

**STATE OF NEW HAMPSHIRE
SUPREME COURT**

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NH SUPREME COURT

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No. 2018- 0355

STATE OF NEW HAMPSHIRE

V.

PAULSON PAPILLON

APPELLANT'S BRIEF

**MANDATORY APPEAL PURSUANT TO
SUPREME COURT RULE 7**

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QUESTIONS PRESENTED FOR REVIEW

1. Whether the trial court's colloquy with the Defendant was sufficient to support a valid waiver of the right to counsel permitting the defendant to proceed pro se? [Notice of Appeal.]
2. Whether the court erred in admitting evidence of other crimes or misconduct pursuant to N.H. R. of Ev. 404(b) over the objection of the Defendant, and whether the court erred in denying the Defendant's motion for new trial? [Transcript of March 7, 2018 at 512, Transcript of March 12, 2018 at 809-810.]
3. Whether the evidence is sufficient to support the verdicts of guilty of second degree murder and conspiracy to commit murder and whether the trial court erred in not dismissing the case at the end of the State's case in chief? [Transcript of March 9, 2018 at 779-780.]

**CONSTITUTIONAL PROVISIONS, STATUTES, ORDINANCES, RULES
OR REGULATIONS**

U.S. Constitution, Amendment 6 - Rights of Accused in Criminal Prosecutions:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

N.H. Constitution Part I., Art. 15. [Right of Accused.]

No subject shall be held to answer for any crime, or offense, until the same is fully and plainly, substantially and formally, described to him; or be compelled to accuse or furnish evidence against himself. . . Every person held to answer in any crime or offense punishable by deprivation of liberty shall have the right to counsel at the expense of the state if need is shown; this right he is at liberty to waive, but only after the matter has been thoroughly explained by the court.

N.H. RSA 626:8 Criminal Liability for Conduct of Another.

I. A person is guilty of an offense if it is committed by his own conduct or by the conduct of another person for which he is legally accountable, or both.

II. A person is legally accountable for the conduct of another person when:

- (a) Acting with the kind of culpability that is sufficient for the commission of the offense, he causes an innocent or irresponsible person to engage in such conduct; or
- (b) He is made accountable for the conduct of such other person by the law defining the offense; or
- (c) He is an accomplice of such other person in the commission of the offense.

III. A person is an accomplice of another person in the commission of an offense if:

- (a) With the purpose of promoting or facilitating the commission of the offense, he solicits such other person in committing it, or aids or agrees or attempts to aid such other person in planning or committing it; or
- (b) His conduct is expressly declared by law to establish his complicity.

IV. Notwithstanding the requirement of a purpose as set forth in paragraph III(a), when causing a particular result is an element of an offense, an accomplice in the conduct causing such result is an accomplice in the commission of that offense, if he acts with the kind of culpability, if any, with respect to that result that is sufficient for the commission of the offense. In other words, to establish accomplice liability under this section, it shall not be necessary that the accomplice act with a purpose to promote or facilitate the offense. An accomplice in conduct can be found criminally liable for causing a prohibited result, provided the result was a reasonably foreseeable consequence of the conduct and the accomplice acted purposely, knowingly, recklessly, or negligently with respect to that result, as required for the commission of the offense.

V. A person who is legally incapable of committing a particular offense himself may be guilty thereof if it is committed by the conduct of another person for which he is legally accountable, unless such liability is inconsistent with the purpose of the provision establishing his incapacity.

VI. Unless otherwise provided, a person is not an accomplice in an offense committed by another person if:

- (a) He is the victim of that offense; or
- (b) The offense is so defined that his conduct is inevitably incident to its commission; or
- (c) He terminates his complicity prior to the commission of the offense and wholly deprives it of effectiveness in the commission of the offense or gives timely warning to the law enforcement authorities or otherwise makes proper effort to prevent the commission of the offense.

VII. An accomplice may be convicted on proof of the commission of the offense and of his complicity therein, though the person claimed to have committed the offense has not been prosecuted or convicted or has been convicted of a different offense or degree of offense or has an immunity to prosecution or conviction or has been acquitted.

NH RSA 629:3 Conspiracy. –

I. A person is guilty of conspiracy if, with a purpose that a crime defined by statute be committed, he agrees with one or more persons to commit or cause the commission of such crime, and an overt act is committed by one of the conspirators in furtherance of the conspiracy.

II. For purposes of paragraph I, "one or more persons" includes, but is not limited to, persons who are immune from criminal liability by virtue of irresponsibility, incapacity or exemption.

III. It is an affirmative defense to prosecution under this statute that the actor renounces his criminal purpose by giving timely notice to a law enforcement official of the conspiracy and of the actor's part in it, or by conduct designed to prevent commission of the crime agreed upon.

IV. The penalty for conspiracy is the same as that authorized for the crime that was the object of the conspiracy, except that in the case of a conspiracy to commit murder the punishment shall be imprisonment for a term of not more than 30 years.

NH RSA 630:1-b Second Degree Murder. –

I. A person is guilty of murder in the second degree if:

(a) He knowingly causes the death of another; or
(b) He causes such death recklessly under circumstances manifesting an extreme indifference to the value of human life. Such recklessness and indifference are presumed if the actor causes the death by the use of a deadly weapon in the commission of, or in an attempt to commit, or in immediate flight after committing or attempting to commit any class A felony.

II. Murder in the second degree shall be punishable by imprisonment for life or for such term as the court may order.

N.H. R. of Ev. 404(b):

Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that the person acted in conformity therewith. It may, however, be admissible for other purposes,

such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

N.H. R. of Ev. 403:

The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.

STATEMENT OF THE CASE/ STATEMENT OF FACTS

Paulson Papillon was a supplier of cocaine and heroin in the City of Manchester in the Summer and Fall of 2015. Adrien Stillwell (a/k/a “Slime”), Nathaniel Smith (a/k/a “O.G.” and/or “Old Gangster”), and Michael Younge (a/k/a “Miz”) were drug dealers in the City of Manchester in the same time frame, and obtained their drugs at least partly from Paulson Papillon. Transcript of March 6, 2018 at 187-188; 190; 192; Transcript of March 7, 2018 at 568.¹

On October 21, 2015, Paulson Papillon was arrested for sales of narcotics on the premises of the Econo Lodge in Manchester and subsequently bailed out. *Id.* at 196. Michael Pittman, a customer of Papillon, was suspected to be the police informant responsible for Papillon’s arrest. *Id.* at 199. On November 3, 2015, Stillwell, Younge and Smith gathered at a 7-Eleven store in West Manchester (where they were captured on surveillance video), and set out up Granite Street. *Id.* at 214-217. Stillwell observed Michael Pittman working on a car and approached him. *Id.* at 221-222. On his approach, Pittman began running away, and Stillwell fired six shots from a .357 Magnum in Pittman’s direction. T 3/5/18 at 95-96. Two of the bullets found their target, and Pittman died in the street shortly thereafter. T 3/6/18 at 348-352. Smith and Younge were present at the time of the shooting. *Id.* at 222-223. The men were subsequently observed scattering, with Stillwell tripping on a garbage can and tossing the hand gun into a parking lot approximately 600’ from the location of the shooting, where it was discovered by a neighbor. T 3/9/18 at 659; T 3/6/18 at 223. At the

¹ Hereinafter “T 3/6/18 at ___.”

time of the shooting, Papillon was travelling to Massachusetts. T 3/7/18 at 455.

The State's theory of the killing was that Stillwell, Smith, and Younge were essentially henchmen acting on the orders of Papillon, and that Papillon provided substantial assistance to his "co-conspirators" in advance of the homicide, and that they were rewarded for their participation in the homicide afterwards. T 3/12/18 at 824. The State's case in chief relied upon the testimony of Michael Younge, who received a very favorable cooperation agreement, and a number of former clients/associates of the Defendant, the remainder of which had extensive criminal records and testified only under a grant of immunity.

