

THE STATE OF NEW HAMPSHIRE
SUPREME COURT

No. 2018-0222

State of New Hampshire

v.

Katherine Saintil-Brown

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

BRIEF FOR THE DEFENDANT

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TEXT OF RELEVANT AUTHORITY

161-F:46 Reports of Adult Abuse; Investigations. –

Any person, including, but not limited to, physicians, other health care professionals, social workers, clergy, and law enforcement officials, suspecting or believing in good faith that any adult who is or who is suspected to be vulnerable has been subjected to abuse, neglect, self-neglect, or exploitation or is living in hazardous conditions shall report or cause a report to be made as follows:

I. An oral report, by telephone or otherwise, shall be made immediately, followed by a written report, if so requested, to the commissioner or his authorized representative. When oral reports are made after working hours of the department, or on weekends or holidays, such reports shall be made to the police department of the appropriate political subdivision, or to the sheriff of the county, in which the alleged abuse, neglect or exploitation occurred. Law enforcement officials receiving reports under this paragraph shall notify the commissioner within 72 hours of receipt of such reports.

161-F:50 Penalty for Violation. – Any person who knowingly fails to make any report required by RSA 161-F:46 shall be guilty of a misdemeanor.

631:8 Criminal Neglect of Elderly, Disabled, or Impaired Adults. –

I. In this section:

- (a) "Adult" means any person who is 18 years of age or older.
- (b) "Caregiver" means any person who has been entrusted with, or has assumed the responsibility voluntarily, by contract, or by order of the court, for frequent and regular care of or services to an elderly, disabled, or impaired adult, including subsistence, medical, custodial, personal or other care, on a temporary or permanent basis. A caregiver shall not include an uncompensated volunteer, unless such person has agreed to provide care and is aware that the person receiving the care is dependent upon the care provided.
- (c) "Disabled adult" means an adult who has a diagnosed physical or mental impairment.
- (d) "Elderly adult" means an individual who is 60 years of age or older.
- (e) "Impaired adult" means any adult who suffers from an impairment by reason of mental illness, developmental disability, organic brain disorder, physical illness or disability, chronic use of drugs, chronic intoxication, memory loss, or other cause, that causes an adult to lack sufficient understanding or capacity to make or communicate reasonable decisions concerning the adult's person or property or exhibits the functional limitations as defined in RSA 464-A:2, VII. Impaired adult includes a person determined to be vulnerable under RSA 161-F or incapacitated under RSA 464-A.
- (f) "Neglect" means the failure or omission on the part of the caregiver to provide the care, supervision, and services which he or she has voluntarily, or by contract, or by order of the court agreed to provide and which are necessary to maintain the health of an elderly, disabled, or impaired adult, including, but not limited to, food, clothing, medicine, shelter, supervision, and medical services, that a prudent person would consider necessary for the well-being of an elderly, disabled, or impaired adult. "Neglect" may be repeated conduct or a single incident.
- (g) "Person" means any natural person, corporation, trust, partnership, unincorporated association, or any other legal entity.
- (h) "Serious bodily injury" means serious bodily injury as defined in RSA 625:11, VI.

(i) "Undue influence" means the intentional use, by a person in a position of trust and confidence with an elderly, disabled, or impaired adult, of that position to obtain an unfair advantage over the elderly, disabled, or impaired adult, through actions or tactics, including, but not limited to, emotional, psychological, and legal manipulation.

II. Any caregiver who purposely causes serious bodily injury to an elderly, disabled, or impaired adult by neglect shall be guilty of a class A felony.

III. Any caregiver who knowingly or recklessly causes serious bodily injury to an elderly, disabled, or impaired adult by neglect shall be guilty of a class B felony.

IV. Nothing in this section shall be construed to alter or impair a person's right to self-determination or right to refuse medical treatment as described in RSA 151:21 and RSA 151:21-b.

V. Nothing in this section shall be construed to mean a person is abused, neglected, exploited, or in need of protective services for the sole reason that such person relies on or is being furnished treatment by spiritual means alone through prayer, in accordance with the tenets and practices of a church or religious denomination of which such person is a member or an adherent.

VI. Nothing in this section shall be construed to impose criminal liability on a person who has made a good faith effort to provide for the care of an elderly, disabled, or impaired adult, but through no fault of his or her own, has been unable to provide such care, or on a person who is carrying out the lawful request of an elderly or disabled adult who is competent to make his or her own decisions

QUESTIONS PRESENTED

1. Whether the State presented sufficient evidence to prove criminal neglect of an elderly adult.

Issue preserved in part by defense motion to dismiss, the hearing, and the court's ruling. T 344-49.* Issue raised in part as plain error pursuant to Supreme Court Rule 16-A.

2. Whether the State presented sufficient evidence to prove negligent homicide.

Issue raised as plain error.

3. Whether the jury instructions on the criminal neglect charge constituted plain error.

Issue raised as plain error.

4. Whether the State presented sufficient evidence to prove failure to report elder abuse.

Issue raised as plain error.

* Citations to the record are as follows:

“A” refers to the appendix to this brief;

“D” refers to the designated time on the recording of the untranscribed deposition of Dr. MacKenzie, played at trial in lieu of his live testimony;

“H” refers to the transcript of the motions hearing held December 27, 2017;

“T” refers to the consecutively-paginated transcript of the four-day trial held in January 2018;

“S” refers to the transcript of the sentencing hearing held April 2, 2018.

STATEMENT OF THE CASE

In 2017, the State charged Katherine Saintil-Brown with three crimes arising out of the death of her mother, N.P., in February 2016. First, the State charged negligent homicide, alleging that Saintil-Brown negligently caused N.P.'s death by allowing her "to lay on the floor of their shared home for multiple days in her own feces and urine without calling for help, which caused [N.P.] to develop a fatal necrotizing soft-tissue infection. . . ." T 90. Second, the State charged Saintil-Brown with criminal neglect of an elder adult by a "caregiver" as defined by RSA 631:8. T 91-92. Third, the State charged Saintil-Brown with committing the misdemeanor of failing to report adult abuse, in violation of RSA 161-F:46 and -F:50. T 90-91.

Saintil-Brown stood trial over four days in January 2018. The jury convicted her on all counts. T 515-17. The court (Delker, J.) sentenced her to concurrent stand-committed terms of two to four years for negligent homicide and neglect of an elder adult, with one year of the minimum and one year of the maximum suspended for five years from release. S 29-30. For failure to report abuse, the court pronounced a concurrent twelve-month sentence, also suspended for five years from release. S 30.

STATEMENT OF THE FACTS

N.P. was the mother of Katherine Saintil-Brown and the grandmother of Saintil-Brown's daughter, Meritel Saintil (Meritel). T 362. In 2012, N.P.'s husband died, leaving N.P. alone in the trailer they had shared in Exeter. T 329, 355-57. For about two years after the death of N.P.'s husband, Saintil-Brown and Meritel lived nearby and frequently ran errands for N.P. T 369, 390. In September 2014, Saintil-Brown and Meritel moved into N.P.'s trailer to live with her. T 341, 369-70, 388-90. In early 2016, N.P. was seventy-five years old. T 203, 337.

After Saintil-Brown and Meritel moved in with her in 2014, N.P. would occasionally accompany them on errands. T 374. By the last weeks of her life, though, N.P. "would just sit in the chair all day" watching television and talking on the telephone with her sister. T 375. N.P. would relieve herself where she sat. T 376.

Evidence at trial described appalling conditions in N.P.'s trailer. Exeter firemen who responded to Saintil-Brown's call for assistance on February 17, 2016, testified that, upon approaching the trailer, a "horrific" and "breathtaking" odor "like a litter box that hadn't been emptied in a month" would "hit you." T 130, 143, 156, 172, 181. Inside, the carpet was "dirty" and "disgusting," as if it hadn't been cleaned in a long time. T 136, 172-73. The firemen observed a hole or "soft

spot” in the floor that “felt like the floor was really weak, going to give way.” T 157, 173-74. There was “brown stuff smeared all over the stove.” T 173. In the midst of this scene, Saintil-Brown and Meritel stood barefoot. T 173.

Testimony established that such conditions had long prevailed in the home. A police officer who visited in May 2015 found the trailer to be “absolutely disgusting” in that it was “kind of unkept, dirty, smelled inside, a lot of flies.” T 272, 274-75. After leaving, the officer contacted the Bureau of Elderly and Adult Services (BEAS), an entity within the Department of Health and Human Services tasked with receiving and investigating reports of abuse, neglect, or self-neglect of incapacitated or vulnerable adults, and with arranging necessary assistance. T 277, 295-98.

Another of N.P.’s daughters, Allison Raiche, recalled that the smell in the house was “horrendous” when Raiche last visited there, some three years before N.P.’s death. T 328-29. Raiche testified that there was “feces everywhere. The sink was clogged up so bad with food that mice had actually settled in and made nests in there.” T 329. Other witnesses similarly described the conditions in the years before Saintil-Brown and Meritel lived there. A BEAS social worker who visited in 2012 in response to a self-neglect report noted filth and a very strong odor of urine. T 355-56.

Meritel, aged thirty-four at the time of trial, testified¹ that she lived in the trailer at times during her childhood and that in those years N.P. “wouldn’t use the toilet. She would basically just go where she was sitting. . . . [W]hen she came in the house, she would take her pants off and she would go to the bathroom while she was cooking in the kitchen. There used to be puddles and poop all over the floors.” T 363-67, 391-92. Meritel’s grandfather for many years slept on the floor rather than in the bed with N.P. because N.P. would urinate and defecate in the bed. T 434.

Lest Meritel’s testimony be thought self-serving, the defense called witnesses who worked in a manufacturing plant with N.P. in the early- and mid-1990s, but afterwards had no contact with her or her family. T 440-42, 448-49, 452, 455-56. The former co-worker witnesses recalled that N.P.’s “personal hygiene was abominable.” T 443, 453. Co-workers could see sores on N.P.’s feet and legs, and they observed that N.P. “would pick the scabs off her feet and eat them.” T 447, 454. One witness recalled that N.P. would urinate, defecate, and menstruate such that bodily fluids would “run down her leg into her shoe” and onto the floor of the workplace. T 444-45. The smell was such that co-workers could not bring themselves to eat lunch at the work table as required, and

¹ The defense called Meritel Saintil to testify at trial. T 362-434. Saintil-Brown did not testify.

consequently lost a significant amount of weight. T 444, 453, 455.

Those conditions reflected N.P.'s chosen way of life. For as long as Meritel could remember, N.P. refused to go to doctors, and Meritel could recall only one occasion, in 2003, in which N.P. had seen a doctor. T 366; see also T 450-51, 454 (N.P.'s negative views about doctors expressed to her 1990's co-workers). Meritel testified that, in response to exhortations to seek medical care, N.P. would say, "[W]ell, if I die, then I die." T 373. She would also say that she wanted to die in her home rather than in a hospital or nursing home. T 373, 413.

