

THE STATE OF NEW HAMPSHIRE  
SUPREME COURT

No. 2018-0130

The State of New Hampshire

v.

David Vincelette

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APPEAL PURSUANT TO RULE 7 FROM A JUDGMENT OF THE  
GRAFTON COUNTY SUPERIOR COURT

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BRIEF FOR THE STATE OF NEW HAMPSHIRE

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THE STATE OF NEW HAMPSHIRE

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**ISSUE PRESENTED**

Whether the evidence was sufficient to prove the defendant purposely violated the court's order by interfering with the Town employees' removal of his property from the right of way and Tanzi nature preserve and threatening them where it showed he sat on wood they were going to remove, walked close to their trucks and excavator, yelled and cursed at them, called them names, accused them of theft and harassment, threatened to have them arrested, tried to push their supervisor, and said that he could take out their machine and was a violent man.

**STATEMENT OF THE CASE**

In November 2016, the defendant, David Vincelette, was charged by information with one count of indirect criminal contempt that was subject to a sentence of up to 180 days of incarceration. DB A7-A10; FPTC 7.<sup>1</sup> Following a two-day bench trial, the Grafton County Superior Court (*Bornstein, J.*) found him guilty as charged. DB A1-A5. The defendant then filed a motion to reconsider and for judgment notwithstanding the verdict (JNOV). DB A37-A38. On February 28, 2018, the trial court denied the motion. DB A6.

On March 1, 2018, the trial court sentenced the defendant to a term of four months in the House of Corrections, but suspended all but eight days of that term and awarded the defendant eight days of pretrial confinement credit. DB A11. This appeal followed.

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<sup>1</sup> “ASB” refers to the appendix attached to the State’s brief.

“BT” refers to the transcripts of the bench trial on August 29 and December 14, 2017.

“DB” refers to the defendant’s brief and the attached appendix.

“FPTC” refers to the transcript of the final pretrial conference on March 2, 2017.

“MVI\_0042,” “MVI\_0043,” “MVI\_0044,” and “MVI\_0045” refer to the videos on the two DVDs that were transferred to this Court. The times cited are those on the VLC Media Player.

## STATEMENT OF FACTS

### **A. The State's case at trial.**

The defendant has lived on property that abuts the "Tanzi Property," a nature preserve owned by the Town of Hanover, for many years. Both properties are accessed "via a private right of way ...." ASB 1;<sup>2</sup> *see also* BT 63, 73. By 2014,

the defendant, without the plaintiff's permission, had placed numerous objects, including wood pallets, abandoned vehicles, boats, windows, doors, appliances including refrigerators, metal brackets, furniture, and yard maintenance equipment, on the [Town's] property, including the private right of way which ... narrow[ed it] to such a width that it [was] difficult for a vehicle to access the [T]own's property.

ASB 1-2 (quotation omitted). The Town "asked the defendant to remove his property," and he then "moved more objects into the right of way and onto the [T]own's property." The Town filed a "suit in equity" against him in the Grafton County Superior Court. ASB 1-2. On May 12, 2015, the civil court (*MacLeod, J.*) issued a final decree. ASB 1. The civil court held that the defendant's conduct was a trespass, and it "ordered [him] to remove all objects within the right of way that w[ould] interfere with travel on [it,] as well as the items on [T]own land by June 1, 2015." ASB 2 (quotation omitted).

The defendant did not comply, so the Town filed a motion for civil contempt. On September 14, 2015, the civil court found the defendant in contempt,

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<sup>2</sup> The trial court (*Bornstein, J.*) took judicial notice of the civil court's September 30, 2016 order, BT 50-52, which is attached to this brief, ASB 1-8.

and “ordered [him] to remove all of his material and debris ... before October 12, 2015.” The court then said that if he failed to do so, the Town “was permitted to remove any remaining pallets, vehicles, appliances, trash, and other debris at the defendant’s costs.” ASB 2 (quotations and brackets omitted).

The defendant did not remove the items, so a crew from the Hanover Department of Public Works (DPW) started to do so, but the defendant interfered. The Town then filed a second motion for civil contempt. The defendant filed “competing motions seeking orders of contempt against the [Town] ....” On October 29, 2015, the civil court denied his motions and found him “in indirect civil contempt.” ASB 2. The civil court also “mandated that [he] immediately cease interfering with the [Town’s] exercise of its rights to remove [his] materials ..., and specifically provided that the [Town could] resume removing [them].” ASB 2-3 (quotation and brackets omitted). The civil court then “cautioned the defendant that he faced possible incarceration [if] he continue[d] to interfere,” and that he could “be subject to [criminal charges] if he [did so].” ASB 3.

On November 6, a DPW crew tried to enter the property to remove the items, but the defendant “intentionally blocked [their access] ... by parking his pickup truck across the right of way ....” ASB 3. The Town then filed a third motion for civil contempt. ASB 3. At a hearing on January 6, 2016, the defendant did not deny that he blocked the crew’s access. DB A39. However, the evidence showed he left

after “10 to 15 minutes,” but the Town, nevertheless, directed the crew to leave. On January 11, 2016, the civil court wrote an order that said:

While the defendant’s conduct on November 6, 2015, was in violation of the October 29, 2015 order, [his] actions were temporary in duration and do not warrant a finding of contempt or incarceration at this juncture, which would only inflame this situation ....

The foregoing notwithstanding, the defendant is ordered yet again to immediately cease interfering with the [Town’s] exercise of its right to remove [his] property from the right of way and [its] property. The court once more cautions the defendant that should he interfere further with the [Town’s] right to access the right of way and/or its removal [of] his property he may be found in contempt and possibly incarcerated on that basis. [He] also risks arrest and criminal prosecution ... should he threaten the [Town’s] employees or continue to interfere with the [Town’s] lawful actions.

DB A39-A40. The clerk mailed the order to the parties on January 20. DB A 39.

In the meantime, on January 11, Michael Chase, the DPW operations manager, a DPW crew, and a subcontractor had returned to the property with heavy equipment and a very large Dumpster. BT 59-60, 63; ASB 9-12. While they were removing items, the defendant came out, became very aggressive, moved in and around them and their equipment, said they were not “allowed to take his stuff,” and yelled at them “to put back what [they] had taken” and “get out.” BT 65; *see also* ASB 9-12. The defendant then climbed into the partially loaded Dumpster, and said that “he wanted [them] to dump it ....” BT 65; *see also* ASB 11. He also called Chase a criminal. BT 69. Chase and the crew had to leave at that point because “the situation was becoming unmanageable and unsafe.” BT 70.



On May 16, 2016, Chase and a DPW crew returned to the property with four Grafton County Sheriff's deputies. BT 31, 69-70. The deputies drove down the right of way and parked on Town property. Sgt. Ryan Kelly and a deputy recording everything on a video camera then walked down a path to two residences on the defendant's property. Sgt. Kelly repeatedly knocked on doors and yelled, "Hello," but no one answered, so they returned to the right of way. BT 27; MVI\_0042 at 00:00-05:48; MVI\_0045 at 03:20-03:45.

Chase and his crew brought in large dump trucks and an excavator and started removing the debris. BT 27-28. They needed heavy equipment because they could not remove the "massive industrial-sized drill press," vehicles, boats, and the like by hand, and it would have taken "ungodly amounts of man hours" to remove the large piles of trash, pallets, wood, old batteries, gas cans, chainsaws, and the like by hand. BT 33; *see also* BT 71-72. Chase had an obligation to maintain the right of way and the Tanzi property and to protect the safety of the hikers and runners who used them, and removing the items was necessary to do so because the debris posed a danger to members of the public and the Town's employees. BT 71-73, 84.