There was extensive pretrial litigation of 404(b) evidence related to both the Defendant as well as numerous witnesses. See Appendix. One of the issues that was addressed pretrial was evidence that the Defendant had attempted to solicit Michael Younge to kill another police informant, which the trial ruled was inadmissible due to it being unfairly prejudicial to the Defendant, and, to the extent that it was relevant to the Defendant's intent or motive to kill Pittman, the State had other evidence of intent, making the evidence cumulative and lessening its probative value. Appendix at 134.

At the trial of Papillon, the State called Michael Younge to testify against the Defendant. Younge was the beneficiary of a cooperation agreement which addressed his complicity in first degree murder, second degree murder, conspiracy to commit murder, as well as an unassociated state drug charge, and federal charges for illegal possession of firearms and making a false statement to procure a firearm. T 3/6/18 at 284-287. Under the deal, Younge had to serve a maximum sentence of ten years, but would receive three or four years off depending on his

testimony against Papillon, serving his federal sentence concurrently, and receiving suspended time for his state drug charges. Id. at 301-305.

Younge's testimony provided an outline of the State's theory. According to Younge, after Papillon was bailed out, he became fixated on Michael Pittman, who he believed was working with the police and responsible for his arrest. Id. at 198. Younge testified that within a couple of days of being bailed out, Papillon told him that Pittman needed to be "taken care of" to insure that Papillon could beat the charges. Id. at 199. Younge claimed that this conversation occurred at Amber Domnitanu's house, and may have been overheard by Domnitanu. Id.

Younge further testified that he had further conversations with Papillon in which Papillon again brought up the topic of killing Pittman, and indicated "whoever killed Mr. Pittman, that he would take care of him. . . give him money or whatever". Id. at 200. Younge was unclear about the quantity of money, indicating it was sometimes \$1,000, sometimes \$8,000. Id. at 200-201. Some of these conversations occurred in the presence of Stillwell and Smith. Id.

Younge claimed that a .357 Magnum with ammunition surfaced at Domnitanu's residence, which he believed was Papillon's gun, as well as Halloween costumes. Id. at 207-208. On cross-examination, Younge admitted the gun served as a "house gun" for protection of the drug dealers operating out of Domnitanu's residence. Id. at 275-276. Younge insinuated that Papillon brought the costumes in order to facilitate Younge, Smith and Stillwell going to Pittman's house on Halloween in disguise and killing him. Id. at 209-213. Younge also stated that Papillon left the state on Halloween, to be absent when the killing occurred. Id. at 211. However, although Younge claims that he and his two associates approached Pittman's house on Halloween, they did not

confront or kill Pittman on October 31, 2015. Id. at 209-213. After discovering Pittman was still alive, Younge testified that Papillon was “a little upset”, and indicated he would have someone else “do it” if Younge, Smith and Stillwell could not kill Pittman. Id. at 214.

Younge went on to testify that on November 3, 2015, he went to the West side of Manchester to sell drugs, where he met up with Stillwell and Smith in front of a 7-Eleven. Id. at 265. Smith indicated he and Stillwell were going up Granite Street to see if they could find Pittman and kill him. Id. at 266-267. Younge elaborated on the details of the shooting and his get-away. Id. at 223-226.

After the shooting, Stillwell, Younge and Smith met up that night with Papillon, who had returned from Massachusetts. Id. at 230. Upon being advised of the murder, Younge testified Papillon gave Stillwell, Younge and Smith each about \$300 and some drugs. Id. at 231. On the following day, he took Younge and Stillwell to Lawrence in a rental car, and got them new clothes. Id. at 234-235. He then took them to a strip club and a casino in Connecticut. Id.

The State additionally introduced evidence of cell phone text messages between cell phones alleged to be associated with Papillon, Stillwell, Younge and Smith between October 2015 and November 2015, in order to establish mutual and frequent communications between Papillon and his associates during the general time frame of Papillon’s arrest and the murder of Michael Pittman. T 3/5/18 at 116-155.

Amber Domnitanu, an addict who was letting Papillon and his associates operate out of her residence, testified to overhearing conversations between Papillon and Stillwell, Younge and Smith in which Papillon discussed the need to “get rid of” Pittman. T 3/7/18 at 449 – 450. She also corroborated Younge’s testimony that there were

Halloween costumes in her house in connection with a possible murder of Pittman on Halloween night. *Id.* at 454-455. Last, she testified that Papillon had her call Pittman's house on the night of the shooting to offer to pay \$50 dollars she owed Pittman, apparently as an indirect way of confirming Pittman's death. *Id.* at 458-459. She readily admitted to being high on crack and heroin when she overheard these purported conversations and made her observations. *Id.* at 470.

Tabitha Lopez, an addict and associate of Amber Domnitanu and Papillon, reiterated confidences Domnitanu relayed to her concerning a Halloween plot to kill Pittman, and claimed that Papillon once told her, while they were driving, "that's where I killed my f___ing rat". *Id.* at 489, 494.

The State called another associate of Domnitanu and Papillon, Julie Miranda, who reiterated Domnitanu's confidences concerning the Halloween plot, and over Papillon's objection, testified that Papillon had offered to have "his boys" shoot her boyfriend's suspected police informant for \$1,000. *Id.* at 510; 511-513. [Miranda's boyfriend was incarcerated pretrial on drug charges at the time.] Miranda's testimony was almost identical to the testimony of Papillon soliciting Younge to shoot another police informant which the Court had ruled inadmissible as having limited probative value and maximal prejudice to the Defendant.

The State called Lawrence Moore, a fellow prison inmate of Papillon's, to testify to discussions between Papillon and Moore, specifically Papillon's anxiety that if Smith, Stillwell, and Younge stayed incarcerated, that they would implicate him in the death of Pittman. *Id.* at 527-8. Papillon also indicated to Moore his annoyance that his "little dudes" allowed themselves to be caught on camera at 7-Eleven. *Id.* at

530. Moore indicated that Papillon wanted to get out of jail, get his alleged co-conspirators out of jail, and then “handle them” the way they “handled” Pittman. Id. at 535-537.

Last, the State called Trooper Emmanuel Francois, a native of Haiti who is fluent in Haitian Creole. Trooper Francois testified to his translation of phone calls between Papillon and his sister which were partially made using Haitian Creole. Most important was a call on January 8, 2016, where Papillon stated “Yes, that I (indiscernible) the guys go kill him.” Id. at 591. [The State in closing arguments claimed the statement was “I made the guy go kill him.”] T 3/12/18 at 835.

At the trial, Papillon called Adrien Stillwell to testify in his defense. Stillwell, although convicted of first degree murder and serving a sentence of life without parole, still had a pending appeal and was provided with immunity. T 3/9/18 at 691. Stillwell testified that Papillon had nothing to do with the shooting, and that it was a personal grudge between Stillwell and Pittman, who owed him money and might prove to be a snitch against Stillwell. T 3/9/18 at 615-618. He indicated that Papillon had not supplied the gun. Id. at 614. Stillwell was cross-examined with prior inconsistent statements made at numerous points in the criminal investigation of himself and Papillon, and admitted repeatedly lying to the police, and admitted to having murdered Pittman and feeling no remorse for either Pittman’s sake or his bereaved wife and children. Id. at 620-763.