In 2012, N.P. "refused totally" the BEAS social worker's offers of help. T 357-58. In May 2015, having noticed that one of N.P.'s feet was "swollen and purple," T 271, 276, the police officer offered to get medical attention or any other kind of help N.P. might want. T 271, 275-77. N.P. refused. T 276-77. In June 2015, a BEAS social worker visited N.P. T 298-300. During that first visit and on a follow-up visit in late January 2016, N.P. refused to let the social worker enter her home. T 300, 304. N.P. told the social worker "that she was not fond of seeing doctors" and had not seen one since her husband's death in 2012, as she blamed doctors for his death. T 302-03. N.P. also refused the social worker's offer of aid with food or anything else. T 303-04. N.P. repeated that refusal of any

assistance during the January 2016 visit, and asked that BEAS close her case. T 305-06, 312-14. BEAS closed the case. T 309.

One day in February 2016, Saintil-Brown and Meritel got up in the morning to find that N.P. was not seated in her recliner as was her custom but was instead lying on the floor. T 376. N.P. told them that she “got on the floor” herself. T 376. They told her she needed to get up and, with N.P.’s cooperation, tried unsuccessfully to lift her. T 376-77, 381, 401-03, 410-13. Meritel later tried to enlist N.P.’s effort and cooperation in rising from the floor by offering to cook her favorite meal – spaghetti. T 379-80. N.P. said she would get up but did not do so. T 380. She told them that she was fine on the floor and forbade them to call firefighters to lift her. T 380, 402-03, 413.

For the remainder of that day and for the following days, N.P. remained on the floor. T 384-85. To Meritel, N.P. seemed no different. T 382-85. She did not complain about any pain and there was no visible wound signaling the onset of the fatal infection. T 386, 424-25. She continued to watch television, speak to her sister on the phone, and eat. T 381-85, 422. She also urinated and defecated on herself but, as noted, that marked no change from her practice of prior months and years. T 384, 406-07, 422-23. Saintil-Brown and Meritel continued without success to try to lift N.P. or

persuade her to get up from the floor. T 382-83, 401-03. N.P. remained adamant that she did not want strangers coming in her house. T 384, 409, 425.

On N.P.'s fourth day on the floor, Saintil-Brown and Meritel searched the internet for information about stroke symptoms. T 423-24. Meritel testified that the search was prompted not by any change in N.P.'s demeanor, but rather by their perplexity as to why she would want to stay on the floor so long. T 424. Around 9:00 a.m. on the fifth day, February 17, 2016, Saintil-Brown called the Exeter fire department for help lifting N.P. back into her chair. T 128-29, 156, 171, 386, 425-26. During the call, Saintil-Brown said that "she wanted someone to pick her mother off the floor because she didn't want to be responsible." H 8; T 108, 492. Meritel testified that N.P. expressed anger that they were calling for help lifting her. T 386.

At the home, firefighters found N.P. lying on her right side, covered in urine and feces, with "feces hanging out of her rectum." T 135, 140, 159, 167, 175. She wore a nightgown described as "soaked" with "bodily fluids." T 165-66. By N.P.'s head was a McDonald's cheeseburger with "one bite . . . taken out of it." T 136. Saintil-Brown told the firefighters that N.P. had been on the floor for five days. T 138, 176-77.

Pursuant to protocol, firefighter-EMTs assessed N.P.'s mental state. T 137, 160-61. N.P. answered some assessment questions correctly and others incorrectly. T 168, 182. She knew her name and where she was, but didn't know the day of the week, and incorrectly answered that the month was October. T 183. Other questions she did not answer or answered inappropriately such as by saying "no" when asked to name the current president. T 183. The EMTs concluded that she had an "altered mental state." T 137-38, 144, 161-64, 174, 181-84. They further determined that she was hypothermic, had low blood pressure and a low blood-oxygen level. T 141-42. N.P. told EMTs that she did not want to go to the hospital. T 162, 167-68, 189-90. Nevertheless, on the authority of their assessment that N.P. had an altered mental state, the EMTs brought her to Exeter Hospital. T 164.

At Exeter Hospital, an emergency room doctor, Catherine Fernando, examined N.P. T 203. Fernando testified that N.P. answered her questions and denied feeling any pain. T 204-05, 222, 225; but see T 242, 246 (Exeter Hospital nurse testified that N.P. seemed disoriented and non-responsive to questions). N.P. told Fernando that she didn't know why she had been brought to the hospital, a statement that, to Fernando, indicated an altered mental state. T 205-06. Based on N.P.'s vital signs and the fact that she had been "on the ground that long, laying in [her] own filth," Fernando

suspected that N.P. had an infection. T 207-08, 224-25, 249-50. However, during an initial “head to toe” examination of N.P., Fernando could not locate the site of any infection. T 209, 224, 227.

Fernando ordered a urine sample, and to obtain it, nurses undertook to clean N.P. from the waist down. T 210. A nurse testified that, at the outset, it looked like N.P. was “wearing pants made of stool,” with “feces caked to her from navel to toes.” T 243. Nurses spent more than an hour cleaning N.P., and in that process discovered a wound on the inside of her thigh. T 244-45, 250. When Fernando looked at the wound, she tentatively diagnosed necrotizing fasciitis, a rare condition in which a bacterial infection spreads, killing skin and muscle tissue. T 211-16, 258. Upon seeing test results indicating that the infection had spread deep into N.P.’s leg, Fernando decided to transfer N.P. to a hospital better equipped to handle so serious a case. T 217-19. Later that day, N.P. arrived at the Maine Medical Center (“MMC”). T 256.

Medical testimony established that infections of this sort spread “very, very quickly.” T 219, 264. Indeed, Fernando testified that the infection must have begun at some point during N.P.’s days on the floor, for had it begun earlier, N.P. would have died before February 17. T 220, 227-28. Fernando acknowledged that the infection could have begun mere hours

before N.P.'s arrival at the hospital. T 228-29. Dr. Brittany Misercola, a surgeon at MMC, testified that, although she could not be certain, it was "most likely" that the infection developed within the twenty-four to forty-eight-hour period preceding N.P.'s arrival at MMC. T 264; see also D 34:20 (MMC Dr. David MacKenzie estimated onset of infection at forty-eight to seventy-two hours prior to N.P.'s arrival at MMC, shortly before 5:00 p.m. on February 17). Misercola also testified that an altered mental state would manifest usually "within twelve to twenty-four hours" of infection. T 264.

By the time Misercola examined N.P. sometime after 6:00 p.m., N.P. could communicate only that she was in discomfort, and otherwise manifested an altered mental state. T 258-59, 263. Misercola noted that the infection appeared on the inside of both thighs, though more on the left than the right. T 258-59. The doctors worried that it seemed to be spreading down N.P.'s legs toward her ankles, as well as up her legs toward her abdomen. T 258, 264.

The only life-saving treatment possible in the case of a necrotizing soft-tissue infection involves an aggressive series of surgeries to remove the dead tissue. T 260-62. In circumstances in which the life-saving surgical option is unlikely to succeed, the only other treatment protocol calls for

palliative care, making the patient comfortable until the disease causes death. T 260.

Even under the best of circumstances, a third of patients with necrotizing soft-tissue disease will die despite surgical intervention. T 261. Here, because the disease “was already pretty advanced,” and because N.P. was “very obese” and generally in poor health, the doctors concluded that the prospect for success of the surgical option was “quite low.” T 135, 260-61. The doctors explained the options and prognosis to Saintil-Brown and Meritel. T 261-62. Ultimately, according to Misercola, “we decided that the patient had expressed previously that she would not want to be in a nursing home or lose her autonomy and decided that aggressive surgical management was not going to be in her goals of care.” T 262. As a result of that choice of palliative care, N.P. was transferred to a hospice in Massachusetts, and by the time she arrived there, N.P. was no longer responsive. T 262-63, 288-89. Three days later, on February 20, N.P. died. T 262-63, 288, 306. The cause of death was sepsis resulting from necrotizing fasciitis. T 263, 306.

Because of N.P.’s well-documented history of hostility to doctors and refusal to seek or accept medical care or other assistance, the parties elicited testimony about the legal principles governing care of the elderly. Provided that she was competent, N.P. had the right to refuse medical care or other

aid. T 153, 163, 168, 231, 298, 314, 358. Thus, neither BEAS social workers nor N.P.'s family members could compel her to accept medical care as long as she remained competent. Saintil-Brown and Meritel knew that N.P. had that right. T 433. That circumstance led the parties to focus on the question of when, during her time on the floor, N.P. became incompetent, for only then could Saintil-Brown summon aid with any hope that it would be rendered.

The State argued that N.P. became incompetent soon after her descent to the floor. On N.P.'s first morning on the floor, she said that she could see her grandson "Levey" dancing on the wall. T 377-78, 415. Meritel testified at trial that she understood N.P. to be joking. T 377-78, 415-17, 420. The State contended that Meritel previously described that moment to police in terms indicating that N.P. was hallucinating. T 416-20, 458-61. Meritel testified that, throughout her time on the floor, N.P. remained as lucid as ever. T 377, 380-81, 420-23. Firefighters testified that Saintil-Brown and Meritel displayed no particular concern about the situation. T 141, 164, 176-77.

In its effort to prove a culpable mental state, the State introduced evidence that Saintil-Brown and Meritel inherited the proceeds of two accounts belonging to N.P. T 338, 428. They were named the heirs with respect to one account in 2012 and the other in early 2014, before they moved into

N.P.'s trailer in September 2014. T 340-42. Saintil-Brown's sister, Raiche, testified that, on a number of occasions and most recently about three years before N.P.'s death, she heard Saintil-Brown say to N.P., "I can't wait until you die so I can get your money." T 324, 332. Raiche explained, though, that the statement came in the context of a "back and forth" argument in which N.P. would say "horrible things" to Saintil-Brown, including expressing the wish that Saintil-Brown would die. T 324, 331. Raiche added that she did not interpret Saintil-Brown's statement as a serious expression of purpose. T 331-32.

During an intake conversation with the hospice facility social worker, the topic of bills due in N.P.'s name came up. T 289-93. The State attributed incriminating significance to Saintil-Brown's statement, in that conversation, that she had an account under both her and N.P.'s name, "but wasn't sure if [N.P.] had to be deceased before [Saintil-Brown] would access those funds." T 291. During that conversation, Saintil-Brown referred to herself as N.P.'s "caregiver." T 290-91.

The State also tried to prove that Saintil-Brown felt some consciousness of guilt with respect to N.P.'s condition. An Exeter Hospital nurse testified that, during a phone call to the hospital, Saintil-Brown claimed that a social worker had come to the house and said that N.P. could not be forced to go to the hospital, and to let her stay on the floor. T 236, 247.

