defender, Hillsborough County-North	<b>Phone Number:</b>	603-669-7888
<b>Address:</b>	20 Merrimack Street Manchester NH 03101-2298		

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

Hearing is scheduled for **MAY 27, 2015 @ 1:15 PM**  
Additional hearing is scheduled for \_\_\_\_\_  
Additional hearing is scheduled for \_\_\_\_\_

RECEIVED  
MAY 12 2015  
By \_\_\_\_\_

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 \$ **20,000.00**. 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 \$ **965.00**. 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.**

Liabe Party Current Information - VERIFY YOUR MAILING ADDRESS:

<b>Name:</b> Joel Martin	<b>Phone Number:</b>
<b>Address:</b> 11 Mary Lane Salem NH 03079	<b>DOB:</b> 11/04/1988

May 12, 2015  
Date

/s/  
Edwin W. Kelly, Administrative Judge

- Court
- O.C.C.
- Appointed Counsel
- Defendant



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

RECEIVED

MAY 12 2015

MANCHESTER DISTRICT DIVISION

Court Name: 9th Circuit - District Division - Manchester

Case Name: State v Joel Martin

Case Number: 456-15-CR-2703  
(if known)

ENTRY OF NOT GUILTY PLEA AND WAIVER OF ARRAIGNMENT

I am the defendant in the above-entitled criminal matter(s) and certify that:

1.  I am represented by counsel. (required if charged with class A misdemeanor or felony)

OR

I am not represented by counsel. (class B misdemeanor or violation ONLY)

2. I have received a copy of the criminal complaint(s) charging me with

Second Degree Murder  
in the above entitled cases(s).

3. I have read the complaint(s) and discussed it (them) with my attorney. (if represented by an attorney)

4.  My attorney has advised me of the nature of the crime(s) charged and the punishment for the alleged offense(s) as set forth by statute.

OR

I understand the substance of the charge(s) and am aware of the punishment provided.

5. My name is correctly stated in the criminal complaint(s)  Yes  No

If "No" please specify:

11 Mary Lane Salem N.H.

6. My home address is:

11 Mary Lane Salem N.H.

7. My present mailing address is:

8. My telephone is: (603) 261-1048

My date of birth is: 11/04/1988

9. My New Hampshire attorney is: Kyle Robidas and Eric Raymond

10. In view of the foregoing and with full knowledge of my rights, I am waiving arraignment and entering (a) plea(s) of Not Guilty to the complaint(s). I also waive my opportunity to be heard regarding bail at the arraignment subject to my right to request a hearing regarding bail in the future.

5/12/15

Date

Joel Martin  
Defendant

I certify that I have discussed the complaint(s) with the defendant on 5/12/15 and believe that the defendant understands the nature of the charge(s) in the complaint(s) and the punishment therefore, which I have also explained to the defendant.

5/12/15

Date

Kyle Robidas  
Attorney for the Defendant

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

Court Name: 9th Circuit-District Division-Manchester

Case Name: State v. Joel Martin

Case Number: 456-2015-CR-2703  
(if known)

APPEARANCE/WITHDRAWAL

APPEARANCE

Type of appearance

Appearance

Select One:

As Counsel for:

Joel Martin

c/o Hillsbrough County House of Correction  
445 Willow Street  
Manchester, NH 03103

I will represent myself (*self-represented*)

WITHDRAWAL

As Counsel for \_\_\_\_\_

Type of Representation:

Appearance:

Notice of withdrawal was sent to my client(s) on: \_\_\_\_\_ at the following address:

A motion to withdraw is being filed.

I certify that on this date I provided a copy of this document to the **Office of the Attorney**

**General** by:  Hand-Delivery OR  US Mail OR  Email (only when there is prior agreement of the parties to use this method of service).

May 15, 2015

New Hampshire Public Defender  
15 Fourth Street, Suite 3, PO Box 85  
Dover, NH 03820  
(603) 749-5540

\_\_\_\_\_  
Melissa Lynn Davis, Esq.