A surprising development in the case occurred on the morning of the third day of trial, when the Defendant requested the right to represent himself. T 3/7/18 at 410. The trial court held a brief *ex parte* hearing with the Defendant and his counsel. Id. at 410-420. In speaking with the Defendant, the trial court reiterated his esteem for the

Defendant's lawyers, and made an analogy between substituting between the first string of a team and the fifth string during a playoff game. The trial court also noted that the Defendant would be expected to grapple with significant legal issues before the end of trial. Id. The trial court then held a brief colloquy on the record in the presence of the State. The trial court partially reviewed the responsibilities of the Defendant in representing himself, leaving out the role of direct examination, and explained the role of stand-by counsel. Id. at 420-230. Despite the trial court's sports metaphor, noticeably absent from the colloquy is a concrete discussion of the specific dangers of self-representation, unlike the colloquy cited in State v. Davis:

And that those disadvantages are, in the first instance, you may not be as familiar with courtroom procedure, that you may not have the technical expertise to be able to form theories of your own defense and that if you had an attorney representing you fully, an attorney would have more familiarity with the manner in which trials are conducted and the manner in which trial strategy is determined than you might have yourself.

139 N.H. 185, 187–88 (1994). The colloquy did not address the impact of self-representation on any ineffective assistance of counsel claim the Defendant might have had against trial counsel. Id.

After the close of the State's case and prior to jury instructions, the Defendant asked the Court to dismiss the charges on the basis that there was no agreement to kill Pittman. T 3/9/18 at 779-780. The Defendant later requested a mistrial on the basis of Miranda's testimony regarding an offer to have "his boy's" take out her boyfriend's rat for \$1,000, in

violation of N.H. Rule of Evidence 404(b). T 3/7/18 at 512, T 3/12/18 at 809-810.

After deliberations, the Jury acquitted the Defendant of first degree murder, but convicted on second degree murder and conspiracy to commit murder. T 3/15/18. The Defendant received a sentence of 33 years to life on the second degree murder charge, and 10 to 30 years on the conspiracy charge. T 5/22/18.

SUMMARY ARGUMENT

The Sixth Amendment Right to Counsel under the U.S. Constitution entails the implicit right to self-representation, provided the trial court determines the defendant made a knowing and voluntary waiver of that right. The legal presumption is against a finding that a defendant waived the right to counsel. Although a colloquy is not required, it is highly recommended, and the colloquy in this matter was defective in comparison to the model colloquy suggested by this Court in State v. Thomas, 150 N.H. 327, 329–30 (2003). There is insufficient evidence in the record of a knowing and voluntary waiver of the right to counsel given the inadequate nature of colloquy, the trial court's lack of inquiry into the Defendant's ability to represent himself, and the State's repeated comments on the Defendant's limited cognitive abilities. Further, there is no evidence on the record of the Defendant attempting to delay the trial, or of using the request for self-representation for purposes of delay. For this reason, the verdict should be vacated, and the case remanded for new trial.

In the course of the trial, over the objection of the Defendant, the State elicited evidence from Julie Miranda that the Defendant offered to

have his associates shoot the police informant in her incarcerated boyfriend's case for \$1,000. This evidence was not probative of a specific intent or a specific plan to kill Michael Pittman, but rather simply established extrinsic evidence of the Defendant's character, that he is the sort of person who routinely assassinates police informants. The evidence does not meet the requirements of N.H. R. of Ev. 404(b), was unfairly prejudicial to the Defendant pursuant to N.H.R. of Ev. 403, and unfairly prejudiced the jury against the Defendant by introducing propensity evidence that went to the ultimate issue in the case. The trial court erred in admitting the evidence and denying the Defendant's motion for mistrial, and the verdict should be vacated and the case remanded for new trial.

Last, the evidence was insufficient to convict the Defendant of either conspiracy to commit murder or second degree murder. There was no meeting of the minds to kill Pittman on November 3, 2015, and therefore, there was no agreement, and the conviction for conspiracy is improper. Likewise, there was no evidence in the record of the Defendant acting with "reckless indifference to human life".

ARGUMENT

I. Invalid Waiver of Right to Counsel

In Faretta v. California, 422 U.S. 806 (1975), the U.S. Supreme Court established that the Constitution Right to counsel under the Sixth Amendment includes, implicitly, the right to self-representation, provided the trial court determines that the defendant knowingly and voluntarily waives the right to counsel. "Courts must indulge in every reasonable presumption against waiver of the right to counsel." United States v.

Proctor, 166 F.3d 396, 401 (1st Cir. 1999). The burden falls upon to the State to prove that the defendant knowingly and voluntarily waived his rights. Shabazz v. State, 557 S.W.3d 274, 280 (2018); See State v. Plante, 133 N.H. 384 (1990) (State must prove beyond a reasonable doubt that there is a knowing and voluntary waiver of Miranda rights); See also State v. Foote, 149 N.H. 323 (2003)(Assuming without deciding that the burden is on the State to prove voluntariness of waiver of jury trial); See also State v. Arsenault, 153 N.H. 413 (2006)(direct attack on a plea requires affirmative showing on the record).

This Court has indicated its strong preference for a thorough colloquy explaining the implications of a waiver of the right to counsel:

[W]e strongly prefer that trial court judges conduct an inquiry with a defendant who wishes to waive his right to counsel. . .
See State v. Davis, 139 N.H. 185, 191, 650 A.2d 1386 (1994) (setting forth model colloquy for waiver of right to counsel).

State v. Thomas, 150 N.H. at 329–30 (2003). This Court’s preference for a through colloquy is consistent with the right to counsel as stated in N.H. Const. Part I., Art. 15: “this right he is at liberty to waive, but only after the matter has been thoroughly explained by the court.” Although the trial court conducted a colloquy, the trial court failed to advise the Defendant in specific of the dangers of self-representation, specifically the need to understand court room procedure and the possible consequences of failure to follow procedure, the inability to formulate viable theories of defense, and inability and inexperience in court room skills.

The trial court made no inquiry into the Defendant’s education, training, legal experience, or even mental health, beyond asking trial

counsel if the Defendant was under the influence of drugs or alcohol in a manner affecting his cognition. In contrast, the State in its closing argument made comments to the jury suggesting the Defendant's limited cognitive abilities ("he's not a complete idiot"), listing mistakes made by the Defendant and his associates, and noting, "[w]e're not dealing with criminal masterminds here". There is a clear contradiction between the State's snide remarks about the Defendant's low intelligence and competency to the jury, and their position that the Defendant made a knowing and voluntary decision to represent himself with his "eyes wide open." The U.S. Supreme Court has acknowledged that the standard for competency to waive the right to counsel is higher than the question of competency to stand trial. Indiana v. Edwards, 554 U.S. 164, 177-78 (2008)("We consequently conclude that the Constitution permits judges to take realistic account of the particular defendant's mental capacities by asking whether a defendant who seeks to conduct his own defense at trial is mentally competent to do so."). It is impossible to determine the defendant's mental capacities in this matter precisely because the trial court made minimal effort to assess the defendant's mental capacities.

In Thomas, although there was no colloquy of the defendant at the time of the waiver, the defendant was repeatedly advised of the advantages of counsel, the role of stand-by counsel, the responsibilities of self-representation, and the defendant was afforded multiple occasions where he was afforded the opportunity to reconsider. In contrast, the Defendant in this case was not provided any subsequent opportunity to reconsider, and underwent a trial by fire, undertaking the role of self-representation in the very midst of a very serious and life changing proceeding. The Defendant had only one previous attorney to Richard Guerriero, Esq., who withdrew early in the case in 2016. Unlike the

defendant in Thomas, the Defendant did not have a pattern of firing multiple attorneys, and unlike the defendant in Thomas, there is no evidence that the Defendant was engaged in any manner of delay tactic. James v. Brigano, 470 F.3d 636, 644 (6th Cir. 2006) (“[I]f a defendant engages in dilatory tactics, that conduct may be sufficient to constitute valid waiver of counsel and excuse the duty of the court to explicitly ensure knowing and intelligent waiver.”). The only delay that occurred on account of the Defendant’s self-representation was that he was allowed time to prepare closing arguments over the weekend from Friday to Monday.