The State introduced evidence seeking to establish that no BEAS social worker, nor any representative of any other social service agency, went to the house during the days N.P. was on the floor. T 307-10, 336-37. Also, Saintil-Brown reportedly said that N.P. had not soiled herself at the home, but rather en route to the hospital. T 236. Finally, a nurse testified that, during another call to Exeter Hospital, Saintil-Brown “scream[ed]” that “everyone is blaming her and it’s not her fault.” T 247-48.

SUMMARY OF THE ARGUMENT

Saintil-Brown found herself in a difficult position. On the one hand, her mother lived in squalid and unhealthy conditions. On the other hand, her mother – as was her right – steadfastly refused medical and hygienic care. Saintil-Brown thus had to balance mutually-exclusive obligations to her mother’s health and to her autonomy. Fundamentally, this case asks whether Saintil-Brown’s attempt to navigate these conflicting obligations was so deficient as to be criminal.

1. The State introduced insufficient evidence to prove criminal neglect. First, the State failed to prove the neglectful caregiver element. That is, the State did not prove that Saintil-Brown became N.P.’s “caregiver” with regard to hygiene, access to medical care, or any other form of care that Saintil-Brown neglected to provide. Second, the State failed to prove that an act or omission by Saintil-Brown caused N.P.’s infection. Third, the State failed to prove that Saintil-Brown acted recklessly.

2. The State introduced insufficient evidence to prove negligent homicide. First, the State failed to prove causation. Second, the State failed to prove that Saintil-Brown acted negligently.

3. The court plainly erred in defining the sixth element of criminal neglect. Whereas the statute required the State to prove that Saintil-Brown neglected a duty that she

had the ability to perform, the instruction communicated the opposite. That is, it told the jury that, to convict, it must find that Saintil-Brown lacked the ability to provide care.

4. The State introduced insufficient evidence to prove the mental state element of failure to report.

I. THE STATE PRESENTED INSUFFICIENT EVIDENCE TO PROVE THE CRIMINAL NEGLIGENCE CHARGE.

After the State rested, the defense moved to dismiss the criminal neglect charge. T 344-49. Counsel argued that the State had not proved Saintil-Brown to be a “caregiver” within the meaning of the statute. T 344-46. The State objected, and the court denied the motion. T 346-49.

RSA 631:8 defines the crime of criminal neglect of elderly, disabled, or impaired adults. Paragraph III provides that “[a]ny caregiver who knowingly or recklessly causes serious bodily injury to an elderly, disabled, or impaired adult by neglect” thereby commits a class B felony. RSA 631:8, III.

The indictment here alleged that Saintil-Brown

recklessly caused serious bodily injury to [N.P.] (age 75), an elderly adult, specifically, a necrotizing soft tissue infection, by neglect, in that Katherine Saintil-Brown allowed [N.P.] to lay on the floor of their shared home for multiple days in her own feces and urine without calling for help, which caused her to develop a necrotizing soft tissue infection, at a time when Katherine Saintil-Brown was [N.P.’s] caregiver pursuant to RSA 631:8

A5-A8.

On appeal, Saintil-Brown advances three challenges to the sufficiency of the evidence. Section A argues that the State did not prove the “caregiver neglect” element. Section B

argues that the State did not prove the causation element. Section C argues that the State did not prove that Saintil-Brown acted recklessly.

Evidence is insufficient if “no rational trier of fact, viewing all of the evidence and all reasonable inferences from it in the light most favorable to the State, could have found guilt beyond a reasonable doubt.” State v. Stanin, 170 N.H. 644, 648 (2018). A conviction on insufficient evidence violates the Due Process Clause of the Fourteenth Amendment. Jackson v. Virginia, 443 U.S. 307, 317–318 (1979). Sufficiency of the evidence is reviewed *de novo*. Stanin, 170 N.H. at 648.

Special considerations apply when, as here, the evidence offered to prove a disputed element is entirely circumstantial. “It is a well-established rule of criminal law in this State that circumstantial evidence may be sufficient to warrant the finding by a jury of guilt beyond a reasonable doubt.” State v. Germain, 165 N.H. 350, 356 (2013). The law has also, though, long recognized a categorical difference between direct and circumstantial evidence that requires explanation in jury instructions. Id. at 357-58.

Direct evidence of guilt - such as a confession or eyewitness testimony to the commission of the crime - raises a question of credibility. When presented with direct evidence, the jury may convict upon concluding that it believes, beyond

a reasonable doubt, that direct evidence to be true. Circumstantial evidence, by contrast, involves the drawing of an inference in addition to a decision whether to believe the testimony presented. Id. at 359. For that reason, courts instruct juries that, in cases involving only circumstantial evidence of an essential element, “if from the circumstantial evidence it’s reasonable to arrive at two conclusions, one consistent with guilt and one consistent with innocence, [the jury] must choose the reasonable conclusion consistent with innocence.” T 99-100.

A. The State introduced insufficient evidence to prove the caregiver neglect element.

RSA 631:8, I(b) defines “caregiver” as follows:

“Caregiver” means any person who has been entrusted with, or has assumed the responsibility voluntarily, by contract, or by order of the court, for frequent and regular care of or services to an elderly, disabled, or impaired adult, including subsistence, medical, custodial, personal or other care, on a temporary or permanent basis. A caregiver shall not include an uncompensated volunteer, unless such person has agreed to provide care and is aware that the person receiving care is dependent upon the care provided.

The “caregiver” provision works in conjunction with RSA 631:8, I(f)’s definition of “neglect:”

“Neglect” means the failure or omission on the part of the caregiver to provide the care, supervision, and services which he or she has voluntarily, or by contract, or by order of the court agreed to provide and which are necessary to maintain the health of an elderly . . . adult, including, but not limited to, food, clothing, medicine, shelter, supervision, and medical services, that a prudent person would consider necessary for the well-being of an elderly . . . adult. “Neglect” may be repeated conduct or a single incident.

Another relevant provision declares that “[n]othing in this section shall be construed to alter or impair a person’s right to self-determination or right to refuse medical treatment. . . .” RSA 631:8, IV. In a related vein, the statute limits the scope of criminal liability by providing that

Nothing in this section shall be construed to impose criminal liability on a person who has made a good faith effort to provide for the care of an elderly . . . adult, but through no fault of his or her own, has been unable to provide such care, or on a person who is carrying out the lawful request of an elderly . . . adult who is competent to make his or her own decisions.

RSA 631:8, VI.

Here, the evidence did not prove that Saintil-Brown was a “caregiver” within the meaning of the statute, in any respect

in which she “neglected” her responsibility. The statute lists a broad range of types of care, “including subsistence, medical, custodial, personal or other care.” RSA 631:8, I(b). For example, one can become a caregiver by undertaking to provide “subsistence,” without undertaking to provide medical care. Conversely, one can become a “caregiver” by undertaking to provide medical care, without necessarily also undertaking to provide food or shelter.

The definition of “neglect” makes clear that a person may be held criminally accountable under RSA 631:8 only with respect to a type of care that she has voluntarily undertaken to provide. Thus, the statute defines “neglect” as “the failure or omission to provide the care, supervision, and services which he or she has voluntarily . . . agreed to provide” RSA 631:8, I(f). At no point in her relationship with N.P. did Saintil-Brown ever undertake to provide, nor did N.P. ever express a willingness to accept, care relating to hygiene or access to medical treatment.

A person who undertakes to provide food and shelter to an elderly adult becomes a “caregiver” with respect to food and shelter, and if neglectful in the provision of food or shelter, can be prosecuted under RSA 631:8. But such a person cannot be prosecuted for neglecting to facilitate medical treatment, for she has not “voluntarily agreed to provide” that care or service.

That feature of the statute forecloses reliance by the State on N.P.'s statement to BEAS that Meritel and Saintil-Brown were "there to assist [N.P.] with the household and assist with things that [N.P.] couldn't manage there." T 303; see also T 305 ("pretty similar[]") statement on occasion of later BEAS visit); T 272-73 (statement to police officer in 2015 that she had difficulty taking care of herself and would have to enter nursing home if not for Meritel and Saintil-Brown). Indeed, the context of the conversation with the BEAS social worker indicates that the social worker asked N.P. about help getting food. T 303; see also T 389-93 (Meritel's testimony that they helped N.P. by cooking and cleaning house, to extent N.P. permitted). Confirmation of that narrow limitation on the scope of the care N.P. expected from Meritel and Saintil-Brown appears in the fact that N.P. told the BEAS social worker during the January 2016 visit that N.P. "didn't intend on following through with establishing [a doctor-patient relationship] with any medical providers." T 305-06.

Saintil-Brown's self-description to a hospice worker as N.P.'s "caregiver," T 291, thus does not prove the element, because Saintil-Brown did not, in that statement, admit specifically to having undertaken a responsibility with respect to N.P.'s medical treatment or hygiene. On the contrary, in that conversation, Saintil-Brown distinguished between the care she provided to N.P. and the medical care she had not

facilitated, in saying that it had been “difficult being a caregiver for a loved one who is alert times three in refusing medical attention.” T 290.

In denying the motion to dismiss, the court failed to appreciate the legal significance of the distinct categories of care listed in the statute. Thus, citing the statute’s inclusion of “subsistence” as a kind of “caregiving,” the court called attention to the fact that N.P.’s very limited mobility in the last part of her life meant that she relied on Meritel and Saintil-Brown for “grocery shopping.” T 349. The court thus relied, in finding Saintil-Brown to be a “caregiver,” on a type of care – the provision of food – the State did not prove Saintil-Brown to have neglected.

In the light most favorable to the State, the record reflects that Saintil-Brown and Meritel undertook to buy and prepare food for N.P. T 390-92. However, there was no evidence that they ever undertook to aid N.P. with hygiene or facilitate the provision of medical care. On the contrary, N.P. steadfastly refused any such aid from any source. T 275-78, 302-06, 313-14, 357-58, 370-73, 390, 443, 447, 450-51, 454; cf. T 356-57 (N.P. told social worker in 2012 that “friend named Lee” came to help her with bathing); T 390, 408 (Meritel testified that N.P. did not want help in bathing from her or Saintil-Brown). Because the State introduced no evidence that Saintil-Brown neglected her duties as a

“caregiver” in any respect as to which she had agreed to provide care, this Court must reverse the conviction.

B. The State introduced insufficient evidence to prove the causation element.

To convict Saintil-Brown, the State also had to prove that her neglectful act caused N.P.’s serious bodily injury. See RSA 631:8, III (defining crime in terms of causing serious bodily injury by neglect); see generally State v. Lamprey, 149 N.H. 364 (2003) (discussing causation). Here, the neglectful act alleged by the State was the failure to call for help sooner. The alleged serious bodily injury was the necrotizing soft tissue infection.

