

THE STATE OF NEW HAMPSHIRE
SUPREME COURT

No. 2018-0441

State of New Hampshire

v.

James Castine

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

BRIEF FOR THE DEFENDANT

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(Oral Argument Waived)

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QUESTIONS PRESENTED

1. Whether the trial court erred in considering evidence of Castine's drug enterprise charges.

Issue preserved by objection, S 17, 21, or raised as plain error.*

2. Whether the State presented sufficient evidence of Castine's guilt.

Issue preserved by motion to dismiss and ruling. T-I 166.

* Citations to the record are as follows:
"A" refers to the appendix to this brief;
"T-I" and "T-II" refer to the transcript of trial;
"S" refers to the transcript of the sentencing hearing.

STATEMENT OF THE CASE

A Rockingham County grand jury indicted James Castine with three counts of sale of a controlled narcotic drug. T-I 15-17. The sales were alleged to have occurred in February-March 2017 to a confidential informant, Joshua Lamb. T-I 15-17.

After a trial in which Lamb testified, the jury returned guilty verdicts. T-II 196-97. The court (Delker, J.) sentenced Lamb to serve consecutive sentences of seven-and-a-half to fifteen years, with the possibility of suspending five years of the minimum term of the second sentence. S 29-31.

STATEMENT OF THE FACTS

Joshua Lamb was arrested in Epping on February 20, 2017 and charged with possession of heroin. T-I 39. He told the police that he had information about others involved with drugs and agreed to work for the police as a confidential informant with the hope of lessening his charges. T-I 41, 66-67. Lamb signed a cooperation agreement and started working as an informant the next day. T-I 43, 66-67, 104, 108.

Lamb gave the police a list of people, including Castine, from whom he believed he could purchase drugs. T-I 138. Lamb met members of the Seacoast Sheriff's Department Drug Task Force ("Task Force") at the Epping Police Department on February 21. T-I 43-44, 108. He testified that he called Castine and asked for a "forty-bag," or four-tenths of a gram of fentanyl. T-I 45, 108-09. According to Lamb, Castine told him to come over. T-I 45.

The Task Force officers searched Lamb and his car and gave him forty dollars to buy the drugs. T-I 45-46, 111-13. Castine lived in a garage on Jenness Road in Epping. T-I 42-43, 114. The officers followed Lamb to Castine's residence in a separate car. T-I 113-14. Once there, the Task Force officers saw Lamb enter the garage, but could not see what happened inside. T-I 115, 141-42.

Lamb testified that when he entered the garage, Castine was there with Shawn Cabral and Michelle Fugare. T-I 47. Cabral was also on the list of people from whom Lamb could buy drugs, T-I 148, and the Task Force knew Fugare from a prior arrest. T-I 144. Lamb dated Fugare for several years but was not dating her at the time of the controlled buys underlying the charges against Castine. T-I 48. Fugare was with Castine each time Lamb went to his house. T-I 47, 55, 60. According to Lamb, he asked Castine for the drugs and Castine produced them from his pants. T-I 48. Castine weighed the drugs and put them in a paper envelope, which Lamb put in his pocket. T-I 48-49. Lamb testified that he left after giving Castine the forty dollars provided by the Task Force. T-I 50. He was in Castine's residence for about ten minutes. T-I 115.

After the alleged purchase, Lamb drove back to the Epping Police Department, followed by Task Force officers. T-I 50, 116. He gave the drugs to the officers, and they searched him again. T-I 50, 116-17. Two similar transactions occurred on February 23, 2018, and March 3, 2018. T-I 51-56, 117-123 (February 23); T-I 58-61, 124-32 (March 3). Lamb testified that he bought seventy-five dollars' worth of fentanyl on February 23, T-I 52-55, and forty dollars' worth on March 3. T-I 58-59. The Task Force tried to audio

record the March 3 transaction, but the attempt failed. T-I 95, 127-28, 143.