Email: mdavis@nhpd.org

NH Bar ID # 17098



**PAUL J. GARRITY**  
Attorney At Law

14 Londonderry Road  
Londonderry, NH 03053  
(603)434-4106  
(603)434-9356  
FAX: (603)437-6472

755 East Broadway  
South Boston, MA 02127  
(617)268-2999

June 3, 2015

Clerk  
Hillsborough Superior Court Northern District  
300 Chestnut Street  
Manchester, NH 03101

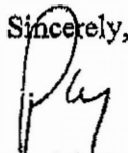
RE: State v. Joel L. Martin

Dear Sir/Madam:

Enclosed please find my Appearance for filing with regard to the above entitled matter.

Thank you for your attention to this matter.

Sincerely,

  
Paul J. Garrity

PJG/ers

Enc.

Cc: Hillsborough County Attorney's Office  
NH Public Defender's Office  
Joel Martin  
*ATTORNEY GENERAL'S OFFICE*

THE STATE OF NEW HAMPSHIRE  
APPEARANCE/WITHDRAWAL

HILLSBOROUGH, S.S.

SUPERIOR COURT NORTHERN DISTRICT

\*Bound-over from 9<sup>th</sup> Circuit/District Division/Manchester, Docket No. 456-2015-CR-2703

STATE

V.

JOEL LAMAR MARTIN

Returnable on the first Tuesday of

APPEARANCE

WITHDRAWAL

Please enter my appearance as:

Please withdraw my appearance as:

  x   counsel for:

       counsel for:

Joel Lamar Martin

    Pro se

Notice of withdrawal sent  
to my client(s) on  
at the following address:

I hereby certify that duplicates of this notice were:

    Delivered  
  X   Mailed

to

Hillsborough County Attorney's Office  
Attorney Eric Raymond, NH Public Defender's Office  
Attorney Melissa David, NH Public Defender's Office

June 3, 2015

Signed: \_\_\_\_\_

Paul J. Garrity  
14 Londonderry Road

Londonderry, NH 03053  
(603)434-4106  
Bar No. 905

Court Name: Hillsborough Superior Court, Northern District  
Case Name: State v. Joel Martin  
Case Number: Bound-over from 9<sup>th</sup> Circuit District Division, Manchester, Docket #456-2015-  
CR-2703  
(if known)

**APPEARANCE/WITHDRAWAL**

**APPEARANCE**

Type of appearance

Appearance

Select One:

As Counsel for:

I will represent myself (*self-represented*)

**WITHDRAWAL**

As Counsel for: Joel Martin

Type of Representation:

Appearance:

Notice of withdrawal was sent to my client(s) on: June 9, 2015 at the following address:

c/o Hillsborough County House of Correction  
445 Willow Street  
Manchester, NH 03103

A motion to withdraw is being filed.

I certify that on this date I provided a copy of this document to the Office of the Attorney General;  
Peter J. Garrity, Esq. by:  Hand-Delivery OR  US Mail OR  Email (only when there is  
prior agreement of the parties to use this method of service).

June 9, 2015  
New Hampshire Public Defender  
20 Merrimack Street  
Manchester, NH 03101

  
Eric L. Raymond, Esq.

Email  
NH Bar ID # 17748

Court Name: Hillsborough Superior Court, Northern District  
Case Name: State v. Joel Martin  
Case Number: Bound-over from 9<sup>th</sup> Circuit District Division, Manchester, Docket #456-2015-  
CR-2703  
(if known)

### APPEARANCE/WITHDRAWAL

#### APPEARANCE

Type of appearance

Appearance

Select One:

As Counsel for:

I will represent myself (*self-represented*)

#### WITHDRAWAL

As Counsel for: Joel Martin

Type of Representation:

Appearance:

Notice of withdrawal was sent to my client(s) on: June 9, 2015 at the following address:

c/o Hillsborough County House of Correction  
445 Willow Street  
Manchester, NH 03103

A motion to withdraw is being filed.

I certify that on this date I provided a copy of this document to the Office of the Attorney General;  
Peter J. Garrity, Esq. by:  Hand-Delivery OR  US Mail OR  Email (only when there is  
prior agreement of the parties to use this method of service).