The record does not suggest that the Defendant made a knowing and voluntary waiver of the right to counsel with a full understanding of the consequences of the right he was waiving. Shabazz, 557 S.W.3d 274, 280–81 (2018) (“The trial court did not adequately explain the risks or the consequences of proceeding without counsel; nor did the court inform Shabazz of the danger of proceeding so quickly with the suppression hearing without the benefit of counsel or the completion of discovery.”); Martin-Argaw v. State, 806 S.E.2d 247, 253 (2017), reconsideration denied (Nov. 14, 2017) (“The colloquy at the May 2013 calendar call does not show that Martin–Argaw was made aware of the dangers of representing himself; the trial court merely informed Martin–Argaw that he would be required to abide by evidentiary and procedural rules without the court's assistance.”).

While the Defendant was advised of most of his legal obligations, and was advised that self-representation was a poor choice, he was not advised as to the specific and severe consequences that might follow from his inadequate legal knowledge and training. Without this critical information, his waiver cannot be construed as knowing and voluntary.

The limited nature of the colloquy, the lack of inquiry of the trial court into the Defendant's actual ability to represent himself, combined with the State's remarks concerning the Defendant's low intelligence and relative incompetence as a street criminal indicate a flawed and inadequate waiver of the right to counsel.

II. Mistrial and Rule 404(B) Evidence

Over objection, the State elicited evidence from Julie Miranda that the Defendant solicited her to have "his boys" kill the police informant connected with her incarcerated boyfriend's case, which formed the basis for the Defendant's later request for a mistrial. The problem with the introduction of this evidence can only be seen in the context of the trial court's pretrial ruling on the State's desire to introduce evidence from Younge that Papillon sought to have Younge kill another police informant:

Defendant contends evidence that defendant attempted to solicit Younge to murder a person, whom he believed to be a snitch, in the weeks after Pittman's murder is unfairly prejudicial. The Court agrees. Here the bad act evidence the State seeks to admit is the exact thing he is standing trial for. Given the similarities between the evidence and the charged crime, the Court finds the potential for unfair prejudice substantially outweighs the evidence's probative value. . . Moreover, to the extent that the evidence can be characterized as being relevant to establish the defendant's intent or motive to kill Pittman, the State has other evidence fulfilling this purpose, making the evidence cumulative and further lessening its probative value.

Appendix at 134. On its face, the testimony of Miranda concerning the offer of Papillon to have his compatriots shoot her boyfriend's informant poses the same evidentiary problems as the excluded evidence: the evidence is highly prejudicial from the standpoint of N.H. R. of Ev. 403, and has equally limited probative value with respect to N.H. R. of Ev. 404(b).

Rule 404(b) provides:

Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that the person acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

Rule 404(b) excludes evidence for the purpose of establishing the character or the propensity of the accused to commit an alleged crime, but allows for such evidence if its purpose falls within a long list of possible permitted evidentiary purposes.

As this Court held in State v. Cassavaugh:

(1) the evidence must be relevant for a purpose other than proving the defendant's character or disposition; (2) there must be clear proof that the defendant committed the act; and (3) the probative value of the evidence must not be substantially outweighed by its prejudice to the defendant.

161 N.H. 90, 96 (2010). The greatest subtlety of Rule 404(b) is in the distinction the Rule makes between "propensity evidence" and evidence of "intent". In drawing the line between "propensity" and evidence of "intent", this Court has attempted to look at the nexus between the uncharged bad act and the alleged crime:

To be relevant, prior bad acts must be in some significant way connected to material events constituting the crime charged and not so remote in time as to eliminate the nexus.

State v. Beltran, 153 N.H. 643, 647–48 (2006). In New Hampshire case law, there are several cases which have found a nexus between prior threats made by a defendant against a victim as admissible to prove intent in a case involving the same victim. Cassavaugh, 161 N.H. at 98 (Defendant's prior threat to kill one of the victims in a murder trial admissible to prove intent.); State v. Pepin, 156 N.H. 269, 278 (2007) ("the prior threat in this case was directed at the same victim and in a similar context as the charged offenses; *i.e.*, his efforts to intimidate the victim when she did something he disliked."); State v. Sawtell, 152 N.H. 177, 182 (2005) ("We have previously held that prior threats and assaults by a defendant against a victim were relevant to prove the defendant's intent and therefore admissible under Rule 404(b)."); State v. Dukette, 145 N.H. 226, 230 (2000) ("We conclude that there is a sufficient logical connection between the defendant's prior assaults against the alleged victim and her state of mind when she committed the stabbing."); but see State v. Crosby, 142 N.H. 134, 136 (1997) (evidence of prior sexual assault on victim not admissible).

In contrast, with regards to threats or other crimes committed against individuals who were not the subject of a pending prosecution, the State has been less successful in introducing evidence of other crimes. State v. McGlew, 139 N.H. 505 (1995) (Evidence defendant sexually assaulted 4 ½ year old boy six years prior to sexual assault trial for assault on 9 year old girl wrongly admitted at trial.); State v. Lapre, No. 2014-0750, 2016 WL 3924431, at *4 (N.H. June 9, 2016) (Evidence that defendant had scar on his penis from an encounter with a prostitute

not admissible in trial for aggravated felonious sexual assault). In the context of the Defendant's case itself, the trial court's consideration of the evidence concerning solicitation of Younge to kill other police informants can be contrasted with the order on the testimony of jail house informant Lawrence Moore, that Papillon told him of a plan to kill his associates, Younge, Stillwell, and Smith. The trial court permitted introduction of this evidence as the statement demonstrated consciousness of guilt on the part of Papillon in connection with the crimes of which he was accused.

The Defendant contends that the trial court was correct in its ruling with respect to the evidence that Papillon solicited Younge to kill another suspected police informant, and incorrect in its ruling with respect to the evidence that Papillon offered Miranda to have Miranda's boyfriend's suspected police informant shot for \$1,000. The evidence was not directly relevant to the charges that the Defendant faced relating to the death of Pittman. It was not probative of a specific intent or a specific plan to kill Pittman as it was entirely unrelated to the killing of Pittman. It did not demonstrate consciousness of guilt. Papillon was not charged with running a murder-for-hire scheme (for which the evidence would be probative), he was charged for the killing of a man he suspected was an informant in his own drug case. The testimony did not demonstrate opportunity, planning, motive or intent to kill Pittman. At best, it implicates Papillon in another, unrelated, pattern of criminal activity, murder-for-hire of an unrelated party to the case. It simply established that Papillon is the kind of man who routinely kills police-informants, that is to say, his propensity to commit the type of offense charged.

Assuming *arguendo* that the allegation had some limited relevance with respect to intent or absence of mistake, it is cumulative of the testimony of Younge, Domnitanu, Lopez, and Miranda's other testimony. It is cumulative of the testimony of Moore, who testified about the Defendant's plot to eliminate his purported henchmen. The probative value of the evidence is extremely attenuated by the cumulative nature of the other evidence. On the other hand, the evidence is highly prejudicial in the sense that the State's theory of the case is that the Defendant solicited his associates to kill Pittman, and the evidence purports to establish that the Defendant offered to kill Miranda's boyfriend's police informant, suggesting he had a propensity to kill police informants. The evidence does not meet the first requirement of N.H. R. of Ev. 404(b), and to the extent it has some relevance outside propensity, its relevance is extremely attenuated. On the other hand, the evidence was highly prejudicial pursuant to N.H. R. of Ev. 403, and improperly tainted the Defendant's trial by introducing propensity evidence that the Defendant was the kind of individual who routinely engaged in the murder of police informants.