Lamb was never indicted for the possession of heroin charge from February 20. It was reduced to a misdemeanor and placed on file without a finding in circuit court. T-I 75-77, 80-81. After another arrest, on March 12, Lamb was indicted on a felony drug offense, but that charge was also reduced to a misdemeanor. T-I 87.

SUMMARY OF THE ARGUMENT

1. A sentencing court may only consider other crimes or bad acts that “carry suspicion to the point of probability.” Here, the State offered unsubstantiated claims of Castine’s leadership of a drug enterprise extending far beyond the three sales to Lamb. The court considered this evidence in sentencing Castine. He is entitled to a new sentencing hearing.

2. The State’s evidence of Castine’s guilt was legally insufficient. No Task Force officer saw the transactions. None were audio-recorded. On each occasion, another person connected with the drug trade could have given the drugs to Lamb, who was motivated to target Castine. This Court should vacate his convictions.

I. THE TRIAL COURT ERRED IN CONSIDERING EVIDENCE OF CASTINE'S DRUG ENTERPRISE CHARGE.

At the time of his sentencing, Castine faced a separate trial on charges of being a drug enterprise leader, possessing drugs at the jail, and witness tampering. S 3; App. at A2; RSA 318-B:2, XII; RSA 318-B:26, VII. He was represented by different counsel on those charges. S 3. During the trial on the three sales to Lamb, the State did not introduce evidence that Castine was an alleged drug enterprise leader or was charged with any other offenses.

At sentencing, and in its sentencing memorandum, the State outlined the evidence allegedly supporting the drug enterprise charge and introduced a chart that depicted the alleged enterprise and Castine's role as the head of it. S 6-12, 16, 21-22, 23-25; App. at A1-A10. Over half of the State's memorandum dealt with drug enterprise evidence and extrinsic bad acts. App. at A3-A9. The State argued that Castine had an "extensive network" of "drug runners" and purchasers. S 7; App. at A3-A4 (State lists six "runners"); App. at A4-A6 (State lists thirty-six alleged purchasers). It also contended that Castine was indirectly connected to overdoses, firearms, a serious drug-related car accident, and had traded drugs for sex. S 9; App. at A9. In addition, the State alleged that Castine withheld drugs from enterprise employees experiencing withdrawal, to manipulate them. S

10; App. at A7. The State argued that the indictments and evidence supported its recommendation for a long prison sentence on the three sales to Lamb. S 12, 15-16; App. at A1 (State seeks fifteen to thirty-year sentence, with a chance for two years off the minimum).

Defense counsel argued that the drug enterprise chart was irrelevant, S 21, and that evidence apart from the three sales to Lamb was not relevant to sentencing in this case. S 17. Counsel argued that Castine was an addict who had not reaped the profits or led the lifestyle of a leader of a drug enterprise. S 17-18, 27-28.

The court sentenced Castine to serve seven-and-a-half to fifteen years committed on one charge, and seven-and-a-half to fifteen years committed and consecutive on another, with a chance to suspend five years of the minimum term. S 29-30. It found that Castine was “the exhibit A contributor to [the drug problem] in this county.” S 28. The court also found that, instead of pursuing treatment for his drug addiction, Castine “took the advantage of continuing [his] criminal enterprise.” S 29.

In considering evidence of Castine’s alleged drug enterprise leader status, and the “bad acts” associated with it, the trial court erred. Castine is entitled to a new sentencing hearing.

A judge has broad discretion to determine what evidence to rely on in fashioning a sentence. State v. Burgess, 156 N.H. 746, 751 (2008). That discretion is not unlimited. State v. Willey, 163 N.H. 532, 541 (2012). “[This Court has] held that judges in sentencing should not rely upon allegations of other crimes by the defendant when such allegations are unsubstantiated, resolved by acquittals, or the product of speculation.” State v. Tufts, 136 N.H. 517, 519 (1992) (quoting State v. Nutter, 135 N.H. 162, 167 (1991)). “Our concern is that sentencing courts should not consider conclusory statements of criminal conduct lacking a factual basis, *i.e.*, evidence [that] does not carry suspicion to the point of probability. . . .” Id. (quotation omitted).