June 9, 2015

New Hampshire Public Defender  
15 Fourth Street, Suite 3, P.O. Box 85  
Dover, NH 03820  
(603) 749-5640



\_\_\_\_\_  
Melissa Lynn Davis, Esq.

Email: mdavis@nhpd.org

NH Bar ID # 17098

STATE OF NEW HAMPSHIRE  
APPEARANCE/WITHDRAWAL

HILLSBOROUGH, SS  
January 16, 2017

HILLSBOROUGH COUNTY SUPERIOR COURT-  
NORTHERN DISTRICT

STATE OF NEW HAMPSHIRE

V.

JOEL MARTIN

Docket No. 216-15-CR-650

---

Please enter my:

APPEARANCE as CO-Counsel to:  
Counsel to:

WITHDRAWAL as

JOEL MARTIN

---

I hereby certify that duplicates of this notice were:

Delivered to: \_\_\_\_\_

Mailed to:

Attorney John Kennedy, NH Attorney General

January 16, 2017

Signed: \_\_\_\_\_

  
Justin C. Shepherd, Esq. #14611  
Shepherd & Osborne, PLLC  
351 Main Street  
Nashua, NH 03060  
(603) 595-5525



HILLSBOROUGH, S.S.

SUPERIOR COURT NORTHERN DISTRICT  
DOCKET NO. 216-2015-CR-00650

STATE OF NEW HAMPSHIRE

V.

JOEL MARTIN

JURY INSTRUCTIONS

In this case, one of the issues is the identification of the defendant as the perpetrator of the crime. The State has the burden of proving identity beyond a reasonable doubt. It is not essential that a witness be free from doubt as to the correctness of his or her identification. However, you, the jury, must be satisfied beyond a reasonable doubt of the accuracy of the identification of the defendant before you may convict him. If you are not convinced beyond a reasonable doubt that the defendant was the person who committed the crime, you must find the defendant not guilty.

The value of identification testimony depends on the opportunity the witness had to observe the person who committed the crime at the time of the crime and to make a reliable identification later. In appraising the identification testimony of a witness, you should consider the following:

1. Did the witness have the capacity and an adequate opportunity to observe the person in question at the time of the crime? In determining this, you may consider such factors as:
  - a. The length of time available for the observation;

- of the lighting conditions;
- d. The witness's degree of attention to the person observed;
  - e. The accuracy of any prior description of the alleged perpetrator;
  - f. Whether the witness had an occasion to see or know the person identified in the past;
  - g. Whether, at the time of the observation, the witness was under the influence of alcohol and, if so, to what degree.
2. Was the identification made by the witness after the crime the product of his or her own recollection?
  3. Finally, you must consider the credibility of each identification witness in the same way as any other witness, including whether you consider the witness to be truthful and whether the witness had the capacity and opportunity to make a reliable observation on the matter covered in the identification testimony. Even if you are convinced that the witness believes his or her identification is correct, you still must consider the possibility that the witness made a mistake in the identification. A witness may honestly believe he or she saw a person, but perceive or remember the event inaccurately. You must decide whether the witness's identification is not only truthful, but accurate. I again emphasize that the State has the burden of proving identity beyond a reasonable doubt. If, after examining the evidence, you have a reasonable doubt as to the accuracy of the identification, you must find the defendant not guilty.

Under our Constitutions, all defendants in criminal cases are presumed to be innocent until proven guilty beyond a reasonable doubt. The burden of proving guilt rests entirely on the State. The defendant does not have to prove his innocence. The defendant enters this courtroom as an innocent person, and you must consider him to be an innocent person unless and until the State convinces you beyond a reasonable doubt that he is guilty of every element of the alleged offense. If, after all the evidence and arguments, you have a reasonable doubt as to whether the defendant has committed any one of more of the elements of an offense charged, then you must find the defendant not guilty as to that offense.