Eventually, the defendant emerged from the path to his property and asked Sgt. Kelly, "Sir. What are you doing on my fuckin' property here sir?" Sgt. Kelly responded, "We're here to enforce the court order." He then gave the defendant a copy of the January 11 order, but the defendant tossed it back to him and said, "I'm gonna film this because you guys are ... violating my rights here." Sgt. Kelly asked,

“Are you gonna cooperate with us?” The defendant responded, “Yes. I’m gonna cooperate. First I’m gonna start my camera .... This is all illegal. These vehicles are not allowed on this ... property.” MVI\_0044 at 00:00 to 01:00.

Sgt. Kelly returned the copy of the order to the defendant and then read the last paragraph of it to him. The defendant said, “The Town is only allowed to bring vehicles in here when they’re doing maintenance or emergency [sic].” He then walked up to Chase, pointed at him, and yelled, “I’ve already told you not to take stuff from here. Get out of here. You’re not allowed on this property. Who are these people?” Chase responded, “They work for the Town of Hanover.” The defendant asked for their names, but Chase refused to provide them. The defendant then said, “You didn’t give me the names the last time ... you brought a bunch of thugs down here to take my stuff.” Sgt. Kelly again started reading the January order to the defendant. The defendant then hit him on the hand and told him to be quiet. MVI\_0044 at 01:00-02:44.

Sgt. Kelly asked, “Are you gonna allow them to remove the property?” The defendant responded, “I am not gonna allow these vehicles in here.... I have told them a million times they can take anything they want to whenever they want to.... They can’t bring vehicles down here.” Sgt. Kelly asked how he expected them to remove everything without vehicles, and the defendant again said that they could use vehicles only for “doing maintenance” or if it was “an emergency.” He next said the Town had not maintained the sewer right of way for 32 years or his right of

way for two years, which violated a court order. He then said, "So, they're not taking my stuff up this road in illegally [sic] machines. They can walk it up piece by piece. I have no problem with it." MVI\_0044 at 02:44-03:47.

Sgt. Kelly said, "If you're gonna interfere with that," and the defendant interrupted and said, "I'm not interfering sir. I'm telling you the facts. The judge has ordered me that I can be on this road, I can block these vehicles. It's not illegal. They cannot take this material of mine out of here in vehicles illegally." The defendant also said Chase knew that because the Town had the deed. He then said officers could not drive on the right of way "unless it [was] an emergency." Sgt. Kelly said it was not for him to decide, and the defendant said, "Yes, you're just doing your job right?" He then pointed at Chase and said, "Just like he's doing his job putting asphalt waste ... in the brook right?... This man is a criminal. He's involved in a criminal conspiracy. He's on my property. I would like you to arrest him." Sgt. Kelly and Chase said it was the Town's property, and the defendant responded that it was "stolen land" because the Town had agreed to maintain it when the Town had purchased it, but then never had. MVI\_0044 at 02:44-05:15.

At that point, the group was standing in front of a dump truck that was trying to leave with a load of wood, so Chase twice asked, "Can we move over?" The defendant said, "You're not taking any of my stuff off this property." Chase asked, "Are you blocking the truck?" The defendant then walked behind the truck, stood by the excavator, and yelled questions to the workers about asphalt. Sgt. Kelly told

him to walk away, and the defendant yelled, "No. The Town manager said every Town employee must answer questions from any citizen of the Town." He then continued yelling questions at the workers. The loaded truck started to leave, and the defendant yelled, "You men are coming out here to steal my material." He then got even closer to the truck and yelled,

You bring my fuckin' firewood back here. We been cutting wood all winter keeping men warm. You men who have spray—. You've never done the job the Town told me that you were gonna do. It's not your fault. I know that, but none of you have ever come down here to maintain my road, but you're all down here to smash and take my shit. Work for these bastards who are polluting the water. Take you asses out of here. Don't take any of my more, more of my stuff. You're not allowed to steal. You're not allowed to pollute the water. I have a picture of every one of you.

MVI\_0044 at 05:15-06:45.

The defendant walked back toward the workers, Chase moved in front of him, and the defendant tried to push him, so Chase said, "Don't touch me please."

The defendant then moved closer to the workers and the excavator and yelled,

I'm telling you for your own protection, every one of you is personally liable for the fact that asphalt waste has illegally been dumped along the roads, that every one of you is a truck driver that's personally responsible. That is a position the Town has put you in. I'm not blaming you. I'm blaming the men and women in the Town who didn't ask the Town, the people what they should do. They had you go out and do their dirty work and now they're doing it again and how many of you are there? One two three four five six seven. Seven Town employees coming down here to mess with me and my people trying to keep warm with, with police with cameras with this lying son of a bitch whose polluted this water for thirty years and lied about it and knows he's lying about it and knows he's gonna be in court about it.

Sgt. Kelly asked, "Are you gonna interfere with the removal?" The defendant responded, "I'm enforcing the law sir.... I've been doing investigation for thirty years on ... what's going on in this town." He then moved even closer to the workers, told the deputy with the camera to film them, and yelled.

'Cause you're all gonna be in court and this guy who told you what to do and you did it just because you're not. You know you're doing something wrong every one of you knows they're spreading asphalt waste on the gravel roads where it's going in the water. Every one of you sons a bitches is personally responsible for coming in here and messing with me. You have a job to do. You don't have to do things that are illegal. You have a responsibility not to do things that are illegal. Every one of you is gonna be up there testifying.

The defendant then moved between the excavator's bucket and cab and asked the operator whether he had dumped asphalt. MVI\_0044 at 06:45-08:47.

Sgt. Kelly eventually convinced the defendant to move away from the workers. Chase then told the defendant, "Yes, we've put recycled asphalt on the roads." The defendant grabbed Chase and tried to turn him toward the camera, so Chase said, "Don't touch me." The defendant removed his hand and asked, "Have you spread asphalt waste up on Moose Mountain?" Chase answered, "No." The defendant turned toward camera operator and said, "Get this in a close up. I want to see 'cause when he gets in the orange jumpsuit ...." The defendant then again grabbed Chase and tried to turn him toward the camera, so Chase again said, "Don't touch me." MVI\_0044 at 08:47-09:25.

A dump truck was backing toward them, so Sgt. Kelly pointed to the path to the defendant's property and asked him, "Can we go over there and talk about this?" The defendant walked toward the truck and yelled, "No. We can't talk about it. You got me all pissed off now. Got twelve, twenty people in a fuckin' conspiracy. You all come down here. Think you can mess with me. Get your asses out of here. I want that damn wood back." The defendant then rushed up the back of the truck and walked along its driver's side on a slope. He was so close to the truck that the driver could not see him, so Chase radioed, "We need to stop this truck right now." MVI\_0044 at 09:25-10:37.

Sgt. Kelly asked, "Are you gonna allow them to remove this property from this roadway?" The defendant responded, "There's nothing on the roadway sir. They can move anything from the roadway." The truck again started to back up, and the defendant again got behind it, so Chase again stopped it. The defendant then sat on a pile of wood. Sgt. Kelly asked, "[Y]ou're gonna sit there on top of the stuff that they have to remove Dave?" The defendant said he was disabled, so he was calling a friend for help. He then asked, "You want to come grab me?" Sgt. Kelly said no. The defendant then said, "I'm not blocking you. The road's not blocked. What's the problem sir?" Chase said, "We're here to remove anything on Town property," and the defendant again said they could not use machines to do so. MVI\_10:38-11:45.

The defendant continued to argue with Sgt. Kelly and Chase about whether they could remove anything or use machines to do so. He also told workers to “speak English,” asked for the police chief, and said, “This road is not a road for you to come down and pick up my stuff.” Chase asked, “Are you gonna block the truck when they start taking this stuff?” The defendant answered, “You’re not gonna take the stuff that’s not yours.” Chase asked, “So you’re saying you’re not gonna allow me to take it?” The defendant said, “I’m saying you’re gonna be too smart to take it.” Chase said, “No, I’m not.” The defendant responded that they could take everything, but not with vehicles because the deed allowed vehicles only “for maintenance and emergencies.” He then said, “They have no right of way for these dump trucks coming down here and stealing my shit.” MVI\_0044 at 11:45-14:30.