For example, in State v. Cobb, 143 N.H. 638, 660-61 (1999), the court properly relied on evidence related to pending indictments where two victims and one member of a victim’s family testified about the pending cases at the sentencing hearing. Similarly, in State v. Taylor, 139 N.H. 96, 102 (1994), the court properly relied on evidence of prior sexual assaults because both victims testified and were subjected to cross-examination. However, in State v. Coppola, 130 N.H. 148, 156 (1987), this Court held that the trial court erred in considering evidence of an unrelated burglary, because the evidence presented established only a “strong suspicion” that the defendant committed the other

crimes – even though the defendant had been convicted in separate proceedings.

When the State introduces inadmissible evidence at sentencing, the trial court must reconsider the sentence unless the court gave the evidence no weight. State v. Lambert, 147 N.H. 295, 296 (2001); State v. Sullivan, 142 N.H. 399, 402-03 (1997). Here, the sentencing court clearly considered the drug enterprise and other extrinsic evidence in pronouncing a sentence of at least ten years for three low-quantity drug sales.

The evidence presented at Castine’s sentencing, however, did not carry “suspicion to the point of probability.” While Castine had been indicted, the State presented no evidence to support its claims. As such, the case is distinguishable from Cobb and Taylor, where the State presented testimony of the alleged victims. It is also distinguishable from Tufts, where the State presented police reports, a letter from the victim, a description of the extrinsic assault by the defendant, and an affidavit from a probation officer verifying that he spoke to the assault victim and had corroborated her account. Tufts, 136 N.H. at 518-19. Thus, the trial court erred in sentencing Castine based on unsubstantiated allegations.

At the sentencing hearing, defense counsel objected to the court’s consideration of the evidence on grounds of

relevance. S 17, 21. The objection sufficiently preserved the issue. See Coppola, 130 N.H. at 156 (noting that the issue Castine raises poses a question of relevance); see also State v. Blackmer, 149 N.H. 47, 48 (2003) (contemporaneous objection gives trial court an opportunity to correct error). If the Court determines that the issue is not preserved, the trial court committed plain error. “The plain error rule allows [the Court] to consider errors not brought to the attention of the trial court.” State v. Lopez, 156 N.H. 416, 423 (2007). “For [the Court] to find error under the rule: (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.” Id.

As argued above, a sentencing court plainly cannot consider evidence of other offenses without live testimony, an affidavit and corroborative evidence, or evidence that elevates suspicion to the point of probability. The evidence offered here clearly failed that test. In addition, the court clearly considered it in sentencing Castine. The court’s consideration of improper evidence affected Castine’s rights and the fairness of his sentence. See Burgess, 156 N.H. at 759-60 (noting impact of improperly considered evidence on defendant’s sentence). This Court should remand this case to the sentencing court for reconsideration of its sentence.

II. THE STATE PRESENTED INSUFFICIENT EVIDENCE OF CASTINE'S GUILT.

At the close of the State's case, Castine moved to dismiss the charges against him due to the lack of sufficient evidence to convict. T-I 166. The court denied the motion. T-I 166. In so ruling, the court erred.

This Court reviews de novo claims relating to the sufficiency of the evidence. State v. Boggs, 171 N.H. 115, 125 (2018). “[T]he defendant must prove that 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. When the evidence is solely circumstantial, it must exclude all rational conclusions except guilt.” State v. Gibbs, 164 N.H. 439, 445 (2012) (quoting State v. Ruggiero, 163 N.H. 129, 138 (2011)). However, “where the proof involves both direct and circumstantial evidence, a sufficiency challenge must fail if the evidence, including the jury’s credibility determinations, is such that a rational trier of fact could find guilt beyond a reasonable doubt, even if the evidence would support a rational conclusion other than guilt if the jury had resolved credibility issues differently.” State v. Saunders, 164 N.H. 342, 351 (2012). As the Saunders Court explained, direct evidence cases involve credibility determinations, “a role for which the jury is superbly suited.” Id. at 351 n.1 (quoting

People v. Kennedy, 391 N.E.2d 288, 290 (N.Y. 1979)); see also State v. Oakes, 161 N.H. 270, 276 (2010) (“The evaluation of witness credibility and the weight given to witnesses’ testimony “were issues for the jury to resolve.”).