Implicit in the State’s case, therefore, is a claim about the timing of three events: 1/ Saintil-Brown’s call to the fire department; 2/ N.P.’s deterioration into incompetence; and 3/ the onset of N.P.’s infection. To prove the delay to have caused the infection, the State must demonstrate that, had Saintil-Brown called sooner, N.P. would not have contracted necrotizing fasciitis. However, given the overwhelming evidence establishing N.P.’s hostility to help in general and to medical care specifically, the State cannot fairly describe Saintil-Brown’s delay as a cause of the disease unless the infection came at some point after N.P. became incompetent.

For if a call for aid were made before N.P. became incompetent, she would have refused the assistance, thereby preventing the call from influencing the course of events. See T 302-06, 313, 366, 454 (describing N.P.'s long-standing unwillingness to accept medical care). If N.P. was competent at the time of the refusal, medical professionals could not have provided aid over her objection. As noted above, the statute does not criminalize the act of a person who "is carrying out the lawful request of an elderly . . . adult who is competent to make his or her own decisions." RSA 631:8, VI.

There is, moreover, no evidence of an altered mental state before N.P. moved to the floor. See T 314 (N.P. competent when social worker visited in January 2016, mere weeks before N.P.'s death). Thus, had Saintil-Brown called for assistance at any point before N.P. had an altered mental state, that call would not have resulted in the provision of medical care because N.P. would have refused it. Therefore, to convict Saintil-Brown, the State had to prove that the three events arose in the following sequence: first, mental incompetence; second, the onset of the fatal infection; and third, the call for help.

The State failed to prove that sequence. Medical testimony established that an altered mental state is a consequence of necrotizing fasciitis that tends to manifest twelve to twenty-four hours after infection. T 264. Therefore,

the sequence was: first, the infection; second, the onset of incompetence; and third, the call. Because the infection thus preceded incompetence, Saintil-Brown's delay in calling did not cause the infection to arise. Rather, the infection arose before N.P. became incompetent, at a time when a call would not have resulted in any treatment.

The State cannot rely on the "Levey dancing" evidence to suggest that N.P. became incompetent soon after her descent to the floor. As a matter of logic, the "Levey dancing" sign of incompetence (assuming it was incompetence) must have been caused either by necrotizing fasciitis or by something else. Under either hypothesis, the State's case fails.

A reasonable doubt defeats a prosecutorial claim that N.P. experienced, as early as her first day on the floor, incompetence associated with necrotizing fasciitis. As noted above, incompetence is a consequence of necrotizing fasciitis, and so must follow rather than precede the disease. Moreover, N.P. cannot already have had a necrotizing soft tissue infection on that first day, for she would not have survived the following five days on the floor and three days in treatment and hospice. See T 220 (doctor testifying that N.P. most likely did not have necrotizing fasciitis before her descent to the floor). Given how long N.P. survived after moving to the floor, the evidence indicates that any

necrotizing-fasciitis-based incompetence arose after that first day.

Alternatively, the hypothesis that N.P. had an altered mental state at the time of the “Levey dancing” episode due to a cause independent of necrotizing fasciitis likewise cannot support the conviction. As noted, a social worker visited N.P. in January 2016, less than a month before her death, and did not observe N.P. to be incompetent.

Thus, to convict, the State had to prove that, for some unknown reason before the onset of, and therefore unrelated to, necrotizing fasciitis, N.P. happened to become incompetent mere weeks after a social worker observed her to be competent. Only the speculation of inexplicable coincidence could account for why, pre-necrotizing fasciitis, N.P. might suddenly become mentally incompetent. A hypothesis of inexplicable coincidence cannot satisfy the State’s burden of proof.

C. The State introduced insufficient evidence to prove that Saintil-Brown acted recklessly.

Finally, the State did not prove the reckless mental-state element. RSA 626:2, II(c) defines a reckless mental state as existing with respect to a material element when a person “is aware of and consciously disregards a substantial and unjustifiable risk that the material element exists or will

result from his conduct.” The definition adds that the disregard of the risk must constitute a “gross deviation from the conduct that a law-abiding person would observe in the situation.” RSA 626:2, II(c). Here, the jury was instructed in accordance with those principles. T 508-09.

In two respects, the State introduced insufficient evidence to prove the reckless mental state. First, the State did not prove that Saintil-Brown was aware of a substantial and unjustifiable risk that N.P. would suffer a serious bodily injury attributable to her time on the floor. Second, the State did not prove that Saintil-Brown was aware, at any time before she called for aid, of a substantial and unjustifiable risk that N.P. had become incompetent, and thus incapable of refusing help or care. This brief presents each claim in a separate sub-section below.

1. Recklessness as to the risk of serious bodily injury.

To prove recklessness as to the result element of serious bodily injury, the State had to prove that Saintil-Brown was actually aware of, and disregarded, a risk that N.P. would suffer serious bodily injury. This the State failed to do.

Necrotizing fasciitis is rare. T 220-21. No evidence was introduced that Saintil-Brown had ever heard of the disease or knew how a person could contract it. On the contrary, the

evidence tended strongly to establish that she had no notion of the disease's source or seriousness. One can contract the disease when bacteria in excrement enters the body through a small cut. Witnesses observed Saintil-Brown standing barefoot on the same filthy floor on which N.P. lay. Nobody aware of the risk of serious disease would have walked barefoot on that floor.

In addition, the State did not prove Saintil-Brown's awareness of a risk that N.P.'s immobility would cause a break in skin permitting entry of pathological bacteria. On the contrary, the evidence showed that Saintil-Brown knew that N.P. had lived a largely immobile life for some time preceding her death, seated in a chair in which she urinated and defecated, without contracting any aggressive and fatal disease. Dr. MacKenzie testified that N.P. was much less likely to suffer a skin breakage when seated on a relatively soft surface such as a chair. D 29:30. However, there was no evidence that Saintil-Brown was aware that an immobile person's movement from chair to floor posed any increased risk of skin breakage.

Third, as shown by the testimony of Dr. Fernando and the Exeter Hospital nurse, N.P.'s skin wound was invisible beneath the feces caked on her legs. Also, as attested to by Meritel and Fernando, N.P. did not complain of pain. The

State therefore failed to prove that Saintil-Brown was aware that N.P.'s skin had broken.

For all these reasons, the State failed to prove that Saintil-Brown was aware of a substantial risk that N.P. would suffer serious bodily injury because she lay on the floor for a period of days, given that her largely immobile life in the previous weeks had not caused any such injury.

2. Recklessness as to N.P.'s mental incompetence.

The State also failed to prove recklessness with respect to N.P.'s competence. As noted, N.P.'s competence mattered because her long-established and well-documented determination to refuse medical care, in conjunction with her right, while competent, to refuse care, rendered pointless any effort to seek treatment while she was competent. To convict, the State thus had to prove that Saintil-Brown failed to seek help for N.P. at a time after Saintil-Brown became aware of N.P.'s incompetence. For several reasons, this Court must conclude that the State failed to prove that Saintil-Brown became aware of N.P.'s incompetence at any point before calling for help.

First, Meritel testified that N.P. seemed competent during her time on the floor. T 385-88. Indeed, the first-responding firefighters noted that N.P. answered some

assessment questions correctly and others incorrectly. T 160-62, 166-69, 181-83. At that point, N.P. knew her name and where she was, but mistook the month and could not name the President. T 183. The question of competence was sufficiently close that the initial evaluator called in a supervisor to assess N.P. T 181-82, 188-89. N.P. remained capable of coherent conversation for a time after her arrival at Exeter Hospital. T 222. The fact that trained professionals regarded the question as close forecloses the possibility that Saintil-Brown acted with criminal recklessness in regarding N.P. as competent until a short time before the first responders arrived.

Second, the State cannot rely on the condition of the home as demonstrating Saintil-Brown's awareness of N.P.'s incompetence because the condition had long been appalling. That fact had not impressed any of the visiting social workers as a basis for compelling N.P. to accept help of any kind, including medical help. Saintil-Brown knew this. T 433. As recently as January 2016, a social worker had visited the home and closed N.P.'s case at N.P.'s insistence. The State introduced no substantial evidence that Saintil-Brown became aware at any point prior to the time she called that there was reason to expect a different outcome from a new call to BEAS or any other similar authority.

This Court accordingly must, on this ground also, reverse Saintil-Brown's conviction.

D. This Court must reverse Saintil-Brown's conviction.

Even if Saintil-Brown did not preserve one or more aspects of this claim, this Court must find plain error. This Court may reverse for plain and prejudicial errors that seriously affect the fairness, integrity or public reputation of judicial proceedings. State v. Hanes, ___ N.H. ___, 192 A.3d 952 (2018); Sup. Ct. R. 16-A. "To find plain error: (1) there must be an error; (2) the error must be plain; (3) the error must affect substantial rights; and (4) the error must seriously affect the fairness, integrity or public reputation of judicial proceedings." State v. Guay, 162 N.H. 375, 380 (2011).

Although plain error is "used sparingly, . . . and is limited to those circumstances in which a miscarriage of justice would otherwise result," Hanes, 192 A.3d at 959, this Court has found that convictions based on insufficient evidence can constitute plain error. State v. Houghton, 168 N.H. 269, 273–74 (2015); Guay, 162 N.H. at 380–84.

Guay represents a useful example. In Guay, the defendant appealed, as plain error, the trial court's failure to dismiss a charge of aggravated felonious sexual assault after

the victim, who was ten years old at the time, testified only that the defendant touched her vagina. Id. at 380-81. This Court found the victim's testimony legally insufficient to prove the element of penetration. Id. at 381-84. This Court additionally concluded that the error was plain and required reversal because "the State could not have met its burden of proof and the charge should not have been submitted to the jury." Id. at 384; see also Houghton, 168 N.H. at 274 (finding plain error where State introduced insufficient evidence to prove essential element of charged offense).

For the reasons stated above, the court erred by allowing a conviction for criminal neglect, and that error was plain. The error was prejudicial because it resulted in Saintil-Brown's conviction. The error seriously affects the fairness, integrity or public reputation of judicial proceedings because Saintil-Brown stands convicted of a charge for which there was not sufficient evidence.

II. THE STATE INTRODUCED INSUFFICIENT EVIDENCE TO PROVE NEGLIGENT HOMICIDE.

A person commits negligent homicide as defined in RSA 630:3, I, when she “causes the death of another negligently.” To earn a conviction, therefore, the State must prove two elements: 1/ that Saintil-Brown caused N.P.’s death; and 2/ that in doing so, she acted negligently. T 503-04 (instructions defining offense). The indictment alleged that Saintil-Brown caused N.P.’s death by allowing her “to lay on the floor of their shared home for multiple days in her own feces and urine without calling for help, which caused her to develop a fatal necrotizing soft tissue infection.” A1-A4.

Here, the State introduced insufficient evidence to prove either causation or negligence. Section A presents the argument with respect to causation. Section B presents the argument with respect to negligence. This brief incorporates the principles set forth in Argument I relating to challenges to the sufficiency of the evidence and plain error doctrine.