### CAUSATION

Thus, it is necessary for the State to prove that the defendant's act(s) caused Mr. Robinson's death and the injuries to Mr. Blaisdell and Mr. Santiago. In determining whether causation has been proved, keep in mind that the defendant's conduct need not be the sole cause of Mr. Robinson's death and Mr. Blaisdell and Mr. Santiago's injuries. If you find beyond a *Doubt* reasonable that the defendant's conduct was a substantial factor in bringing about the result, the element of causation is proven, even though other factors may have contributed to the result. Factors other than the defendant's conduct that may have contributed to Mr. Robinson's death and Mr. Blaisdell and Mr. Santiago's injuries will break the causal link and defeat the element of causation only when you find that they were the sole substantial cause of Mr. Robinson's death and Mr. Blaisdell and Mr. Santiago's injuries. Keep in mind that it is the State's burden to prove both that the defendant's conduct was a substantial factor and that other conduct was not the sole substantial cause of the death and injuries.

**LESS SERIOUS INCLUDED OFFENSES (SPECIAL INSTRUCTION)**

If you decide that the defendant is not guilty of the crime of Second Degree Murder, or if after reasonable efforts you are unable to reach a verdict on the charge of Second Degree Murder, then you should go on to consider and decide whether he/she is guilty of a similar, but less serious, crime.

A similar, but less serious, crime is different from a more serious crime in one of two ways: either it requires a less serious physical act, or it requires a less serious mental intent.

Here, if you decide that the defendant is not guilty of Second Degree Murder, or if after reasonable efforts you are unable to reach a verdict on Second Degree Murder, then you should consider whether the State has proven beyond a reasonable doubt that he/she is guilty of the similar, but less serious crime of Manslaughter.

**RSA 630:2,1(a) Manslaughter (Provocation)**

The defendant is charged with the crime of manslaughter. The definition of this crime has two parts, or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove:

1. The defendant caused the death of another; and
2. The defendant acted under the influence of extreme mental or emotional disturbance caused by extreme provocations; and
3. The way in which the defendant caused the death would otherwise constitute murder.

Certain words in this definition need to be further defined:

In deciding whether the defendant acted under the influence of extreme mental or emotional disturbance caused by extreme provocation you must find that the provocation was

provision under the law, you must find that the acts of the victim were unlawful; lawful acts, even if they involved physical violence, are not recognized in the law as sufficient provocation to kill another.

### RSA 630:2,1(b) Manslaughter (Reckless)

The defendant is charged with the crime of manslaughter. The definition of this crime has to parts, or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant caused the death of another; and
2. The defendant acted recklessly.

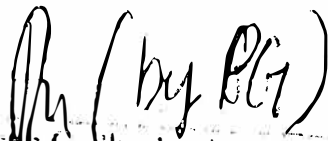
This is the definition of the crime of manslaughter.

Respectfully submitted  
Joel Martin,  
By his Attorneys.



Paul J. Garrity  
Bar No. 905  
14 Londonderry Road  
Londonderry, NH 03053  
603-434-4106

Date: March 7, 2017



Justin C. Shepherd  
Bar No. 14611  
Shepherd & Osborne, PLLC  
351 Main Street

THE STATE OF NEW HAMPSHIRE  
JUDICIAL BRANCH  
SUPERIOR COURT

Hillsborough Superior Court Northern District  
300 Chestnut Street  
Manchester NH 03101

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

RETURN FROM SUPERIOR COURT – STATE PRISON SENTENCE

Case Name: State v. Joel Martin  
Case Number: 216-2015-CR-00650

Name: Joel Martin, NHSP #79163 PO Box 14 Concord NH 03302  
DOB: November 04, 1988

Charging document: Indictment

Offense: 2nd Degree Murder  
Disposition: Guilty/Chargeable By: Jury  
Charge ID: 1160341C  
RSA: 630:1-b  
Date of Offense: May 09, 2015

A finding of GUILTY/CHARGEABLE is entered.