No rational jury could have found Castine guilty. Although Lamb testified Castine sold the drugs, none of the Task Force officers saw the sales. T-I 142. Even the Task Force officers had reason to doubt Lamb’s veracity. Having already twice received drugs from Lamb, the officers endeavored to audio-record a third sale. T-I 127-28, 143. If Lamb’s word was enough to secure a conviction, no recording would have been necessary. Perhaps the Task Force officers’ doubt stemmed from the fact that on each occasion, the drugs could just as well have been sold by Cabral or Fugare – one who was on the list of targeted dealers, T-I 148, and the other who had a prior arrest. T-I 144. A Task Force officer admitted that either Cabral or Fugare could have given the drugs to Lamb. T-I 147-48.

Like any informant, Lamb hoped to save himself. T-I 67, 137. Castine was at the top of the Task Force’s list, T-I 138, and was Lamb’s best chance of avoiding his own drug charges. Despite Lamb’s direct testimony, the State’s evidence was insufficient.

CONCLUSION

WHEREFORE, Mr. Castine respectfully requests that this Court (a.) vacate his convictions due to insufficient evidence; or (b.) remand his case for a new sentencing hearing.

Undersigned counsel waives oral argument.

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

This brief complies with the applicable word limitation and contains 2,411 words.

Respectfully submitted,

By 

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CERTIFICATE OF SERVICE

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

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DATED: January 15, 2019

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STATE OF NEW HAMPSHIRE

v.

JAMES R. CASTINE

STATE'S SENTENCING MEMORANDUM

NOW COMES the State of New Hampshire, by and through the Office of the
Rockingham County Attorney, and states as follows:

THE STATE'S RECOMMENDED SENTENCE

1. The State recommends two consecutive 7 ½ -15 year sentences in the New Hampshire State Prison, stand committed with a recommendation for drug treatment while incarcerated. The State requests that 1 year of the Defendant's minimum sentence be suspended upon successful completion of his HiSET or GED equivalent. The State further recommends a \$500 fine and \$120 penalty assessment, all suspended be placed on both charges.
2. On the third charge, the State recommends a 7 ½-15 year sentence, all suspended for a period of 5 years, consecutive to the first two charges. The State further recommends a \$500 fine and \$120 penalty assessment, all suspended be placed on both charges.

FACTUAL BACKGROUND OF THIS CASE

3. In this case, 218-2017-CR-308 the Defendant was charged and convicted of three counts of Sale of a Controlled Drug.
4. On February 21, 2017 SGT Soares, an Epping Police Officer and member of the Rockingham County Drug Task Force, was contacted by Joshua Lamb who volunteered to be a Cooperating Individual and indicated who could conduct controlled drug buys from the Defendant.
5. Through the cooperation between the Rockingham County Drug Task Force and the Epping Police Department three controlled buys were conducted on February 21st, February 23rd, and March 3rd of 2017.

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6. On February 21st and March 3rd, Joshua Lamb purchased what he thought was 0.5 grams of heroin/fentanyl from the Defendant for \$40 and on February 23rd, Joshua Lamb purchased what he believed to be 1 gram of fentanyl/heroin from the Defendant.

7. The State notes that these prices would likely be double the price that the Defendant paid for the drugs based on evidence provided by individuals close to the Defendant and based on the knowledge and experience of the Drug Task Force.
8. At trial, the Defendant argued that Joshua Lamb had lied about purchasing heroin from James Castine and accused Joshua Lamb of being a drug addict.