Sgt. Kelly again asked, “Are you gonna sit on this these stacks of wood?” The defendant responded, “I’m gonna ... go wherever. I’m a free man.” He then stood in the road in front of the wood pile and screamed,

I’m not gonna take these assholes messing with me anymore.  
Okay? They’ve committed state and federal crime. I’ve gone to ...  
everybody ... in your chain of command.... Nobody gives a shit.  
Guess what? I give a shit. No. They’re not using them. They can  
come down on their knees. They can down in ... wheelchairs.  
They can come on crutches. They can take a piece at a time.

The defendant said he had tried to clean up. He then screamed, “It’s a bunch of firewood we’re taking apart to heat the damn house for homeless people and

they need five people to come here and steal our damn wood. I've had enough of these bastards. Okay? They're pollutin'." MVI\_0044 at 14:30-15:42.

After that, the defendant called the deputies "fuckin' disgusting," called the one with the camera a "fat bastard," and then looked at Chase and yelled, "What's this excuse for a man? You send people down here and steal fuckin' homeless people's fuckin' firewood. Get the fuck out of here now." He then aggressively approached the workers next to the excavator and yelled: "I'm fuckin' sick of looking at you. You're fuckin' assholes. Go on there frickin' people. Would you like me to come to your fuckin' house? You know good and well what is going on here." Sgt. Kelly pointed away from the workers. The defendant stayed where he was and yelled, "These men are attempting to do criminal activity on my property. They're stealing my shit. These people are paid to, to pollute my water. Now they're being paid to steal my shit." Sgt. Kelly told him to leave, and he started to, but then turned around and yelled,

Get these criminals out of here. They're part of a criminal conspiracy. I'm gonna file cha—. I've been very patient. I've been waiting a long time. I haven't brought it to court. You can't keep coming down here and messing with me like this. You don't even have the decency to call me before you come down and start stealing my shit. Now get out, all of you. You're not leaving with one stick of wood and you'd better bring that other wood back you sons of bitches, lowlife bastards.

The defendant then walked around the truck that had been waiting for over ten minutes to back up, and it was finally able to do so. MVI\_0044 at 15:43-16:40.



The defendant called the police and told the dispatcher people had “come illegally into the nature preserve” and were “taking [his] stuff” and “harassing him.” He also said that all the vehicles, including cruisers, were not allowed down there, and that if the dispatcher did not send officers to deal with the problem, he would do it himself. He then yelled, “[S]o you’ll have a bunch of people come here and steal my stuff ....” MVI\_0044 at 16:40-21:30.

Chase told the defendant that the lieutenant had come by and said the defendant could move the wood to the defendant’s property. At that point, the excavator, the crew, and a dump truck were moving farther into the Tanzi property. The defendant yelled, “I want these trucks out of here. Let’s get them out of here.” He then walked right next to the truck as it was backing up, so the driver had to stop. The defendant walked around the truck, and the driver started backing up again. The defendant then walked behind the truck and yelled questions at a worker who was guiding the truck and trying to make sure it did not back over the defendant. MVI\_21:30-22:42.

Sgt. Kelly told the defendant to stop bothering workers, and the defendant responded that Chase had them “doing something that [was] illegal.” He then walked very close to the excavator while it was turning and yelled to workers, “You’re being brought down here just to mess with me.” He walked back around the moving excavator, stood near manure the excavator was picking up, and then stood in front of the excavator. Chase directed the operator

to shut it off, so he and Sgt. Kelly could talk to the defendant. Chase then asked the defendant if he was refusing to let them take the items, and the defendant answered, "I'm refusing to let you do stuff that is not allowed in the deed.... You can't use these vehicles." A truck was backing toward them, so Chase directed the driver to stop the truck. The defendant then started talking about asphalt again. Sgt. Kelly asked, "[W]hat does that have to do with this right here?" The defendant said, "This has to do with whether he has a right to do this or not." MVI\_0044 at 22:43 at 25:47.

Chase and Sgt. Kelly asked the defendant to move, so the crew could continue cleaning. The defendant yelled that the deed did not allow them to use vehicles to clean. Chase asked him if he gave the deed to the court, and the defendant said yes, so Chase asked him why the judge authorized them to remove everything. The defendant said, "Show me the order." Sgt. Kelly read the October 2015 order to him. The defendant then kept saying that they could take everything, but not with vehicles and machines, and Chase kept telling him they were going to use them. The defendant then yelled, "[Y]ou're a big mouth. Y-you think you ... can get confrontational with me and ... bring ... a hundred-thousand-dollar ... machine to mess with me right? You think I can't take that machine out if I want to?" Chase said, "I don't know." The defendant said, "Yeah you do. You've heard in court I'm a very violent man." Chase said, "You've only come close to assaulting me once ...." MVI\_25:48-28:27.

The defendant again asked Chase about asphalt, but Chase did not answer, so the defendant yelled that Chase would end up in an “orange jumpsuit” because he was “a liar” and “a criminal,” was “running a criminal enterprise,” and was “dumping poison in the water.” He next yelled,

You want to come down and mess with me some more?... Get these fuckin’ machines out of here. I’m gonna file federal charges. I’ve waited. I don’t want to go to fuckin’ court. I don’t want to deal with you assholes. You give me no fuckin’ choice. I let you get away last summer, last fall. We’ve been working here trying to clean it up. You want to keep fuckin’ with me Mike?

The defendant yelled that he had proof of illegal asphalt dumping, and that if Chase did not get everyone out of there, he would file personal charges against them and they could lose everything they had. MVI\_0044 at 28:29-31:37.

Sgt. Kelly kept trying to persuade the defendant to move out from behind the truck, and eventually, the defendant did. He then repeatedly said that they could take everything, but not with vehicles. Sgt. Kelly asked, “If they stay here, continue loading, are you gonna interfere ... [or] go by the court order?” The defendant answered, “I’m gonna go get the police here. Then I’m gonna find out what I have to do to keep my belongings here. I’m not interfering.... I’ve told them straight out what they’re doing is illegal.... Can I have the other order?” Sgt. Kelly handed the defendant the October 2015 order. MVI\_0044 at 31:38-33:29.

The defendant read Sgt. Kelly some language he said was from his deed. The defendant then said that the deed did not allow vehicles to take his property. Sgt. Kelly responded, "But the judge ordered, based on all the information, that all the property ... needs to be removed ...." The defendant responded, "He didn't say they could use vehicles.... The order ... doesn't say they can go pick up my stuff." Chase asked, "Are you telling me you're not gonna allow me to pick the stuff up?" The defendant answered, "Yup." Chase said, "Okay. Then I'm pulling them out.... If you are not going to allow us to pick this stuff up, you're gonna get in front of us to do that, it's not worth getting you upset and me upset ...." The defendant yelled that he was already upset, and that they should have called. Sgt. Kelly said that he had knocked on the defendant's doors over an hour earlier. MVI\_0045 at 00:00-04:06.

Chase said, "I'm assuming you're blocking me. I'm pulling these guys out. I don't need you upset." Chase then said that they would "have to come back down ...." The defendant yelled, "You're not coming down. Haul me in court. I want to get that wood back. What all did you take from me?" Chase said, "Well, let's get through this first procedure and then we'll ... end up talking about it." The defendant said, "J-just get out of here. That'd be the first thing." He then walked up to the excavator while it was turning and again yelled at workers. Chase asked him three more times whether he was going to

allow them to remove items with equipment, and each time, the defendant said doing so violated the deed. He then moved closer to the workers and yelled,

And I'm gonna see every one of you guys in court 'cause he's got all your pictures. I'm gonna get all your names and then we're gonna have a discussion of what you knew when, so you can ... be part of the lawsuit and get reparations through this Town for putting you in a position where you got to do illegal stuff.