Conviction: Felony

Sentence: see attached

June 28, 2017  
Date

Hon. Kenneth C. Brown  
Presiding Justice

W. Michael Scanlon  
Clerk of Court

MITTIMUS

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

Attest: W. Michael Scanlon  
Clerk of Court

SHERIFF'S RETURN

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

7/14/17  
Date

D. Grant  
Sheriff

J-ONE:  State Police  DMV

C:  Dept. of Corrections  Offender Records  Sheriff  Office of Cost Containment  
 Prosecutor John J. Kennedy, ESQ, Stacey Kaelin, ESQ, John McCormack, ESQ, Peter Hickey, Esq.  
 Defendant  Defense Attorney Paul J. Garrity, ESQ  
 Sentence Review Board  Sex Offender Registry  Other Jailer  Justin Shepherd, ESQ, Co-Counsel  
Dist Div. \_\_\_\_\_

125

THE STATE OF NEW HAMPSHIRE  
JUDICIAL BRANCH

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

Court Name: Hillsborough County Superior Court, Northern District  
Case Name: State of New Hampshire v. Joel Martin  
Case Number: 216-2015-CR-00650 Charge ID Number: 1160341C  
(if known)

STATE PRISON SENTENCE

Plea/Verdict: Guilty	Clerk: W. Michael Scanlon / JLC
Crime: Second Degree Murder, RSA 630:1-b, 1(a)	Date of Crime: May 9, 2015
Monitor: JF	Judge: Kenneth C. Brown

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.
- X 1. The defendant is sentenced to the New Hampshire State Prison for not more than life, nor less than 40 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.
- X 2. This sentence is to be served as follows: X Stand committed X Commencing forthwith.
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))
- X 7. Pretrial confinement credit: 46 days.
8. The Court recommends to the Department of Corrections:
- Drug and alcohol treatment and counseling
  - Sexual offender program
  - Sentence to be served at House of Corrections
  - \_\_\_\_\_

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

**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 \$ \$6,767 to \$1,767 to Robinson Family, \$5,500 to Victim's Compensation Fund  
 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: \_\_\_\_\_
  - X 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.
  - X H. Law enforcement agencies may X destroy the evidence X return evidence to its rightful owner.
  - I. The defendant and the State have waived sentence review in writing or on the record.
  - X J. The defendant is ordered to be of good behavior and comply with all the terms of this sentence.
  - K. Other: \_\_\_\_\_

Date

6/28/17

K. J. [Signature]  
Presiding Justice



THE STATE  
JUDICIAL BRANCH  
SUPERIOR COURT

Hillsborough Superior Court Northern District  
300 Chestnut Street  
Manchester NH 03101

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

RETURN FROM SUPERIOR COURT – STATE PRISON SENTENCE

Case Name: State v. Joel Martin  
Case Number: 216-2015-CR-00650  
Name: Joel Martin, NHSP #79163 PO Box 14 Concord NH 03302  
DOB: November 04, 1988

Charging document: Indictment

Offense:	Charge ID:	RSA:	Date of Offense:
2nd Degree Assault	1160342C	631:2,l(b)	May 09, 2015
Disposition: Guilty/Chargeable By: Jury			

A finding of GUILTY/CHARGEABLE is entered.

Conviction: Felony

Sentence: see attached

June 28, 2017  
Date

Hon. Kenneth C. Brown  
Presiding Justice

W. Michael Scanlon  
Clerk of Court

MITTIMUS

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

Attest: \_\_\_\_\_  
Clerk of Court

SHERIFF'S RETURN

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

\_\_\_\_\_  
Date

\_\_\_\_\_  
Sheriff

J-ONE:  State Police  DMV

C:  Dept. of Corrections  Offender Records  Sheriff  Office of Cost Containment  
 Prosecutor John J. Kennedy, ESQ, Stacey Kaellin, ESQ, John McCormack, ESQ, Peter Hickley, Esq.  
 Defendant  Defense Attorney Paul J. Garrity, ESQ  
 Sentence Review Board  Sex Offender Registry  Other Jailer  Justin Shepherd, ESQ, Co-Counsel  
Dist Div. \_\_\_\_\_

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

Court Name: Hillsborough County Superior Court, Northern District  
Case Name: State of New Hampshire v. Joel Martin  
Case Number: 216-2015-CR-00650 Charge ID Number: 1160342C  
(if known)

STATE PRISON SENTENCE

Plea/Verdict: Guilty Clerk: V. Michael Scanlon / JL e  
Crime: Second Degree Assault, RSA 631:2 Date of Crime: 1 May 9, 2015  
Monitor: JF Judge: Kenneth C. Brown