DEFENDANT'S CRIMINAL HISTORY

9. James R. Castine has been a known drug dealer in the Rockingham County area, and the surrounding area for the last 5 years. This is evident from repeated arrests for selling controlled drugs and by the statements of numerous addicts in the area.
10. 218-2017-CR-1576: This case is still pending. The Defendant is charged with (2) counts of Drug Enterprise and (2) counts of witness tampering. The State will articulate to some degree the extent of the Defendant's Drug Enterprise within this memorandum. In regards to the Witness Tampering charges, the Defendant in jail calls told a witness to plead the fifth and then told her to tell everyone else to too. The witness took this to mean that she should not say anything. This constituted an attempt to silence any possible witnesses in an investigation that he knew was about to be instituted.
11. 218-2017-CR-1408: This case is still pending. The Defendant turned himself in after the arrest in this case. While held at the Rockingham County House of Corrections, the Defendant was found to be in possession of about .5 grams of a controlled drug that documented the presence of fentanyl and heroin and indicated the presence of cocaine. Prior to the seizure of the fentanyl, the body image scan showed possible contraband inside the Defendant's rectum. After the seizure of the fentanyl, the body scan no longer showed any contraband. The State further possesses jail calls where the Defendant admits to Timothy Castine that he possessed the contraband. The Defendant is charged with Possession of a Controlled Drug and Articles Prohibited.
12. 218-2014-CR-637: On January 25, 2014 the Defendant was found to be in possession of (1) syringe that documented the presence of heroin, (4) tablets of clonazepam, (1) scrap of plastic containing buprenorphine, and (3) intact wrappers labelled buprenorphine. The Defendant through a negotiated plea on charge ID#983590C sentenced the Defendant to 12 months in the House of Corrections, all deferred for 1 year then either imposed, suspended or further deferred for 1 year. The Defendant was ordered to participate in substance abuse counseling and to obtain GED by 8/25/15. The Defendant's sentence was repeatedly re-deferred to allow time to complete the GED, which the Defendant never successfully did. The State notes that Facebook records show that the Defendant was dealing before, during, and after his HiSET Classes despite being strictly monitored by this Court.

13. 218-2012-CR-912: The Defendant on February 9, 2012 a Cooperating Individual advised the Rockingham County Sherriff's Department that he could purchase controlled drugs from the Defendant. On February 9, 2012 C.I. purchased (10) 15mg oxycodone pills from the Defendant for \$150. When arrested for the sale on August 7, 2012 the Defendant had brass knuckles and (2) buprenorphine pills in his possession. The Defendant plead guilty to Sale of a Controlled Drug (669603C) and was sentenced to 12 months, stand committed and 355 days of the sentence was suspended for 4 years. The Defendant was ordered to pay \$350 fine and \$150 restitution to the Rockingham County Sherriff's Department Drug Fund.
14. The Defendant also has a 2013 conviction for Stalking out of the Brentwood District Court where he received 30 days in the House of Corrections, all suspended.
15. In Massachussetts the Defendant has a pending Possession of a Controlled Drug case out of Sturbridge, MA which, in part, was a reason for the State's Motion to Revoke Bail.

THE DEFENDANT'S DRUG ENTERPRISE

16. The Defendant's trial and conviction are for (3) instances where the Defendant sold drugs to Joshua Lamb, a C.I., working with the Rockingham County Drug Task Force.
17. However, these three controlled buys reflect an ongoing dealer/buy relationship that the Defendant had with Joshua Lamb. These three buys are snap shots in a long history of drug deals.
18. More significantly, they are a snapshot of a voluminous history of drug sales that the Defendant conducted in Epping, Raymond, and the surrounding areas. Not just to Joshua Lamb, but to a number of other individuals as well.
19. While the Defendant has not plead guilty to Drug Enterprise and there has not been a trial, the facts supporting the charge, whether constituting Drug Enterprise or not, are invaluable in considering a sentence in this case.
20. Through a joint investigation between the Rockingham County Attorney's Officer, the Rockingham County Drug Task Force, Epping Police Department, and Raymond Police Department, law enforcement has determined that James Castine utilized a number of individuals or "runners" to buy drugs in Massachusetts, transport drugs, and sell drugs on his behalf and/or at his behest in Rockingham County.
21. These "runners" include:
- a. Shawn Cabral
 - b. Michelle Fugere
 - c. Steven Castine
 - d. Joshua Prentice