The evidence admitted was not harmless:

In determining whether an error was harmless, we ask not 'whether the evidence, apart from that erroneously admitted, would support a finding of guilt, but whether it can be said beyond a reasonable doubt that the inadmissible evidence did not affect the verdict.'

State v. Crosby, 142 N.H. 134, 139 (1997)(quoting State v. Ruelke, 116 N.H. 692, 694, 366 A.2d 497, 498 (1976)). The evidence of the Defendant's offer to commit a murder for hire of the police informant in Miranda's boyfriend's case is evidence of the Defendant's mercenary

character and willingness to casually dispatch police informants. Given that it addressed the same issue in question as the underlying case, it was demonstrably prejudicial to the verdict. It cannot be said to be harmless beyond a reasonable doubt, as it amounted to character evidence of the Defendant's propensity to murder police informants, which went to the ultimate question of fact in the trial. It should have been excluded for the identical reasons the trial court excluded the evidence that Papillon solicited Younge to commit another murder. The trial court erred in admitting the improper evidence, as well as denying the Defendant's motion for mistrial, and the Defendant asks this Court to reverse the verdict and remand the case for new trial due to the prejudice to the jury due to this highly prejudicial evidence.

III. Sufficiency of the Evidence

New Hampshire R.S.A. 629:3 (I.) defines conspiracy as:

A person is guilty of conspiracy if, with a purpose that a crime defined by statute be committed, he agrees with one or more persons to commit or cause the commission of such crime, and an overt act is committed by one of the conspirators in furtherance of the conspiracy.

Traditionally, an agreement to commit a crime requires a meeting of the minds:

A meeting of the parties' minds is sufficient for the agreement necessary for a criminal conspiracy, reflecting a unity of purpose and design.

The agreement necessary for a criminal conspiracy may be shown by a meeting of the minds, reflecting a unity of purpose and design. This means that the parties give sufficient thought to the matter to mentally

appreciate or articulate the object of the conspiracy, the objective to be achieved or the act to be committed, and understand that another person also achieves that conceptualization and agrees to cooperate in the achievement of that objective or the commission of that act. It is sufficient if the minds of the parties meet understandingly to bring about an intelligent and deliberate agreement to commit the underlying offense.

Parties may join a conspiracy for different reasons; the question is whether the parties have agreed to advance a common goal. Where two parties act in concert to achieve different goals, there is no meeting of minds as to a common scheme or plan. [Emphasis in original.]

15A C.J.S. Conspiracy § 132. United States v. Adkinson, 158 F.3d 1147, 1154 (11th Cir. 1998)(“The government, however, must show circumstances from which a jury could infer beyond a reasonable doubt that there was a “meeting of the minds to commit an unlawful act.”).

As an offer in itself is insufficient to form a contract, a criminal solicitation is insufficient in itself to form a conspiracy. Reviewing the evidence in the Defendant’s trial in the light most favorable to the State, there is no evidence of a meeting of the minds between the Defendant and Younge, Stillwell, and Smith on November 3, 2015. Examining Younge’s testimony, we find evidence that the Defendant suggested that he wanted Pittman killed, that the Defendant may have owned a “house gun” used for security at the residence the men were using as a “trap house” to sell drugs, and that the Defendant had provided Halloween costumes as a possible disguise in which to commit a murder on October 31, 2015. However, his associates did not commit the offense on October 31, 2015, did not wear the costumes, and the Defendant’s response to

his associate's failure to act was to indicate that he would get someone else to do the job.

Younge testified that his meeting up with Smith and Stillwell on November 3, 2015 was random, and that the intention was to sell drugs, not to shoot Pittman. Since there was no plan to kill Pittman on November 3, 2015, there is no means by which Papillon could have assisted in the non-plan. Instead, Papillon was out of state, and the confrontation amounted to a random happen-chance encounter of Pittman on the street. There was no meeting of the minds on a common plan or scheme, in fact, Younge, Smith and Stillwell expressly rejected the proposed scheme that (according to Younge), Papillon had proposed. While there was evidence introduced that Papillon wanted Pittman dead, and further that he might reward the one who killed Pittman, his associates expressly rejected the means and mode that he proposed to carry out his intended plot. By their conduct, they expressly rejected his proposed agreement. His response to their rejection was to indicate that he would look for someone else to do the job, which is further evidence of non-agreement. There was no "unity of purpose", no "common plan", the killing of Pittman was based on a random encounter. The evidence was legally insufficient to convict the Defendant of conspiracy to commit murder as there was insufficient evidence of an agreement between Papillon and his associates.

The evidence at trial was also legally insufficient to convict the Defendant of second degree murder. The State contends that the Defendant solicited the murder of Pittman, may have owned the firearm used to commit the murder, intentionally left the state on the night of murder, and rewarded some of the individuals involved by providing them with money, drugs, and a trip to a strip club and a casino. RSA

629:2 I. provides “[a] person is guilty of criminal solicitation if, with a purpose that another engage in conduct constituting a crime, he commands, solicits or requests such other person to engage in such conduct.” Proof of criminal solicitation requires evidence that the defendant acted purposely, the highest *mens rea* in the criminal code. RSA 626:2. Further, if the solicitation results in an agent committing the desired criminal act on behalf of the solicitor, then the agent acts purposefully with respect to the commission of the crime. In State v. Kilgus, 128 N.H. 577, 583 (1986), this Court held:

It is clear to us that under the capital murder statute, if one solicits another to commit murder and the one solicited does kill, then the one who solicited is guilty of capital murder.

In order to solicit a murder, the Defendant would have had to have acted purposefully, and his agents would have also acted purposefully, which would constitute first degree murder under N.H. R.S.A. 630:1-a. However, the Defendant was acquitted of first degree murder, indicating that the jury did not find that the Defendant intentionally took the life of Pittman (although they did find he conspired to take the life of Pittman).

If the evidence supports a factual finding that Defendant solicited the murder and perhaps aided in the planning of the murder, e.g. purposeful behavior, then he cannot be said to have behaved with “recklessness under circumstances manifesting an extreme indifference to the value of human life”.² As the Court of Appeals of New York held in People v. Gonzalez:

But a person cannot act both intentionally and recklessly with respect to the same result. “The act is either intended or not intended; it cannot simultaneously be both”.

1 N.Y.3d 464, 468 (2004) (quoting People v. Gallagher, 69 N.Y.2d 525, 529 (1987)). As the Court further elaborated:

Depraved indifference murder differs from intentional murder in that it results not from a specific, conscious intent to cause death, but from an indifference to or disregard of the risks attending defendant's conduct. . . . When a defendant is in that sense indifferent to whether death will likely result from his or her conduct—including with respect to a single victim—depraved indifference may be manifest. But where, as here, a defendant's conduct is specifically designed to cause the death of the victim, it simply cannot be said that the defendant is indifferent to the consequences of his or her conduct.

Id., 1 N.Y.3d at 467 (2004). Legally speaking, a person can solicit a person to commit first degree murder, but a person cannot solicit a person to commit second degree murder with reckless indifference to human life.