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.
- X 1. The defendant is sentenced to the New Hampshire State Prison for not more than 30 years nor less than 10 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.
- X 2. This sentence is to be served as follows: X Stand committed  Commencing forthwith.
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.
- X 6. The sentence is X consecutive to 1160341C  
(Charge ID Number(s))  
 concurrent with \_\_\_\_\_  
(Charge ID Number(s))
7. Pretrial confinement credit: \_\_\_\_\_
8. The Court recommends to the Department of Corrections:  
 Drug and alcohol treatment and counseling  
 Sexual offender program  
 Sentence to be served at House of Corrections  
 \_\_\_\_\_

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

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: \_\_\_\_\_
  - X 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.
  - X H. Law enforcement agencies may X destroy the evidence X return evidence to its rightful owner.
  - I. The defendant and the State have waived sentence review in writing or on the record.
  - X J. The defendant is ordered to be of good behavior and comply with all the terms of this sentence.
  - K. Other: \_\_\_\_\_

6/28/17

Date

Presiding Justice



THE STATE OF NEW HAMPSHIRE  
JUDICIAL BRANCH  
SUPERIOR COURT

Hillsborough Superior Court Northern District  
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RETURN FROM SUPERIOR COURT – STATE PRISON SENTENCE

Case Name: State v. Joel Martin  
Case Number: 216-2015-CR-00650

Name: Joel Martin, NHSP #79163 PO Box 14 Concord NH 03302  
DOB: November 04, 1988

Charging document: Indictment

Offense: 2nd Degree Assault  
Disposition: Guilty/Chargeable By: Jury

Charge ID: 1160343C

RSA: 631:2,1(b)

Date of Offense: May 09, 2015

A finding of GUILTY/CHARGEABLE is entered.

Conviction: Felony

Sentence: see attached

June 28, 2017  
Date

Hon. Kenneth C. Brown  
Presiding Justice

W. Michael Scanlon  
Clerk of Court

MITTIMUS

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

Attest:

W. Michael Scanlon  
Clerk of Court

SHERIFF'S RETURN

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

7/14/17  
Date

DBRN  
Sheriff

JONE:  State Police  DMV

C.  Dept. of Corrections  Offender Records  Sheriff  Office of Cost Containment  
 Prosecutor John J. Kennedy, ESQ, Stacey Kaelin, ESQ, John McCormack, ESQ, Peter Hickley, Esq.  
 Defendant  Defense Attorney Paul J. Garrity, ESQ  
 Sentence Review Board  Sex Offender Registry  Other Jailer  Justin Shephard, ESQ, Co-Counsel  
Dist Drv. \_\_\_\_\_

THE STATE OF NEW HAMPSHIRE  
JUDICIAL BRANCH

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

Court Name: Hillsborough County Superior Court, Northern District  
Case Name: State of New Hampshire v. Joel Martin  
Case Number: 216-2015-CR-00650 (if known) Case ID Number: 11603430

STATE PRISON SENTENCE

Plea/Verdict: Guilty Clerk: W. Michael Scanlon JLC  
Crime: Second Degree Assault, RSA 631:2 Date of Crime: May 9, 2015  
Monitor: JF Judge: Kenneth C. Brown

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.
- X 1. The defendant is sentenced to the New Hampshire State Prison for not more than 30 years nor less than 10 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 operated for any part of the year.
- X 2. This sentence is to be served as follows: X Stand committed  Commencing forthwith.  
 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 or \_\_\_\_\_ (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 modify 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.
- X 6. The sentence is ~~X consecutive to 11603430~~ (Charge ID Number)  
 concurrent with 11603430 (Charge ID Number)
- 7. Pretrial confinement credit \_\_\_\_\_
- 8. The Court recommends to the Department of Corrections:
  - Drug and alcohol treatment and counseling
  - Sexual offender program
  - Sentence to be served at House of Corrections
  - \_\_\_\_\_