For the reasons stated below, the court erred by allowing a conviction for negligent homicide, and that error was plain. The error was prejudicial because it resulted in Saintil-Brown’s conviction. The error seriously affects the fairness, integrity or public reputation of judicial proceedings because Saintil-Brown stands convicted of a charge for which there was not sufficient evidence.

A. The State introduced insufficient evidence to prove that Saintil-Brown caused N.P.'s death.

The indictment alleged conduct – allowing N.P. to lay on the floor without calling for help – that constituted an omission rather than an action. See RSA 625:11, I (defining “conduct” as “an action or omission”). Here, the State alleged Saintil-Brown’s failure earlier to call as the omission that caused N.P.’s death. The argument as to the causation element of negligent homicide, therefore, tracks the arguments advanced above in Section I(B) challenging the sufficiency of the evidence to prove that Saintil-Brown’s failure earlier to call caused N.P. to contract necrotizing fasciitis.

As to causation, the principal distinction between criminal neglect of an elderly adult and negligent homicide is that the former requires the State to prove causation of serious bodily injury, while the latter requires the State to prove causation of death. Given the serious nature of necrotizing fasciitis, that distinction does not affect the character of Saintil-Brown’s challenges to the sufficiency of the evidence. This brief accordingly incorporates the parallel arguments made above, here offered to challenge the cognate element of negligent homicide.

B. The State introduced insufficient evidence to prove that Saintil-Brown acted negligently.

RSA 626:2, II(d) defines criminal negligence as follows:

A person acts negligently with respect to a material element of an offense when he fails to become aware of a substantial and unjustifiable risk that the material element exists or will result from his conduct. The risk must be of such a nature and degree that his failure to become aware of it constitutes a gross deviation from the conduct that a reasonable person would observe in the situation.

The jury was instructed in accordance with that definition. T 504-05.

The distinction between recklessness and negligence alters the nature of Saintil-Brown's challenge to the sufficiency of the mental state evidence. To prove recklessness, the State must prove that Saintil-Brown actually was aware of a substantial and unjustifiable risk. To prove criminal negligence, the State need not prove that Saintil-Brown was aware of the risks in question, but must prove that a reasonable person would have been aware. Therefore, Saintil-Brown advances here a modified version of the mental-state arguments raised above.

In two respects, the State introduced insufficient evidence to prove negligence. First, the evidence was insufficient to prove that a reasonable person would have

become aware of a substantial and unjustifiable risk that N.P.'s time on the floor would cause her death. Second, the evidence was insufficient to prove that a reasonable person would have become aware, at any time before Saintil-Brown called for aid, of a substantial and unjustifiable risk that N.P. would be regarded as mentally incompetent, and thus as legally incapable of refusing help or care. This brief presents each claim in a separate sub-section below.

1. Negligence as to the risk of death.

To prove negligence with respect to the result element of death, the State had to prove that a reasonable person in Saintil-Brown's position would become aware of a substantial risk that N.P. would die. This the State failed to do.

First, necrotizing fasciitis is rare. T 220-21. Dr. Fernando had only very infrequently encountered it and could not with certainty assess the seriousness of it in N.P. without various tests and a surgical examination of subcutaneous tissue. T 211-12. One therefore cannot say that an ordinary person in the exercise of reasonable care would know of the disease and its etiology. Likewise, the fact that the disease progresses so rapidly and quickly becomes effectively incurable is not a matter of common knowledge. Thus, the State did not prove that a reasonable person would recognize both that N.P.'s situation posed a substantial risk for

contracting such a disease and that a delay of even a few days in calling for help could dramatically reduce the availability of a cure.

Second, the State introduced no evidence to prove that a reasonable person would perceive that N.P.'s risk of contracting the disease would increase substantially just because she moved from her chair to the floor. Third, as shown by the testimony of Dr. Fernando and the Exeter Hospital nurse, the actual break in N.P.'s skin was not visible beneath the feces caked on her legs. T 209, 243-45, 250. Also, as attested by Meritel and the Exeter Hospital medical staff, N.P. did not complain of any pain. T 225, 386. A reasonable person therefore would not have perceived the skin-breakage that allowed entry to disease-bearing bacteria.

For all these reasons, the State failed to prove that Saintil-Brown acted negligently with respect to a substantial risk that N.P. would die because she lay on the floor for a period of days.

2. Negligence as to N.P.'s incompetence.

The State also failed to prove negligence with respect to N.P.'s competence. As described above, N.P.'s competence mattered because her long-established and oft-repeated determination to refuse any medical care, in conjunction with her legal right, while competent, to refuse such care, rendered

pointless any effort to seek treatment for her while she was competent. To convict, the State thus had to prove that Saintil-Brown failed to seek help for N.P. at a time after a reasonable person would have become aware of N.P.'s incompetence. Here, the State failed to do so.

To prove the element, the State could not rely on N.P.'s eccentric habits, beliefs or living conditions, for she had long practiced those habits, subscribed to those beliefs, and chosen to live in those conditions, without impressing any of the BEAS social workers who visited the home as presently incompetent. As recently as January 25, 2016, a social worker visited and closed N.P.'s case at her request. T 304-06, 309. The State, therefore, had to prove that some recent change in N.P. would have prompted a reasonable person to doubt her competence.

Given N.P.'s sedentary habits and the testimony that she remained lucid for days after her descent to the floor, the State cannot prevail by claiming that the descent itself marked the moment at which a reasonable person would doubt her lucidity. No other ground existed that would prompt a reasonable person familiar with N.P. to doubt her mental competence at any point prior to the time Saintil-Brown called for help. For all these reasons, this Court accordingly must, on this ground also, reverse the conviction.

III. A JURY INSTRUCTION ERRONEOUSLY DEFINED AN ELEMENT OF CRIMINAL NEGLIGENCE.

In the instructions, the court defined criminal neglect of an elder adult as having six elements. T 506. First, the defendant caused serious bodily injury to an elderly adult. Second, the bodily injury was caused by the defendant's neglect. Third, the defendant acted recklessly. Fourth, the defendant was a caregiver to the elderly adult. Fifth, the defendant was not carrying out a lawful request of an elderly adult who was competent to make her own decisions.

The sixth element, challenged here, was defined as follows:

The defendant was unable to provide care to an elderly person through no fault of her own despite a good faith effort by the defendant to provide such care.

T 506. In including this instruction, the court plainly erred.

The source for the jury instruction is RSA 631:8, VI.

That paragraph provides:

Nothing in this section shall be construed to impose criminal liability on a person who has made a good faith effort to provide for the care of an elderly . . . adult, but through no fault of his or her own, was unable to provide such care, or on a person who is carrying out the lawful request of an elderly . . . adult who is competent to make his or her own decisions.

(Emphasis added). The non-emphasized final clause of the paragraph – relating to the lawful-request-by-a-competent-adult scenario – was the source of the fifth element in the instructions, as to which Saintil-Brown makes no objection.

The underlined clause inspired the challenged jury instruction describing the sixth element. Essentially, that clause obliges the State to prove that the defendant had the ability to provide the care that she withheld. In other words, under the statute, the State cannot convict a defendant for withholding care if the defendant lacked the ability to provide that care.

As phrased, however, the jury instruction failed to communicate that requirement. Indeed, it communicated the opposite in indicating that a defendant’s inability to provide the care constituted the sixth culpable element. Thus, the wording of the instruction informed the jury that the State had to prove that the defendant “was unable to provide care to an elderly person.” T 506. Moreover, the instruction made clear that that inability to provide care must arise “through no fault” of the defendant, and “despite a good faith effort by the defendant to provide such care.” T 506.

Juries are presumed to follow instructions. State v. Boggs, __ N.H. __, 191 A.3d 535, 543 (2018). The fact that the jury here convicted therefore signifies that the jury found the element defined in the instruction. That is, the jury found

that Saintil-Brown was unable to provide the care, that she was without fault in that inability, and that she made a good faith effort to provide the care. Under the statute, that fact defeats rather than constitutes an essential element. The finding thus requires acquittal.

The defense did not object to the instruction. Saintil-Brown accordingly raises the issue as plain error. This Court may reverse for plain and prejudicial errors that seriously affect the fairness, integrity or public reputation of judicial proceedings. Hanes, 192 A.3d at 959; Sup. Ct. R. 16-A. Although plain error is “used sparingly, . . . and is limited to those circumstances in which a miscarriage of justice would otherwise result,” Hanes, 192 A.3d at 959, this Court has found plain error in a variety of circumstances, including in cases in which the error involved jury instructions defining elements of the charged offense. See, e.g., State v. Mueller, 166 N.H. 65, 68-73 (2014) (plain error where instructions mis-defined offense’s mental-state element); State v. Kelly, 160 N.H. 190, 194-98 (2010) (plain error where response to jury question constructively amended complaint).

In Mueller, the trial court erroneously equated the statutory element “willfully” with the mental state of “purposely.” Mueller, 166 N.H. at 69. Because the concept of “purposely” did not capture all that the State must establish to prove the element of “willfully,” the error affected the

defendant's substantial rights. Id. at 69-72. In considering the fourth prong, the Court noted "the very real prospect that the jury would have returned different verdicts had it been properly instructed." Id. at 72-73. For the reasons stated above, the same conclusion holds true here.

The court erred by giving an instruction contrary to the statutory language, and that error was plain. The error was prejudicial because it instructed the jury that the described finding supported conviction when, under the law, that finding required acquittal. The error seriously affects the fairness, integrity or public reputation of judicial proceedings because Saintil-Brown stands convicted of a charge where the jury's findings required acquittal. This Court must reverse the criminal neglect conviction.

IV. THE STATE PRESENTED INSUFFICIENT EVIDENCE TO PROVE FAILURE TO REPORT ELDER ABUSE.

RSA 161-F:50 provides that “[a]ny person who knowingly fails to make any report required by RSA 161-F:46 shall be guilty of a misdemeanor.” RSA 161-F:46 obliges any person “suspecting or believing in good faith” that a vulnerable adult has “been subjected to abuse, neglect, self-neglect . . . or is living in hazardous conditions” to report the situation to the appropriate authority. The complaint alleged that Saintil-Brown “knowingly failed to immediately make” the required report when she believed that N.P. was “self-neglecting/living in hazardous conditions when she laid on the floor of their shared residence for multiple days and couldn’t get up while urinating and defecating on herself. . . .” A9-A12.

The jury instructions defined the crime as having two elements. T 509-11. First, the State had to prove that Saintil-Brown failed to make a required report. In explanation of that element, the court read the statute’s language and defined the terms “vulnerable” and “self-neglect.” T 510-11. Second, the State had to prove that Saintil-Brown acted knowingly. A “person acts knowingly with respect to conduct or to a circumstance that is a material element of an offense when he is aware that his conduct is of such nature or that such circumstances exist.” RSA 626:2, II(b).