Chase said, "Leave the guys alone." The defendant yelled, "You leave. You're the one who put them in this criminal position. You're the one who involved them in a conspiracy. You do understand every one of these guys you are responsible for what they've done criminally." He then said Chase was "fucked" because he had proof about the asphalt. MVI\_0045 at 04:07-07:42.

The crew was concerned for their safety because of the defendant's erratic, violent, and dangerous conduct. BT 34. Chase decided he had to pull them out of there because the defendant kept getting close to their equipment, being aggressive toward them, accusing them of stealing, and threatening to have them charged with crimes, all of which was clearly distracting them, keeping them from doing their jobs, and creating a very dangerous situation. BT 34, 75-77. Chase, his crew, and the deputies left, and as they were doing so, the defendant approached them, yelled at them, called a worker a "fucking liar," called someone a "little piggy," and called Chase "a paid fuckin' criminal." MVI\_0045 at 07:57-10:50.

The Town then filed a fourth motion for civil contempt. ASB 1, 4-6. On September 30, 2016, the civil court found the defendant in indirect civil contempt, and held that his “deed restriction argument [was] irrelevant and erroneous ....” ASB 6; BT 51. The civil court also referred the case to the Grafton County Attorney’s Office, ASB 8, which then charged the defendant with indirect criminal contempt for violating the January 2016 order, DB A7.

**B. Relevant events during and after trial.**

The amended information alleged, in relevant part, that the defendant [purposely] interfered with the Town of Hanover’s removal of [his] property ... by:

- a. Yelling at ... Town ... employees to get out of the area and/or to stop stealing [his] property ...; and or
- b. Yelling and/or cursing at and/or insulting Town ... employees and/or ... agents ...; and/or
- c. Creating a dangerous situation by walking up to and/or behind and/or in between the heavy machinery brought by Town of Hanover employees, and/or
- d. Threatening Town of Hanover employees with personal liability for the position the Town of Hanover put the employees in; and/or
- e. Continuing to interfere with Town of Hanover’s lawful actions by telling Town of Hanover employees they could not use vehicles to remove the defendant’s property from the right of way and the Town of Hanover’s property; and/or
- f. Continuing to interfere with Town of Hanover’s lawful actions by telling Town of Hanover employees that they were not removing [his] property ....

DB A8-A9.

After the State rested, the defendant moved to dismiss orally and in writing. BT 113. He argued the evidence proved that his speech was constitutionally protected, DB A14-A16, and never “impeded the ... [T]own employees,” DB A16. He also argued that the evidence proved his physical conduct neither “create[d] a dangerous situation” nor “interfere[d] with the removal of the property,” DB A17, and that it proved his “purpose [was] not to violate the Order.” DB A19-A20.

The State filed an objection. ADB A23-A28. The defendant then filed a reply and newspaper articles he had neither mentioned nor admitted at trial. DB A29-A36. The defendant argued that the articles showed his speech was “of public concern,” and that speech “of public concern” was “at the core of the First Amendment.” DB A29-30. He also argued that even if his speech was “only of private concern, the First Amendment protect[ed] it,” DB A31. He further argued that even if the evidence proved his “intent was to prevent theft of his property,” that was “not the same as an intent to violate the Court’s order, which did not authorize theft.” DB A30.

The trial court denied the motion. DB A1-A5. The court held that the evidence proved the defendant had purposely engaged in the conduct alleged in the information and purposely violated the order by “interfer[ing] with the Town’s exercise of its right to remove [his] property.” The court also held “that none of the charged conduct [was] constitutionally protected speech.” DB A4.

The defendant filed a motion to reconsider and for JNOV because he had “also intended to invoke part I, article 22 of the New Hampshire Constitution.” DB A37-A38. The trial court denied the motion and held “that none of the charged conduct [was] protected speech under [p]art I, [a]rticle 22 ....” DB A6.



**SUMMARY OF THE ARGUMENT**

The evidence was sufficient to prove beyond a reasonable doubt that the defendant knew the Town's employees were authorized to use vehicles and heavy equipment to remove his property from the right of way and the Town's property, and therefore, their efforts to do so on May 16, 2016, were lawful. The evidence was also sufficient to prove beyond a reasonable doubt that the defendant intentionally violated the civil court's January 2016 order by threatening the Town's employees and interfering with their lawful efforts to remove his property. In addition, the evidence was sufficient to prove beyond a reasonable doubt that the defendant's speech was not constitutionally protected, and that even if some of it was, the trial court's prohibition on any speech or conduct that threatened the Town's employees or interfered with their efforts to remove the defendant's property was a reasonable time, place, and manner restriction.

**ARGUMENT**

**THE EVIDENCE AT TRIAL WAS SUFFICIENT TO PROVE BEYOND A REASONABLE DOUBT THAT THE DEFENDANT’S SPEECH WAS NOT CONSTITUTIONALLY PROTECTED, THAT HIS SPEECH AND HIS CONDUCT INTERFERED WITH THE TOWN’S EFFORTS TO REMOVE HIS PROPERTY, AND THAT HE INTENDED FOR IT TO DO SO.**

The defendant argues that the evidence was insufficient to prove that he purposely violated the January order. DB 5–11. “Because a challenge to the sufficiency of the evidence raises a claim of legal error, [this Court’s] standard of review is *de novo*.” *State v. Collyns*, 166 N.H. 514, 517 (2014). This Court will “objectively review the record to determine whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt, considering all the evidence and all reasonable inferences therefrom in the light most favorable to the State.” *State v. Francis*, 167 N.H. 598, 604 (2015).

Further, the trier may draw reasonable inferences from facts proved and also inferences from facts found as a result of other inferences, provided they can be reasonably drawn therefrom. In reviewing the evidence, [this Court will] examine each evidentiary item in the context of all the evidence, not in isolation.

*Id.* Moreover, this Court will “assume all credibility resolutions in favor of the State ...” *State v. Saunders*, 164 N.H. 342, 351 (2012). “It is the defendant who bears the burden of demonstrating that the evidence was insufficient to prove guilt.” *Id.* (quotation and brackets omitted). The defendant has not met that burden.

The defendant argues that “[t]he [court’s] addition of threats to the January order suggests the court’s earlier prohibition on interference was not so broad as to

cover speech,” and that “[t]his interpretation of the order is consistent with the court’s effort to prevent ‘continued’ interference, a reference to prior physical conduct, and the use of language that was narrowly tailored to avoid infringing [his] free speech rights.” DB 12. (quotation and citation omitted). The defendant then argues that because “non-threatening speech [was] not clearly prohibited by the court’s order barring interference and threats, [his] statements did not violate the order.” DB 12-13. Those arguments are not preserved.

“The defendant, as the appealing party, has the burden to provide this [C]ourt with a sufficient record to decide his issues on appeal and demonstrate that he raised [them] before the trial court.” *State v. Brooks*, 162 N.H. 570, 583 (2011). In the trial court, the defendant never argued that the civil court did not intend to prohibit interference by non-threatening speech or that the civil court’s order did not do so. Instead, he argued that his speech was constitutionally protected, so the trial court could not find it violated the order. DB A15-A16, A29-A31. Therefore, the defendant has not preserved those arguments for appeal.

In any event, it does not matter whether the civil court’s order prohibited non-threatening speech because the order clearly prohibited threatening speech. As demonstrated in the statement of facts, the defendant made several threats to Chase and other DPW employees, including threats to file personal lawsuits and criminal charges against them for polluting the water, stealing his property, and harassing him. He also told Chase that he could “take out” the hundred-thousand-dollar

machine if he wanted to, and that he was “a very violent man.” Therefore, it cannot be said that no rational trier of fact, viewing all the evidence and all reasonable inferences therefrom in the light most favorable to the State, could have found that the defendant purposely threatened the Town’s employees.

Furthermore, several of the defendant threats were “true threats,” which he acknowledges are not protected by the First Amendment, DB 12.