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

**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 \_\_\_\_\_ of \_\_\_\_\_  
 Through the Department of Corrections as directed by the Probation/Parole Officer. A 1% 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 \$ 3,554.13 to AmTrust North America  
 Through the Department of Corrections as directed by the Probation/Parole Officer. A 1% 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: \_\_\_\_\_
  - X 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.
  - X H. Law enforcement agencies may X destroy the evidence X return evidence to its rightful owner.
  - I. The defendant and the State have waived sentence review in writing or on the record.
  - X J. The defendant is ordered to be of good behavior and comply with all the terms of this sentence.
  - K. Other: \_\_\_\_\_

6/22/17

KCB

THE STATE OF NEW HAMPSHIRE  
JUDICIAL BRANCH  
SUPERIOR COURT

1000 State Street  
Manchester, NH 03101

Telephone: 1-855-212-1234  
TTY/TDD: Relay, 800-735-2864  
HTTP: WWW.COURTS.STATE.NH.US

RETURN FROM SUPERIOR COURT – STATE PRISON SENTENCE

Case Name: State v. Joel Martin  
Case Number: 216-2015-CR-00650

Name: Joel Martin, NHSP #79163 PO Box 14 Concord NH 03302  
DOB: November 04, 1988

Charging document: Indictment

Offense: Felon in Possession of Dangerous Weapon  
Charge ID: 1302290C  
RSA: 159:3  
Date of Offense: May 09, 2015

Disposition: Guilty/Chargeable By: Court

A finding of GUILTY/CHARGEABLE is entered.

Conviction: Felony

Sentence: see attached

June 28, 2017  
Date

Hon. Kenneth C. Brown  
Presiding Justice

W. Michael Scanlon  
Clerk of Court

MITTIMUS

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

Attest: W. Michael Scanlon  
Clerk of Court

SHERIFF'S RETURN

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

7-14-17  
Date

DORA  
Sheriff

JONE  State Police  DMV

C  Dept. of Corrections  Offender Records  Sheriff  Office of Cost Containment  
 Prosecutor John J. Kennedy, ESQ. Stacey Kaelin, ESQ. John McCormack, ESQ. Peter Hindley, ESQ.  
 Defendant  Defense Attorney Paul J. Garity, ESQ.  
 Sentence Review Board  Sex Offender Registry  Other Justin Shepherd Esq. Co-Counsel

THE STATE OF NEW HAMPSHIRE  
JUDICIAL BRANCH

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

Court Name Hillsborough County Superior Court, Northern District

Case Name State of New Hampshire v. Joel Martin

Case Number 216-2015-CR-00650 Charge ID Number 13022950

(if known)

STATE PRISON SENTENCE

Plea/Verdict: Guilty

Clerk: W. Michael Scanlon *JLC*

Crime: Felon in Possession of Dangerous  
Weapon, RSA 159.3

Date of Crime: May 9, 2015

Monitor: *JF*

Judge: Kenneth C. Brown

A finding of GUILTY/TRUE is entered

- The defendant has been convicted of Domestic Violence contrary to RSA 631:2-b. See attached PSA 631:2-b Sentencing Addendum.
- X 1 The defendant is sentenced to the New Hampshire State Prison for not more than 10 years, nor less than 5 years. There is added to the minimum sentence a disciplinary period equal to 150 days for each year of the minimum term of the defendant's sentence, to be prorated for any part of the year.
- X 2 This sentence is to be served as follows: X Stand committed  Commencing forthwith
- 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 \_\_\_\_\_ years. 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.
- X 6. The sentence is  consecutive to \_\_\_\_\_ (Charge ID Number(s))
- X concurrent with 1160341C (Charge ID Number(s))
7. Pretrial confinement credit: \_\_\_\_\_
- 8 The Court recommends to the Department of Corrections:
- Drug and alcohol treatment and counseling
  - Sexual offender program
  - Sentence to be served at House of Corrections
  - \_\_\_\_\_

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



**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: \_\_\_\_\_
  - X 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.
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  - X H. Law enforcement agencies may X destroy the evidence X return evidence to its rightful owner.
  - I. The defendant and the State have waived sentence review in writing or on the record.
  - X J. The defendant is ordered to be of good behavior and comply with all the terms of this sentence.
  - K. Other: \_\_\_\_\_

6/28/17

Date

  
Presiding Justice