Saintil Brown challenges the sufficiency of the evidence to prove the knowing mental state. The brief incorporates the description in Argument I of the legal principles governing challenges to the sufficiency of the evidence and the plain error doctrine. For the reasons stated below, the court erred by allowing a conviction for failure to report, and that error was plain. The error was prejudicial because it resulted in Saintil-Brown's conviction. The error seriously affects the fairness, integrity or public reputation of judicial proceedings because Saintil-Brown stands convicted of a charge for which there was not sufficient evidence.

As described in the Statement of Facts, on several occasions in the last years of N.P.'s life, BEAS social workers checked on N.P. and walked away without providing care or otherwise taking meaningful action because N.P. refused to accept care. The last such visit occurred in January 2016, just weeks before N.P.'s death, and resulted in BEAS closing N.P.'s case. Saintil-Brown knew that.

To convict her for failing to report N.P.'s condition after her descent to the floor in February 2016, therefore, the State had to prove that Saintil-Brown knew of some new circumstance of such significance that it would change BEAS's analysis. Here, there are only two possible new circumstances: first, that N.P. had moved from her chair to

the floor; and second, that N.P. manifested an altered mental state.

The brief incorporates the relevant discussions above of those circumstances. In summary, to rely on N.P.'s descent to the floor, the State would have to prove that Saintil-Brown knew of the risk of skin-breakage and infection posed by N.P.'s decision to remain on the floor. For all the reasons given in Section I(C)(1) above, the State failed to prove Saintil-Brown's awareness of those dangers. To rely on N.P.'s altered mental state, the State would have to prove that Saintil-Brown was aware of that alteration at some point before she called for help. For all the reasons given in Section I(C)(2) above, the State failed to prove Saintil-Brown's knowledge of such a change. The State accordingly failed to prove the mental-state element of the crime. This Court must reverse that conviction.

CONCLUSION

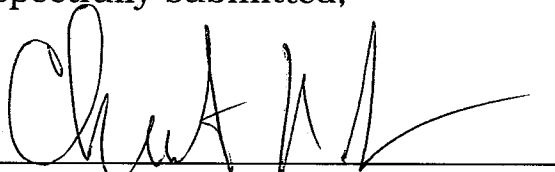
WHEREFORE, Ms. Saintil-Brown respectfully requests that this Court reverse her convictions.

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

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

This brief complies with the applicable word limitation and contains 9895 words.

Respectfully submitted,

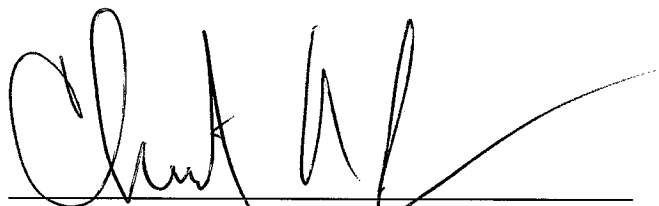
By 

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

CERTIFICATE OF SERVICE

I hereby certify that two copies of the foregoing brief
have been mailed, postage prepaid, to:

Criminal Bureau
New Hampshire Attorney General's Office
33 Capitol Street
Concord, NH 03301

A handwritten signature in black ink, appearing to read 'Chris M. Johnson', written over a horizontal line.

Christopher M. Johnson

DATED: December 6, 2018

A P P E N D I X

APPENDIX – TABLE OF CONTENTS

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THE STATE OF NEW HAMPSHIRE

ROCKINGHAM, SS.

INDICTMENT

At the Superior Court, holden at Brentwood, within and for the County of Rockingham aforesaid, on the 8th day of February in the year of our two thousand and seventeen,

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

KATHERINE SAINTIL-BROWN

At Exeter, New Hampshire, on or between 12th day of February 2016 and the 17th day of February 2016 did commit the crime of

**NEGLIGENT HOMICIDE
RSA 630:3**

As amended. See attached.

in that Katherine Saintil-Brown negligently caused the death of Nancy Parker (age 76), in that Katherine Saintil-Brown allowed Nancy Parker to lay on the floor of their shared home for multiple days in her own feces and urine without calling for help, which caused her to develop a fatal case of necrotizing fasciitis, in such case made and provided, and against the peace and dignity of the State.

N. Wilson 4/10/2017
+
1/8/2018

Verdict: Guilty
Date: 1/11/18
Time: 4:00P
Clerk: Keyes
Judge: N.W. Decker
This is a true bill.

Brandon H. Garod

Brandon H. Garod
Attorney
Office of the Attorney General

Molly L. Decker

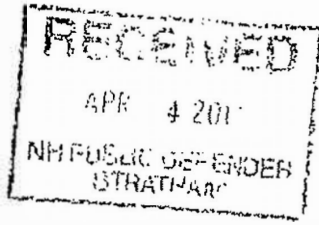
Foreperson

Name: Katherine Saintil-Brown
Address: 8202 Rustic Fall Court, Houston, TX 77088
RSA: RSA 630:3 (Negligent Homicide)

SEARCHED AND
SERIALIZED AND
INDEXED AND
FILED
FEB 10 2018
ROCKINGHAM

218-2017-CR-200

Charge ID: 13366120



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

Court Name: Rockingham Superior Court
Case Name: State v. Katherine Saintil-Brown
Case Number: 218-2017-CR-200 Charge ID Number 1336612C

COMPLAINT/INDICTMENT AMENDMENT FORM

- The offense degree is amended to:
 - Violation Misdemeanor Class A Class B Unclassified (non-person)
 - Felony Class A Class B Special Unclassified (non-person)

The RSA name and RSA reference are amended as follows in order to make the complaint compliant with the Uniform Charge Table:
RSA name (UCT Descriptor): _____
RSA _____

- The complaint narrative is unchanged.
- The complaint narrative is amended to read as follows:
See attached addendum

If applicable, the inchoate reference is unchanged; amended to read: _____

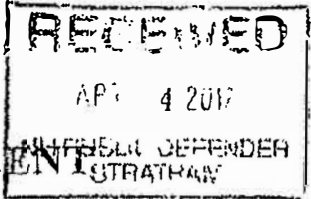
If applicable, the sentence enhancer is unchanged; amended to read: _____

3-31-2017
Date

Brandon Garod
Signature of Prosecutor
Brandon Garod # 21164
Name of Prosecutor

4/16/17
Date

Kristen Guilmette
Signature of Defendant/Defense Counsel
Kristen Guilmette 16463
Name of Defendant/Defense Counsel



**ADDENDUM TO COMPLAINT/INDICTMENT
AMENDMENT FORM**

**State v. Katherine Saintil-Brown
218-2017-CR-200
Charge # 1336612C**

The complaint narrative is amended to read as follows:

KATHERINE SAINTIL-BROWN (D.O.B. 03/10/1963)

At Exeter, New Hampshire, on or between 12th day of February 2016 and the 17th day of February 2016 did commit the crime of

**NEGLIGENT HOMICIDE
RSA 630:3**

in that Katherine Saintil-Brown negligently caused the death of Nancy Parker (age 76), in that Katherine Saintil-Brown allowed Nancy Parker to lay on the floor of their shared home for multiple days in her own feces and urine without calling for help, which caused her to develop a fatal case of necrotizing fasciitis, in such case made and provided, and against the peace and dignity of the State.

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

Court Name: Rockingham Superior
Case Name: State v. Katherine Saint-Brown
Case Number: 218-2017-CR-200 Charge ID Number: 1336612C

COMPLAINT/INDICTMENT AMENDMENT FORM

- The offense degree is amended to:
- Violation Misdemeanor Class A Class B Unclassified (non-person)
 - Felony Class A Class B Special Unclassified (non-person)
- The RSA name and RSA reference are amended as follows in order to make the complaint compliant with the Uniform Charge Table.
- RSA name (UCT Descriptor): _____
RSA: _____
- The complaint narrative is unchanged.
 The complaint narrative is amended to read as follows:

Amendment 1: Nancy Parker (Age 75)

Amendment 2: "which caused her to develop a fatal necrotizing soft tissue infection"

If applicable, the inchoate reference is unchanged; amended to read:

If applicable, the sentence enhancer is unchanged; amended to read:

12-27-17
Date

1/8/18
Date

Brandon Garod
Signature of Prosecutor

Brandon Garod # 21164
Name of Prosecutor

Kristen Gutierrez
Signature of Defendant/Defense Counsel

Kristen Gutierrez 16403
Name of Defendant/Defense Counsel

THE STATE OF NEW HAMPSHIRE

ROCKINGHAM, SS.

INDICTMENT

At the Superior Court, holden at Brentwood, within and for the County of Rockingham aforesaid, on the 8th day of February in the year two thousand and Seventeen,

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

KATHERINE SAINTIL-BROWN

At Exeter, New Hampshire, on or between 12th day of February 2016 and the 17th day of February 2016 did commit the crime of

CRIMINAL NEGLECT OF AN ELDER ADULT

RSA 631:8

As amended. See attached.

in that Katherine Saintil-Brown recklessly caused serious bodily injury to Nancy Parker (age 76), an elderly adult, specifically, necrotizing fasciitis, by neglect, in that Katherine Saintil-Brown allowed Nancy Parker to lay on the floor of their shared home for multiple days in her own feces and urine without calling for help, which caused her to develop necrotizing fasciitis, at a time when Katherine Saintil-Brown was Nancy Parker's caregiver pursuant to 631:8, in such case made and provided, and against the peace and dignity of the State.

N. Delker
D
4/10/2017
+
1/8/2018

Verdict: Guilty
Date: 1/11/18
Time: 4:00P
Clerk: Keyes
Judge: N.W. Delker

Brandon H. Garod

Brandon H. Garod
Attorney
Office of the Attorney General

This is a true bill.

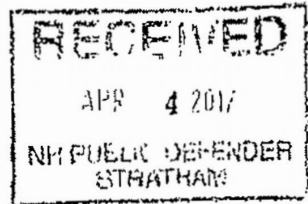
M. Delker

Foreperson

Name: Katherine Saintil-Brown
Address: 8202 Rustic Fall Court, Houston, TX 77083
RSA: RSA 631:8 Criminal Neglect of an Elder Adult

218-2017-CR-200

Charge ID: 1336613C



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

Court Name: Rockingham Superior Court
Case Name: State v. Katherine Saintil-Brown
Case Number: 218-2017-CR-200 Charge ID Number 1336613C

COMPLAINT/INDICTMENT AMENDMENT FORM

- The offense degree is amended to:
 - Violation Misdemeanor Class A Class B Unclassified (non-person)
 - Felony Class A Class B Special Unclassified (non-person)

- The RSA name and RSA reference are amended as follows in order to make the complaint compliant with the Uniform Charge Table:
 RSA name (UCT Descriptor): _____
 RSA: _____

- The complaint narrative is unchanged.
- The complaint narrative is amended to read as follows:
See attached addendum.