A conspiracy in New Hampshire law involves not merely a purposeful solicitation, but also an agreement purposefully to carry out a crime. In fact, the Defendant was convicted of conspiracy to commit murder in this case. This Court has held that one cannot conspire to commit a reckless act. State v. Donohue, 150 N.H. 180, 186 (2003) (“[A] person cannot agree, in advance, to commit a reckless assault, because, by definition, a reckless assault only arises once a future harm results from reckless behavior.”). The primary evidence in the record of the Defendant’s involvement in the murder of Pittman was repeated testimony that the Defendant solicited the death of Pittman and promised a reward for Pittman’s death. There was also evidence that the Defendant unsafely stored a gun for a time at the residence that the

Defendant and his associates used to deal drugs, a gun that Stillwell had access to and used in the murder. The Defendant further supplied Halloween costumes which were never used by his associates. But the date and time of the murder was random based on the unanimous testimony of Younge and Stillwell. The Defendant was not present at the time of the murder, and had no ability to directly control or influence that event. The evidence indicated that there may have been text communications between the Defendant and Younge, Smith, and Stillwell on the night of the murder (no evidence was provided from the Defendant's actual phone, or evidence that the Defendant used his actual phone to communicate), but no specific texts were produced indicating culpability or suggesting guidance on the part of the Defendant. The Defendant may have solicited the murder of Pittman, but he was not an "accomplice in conduct". State v. Rivera, 162 N.H. 182 (2011)(Accomplice in conduct in a robbery which resulted in unplanned homicide can be convicted of second degree murder).

In State v. Anthony, this Court clarified that an "accomplice in conduct" can be guilty of a crime which requires a *mens rea* of negligence (e.g. the principal is not aware that they are either committing a crime or even aware that there is a risk of committing a crime). 151 N.H. 492 (2004). This Court's reasoning rested on the language of N.H. R.S.A. 626:8 IV.:

IV. Notwithstanding the requirement of a purpose as set forth in paragraph III(a), when causing a particular result is an element of an offense, an *accomplice in the conduct* causing such result is an accomplice in the commission of that offense, if he acts with the kind of culpability, if any, with respect to that result that is sufficient for the commission of the offense. [Emphasis supplied.]

RSA 626:8 III. provides several means by which a person can be an accomplice to a crime:

With the purpose of promoting or facilitating the commission of the offense, he solicits such other person in committing it, or aids or agrees or attempts to aid such other person in planning or committing it

The means of acting as an accomplice can be divided into two basic categories: i.) speech acts and performative gestures, and ii.) conduct. For example, a solicitation necessarily involves either a speech act, such as a command, or a performative gesture, such as a thumbs-down sign. With respect to III., solicitations, agreement, or conscious planning are necessarily either speech acts or performative gestures, and are necessarily purposeful behavior. In contrast, a criminal may render aid through direct conduct, without a purpose or even knowledge of the probable result.

This distinction helps to clarify the confusion expressed by this Court in the case of State v. Etzweiler, 125 N.H. 57 (1984) which was subsequently clarified in the case of Anthony. A speech act or a performative gesture is by necessity a purposeful action, whether it be a solicitation, an agreement, or the formulation of a plan. On the other hand, conduct rendering aid in the commission of an offense, such as assisting one's spouse in tying the legs of a colt together, may be negligent, reckless, knowing or purposeful. Anthony, 151 N.H. at 492. Thus, while RSA 626:8 III. discusses "purposeful" acts and lists a number of inherently purposeful performative actions (solicitation, etc.), there is no contradiction between RSA 626:8 III. and IV. because the latter restricts its application to solely to the "accomplice in conduct".

In this respect, this case is distinguishable from Rivera in that the Defendant played no role in the actual commission of the offense and was not an “accomplice in conduct”, he (in the light most favorable to the State) solicited the intentional murder of Pittman, and therefore, would not be subject to the provisions of RSA 626:8 IV. One cannot solicit, conspire or plan a reckless assault or a reckless homicide. One can only solicit, conspire, or plan a purposeful assault or a purposeful homicide. The proper result, consistent with Donohue, is that while the Defendant could conspire and/or solicit and/or plan an intentional murder, the Defendant was incapable of soliciting or conspiring or planning the commission of a reckless murder. Leaving aside the Defendant’s solicitations, the only real connection between the Defendant’s conduct and the murder was that he may have owned or left the gun at a residence used for drug dealing where Stillwell could easily obtain it and use it to kill Pittman. While negligent storage of a firearm may in some context give rise to criminal liability, the idea that the negligent storage of a firearm can give rise to a conviction for second degree murder shocks the conscience. The evidence was insufficient to support a guilty verdict of the Defendant on the count of second degree murder, and the trial court erred in not dismissing the count of second degree murder on the grounds of insufficient evidence.

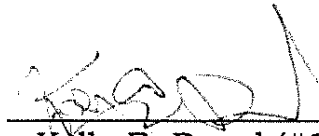
CONCLUSION

WHEREFORE, for all the reasons set forth above, the Appellant respectfully requests that the Honorable Court:

- A. Find that the evidence was insufficient to convict the Defendant of conspiracy to commit murder and vacate his conviction on that charge;
- B. Find that the evidence was insufficient to convict the Defendant of second degree murder and vacate his conviction on that charge; in the alternative,
- C. Vacate the verdict and remand for a new trial due to the improper and inadequate waiver of the right to counsel;
- D. Vacate the verdict and remand for a new trial due to the introduction of improper and prejudicial 404(b) evidence; and
- E. Such other and further relief as is equitable and just.

Respectfully submitted,

Paulson Papillon
By his attorney,
Law Offices of Kelly E. Dowd, PLLC

Dated: February 8, 2019 By: 

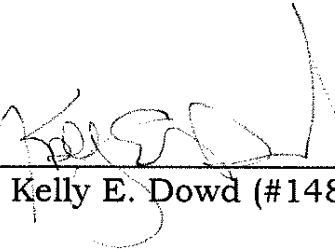
Kelly E. Dowd (#14890)
P.O. Box 188
29 Center St., Suite 12
Keene NH 03431

CERTIFICATION OF SERVICE AND REQUEST FOR ORAL ARGUMENT

I hereby certify that copies of the foregoing Brief was mailed first class on this day to Assistant Attorney General John Harding, Esq. and Senior Attorney General Peter Hinckley, Esq. of the New Hampshire Attorney General's Office, 33 Capitol St., Concord NH 03301. The Appellant respectfully request oral argument before the full court and time to address the Court, not to exceed 15 minutes.

Dated: February 8, 2019

By:



Kelly E. Dowd (#14890)

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JUN 21 2018

NH SUPREME COURT

Hillsborough Superior Court Northern District
300 Chestnut Street
Manchester NH 03101

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
SUPERIOR COURT

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JUN 07 2018

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

RETURN FROM SUPERIOR COURT - STATE PRISON SENTENCE

Case Name: State v. Paulson Papillon
Case Number: 216-2016-CR-00320

Name: Paulson Papillon, NHSP Inmate #93554 PO Box 14 Concord NH 03302-0014
DOB: June 26, 1989

Charging document: Indictment

Offense:	Charge ID:	RSA:	Date of Offense:
2nd Degree Murder	1202970C	630:1-b	November 03, 2015
1st Degree Murder	1202971C	630:1-a	October 08, 2015
Disposition: Guilty/Chargeable By: Jury			

A finding of GUILTY/CHARGEABLE is entered.