“True threats” encompass those statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals. The speaker need not actually intend to carry out the threat. Rather, a prohibition on true threats protects individuals from the fear of violence and from the disruption that fear engenders, in addition to protecting people from the possibility that the threatened violence will occur. Intimidation in the constitutionally proscribable sense of the word is a type of true threat, where a speaker directs a threat to a person or group of persons with the intent of placing the victim in fear of bodily harm or death.

*Virginia v. Black*, 538 U.S. 343, 358-59 (2003) (plurality opinion) (quotations, citations, brackets, and parentheticals omitted). The same rule applies when the defendant does so with the intent to place the victim in fear of “physical damage to property.” See *A.R. v. L.C.*, 108 N.E.3d 490, 493 (Mass. App. Ct. 2018); *In re Robert T.*, 746 N.W.2d 754, 569-70 (Wis. Ct. App. 2008) (gathering cases).

Here, a rational trier of fact could have concluded that the defendant’s statements to Chase about taking out the expensive machine and being a violent man were intended to intimidate Chase into leaving by placing him in fear of physical damage to the machine or to Chase and his crew. A rational trier of fact

also could have concluded that the defendant's attempt to push Chase was intended to place him in fear of physical harm because Chase testified that they left "[b]ecause the situation became very, very unstable and it appeared ... that [the defendant] was getting very aggressive toward [him] and [his] crew." BT 77. In addition, a rational trier of fact could have concluded that the defendant's conduct toward the DPW crew was intended to intimidate them because Sgt. Kelly testified that the defendant was "[v]ery angry," BT 31, that his "attitude and his mannerisms were escalating," BT 35, and that the DPW employees were concerned for their safety due to the defendant's actions, BT 34. In other words, a rational trier of fact could have concluded that the defendant's expressive conduct and several of his statements constituted "true threats."

Components of the defendant's speech also constituted "fighting words," which fall outside the protection afforded by the First Amendment. *Elonis v. United States*, 135 S. Ct. 2001, 2027 (2015). "Fighting words" are "those personally abusive epithets which, when addressed to the ordinary citizen, are, as a matter of common knowledge, inherently likely to provoke a violent reaction ...." *Id.* A defendant need not intend for his words to provoke a violent reaction or a breach of the peace or know that they will do so for those words to constitute "fighting words." *Id.* Instead, he need only intend to say those words. *Id.*

As demonstrated in the statement of facts, the defendant called Chase and his crew "a bunch of thugs," "criminals," "fuckin' liars," "fuckin' assholes," "sons of

bitches,” and “lowlife bastards.” The defendant also accused them of stealing from him. In other words, he called them thieves. Therefore, those portions of the defendant’s speech were not constitutionally protected because they constituted “fighting words.” *Cf. Woodward v. Gray*, 527 S.E.2d 595, 599-600 (Ga. Ct. App. 2000) (noting that “son of a bitch” and “bastard” are “fighting words” even when directed at police officers).

The defendant argues, however, that his “speech was protected under the First Amendment” because the First Amendment “affords stronger protections” to speech that “can ‘be fairly considered as relating to any matter of political, social, or other concern to the community,’” or that “‘is a subject of legitimate new interest,’” DB 13 (quoting *Snyder v. Phelps*, 562 U.S. 443, 452 (2011)), and his speech met both criteria, DB 14. However, his reliance on a newspaper article that discussed his case in support of that argument is misplaced because he neither mentioned nor admitted the article at trial. Instead, he attached it to his reply to the State’s objection to his written motion to dismiss. Therefore, the article is not relevant to the issue of whether the evidence at trial was sufficient to convict him.

Furthermore, the defendant concedes that “true threats” are not immunized by the First Amendment, and the United States Supreme Court has held that “[n]either classic ‘fighting words’ nor defamatory statements are immunized when they occur in a public place ....” *Snyder*, 562 U.S. at 472. Therefore, even if

portions of the defendant's speech were of public concern, the portions that constituted "true threats" or "fighting words" were not constitutionally protected.

In any event, "even protected speech is not equally permissible in all places and at all times." *Snyder*, 562 U.S. at 456 (quotation omitted). Instead, "it is subject to reasonable time, place, or manner restrictions ...." *Id.* "[R]estrictions of this kind are valid provided that they are justified without reference to the content of the regulated speech, that they are narrowly tailored to serve a significant governmental interest, and that they leave open ample alternative channels for communication of the information." *Clark v. Community for Creative Non-Violence*, 468 U.S. 288, 293 (1984).

Here, the civil court concluded that removing the defendant's debris and materials from the right of way and the Town's property was necessary because they were "so numerous that they narrow[ed] the right of way to such a width that it [was] difficult for a vehicle to access the [T]own's property." ASB 2. The civil court also authorized the Town to remove everything, and concluded that the defendant had intentionally interfered with the Town's efforts to do so. ASB 2-3. Therefore, the civil court's order that the defendant cease interfering with the Town's efforts to remove his debris and materials from the right of way and Tanzi property was "justified without reference to the content of the regulated speech."

Furthermore, Chase testified that the Tanzi property was a nature preserve, that the debris the defendant left on it and the right of way included "lots of trash,

old batteries, gas cans, chainsaws,” and other such items, BT 71, that hikers and runners used the right of way, that part of his obligation was to protect them, BT 72-73, and that he thought the items were probably “dangerous,” BT 94. Therefore, the civil court’s order that the defendant cease interfering with the cleanup was also “narrowly tailored to serve a significant governmental interest.”

Moreover, the order did not prohibit the defendant from expressing his opinions about the Town, its employees, or their actions in any other place, at any other time, or in any manner that did not interfere with their actions or threaten them. Therefore, the order “le[ft] open ample alternative channels for communication of the information.” That being the case, even if some of the defendant’s speech was protected by the First Amendment, the evidence proved that the order was a reasonable time, place, and manner restriction.

The defendant also argues that “the State failed to prove that [his] words interfered with the removal of the property.” DB 13. The plain meaning of the word “interfere” is “to be in opposition: to run at cross purposes,” and the plain meaning of the word “interference” is “meddling in or hampering an activity or process.” *Webster’s Third New International Dictionary* at 1178 (unabridged ed. 2002). Here, the evidence proved that the defendant’s words hampered the Town employee’s assigned activities and processes.

As demonstrated in the statement of facts, the defendant was yelling at Sgt. Kelly, Chase, and workers while they were trying to load and remove the debris.



Chase testified that the defendant doing so was “affecting the concentration of the tasks that the highway workers had been assigned to,” BT 74, and that he “could see that [their] attention was being drawn to the conversation and the noise,” BT 75. In other words, he testified that the defendant’s speech was hampering the worker’s assigned activities and processes. Therefore, a rational trier of fact, viewing all the evidence and all reasonable inferences therefrom in the light most favorable to the State, and resolving all credibility determinations in the State’s favor, could have concluded that the defendant’s speech actually interfered with the Town’s removal of his property.

The defendant next argues that there was “insufficient evidence that [he] intended to violate the order through his speech,” DB 16, because the evidence showed that he believed “the Town’s use of vehicles on the right of way was unlawful under *his* deed.” DB 16 (emphasis added). However, he never admitted any evidence he had a deed to the property or the right of way. Instead, he admitted a deed from the Hanover Conservation Council to the Town, BT 46, 52, and “stipulate[d] that he [did not] have an interest in the piece of property,” BT 47. Therefore, he not only waived his argument, he admitted evidence that belied it.