If applicable, the inchoate reference is unchanged; amended to read:

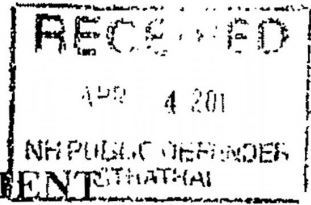
If applicable, the sentence enhancer is unchanged; amended to read:

3/31/17
Date

Brandon Garod
Signature of Prosecutor
Brandon Garod #21164
Name of Prosecutor

4/16/17
Date

Kristen Guilmette
Signature of Defendant/Defense Counsel
Kristen Guilmette #1663
Name of Defendant/Defense Counsel



**ADDENDUM TO COMPLAINT/INDICTMENT
AMENDMENT FORM**

**State v. Katherine Saintil-Brown
218-2017-CR-200
Charge # 1336613C**

The complaint narrative is amended to read as follows:

KATHERINE SAINTIL-BROWN (D.O.B. 03/10/1963)

At Exeter, New Hampshire, on or between 12th day of February 2016 and the 17th day of February 2016 did commit the crime of

**CRIMINAL NEGLECT OF AN ELDER ADULT
RSA 631:8**

in that Katherine Saintil-Brown recklessly caused serious bodily injury to Nancy Parker (age 76), an elderly adult, specifically, necrotizing fasciitis, by neglect, in that Katherine Saintil-Brown allowed Nancy Parker to lay on the floor of their shared home for multiple days in her own feces and urine without calling for help, which caused her to develop necrotizing fasciitis, at a time when Katherine Saintil-Brown was Nancy Parker's caregiver pursuant to 631:8, in such case made and provided, and against the peace and dignity of the State.

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

Court Name: Rockingham Superior Court
Case Name: State v. Katherine Saintil-Brown
Case Number: 218-2017-CR-200 Charge ID Number: 1336613C

COMPLAINT/INDICTMENT AMENDMENT FORM

- The offense degree is amended to:
- Violation Misdemeanor Class A Class B Unclassified (non-person)
 Felony Class A Class B Special Unclassified (non-person)
- The RSA name and RSA reference are amended as follows in order to make the complaint compliant with the Uniform Charge Table.
- RSA name (UCT Descriptor): _____
RSA _____
- The complaint narrative is unchanged.
 The complaint narrative is amended to read as follows:

Amendment 1: Nancy Parker (Age 75)

Amendment 2: "Specifically, a necrotizing soft tissue infection"

Amendment 3: "which caused her to develop a necrotizing soft tissue infection"

If applicable, the inchoate reference is unchanged; amended to read

If applicable, the sentence enhancer is unchanged; amended to read.

12-27-17
Date

Brandon Garod
Signature of Prosecutor
Brandon Garod #21164
Name of Prosecutor

1/8/18
Date

Kristen Guinane
Signature of Defendant/Defense Counsel
Kristen Guinane
Name of Defendant/Defense Counsel

THE STATE OF NEW HAMPSHIRE

ROCKINGHAM, SS.

INFORMATION

At the Superior Court, holden at Brentwood, within and for the County of Rockingham aforesaid, on the 8th day of February in the year two thousand and seventeen,

The Office of the Attorney General in the name and on behalf of the State of New Hampshire, upon information, complains that

KATHERINE SAINTIL-BROWN

At Exeter, New Hampshire, on or between February 12, 2016 and February 17th, 2016 did commit the crime of

PENALTY FOR VIOLATION (FAILURE TO REPORT ADULT ABUSE)

(RSA 161-F:50

As amended. See attached.

in that Katherine Saintil-Brown knowingly failed to immediately make a report as required by RSA 161-F:46, when she believed in good faith that Nancy Parker (age 76), a vulnerable adult, was self-neglecting and/or living in hazardous conditions when she laid on the floor of their shared residence for multiple days and couldn't get up while urinating and defecating on herself, in such case made and provided, and against the peace and dignity of the State.

K. William
[Signature]
4/10/2017
+
1/8/2018

Verdict: Guilty
Date: 1/11/18
Time: 4:00p
Clerk: Keyes
Judge: N.W. Delker

[Signature]

Brandon H. Garod
Attorney
Office of the Attorney General

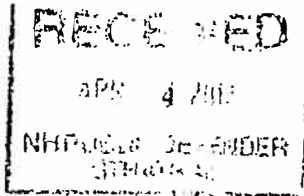
[Signature]
[Signature]

Name: Katherine Saintil-Brown
Address: 8202 Rustic Fall Court, Houston, TX 77083
RSA: RSA 161-F:50 (Failure to Report Adult Abuse)

FILED WRITED AND
CLERK ENTERED

218-2017-CR-200

Charge ID: *1336614C*



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

Court Name: Rockingham Superior Court
Case Name: State v. Katherine Saint-Brown
Case Number: 218-2017-CR-200 Charge ID Number: 1336614C

COMPLAINT/INDICTMENT AMENDMENT FORM

- The offense degree is amended to:
 - Violation Misdemeanor Class A Class B Unclassified (non-person)
 - Felony Class A Class B Special Unclassified (non-person)
- The RSA name and RSA reference are amended as follows in order to make the complaint compliant with the Uniform Charge Table:
 RSA name (UC T Descriptor): _____
 RSA: _____
- The complaint narrative is unchanged.
- The complaint narrative is amended to read as follows:
See attached addendum.

If applicable, the inchoate reference is unchanged; amended to read:

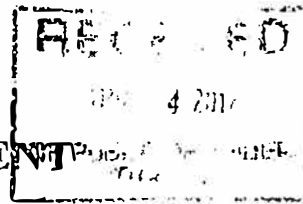
If applicable, the sentence enhancer is unchanged; amended to read:

3/31/17
Date

Brandon Garod
Signature of Prosecutor
Brandon Garod # 21164
Name of Prosecutor

4/10/17
Date

Kristen Guimette
Signature of Defendant/Defense Counsel
Kristen Guimette 16453
Name of Defendant/Defense Counsel



**ADDENDUM TO COMPLAINT/INDICTMENT
AMENDMENT FORM**

**State v. Katherine Saintil-Brown
218-2017-CR-200
Charge # 1336614C**

The complaint narrative is amended to read as follows:

KATHERINE SAINTIL-BROWN (D.O.B. 03/10/1963)

At Exeter, New Hampshire, on or between February 12, 2016 and February 17th, 2016 did commit the crime of

**PENALTY FOR VIOLATION (FAILURE TO REPORT ADULT ABUSE)
(RSA 161-F:50)**

in that Katherine Saintil-Brown knowingly failed to immediately make a report as required by RSA 161-F:46, when she believed in good faith that Nancy Parker (age 76), a vulnerable adult was self-neglecting/living in hazardous conditions when she laid on the floor of their shared home for multiple days and couldn't get up while urinating and defecating on herself, in such case made and provided, and against the peace and dignity of the State.

THE STATE OF NEW HAMPSHIRE

JUDICIAL BRANCH

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

Court Name: Rockingham Superior Court

Case Name: State v. Katherine Saintil-Brown

Case Number: 218-2017-CR-200 Charge ID Number: 1336614C

COMPLAINT/INDICTMENT AMENDMENT FORM

- The offense degree is amended to:
- | | | | | |
|------------------------------------|-------------|----------------------------------|----------------------------------|--|
| <input type="checkbox"/> Violation | Misdemeanor | <input type="checkbox"/> Class A | <input type="checkbox"/> Class B | <input type="checkbox"/> Unclassified (non-person) |
| | Felony | <input type="checkbox"/> Class A | <input type="checkbox"/> Class B | <input type="checkbox"/> Special |
| | | | | <input type="checkbox"/> Unclassified (non-person) |

- The RSA name and RSA reference are amended as follows in order to make the complaint compliant with the Uniform Charge Table:

RSA name (UCT Descriptor): _____

RSA: _____

- The complaint narrative is unchanged.
- The complaint narrative is amended to read as follows:

Amendment 1: Nancy Parker (age 75)

If applicable, the inchoate reference is unchanged; amended to read:

If applicable, the sentence enhancer is unchanged; amended to read:

12-27-17
Date

Brandon Garod
Signature of Prosecutor

Brandon Garod # 21164
Name of Prosecutor

1/8/18
Date

[Signature]
Signature of Defendant/Defense Counsel

[Name]
Name of Defendant/Defense Counsel

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

Court Name: Rockingham Superior Court
 Case Name: State v. Katherine Squentil Brown
 Case Number: 218-2017-CR-200 Charge ID Number: 1336612c
 (If known)

STATE PRISON SENTENCE

Plea/Verdict: <u>Guilty</u>	Clerk: <u>ONE D</u>
Crime: <u>Negligent Homicide</u>	Date of Crime: <u>Feb 12, 2016</u>
Monitor: <u>Cook</u>	Judge: <u>DeKer</u>

A finding of GUILTY/TRUE is entered.

- The defendant has been convicted of Domestic Violence contrary to RSA 631:2-b or of an offense recorded as Domestic Violence. See attached Domestic Violence Sentencing Addendum.
- 1. The defendant is sentenced to the New Hampshire State Prison for not more than 4 years nor less than 2 years. There is added to the minimum sentence a disciplinary period equal to 150 days for each year of the minimum term of the defendant's sentence, to be prorated for any part of the year.
- 2. This sentence is to be served as follows: Stand committed Commencing Forthwith
- 3. One year of the minimum sentence and one year 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 5 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. See Addendum to State Prison Sentence Sexual Offender Assessment and Treatment.
- 6. The sentence is consecutive to _____ (Charge ID Number(s))
 concurrent with 1336613c (Charge ID Number(s))
- 7. Pretrial confinement credit: _____ days.
- 8. The Court recommends to the Department of Corrections:
 - Screen and/or assess for drug and alcohol treatment needs.
 - 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.

Case Name: _____

Case Number: _____

STATE PRISON SENTENCE

PROBATION

- 9. The defendant is placed on probation for a period of _____ year(s), upon the usual terms of probation and any special terms of probation determined by the Probation/Parole Officer.
Effective: Forthwith Upon Release _____
 The defendant is ordered to report immediately to the nearest Probation/Parole Field Office.
- 10. Subject to the provisions of RSA 504-A:4, III, the probation/parole officer is granted the authority to impose a jail sentence of 1 to 7 days in response to a violation of a condition of probation, not to exceed a total of 30 days during the probationary period.
- 11. Violation of probation or any of the terms of this sentence may result in revocation of probation and imposition of any sentence within the legal limits for the underlying offense.