Conviction: Felony

Sentence: see attached

May 22, 2018
Date

Hon. Kenneth C. Brown
Presiding Justice

W. Michael Scanlon
Clerk of Court

MITTIMUS

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

Attest: _____
Clerk of Court

SHERIFF'S RETURN

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

Date

Sheriff

J-ONE: State Police DMV

C: Dept. of Corrections Offender Records Sheriff Office of Cost Containment
 Prosecutor John H. Harding, ESQ, Peter Hinckley, Esq. Defendant
 Defense Attorney Richard C. Guerriero, Jr, ESQ, Theodore Lothstein, Esq.
 Sentence Review Board Sex Offender Registry Other Jailer _____ _____ Dist Div. _____

**THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH**

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

Court Name: Hillsborough Superior Court Northern District

Case Name: State of New Hampshire v. Paulson Papillon

Case Number: 217-2016-CR-00548
(if known)

Charge ID Number: 1202970C

STATE PRISON SENTENCE

Plea/Verdict: Guilty Verdict	Clerk: Janet Cyr
Crime: Second Degree Murder	Date of Crime: 11/03/2015
Monitor: SC	Judge: Kenneth C. Brown

A finding of GUILTY/TRUE is entered.

- The defendant has been convicted of Domestic Violence contrary to RSA 631:2-b 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 life nor less than 33 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 after completion of 200 days of the 216-day sentence (see # 217-2016-CR-00548)
- 3. _____ of the minimum sentence and _____ of the maximum sentence is suspended. (30d 24 of 30)
Suspensions are conditioned upon good behavior and compliance with all of the terms of this order. Any suspended sentence may be imposed after a hearing at the request of the State. The suspended sentence begins today and ends _____ years from today or release on _____ (Charge ID Number)
- 4. _____ of the sentence is deferred for a period of _____ year(s). The Court retains jurisdiction up to and after the deferred period to impose or terminate the sentence or to suspend or further defer the sentence for an additional period of _____ year(s). Thirty (30) days prior to the expiration of the deferred period, the defendant may petition the Court to show cause why the deferred commitment should not be imposed, suspended and/or further deferred. Failure to petition within the prescribed time will result in the immediate issuance of a warrant for your arrest.
- 5. See Addendum to State Prison Sentence Sexual Offender Assessment and Treatment.
- 6. The sentence is consecutive to _____ (Charge ID Number(s))
 concurrent with _____ (Charge ID Number(s))
- 7. Pretrial confinement credit: _____ days.
- 8. The Court recommends to the Department of Corrections:
 - 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.

14/ CC: CA & NY 5/22/16
NHJB-2115-S (01/01/2015)

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Case Name: State of New Hampshire v. Paulson Papillon

Case Number: 217-2016-CR-00541

JUN 21 2018

STATE PRISON SENTENCE

PROBATION

NH SUPREME COURT

- 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 \$ 4,432.35 to NH Victims' Compensation Brd.
 Through the Department of Corrections as directed by the Probation/Parole Officer. A 17% administrative fee is assessed for the collection of restitution.
 At the request of the defendant or the Department of Corrections, a hearing may be scheduled on the amount or method of payment of restitution.
 Restitution is not ordered because: _____
 - C. The defendant is to participate meaningfully in and complete any counseling, treatment and educational programs as directed by the correctional authority or Probation/Parole Officer.
 - D. Subject to the provisions of RSA 651-A:22-a, the Department of Corrections shall have the authority to award the defendant earned time reductions against the minimum and maximum sentences for successful completion of programming while incarcerated.
 - E. Under the direction of the Probation/Parole Officer, the defendant shall tour the
 New Hampshire State Prison House of Corrections
 - F. The defendant shall perform _____ hours of community service and provide proof to
 the State or probation within _____ days/within _____ months of today's date.
 - G. The defendant is ordered to have no contact with _____
either directly or indirectly, including but not limited to contact in-person, by mail, phone, email, text message, social networking sites or through third parties.
 - H. ~~Law enforcement agencies may destroy the evidence~~ return evidence to its rightful owner.
 - I. The defendant and the State have waived sentence review in writing or on the record.
 - J. The defendant is ordered to be of good behavior and comply with all the terms of this sentence.
 - K. Other:

Date 5/22/18

Presiding Justice [Signature]

**THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH**

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

Court Name: Hillsborough Superior Court Northern District

Case Name: State of New Hampshire v. Paulson Papillon

Case Number: 217-2016-CR-00548
(if known)

Charge ID Number: 1202971C

STATE PRISON SENTENCE

Plea/Verdict: Guilty Verdict	Clerk: Janet Cyr
Crime: Conspiracy to Commit Murder	Date of Crime: 10/22/2015
Monitor: SC	Judge: Kenneth C. Brown

A finding of GUILTY/TRUE is entered.

- The defendant has been convicted of Domestic Violence contrary to RSA 631:2-b 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 30 years, nor less than 10 years. There is added to the minimum sentence a disciplinary period equal to 150 days for each year of the minimum term of the defendant's sentence, to be prorated for any part of the year.
- 2. This sentence is to be served as follows: Stand committed Commencing after completion of sentencing, State of NH 217-2016-CR-00548, 10/22/2015
- 3. _____ of the minimum sentence and _____ of the maximum sentence is suspended. (See RSA 631:2-b(1)(c))
Suspensions are conditioned upon good behavior and compliance with all of the terms of this order. Any suspended sentence may be imposed after a hearing at the request of the State. The suspended sentence begins today and ends _____ years from today or release on _____ (Charge ID Number)
- 4. _____ of the sentence is deferred for a period of _____ year(s). The Court retains jurisdiction up to and after the deferred period to impose or terminate the sentence or to suspend or further defer the sentence for an additional period of _____ year(s). Thirty (30) days prior to the expiration of the deferred period, the defendant may petition the Court to show cause why the deferred commitment should not be imposed, suspended and/or further deferred. Failure to petition within the prescribed time will result in the immediate issuance of a warrant for your arrest.
- 5. See Addendum to State Prison Sentence Sexual Offender Assessment and Treatment.
- 6. The sentence is consecutive to 1202970C
(Charge ID Number(s))
 concurrent with _____
(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.

148 NHJB-2115-S (01/01/2018) 217-2016-CR-00548 5/1/18

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Case Name: State of New Hampsb' v. Paulson Papillon

Case Number: 217-2016-CR-00548

JUN 21 2018

STATE PRISON SENTENCE

PROBATION

NH SUPREME COURT

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

OTHER CONDITIONS

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

Date 5/22/18

Presiding Justice KC B...

THE STATE OF NEW HAMPSHIRE

INDICTMENT

HILLSBOROUGH, SS.
Northern District

MARCH TERM, 2016

At the Superior Court, holden at Manchester, within and for the County of Hillsborough, on the 18th day of March in the year of our Lord two thousand and sixteen,

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

PAULSON PAPILLON
(D.O.B. 6-26-1989)

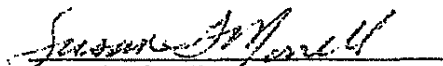
INCO 2216	CR 16-10
03-18-2016	11:58 AM

of 281 North State Street in Concord, New Hampshire, on November 3, 2015, at Manchester, New Hampshire in the County of Hillsborough, did commit the crime of

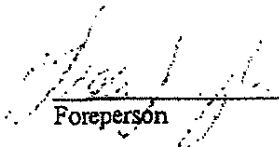
Second-Degree Murder
(RSA 630:1-b, I(b) & RSA 626:8)

in that Paulson Papillon, acting in concert with Michael Younge, Adrien Stillwell and/or Nathaniel Smith, caused the death of Michael Pittman recklessly under circumstances manifesting an extreme indifference to the value of human life, in that Younge, Stillwell and/or Smith shot Pittman in the torso,

contrary to the form of the statute, in such case made and provided, and against the peace and dignity of the State.


Susan G. Morrell
Senior Assistant Attorney General

This is a true bill.