Even if he had not done so, the civil court’s May 12, 2015 final decree said that the items on the right of way and the Town’s property included “vehicles, boats, ... appliances, including refrigerators, ... furniture, and yard maintenance equipment,” and that they were “so numerous that they narrow[ed] the right of way

to such a width that it [was] difficult for a vehicle to access the [T]own's property." ASB 2 3 (quotation omitted). The civil court's September 14, 2015 order said that the Town "was permitted to remove any remaining pallets, *vehicles, appliances*, trash, and other debris ...." ASB 2 (emphasis added) (quotation omitted). The civil court's October 29, 2015 order "mandated that the defendant immediately cease interfering with the [Town's] exercise of its rights to remove [his] materials," and that the Town could "resume removing [his] debris ...." ASB 2-3. The civil court's January 11, 2016 order then said that the defendant had not denied he "parked his vehicle at the intersection of N.H. Rte. 120 and the right of way for the purpose of blocking the [Town's] access" on November 6, 2015. The order also said that his conduct "was in violation of the October 29, 2015 order ...." DB A39.

In addition, the video of the events on May 16 showed that the Town's employees could have walked around a vehicle parked across the right of way. Therefore, the only reasonable conclusions the trial court could have reached were that the civil court authorized the Town to remove items that could not be removed without vehicles and heavy equipment, that it prohibited the defendant from interfering with the Town's efforts to do so using vehicles and heavy equipment, and that it found the defendant violated the October 29, 2015 by parking his vehicle across the right of way because doing so blocked the Town's access to the property with vehicles and heavy equipment.

The video of the events on May 16 also showed that there were still at least three vehicles, including a large truck, on the property on that date, and that the Town's employees were in that area when Chase decided it was no longer safe for them to continue working. MVI\_0045 at 05:22. In addition, Sgt. Kelly testified that they were trying to remove vehicles, boats, a "massive industrial sized drill press," and other items that could not "be moved by hand." Therefore, the trial court had good reason to disbelieve the defendant's claim "that the court 'didn't say they could [remove the property] with vehicles.'" DB 16 (quoting DB A60). In fact, viewing the foregoing evidence and all reasonable inferences therefrom in the light most favorable to the State, and resolving all credibility determinations in the State's favor, the only reasonable conclusions the court could have reached were that the defendant knew the civil court had authorized the Town to use vehicles and heavy equipment to remove his property, and that the civil court had prohibited him from interfering with those efforts.

Furthermore, as demonstrated in the statement of facts, the defendant repeatedly accused the Town employees of stealing his property. He also said that he was not going to allow them to take any of his property, that he wanted them to return the property they had already taken, and that he was going to call the police to find out how he could keep his property there. Therefore, the trial court also had good reason to disbelieve his claims that he was only trying to stop them from removing his property with equipment, and that he did not object to them taking it

by hand or in wheelbarrows. DB 17. Instead, the only reasonable conclusion the trial court could have reached was that the defendant knew the DPW employees' actions were lawful, and that he intended to stop them from removing his property.

The defendant next argues that the evidence proved that he "was not physically interfering with the Town's actions" because it showed that he "gave moving trucks a berth and did not 'physically blockade' a stationary truck attempting to pull off the property." DB 19. The record belies that claim.

As demonstrated in the statement of facts, the video showed that the defendant was standing in front of a dump truck that was loaded with wood and ready to leave, that Chase twice asked him to "move over," and that he refused to do so until after Chase asked if he was blocking the truck. The video also showed that after the truck left, Sgt. Kelly asked the defendant to move over because another truck was backing up, and the defendant then rushed up to the back of the truck and walked right next to its driver's side, so Chase had to stop the truck. The video further showed that after the defendant moved out from behind the truck, it started backing up and he again got behind it, so Chase again had to stop it.

In addition, the video showed that while the truck was waiting to back up to the excavator, the defendant sat on top of a pile of wood the truck had back past to get to the wood the workers were loading with the excavator, next stood in the road in front of the pile, and then stood very close to, and in front of, the excavator and the workers. The video also showed that Sgt. Kelly repeatedly asked the defendant

to move out of the way, that the defendant refused to do so, and that his conduct made it unsafe for the truck to back up to be loaded for over ten minutes.

The video then showed that after Chase had the workers, the excavator, and the trucks move toward the back of the property, the defendant walked right next to a truck that was backing, so the driver had to stop. The video also showed that after the workers resumed picking up debris, the defendant twice walked very close to the cab of the excavator while it was turning, stood in front of the excavator, and refused to move when Chase and Sgt. Kelly asked him to do so, which prevented a truck from backing up to the excavator to be loaded for over six minutes. Therefore, it cannot be said that no rational trier of fact, viewing all the evidence and all reasonable inferences therefrom in the light most favorable to the State, and resolving all credibility determinations in the State's favor, could have found that the defendant knew the Town employees' removal of his debris with vehicles and heavy equipment was lawful, that he physically and verbally interfered with their efforts to remove his debris, and that he did so purposely. In other words, it cannot be said that no rational trier of fact could have found that he purposely violated the civil court's order.

**CONCLUSION**

For the foregoing reasons, the State respectfully requests that this Honorable Court affirm the judgment below.

The State requests a 5-minute, 3JX, oral argument.

Respectfully submitted,

THE STATE OF NEW HAMPSHIRE

By its attorneys,  
Gordon J. MacDonald  
Attorney General



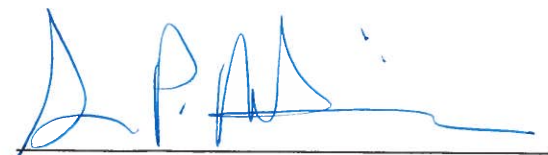
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December 21, 2018

**CERTIFICATE OF SERVICE**

I, Susan P. McGinnis, hereby certify that two copies of the foregoing were mailed, this day, postage prepaid, to Eric Wolpin, Assistant Appellate Defender, counsel of record for the defendant, at the following address:

Eric Wolpin,  
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Concord, NH 03301

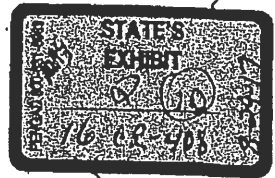


Susan P. McGinnis

December 21, 2018

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STATE OF NEW HAMPSHIRE  
SUPERIOR COURT

GRAFTON, SS.

Docket No. 14-CV-372

Town of Hanover

v.

David B. Vincelette

THE COMPTROLLER

*[Handwritten signature]*  
Clerk Assistant

CONTEMPT ORDER

*VK*  
*8/19/16*

This case was before the court on September 13, 2016 for a hearing on the plaintiff's Motion for Contempt (Index #38), to which the defendant, David Vincelette, objected. (Index #41). The defendant was served in hand with the plaintiff's motion by the Grafton County Sheriff's Department on August 10, 2016. (Index #40). The plaintiff appeared and was represented by Walter L. Mitchell, Esquire. The defendant participated *pro se*. Testimony was taken from several witnesses, including the defendant. Evidence was also presented by offer of proof. The court took the matter under advisement to consider the evidence and to view certain videotape recordings shot by the Grafton County Sheriff's Department. This is the fourth motion for contempt filed by the plaintiff against the defendant. Having considered all of the evidence presented, the court finds and rules as follows.

This case was initiated nearly two years ago in November 2014, when the plaintiff brought suit against the defendant in equity for preliminary and permanent injunctive relief. A detailed factual and procedural history of this matter is set forth in the court's prior orders and, as such, the court declines to reiterate same in its entirety herein.

Nevertheless, by way of background the court notes that a final decree was issued on May 12, 2015 (Index #13), pursuant to which the court made numerous findings of fact, rulings, and orders. Specifically, the court found that the parties' properties are abutting, and that access to both parties' properties is via a private right of way from N.H. Route 120. The court further found in its May 12, 2015, final decree that the defendant, without the plaintiff's permission, had placed numerous

CLERK'S NOTICE DATE

10/6/16

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objects, including “wood pallets, abandoned vehicles, boats, windows, doors, appliances including refrigerators, metal brackets, furniture, and yard maintenance equipment,” on the plaintiff’s property, including the private right of way “which objects are so numerous that they narrow the right of way to such a width that it is difficult for a vehicle to access the town’s property.” Additionally, the court found in its May 12, 2015 final decree that “[a]lthough the town has asked the defendant to remove the items from its property, he has refused to do so, but instead has moved more objects into the right of way and on the town’s property,” and that the “[d]efendant has therefore trespassed by intentionally placing and leaving objects on town land.” The court’s May 12, 2015, decree specifically ordered the defendant “to remove all objects within the right of way that will interfere with travel on the road, as well as the items on town land by June 1, 2015.”