OTHER CONDITIONS

- 12. Other conditions of this sentence are:
 - A. The defendant is fined \$ _____ plus statutory penalty assessment of \$ _____
 The fine, penalty assessment and any fees shall be paid: Now By _____ OR
 Through the Department of Corrections as directed by the Probation/Parole Officer. A 10 % service charge is assessed for the collection of fines and fees, other than supervision fees.
 - \$ _____ of the fine and \$ _____ of the penalty assessment is suspended for _____ year(s).
A \$25.00 fee is assessed in each case file when a fine is paid on a date later than sentencing.
 - B. The defendant is ordered to make restitution of \$ _____ to _____
 Through the Department of Corrections as directed by the Probation/Parole Officer. A 17% administrative fee is assessed for the collection of restitution.
 At the request of the defendant or the Department of Corrections, a hearing may be scheduled on the amount or method of payment of restitution.
 Restitution is not ordered because _____
 - C. The defendant is to participate meaningfully in and complete any counseling, treatment and educational programs as directed by the correctional authority or Probation/Parole Officer.
 - D. Subject to the provisions of RSA 651-A:22-a, the Department of Corrections shall have the authority to award the defendant earned time reductions against the minimum and maximum sentences for successful completion of programming while incarcerated.
 - E. Under the direction of the Probation/Parole Officer, the defendant shall tour the
 New Hampshire State Prison House of Corrections
 - F. The defendant shall perform _____ hours of community service and provide proof to
 the State or probation within _____ days/within _____ months of today's date.
 - G. The defendant is ordered to have no contact with _____
either directly or indirectly, including but not limited to contact in-person, by mail, phone, email, text message, social networking sites or through third parties.
 - H. Law enforcement agencies may destroy the evidence return evidence to its rightful owner.
_____. The defendant and the State have waived sentence review in writing or on the record.
 - J. The defendant is ordered to be of good behavior and comply with all the terms of this sentence.
 - K. Other:

see conditions set forth in 133612C for conditions of suspended sentence.

Date 4/10/2018

Presiding Justice *[Signature]*

THE STATE OF NEW HAMPSHIRE

JUDICIAL BRANCH

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

Court Name: Rockingham Superior Court

Case Name: State v. Katherine Saintil Brown

Case Number: 218-2017-CR-200 Charge ID Number: 1336613C
(if known)

STATE PRISON SENTENCE

Plea/Verdict: Guilty	Clerk: O'Neil
Crime: Criminal Neglect	Date of Crime: Feb 12, 2016
Monitor: Cook	Judge: Delker

A finding of GUILTY/TRUE is entered.

- The defendant has been convicted of Domestic Violence contrary to RSA 631:2-b or of an offense recorded as Domestic Violence. See attached Domestic Violence Sentencing Addendum
- 1. The defendant is sentenced to the New Hampshire State Prison for not more than 4 years nor less than 2 years. There is added to the minimum sentence a disciplinary period equal to 150 days for each year of the minimum term of the defendant's sentence, to be prorated for any part of the year.
- 2. This sentence is to be served as follows: Stand committed Commencing forthwith
- 3. One year of the minimum sentence and one year 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 5 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. See Addendum to State Prison Sentence Sexual Offender Assessment and Treatment.
- 6. The sentence is consecutive to _____ (Charge ID Number(s))
 concurrent with 1336613C (Charge ID Number(s))
- 7. Pretrial confinement credit: _____ days.
- 8. The Court recommends to the Department of Corrections:
 - Screen and/or assess for drug and alcohol treatment needs.
 - Sentence to be served at House of Corrections
 - Mental health evaluation

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

Case Name: _____

Case Number: _____

STATE PRISON SENTENCE

PROBATION

- 9. The defendant is placed on probation for a period of _____ year(s), upon the usual terms of probation and any special terms of probation determined by the Probation/Parole Officer.
Effective: Forthwith Upon Release _____
 The defendant is ordered to report immediately to the nearest Probation/Parole Field Office.
- 10. Subject to the provisions of RSA 504-A:4, III, the probation/parole officer is granted the authority to impose a jail sentence of 1 to 7 days in response to a violation of a condition of probation, not to exceed a total of 30 days during the probationary period.
- 11. Violation of probation or any of the terms of this sentence may result in revocation of probation and imposition of any sentence within the legal limits for the underlying offense.

OTHER CONDITIONS

- 12. Other conditions of this sentence are:
 - A. The defendant is fined \$ _____ plus statutory penalty assessment of \$ _____
 The fine, penalty assessment and any fees shall be paid: Now By _____ OR
 Through the Department of Corrections as directed by the Probation/Parole Officer. A 10 % service charge is assessed for the collection of fines and fees, other than supervision fees.
 \$ _____ of the fine and \$ _____ of the penalty assessment is suspended for ____ year(s)
A \$25.00 fee is assessed in each case file when a fine is paid on a date later than sentencing.
 - B. The defendant is ordered to make restitution of \$ _____ to _____
 Through the Department of Corrections as directed by the Probation/Parole Officer. A 17% administrative fee is assessed for the collection of restitution.
 At the request of the defendant or the Department of Corrections, a hearing may be scheduled on the amount or method of payment of restitution.
 Restitution is not ordered because: _____
 - C. The defendant is to participate meaningfully in and complete any counseling, treatment and educational programs as directed by the correctional authority or Probation/Parole Officer.
 - D. Subject to the provisions of RSA 651-A:22-a, the Department of Corrections shall have the authority to award the defendant earned time reductions against the minimum and maximum sentences for successful completion of programming while incarcerated.
 - E. Under the direction of the Probation/Parole Officer, the defendant shall tour the
 New Hampshire State Prison House of Corrections
 - F. The defendant shall perform _____ hours of community service and provide proof to
 the State or probation within _____ days/within _____ months of today's date.
 - G. The defendant is ordered to have no contact with _____
either directly or indirectly, including but not limited to contact in-person, by mail, phone, email, text message, social networking sites or through third parties.
 - H. Law enforcement agencies may destroy the evidence return evidence to its rightful owner.
 - I. The defendant and the State have waived sentence review in writing or on the record.
 - J. The defendant is ordered to be of good behavior and comply with all the terms of this sentence.
 - K. Other: *The suspended portion of the sentence is conditioned on the defendant obtaining a mental health evaluation and complying with all treatment recommendations. The defendant shall file a waiver to allow the state to monitor the*

Date 4/12/2018 _____
Presiding Justice _____

Defendant's Compliance

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

Court Name: Rockingham Superior Court
 Case Name: State v. Katherine Saintil Brown
 Case Number: 218-2017-CR-200 Charge ID Number: 1336644
 (if known)

HOUSE OF CORRECTIONS SENTENCE

Plea/Verdict: <u>Guilty</u>	Clerk: <u>O'Neil</u>
Crime: <u>Failure to Report</u>	Date of Crime: <u>February 12, 2016</u>
Monitor: <u>Cook</u>	Judge: <u>Delker</u>

A finding of GUILTY/TRUE is entered.

- This conviction is for a Felony Misdemeanor Violation of Probation
- The defendant has been convicted of Domestic Violence contrary to RSA 631:2-b or of an offense recorded as Domestic Violence. See attached Domestic Violence Sentencing Addendum.
- The defendant has been convicted of a misdemeanor, other than RSA 631:2-b or an offense recorded as Domestic Violence, which includes as an element of the offense, the use or attempted use of physical force or threatened use of a deadly weapon, and the defendant's relationship to the victim is:
- (1) Current or former spouse (2) Parent (3) Guardian (4) Child in common
 OR Cohabiting or cohabited with victim as a (5) spouse (6) parent (7) guardian
 OR A person similarly situated to (8) spouse (9) parent (10) guardian

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

2. This sentence is to be served as follows:
- Stand committed Commencing _____
- Consecutive weekends from _____ PM Friday to _____ PM Sunday beginning _____
- All of the sentence is suspended during good behavior and compliance with all terms and conditions of this order. Any suspended sentence may be imposed after hearing at the request of the State. The suspended sentence begins today and ends 5 years from today or release on _____
 (Charge ID Number)

_____ of the sentence is deferred for a period of _____
 The Court retains jurisdiction up to and after the deferred period to impose or terminate the sentence or to suspend or further defer the sentence for an additional period of _____
 Thirty (30) days prior to the expiration of the deferred period, the defendant may petition the Court to show cause why the deferred commitment should not be imposed. Failure to petition within the prescribed time will result in the immediate issuance of a warrant for the defendant's arrest.

Other: _____

3. The sentence is ~~consecutive~~ 1336612C and 1336613C
 (Charge ID Number) concurrent with _____
 (Charge ID Number)

4. Pretrial confinement credit: _____ days.
5. The court recommends to the county correctional authority:
- Work release consistent with administrative regulations.
- Drug and alcohol treatment and counseling.
- Sexual offender program.
- _____

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

Case Number: _____

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HOUSE OF CORRECTIONS SENTENCE

PROBATION

- 6. The defendant is placed on probation for a period of _____ year(s), upon the usual terms of probation and any special terms of probation determined by the probation/parole officer.
Effective: Forthwith Upon Release _____
The defendant is ordered to report immediately to the nearest Probation/Parole Field Office.
- 7. Subject to the provisions of RSA 504-A:4, III, the probation/parole officer is granted the authority to impose a jail sentence of 1 to 7 days in response to a violation of a condition of probation, not to exceed a total of 30 days during the probationary period.
- 8. Violation of probation or any of the terms of this sentence may result in revocation of probation and imposition of any sentence within the legal limits for the underlying offense.

OTHER CONDITIONS

- 9. Other conditions of this sentence are:
 - A. The defendant is fined \$ _____, plus statutory penalty assessment of \$ _____
 The fine, penalty assessment and any fees shall be paid: Now By _____ OR
 Through the Department of Corrections as directed by the Probation/Parole Officer. A 10 % service charge is assessed for the collection of fines and fees, other than supervision fees.
 \$ _____ of the fine and \$ _____ of the penalty assessment is suspended for _____ year(s).
 A \$25.00 fee is assessed in each case file when a fine is paid on a date later than sentencing.
 - B. The defendant is ordered to make restitution of \$ _____ to _____
 Through the Department of Corrections as directed by the Probation/Parole Officer. A 17% administrative fee is assessed for the collection of restitution.
 At the request of the defendant or the Department of Corrections, a hearing may be scheduled on the amount or method of payment of restitution.
 Restitution is not ordered because: _____
 - C. The defendant is to participate meaningfully and complete any counseling, treatment and educational programs as directed by the correctional authority or Probation/Parole Officer.
 - D. The defendant's license privilege to operate in New Hampshire is revoked for a period of _____ effective _____
 - E. Under the direction of the Probation/Parole Officer, the defendant shall tour the
 New Hampshire State Prison House of Corrections
 - F. The defendant shall perform _____ hours of community service and provide proof to
 the State or probation within _____ of today's date.
 - G. The defendant is ordered to have no contact with _____
 either directly or indirectly, including but not limited to contact in-person, by mail, phone, e-mail, text message, social networking sites and/or third parties.
 - H. Law enforcement agencies may destroy the evidence return evidence to its rightful owner.
 - I. The defendant is ordered to be of good behavior and comply with all the terms of this sentence.
 - J. Other:

See conditions of suspended sentence in Charge 1D

13366126

Date

4/2/2018

Presiding Justice