Foreperson

Jury Verdict: Guilty
Date: 3-15-16
Jurors: BECCA
Monitor: SC
Clerk: JLC

Defendant's Name: Paulson Papillon
DOB: 6-26-1989
Address: 281 North State Street, Concord, NH
RSA: 626:8 & 630:1-b, I(b)
Dist. Ct: Manchester District Court

Date: March 18, 2016

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NH SUPREME COURT

THE STATE OF NEW HAMPSHIRE

INDICTMENT

HILLSBOROUGH, SS.
Northern District

MARCH TERM, 2016

At the Superior Court, holden at Manchester, within and for the County of Hillsborough, on the 18th day of March in the year of our Lord two thousand and sixteen,

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

PAULSON PAPILLON
(D.O.B. 6-26-1989)

HNESC #218	16	CR	122
CHG #02	3284726		

of 281 North State Street in Concord, New Hampshire, on or between October 8, 2015, and November 3, 2015, at Manchester, New Hampshire, in the County of Hillsborough, and elsewhere, did commit the crime of

Conspiracy to Commit Murder
(RSA 630:1-a, I(a) & RSA 629:3)

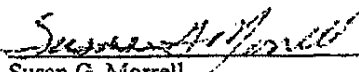
in that, with the purpose that the crime of murder be committed, a crime defined by RSA 630, Paulson Papillon agreed with Michael Younge, Adrien Stillwell, Nathaniel Smith, and/or others known and unknown to the Grand Jury, to cause the death of Michael Pittman, and that one or more of the co-conspirators committed one or more of the following overt acts in furtherance of the conspiracy:

1. Paulson Papillon solicited Michael Younge to kill Michael Pittman; and/or
2. Paulson Papillon solicited Adrien Stillwell to kill Michael Pittman; and/or
3. Paulson Papillon solicited Nathaniel Smith to kill Michael Pittman; and/or
4. Paulson Papillon traveled to Connecticut on October 31, 2015; and/or
5. Paulson Papillon traveled to Massachusetts with Howard Whitted on November 3, 2015; and/or
6. On October 31, 2015, Michael Younge armed himself with a handgun; and/or
7. On October 31, 2015, Adrien Stillwell armed himself with a handgun; and/or
8. On October 31, 2015, Nathaniel Smith armed himself with a handgun; and/or
9. On November 3, 2015, Michael Younge, Nathaniel Smith and Adrien Stillwell met at the 7-Eleven convenience store located at 86 South Main Street in Manchester, New Hampshire

Date	3-15-18
Judge	Brown
Monitor	SC
Clerk	JLC

10. On November 3, 2015, Michael Younge, Nathaniel Smith and Adrien Stillwell walked from the 7-Eleven convenience store located at 86 South Main Street in Manchester to the area of 472 Granite Street in Manchester; and/or
11. On November 3, 2015, Adrien Stillwell armed himself with a handgun; and/or
12. On November 3, 2015, Nathaniel Smith armed himself with a handgun; and/or
13. On November 3, 2015, Michael Younge, Nathaniel Smith and Adrien Stillwell huddled together across the street from the apartment building located at 472 Granite Street in Manchester; and/or
14. On November 3, 2015, Adrien Stillwell caused Michael Pittman's death by shooting him in the torso; and/or
15. On November 3, 2015, Michael Younge caused Michael Pittman's death by shooting him in the torso; and/or
16. On November 3, 2015, Nathaniel Smith caused Michael Pittman's death by shooting him in the torso; and/or
17. On November 3, 2015, Adrien Stillwell discarded a handgun in a parking lot adjacent to 244 Douglass Street in Manchester, New Hampshire; and/or
18. On November 3, 2015, Michael Younge discarded a handgun in a parking lot adjacent to 244 Douglass Street in Manchester, New Hampshire; and/or
19. On November 3, 2015, Nathaniel Smith discarded a handgun in a parking lot adjacent to 244 Douglass Street in Manchester, New Hampshire,

contrary to the form of the statute, in such case made and provided, and against the peace and dignity of the State.


 Susan G. Morrell
 Senior Assistant Attorney General

This is a true bill.


 Foreperson

Defendant's Name: Paulson Papillon
 DOB: 6-26-1989
 Address: 281 North State Street, Concord, NH
 RSA: 629:3 & 630:1-a, I(a)
 Dist. Ct: Manchester District Court

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THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
SUPERIOR COURT

NH SUPREME COURT

Hillsborough Superior Court Northern District
300 Chestnut Street
Manchester NH 03101

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

RETURN FROM SUPERIOR COURT

Case Name: **State v. Paulson Papillon**
Case Number: **216-2016-CR-00320**

Name: **Paulson Papillon**, NHSP Inmate #93554 PO Box 14 Concord NH 03302-0014

DOB: June 26, 1989

Charging document: Indictment

Offense:	Charge ID:	RSA:	Date of Offense:
1st Degree Murder	1202969C	630:1-a	November 03, 2015

Disposition: Not Guilty

Date: May 22, 2018

Action taken: By Jury

Kenneth C. Brown

J-ONE: State Police DMV

C: Dept. of Corrections Offender Records Sheriff Office of Cost Containment
 Prosecutor John H. Harding, ESQ, Peter Hinckley, Esq.
 Defendant Defense Attorney Richard C. Gueriero, Jr, ESQ, Theodore Lothstein, Esq.
 Other Jailer Dist Div.

THE STATE OF NEW HAMPSHIRE

INDICTMENT

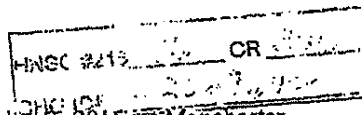
HILLSBOROUGH, SS.
Northern District

MARCH TERM, 2016

At the Superior Court, holden at Manchester, within and for the County of Hillsborough, on the 18th day of March in the year of our Lord two thousand and sixteen,

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

PAULSON PAPILLON
(D.O.B. 6-26-1989)

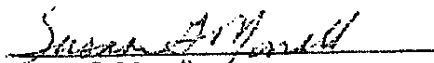


of 281 North State Street in Concord, New Hampshire, on November 3, 2015, at Manchester, New Hampshire in the County of Hillsborough, did commit the crime of

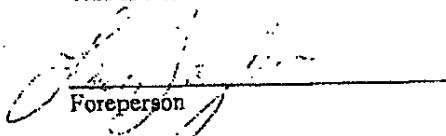
First-Degree Murder
(RSA 630:1-a, I(a) & RSA 626:8)

in that Paulson Papillon, acting in concert with Michael Younge, Adrien Stillwell and/or Nathaniel Smith, purposely caused the death of Michael Pittman, in that Younge, Stillwell, and/or Smith shot Pittman in the torso,

contrary to the form of the statute, in such case made and provided, and against the peace and dignity of the State.


Susan G. Morrell
Senior Assistant Attorney General

This is a true bill.


Foreperson

Jury Verdict: Not Guilty
Date: 3-18-16
Judge: DCR
Monitor: SE
Clerk: ME

Defendant's Name: Paulson Papillon
DOB: 6-26-1989
Address: 281 North State Street, Concord, NH
RSA: 626:8 & 630:1-a, I(a)
Dist. Ct: Manchester District Court

Date: March 18, 2016

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JUN 21 2018

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
SUPERIOR COURT

NH SUPREME COURT

Hillsborough Superior Court Northern District
300 Chestnut Street
Manchester NH 03101

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

NOTICE OF DECISION

FILE COPY

Case Name: **State v. Paulson Papillon**
Case Number: **216-2016-CR-00320**

Please be advised that on May 17, 2018 Judge Brown made the following order relative to:

Motion for Mistrial

"After review-motion denied."

June 07, 2018

W. Michael Scanlon
Clerk of Court

(533)

C: Paulson Papillon; Richard C. Guerriero, Jr, ESQ; Theodore M. Lothstein, ESQ; John H. Harding,
ESQ; Peter R. Hinckley, ESQ