On September 14, 2015, this court issued an order finding the defendant in civil contempt of its May 12, 2015, final decree, pursuant to which the defendant was again ordered to remove all of his materials and debris from the plaintiff’s property, including the right of way, before October 12, 2015. In addition, the court ordered that should the defendant fail to comply with its order the plaintiff was permitted to remove “any remaining pallets, vehicles, appliances, trash[,] and other debris at the defendant’s costs.” Implicit in the court’s September 14, 2015 order is a requirement that the defendant neither prohibit nor interfere with the plaintiff’s right to enter upon the right of way and/or clean up its own property by removing the aforementioned materials and debris.

Suffice it to say, the defendant did not purge himself of contempt by complying with the September 14, 2015 order, and a further contempt hearing was held on October 23, 2015. On October 29, 2015, the court issued its second order finding the defendant in indirect civil contempt of the September 14, 2015 order for failing to remove his materials and debris from the plaintiff’s land. The defendant’s competing motions seeking orders of contempt against the plaintiff were denied. The October 29, 2015 order mandated that “the defendant [] immediately cease interfering with the plaintiff’s exercise of its rights to remove the defendant’s

materials from the right of way and the plaintiff's property," and specifically provided that "[t]he plaintiff may resume removing the defendant's debris from its property and the right of way." The plaintiff's request for a preemptive arrest warrant in the event the defendant continued to interfere with its efforts to remove material and debris from the site was denied, but the court specifically cautioned the defendant that he faced possible incarceration "in the event he continues to interfere with the plaintiff's lawful actions." The court also informed the defendant he "may be subject to the provisions of the State Criminal Code if he interferes with the lawful actions of the Hanover Police or other civil authorities."

The case was back before the court on January 6, 2016, for a hearing on the plaintiff's third motion for contempt. The plaintiff alleged that the defendant had intentionally blocked the plaintiff's access to its property on November 6, 2015, by parking his pickup truck across the right of way where it intersects with Route 120. Although this fact proved to be undisputed, the evidence showed that the defendant had driven his vehicle away shortly thereafter and did not return. The plaintiff, despite being aware of the defendant's departure, declined, nevertheless, to access the right of way, and the court did not find the defendant in contempt. The court did, however, caution the defendant, once again, that he could be found in civil contempt, and possibly incarcerated, should he continue to interfere with the plaintiff's right to access the right of way and/or its removal of the material and debris. Additionally, the defendant was cautioned, yet again, by the court that he risked possible criminal prosecution for contempt or on other grounds "should he threaten the plaintiff's employees or continue to interfere with the plaintiff's lawful actions."

With regard to the plaintiff's pending fourth motion for contempt, the court finds that the plaintiff has presented credible, persuasive testimonial and videotaped evidence that the defendant intentionally interfered with and disrupted the plaintiff's efforts to remove materials and debris from its property, including the right of way, on two further occasions subsequent to January 6, 2016.

More specifically, the credible evidence is that upon entering the right of way

on January 11, 2016, a work crew from the Hanover Public Works Department again encountered the defendant's pickup truck impeding their way and a car blocking access to materials and debris on the plaintiff's property. This occurred following a meeting at the plaintiff's public works building earlier that day between representatives of the plaintiff and the defendant in an attempt to negotiate the removal of the materials. When the plaintiff's work crew and their machinery arrived at the site, the defendant confronted the foreman, Michael Chase, and other members of the work crew by yelling, screaming, and accusing them of criminal acts. The defendant then moved the two vehicles closer to the materials the crew intended to remove in an attempt to further block the men from accessing the material. At that point, the defendant left the site; albeit temporarily.

In the defendant's absence, the plaintiff's work crew began loading materials and debris for removal, whereupon the defendant, accompanied by his wife, returned to the scene and again accosted the foremen and crew members in the same aggressive, threatening manner, all the while ordering them to return the materials and vacate the area. At one point, the defendant climb into a large dumpster where materials had been loaded, and the defendant's wife positioned herself between a skid steer and the plaintiff's other heavy equipment in an attempt to block removal of the loaded materials. Concerned for his crew's physical safety and possible damage to the plaintiff's equipment given the defendant's increasingly volatile behavior, Michael Chase ordered the work crew to depart the scene.

Subsequent to January 11, 2016, the plaintiff decided not to attempt to enter its property and remove the defendant's materials during the winter and early spring of this year. However, on May 16, 2016, the plaintiff returned to the subject premises accompanied by uniformed officers of the Grafton County Sheriff's Department. The credible evidence is that the plaintiff enlisted the assistance of the Sheriff's Department both to enforce the court's orders and to maintain order and safety while doing so given the confrontational nature of the January 11, 2016 encounter between its work crew and the defendant. Sheriff Department officers entered the property first in what proved to be an unsuccessful attempt to locate the defendant and advise

him of the plaintiff's intentions. Thereafter, the plaintiff's work crew and heavy equipment entered the property to begin removing materials and debris from the site, including the right of way.

It was approximately at that point that the defendant appeared and engaged in a prolonged and belligerent tirade directed toward the Sheriff's Department officers, Michael Chase, and others employed by the plaintiff, which was obviously intended to stop the plaintiff, once again, from removing the materials and debris stockpiled on its property and from otherwise enforcing its rights under the court's orders. A significant portion of the defendant's interactions with the plaintiff's employees and the law enforcement officers on May 16, 2016 is captured on the videotape recorded by the Sheriff's Department. The defendant is seen on the video recording repeatedly harassing, insulting, and threatening the plaintiff's work crew and the officers telling them repeatedly that they had no right to be there, and ordering them to cease working and depart the area. Given the highly charged, prolonged, and volatile behaviors being exhibited by the defendant, the plaintiff and the Sheriff's Department determined that the situation was unsafe and elected to vacate the area.

In addition to the videotape recordings, the court heard testimony from Michael Chase, who is the operations manager for the Hanover Highway Department. Mr. Chase was present at the scene with the defendant on January 11, 2016 and May 16, 2016, and gave credible and persuasive evidence regarding the defendant's hostile and aggressive efforts to impede, discourage, and block the plaintiff from removing the materials and debris from the right of way and the plaintiff's other property on both occasions.

The defendant stipulated during the hearing to the admission of the videotape recordings as evidence. During both the defendant's testimony and his presentation and arguments to the court, the defendant did not dispute, in any meaningful or credible fashion, the plaintiff's evidence, but instead choose to argue that the parties' deeds restrict vehicular access to the right of way by the plaintiff. The defendant also argued that the plaintiff has targeted him and his family for various reasons,

including his having publically accused the plaintiff and Dartmouth College of violating state and federal environmental and other laws.

The defendant did not specifically raise or argue that he could not comply with either the court's September 14, 2015 or October 29, 2015 orders. *See In the Matter of Brownell & Brownell*, 163 N.H. 593, 602 (2012).

The defendant's deed restriction argument is irrelevant and erroneous, as are his remaining arguments; many of which he has raised repeatedly with the court on prior occasions.

The court finds and holds that the plaintiff has carried its burden of proof that the defendant is in indirect contempt of the court's September 14, 2015 and October 29, 2015 orders by intentionally interfering with the plaintiff's lawful attempts on January 11, 2016 and May 16, 2016 to remove the materials and debris stockpiled by the defendant on the plaintiff's property.

The defendant, by his intentional actions, has on repeated occasions obstructed the plaintiff's attempts to effectuate and enforce the court's orders, even when the plaintiff's employees have been accompanied by law enforcement personnel. The defendant's repeated hostile actions, behaviors, and demeanor directed toward the plaintiff's employees and others acting on its behalf have caused the plaintiff to determine, justifiably, that it may be impossible for it to safely access its property and enforce its rights. The court adopts and incorporates herein by reference paragraphs 24 a. through 24 s. of the plaintiff's Motion for Contempt dated July 7, 2016, (Index #38), as additional findings of fact; all of which are supported by the evidence presented. Additionally, the evidence supports a finding that the defendant has made no significant or sustained effort himself since the court issued its final decree in May 2015 to remove the materials and debris he has deposited on the plaintiff's property.

At all times relevant, the defendant has had actual notice of the court's orders and has had the ability to comply with the orders, but he has repeatedly and intentionally failed to comply and has aggressively thwarted the plaintiff's efforts to enforce the court's orders. In point of fact, a Sheriff's Department officer actually

read the October 29, 2015 order to the defendant at the subject property on May 16, 2016.

Accordingly, the defendant is again ordered to immediately and permanently cease interfering in any way with the plaintiff's exercise of its right in any manner it elects to remove the defendant's materials from the right of way and the plaintiff's other property. The plaintiff is awarded its reasonable attorney's fees and cost incurred relative to this contempt proceeding, and shall submit a taxation of costs and fees to the court for its review and approval within 14 days of the date of the Clerk's notice of this decision. The plaintiff's request that the defendant be incarcerated at this juncture is denied. As the court understands the plaintiff's request, it is seeking an order to incarcerate the defendant at a future date for an as yet unspecified, but determinate period to permit plaintiff to remove the materials and debris from its property without interference from the defendant. While the court understands the plaintiff's reasoning, an order for a determinate period of incarceration would not be remedial but punitive, and thus would constitute an impermissible criminal sanction in the context of this civil case. *See State v. Wallace*, 136 N.H. 267, 269-70 (1992).

This order constitutes the court's third finding of civil contempt against the defendant in this case. The evidence supports a finding that the defendant's contempt of court has been continual and ongoing since the court issued its final decree in that he has neither removed all of the materials and debris from the plaintiff's property nor permitted the plaintiff to remove them. In that respect, the court finds that the defendant's contempt to be substantially similar in kind to that of the contemnor in *Bonser v. Courtney* in that the defendant has repeatedly and willfully failed to comply with this court's orders and has shown every indication that he has no intention of complying. *See Bonser v. Courtney*, 124 N.H. 796 (1984).

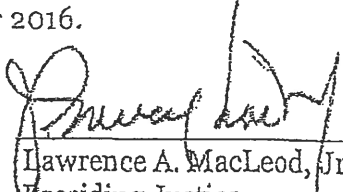
Should the defendant fail to fully remove all of his materials and/or debris located on the plaintiff's property, including the right of way, within the next 30 days and/or continue to interfere with, obstruct, block, or take any other actions to thwart the plaintiff's efforts to enforce the court's orders, the defendant shall, upon the

court's receipt from the plaintiff of a verified pleading or affidavit attesting to the defendant's continued or repeated contempt, appear before this court to show cause why he should not be incarcerated for an indeterminate period in the Grafton County House of Corrections until he purges himself of such contempt.

Finally, the Clerk of Court is instructed to refer this case to the Grafton County Attorney's Office for investigation and possible prosecution of the defendant for the crime of indirect criminal contempt of court. Should the Grafton County Attorney determine that prosecution of the defendant is warranted and charge the defendant with criminal contempt, any sentence of incarceration imposed should the defendant be convicted shall not exceed six (6) months in the Grafton County House of Corrections. *See State v. Linsky*, 117 N.H. 866, 881 (1977).

This order shall not be stayed in the event of any appeal, but shall continue as a temporary order during any pending appeal.

SO ORDERED, this 30<sup>th</sup> day of September 2016.

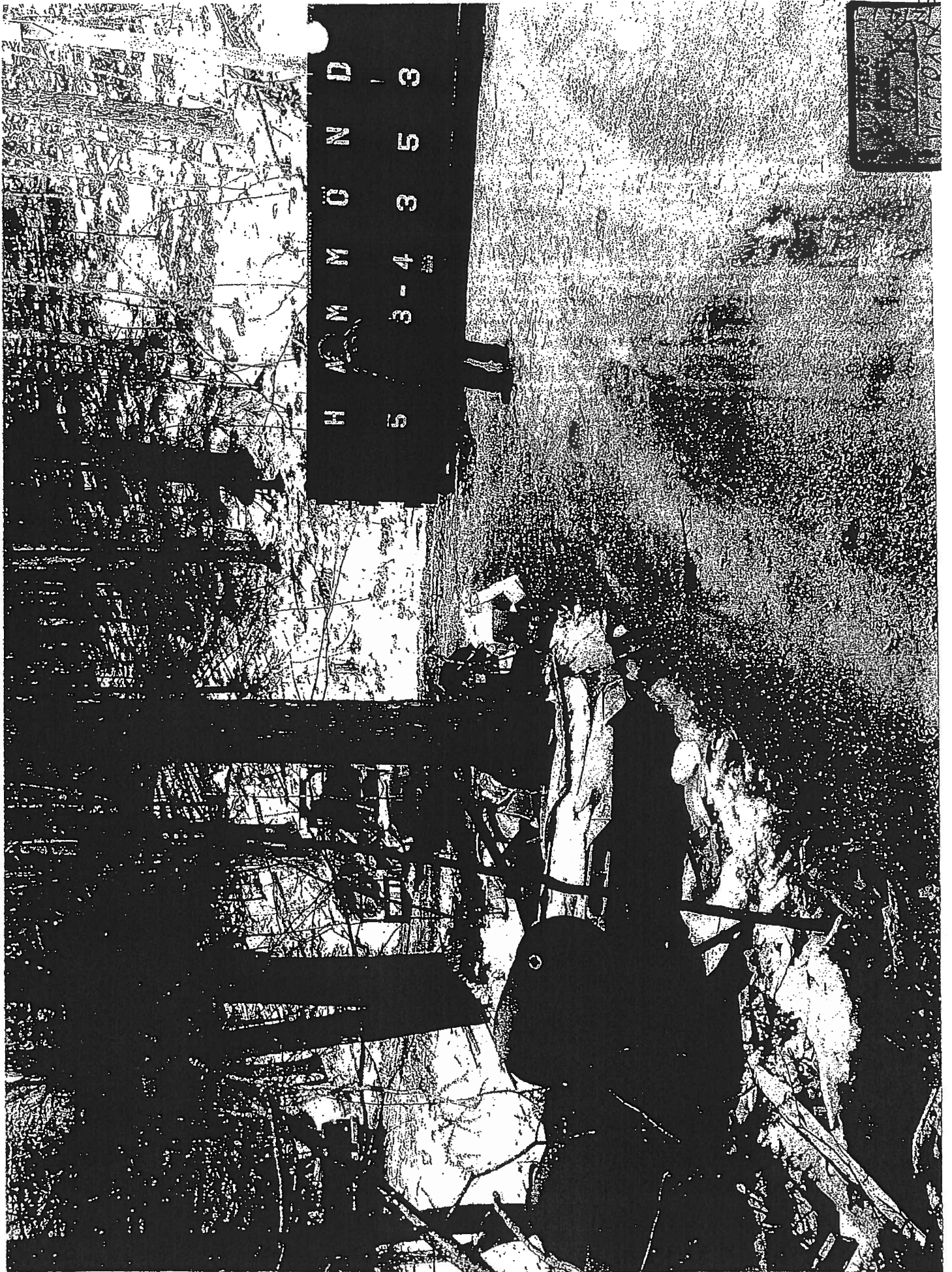
  
Lawrence A. MacLeod, Jr.  
residing Justice

TRUE COPY ATTEST:

  
Court Assistant







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