- e. Joshua Lamb
- f. Dakota James Winter
- g. Joe Demarco

22. James would exercise control over these runners.

23. Several States' witnesses, consisting of runners and frequent buyers, have stated that James Castine would direct them to pick up drugs in Massachusetts providing the money, telling them when/where to go, instructing them on who to speak to and how much to buy. James would then take possession of the drugs when they would return. In return, James would provide a small amount of heroin/fentanyl, generally less than 0.5 grams, as payment for the trip. Those witnesses also indicated that they could not buy from those suppliers without the Defendant's approval.

24. State witnesses have also stated that James Castine would direct them to sell drugs to other individuals. James Castine would give them the weighed and packaged drugs, tell them where to go, who to sell to, and set the price. If the buyer did not have the money for the drugs, the runners could not sell to them without James's approval. James Castine would count and pocket the money when the runner returned. As payment, James Castine would give the runner around 0.1 or 0.2 grams of heroin/fentanyl for the trip.

25. In using runners, James Castine was attempting to insulate himself from interaction with law enforcement and concealing his participation in drug sales and drug trafficking. On August 3, 2016 the Defendant even articulated on Facebook that he was using a police scanner to monitor police in the area. The Defendant in many messages concerned himself with law enforcement's narcotic investigations in the area.

26. Just prior to his arrest, the Defendant rarely left his home. Most sales were done through the use of his runners. However, in the course of the investigation law enforcement became aware of a number of individuals, who were not runners, that would purchase drugs from or through James Castine. The State has listed (36) of these individuals below and in some instances noted aggravating factors the Court should consider that derive from the Defendant's Facebook records, unless otherwise indicated.

- a. Courtney Tanzella
- b. Stephanie Ramsey – Ms. Ramsey sells the drugs she buys from James to other people. However, she does not sell under the direct supervision of the Defendant.
- c. Lauren Stewart – Ms. Stewart indicated to law enforcement that she purchased drugs from the Defendant for several months often multiple times a day.

Nicole Tanzella – Ms. Tanzella died from an overdose on 3/16/18. Evidence shows that she had purchased over \$1,700 worth of controlled drugs from the defendant prior to 12/19/16.

- e. Jazz Prince - Ms. Prince indicated to law enforcement that she purchased drugs from the Defendant for several months often multiple times a day.
- f. Jason Greenlaw
- g. Tia Boomhower
- h. Sarah Bradstreet
- i. Sherrie Shawchuk
- j. Alexandria Frank
- k. Christopher Howard
- l. Joshua St. Laurent
- m. Ashleigh Ward
- n. Jason Knox
- o. Catherine C. Booker
- p. Olivia Wason
- q. Timothy Garczynski
- r. Stephen Garczynski – Mr. Garczynski sells the drugs he buys from James to other people. However, he does not sell under the direct supervision of the Defendant.
- s. David Desmond
- t. Kristina Tirone – Ms. Tirone overdosed twice on 6/11/16. The Defendant sold drugs to her around that time. The Defendant sells again to her despite having been told by her boyfriend to stop selling to her because of the she almost died.
- u. Jen Mclean – The Defendant sold to her after knowing that she had overdosed two days before.
- v. Michael Homes
- w. Carlo Grifone
- x. Anthony Venuti – The Defendant took (3) firearms from Anthony Venuti to secure a drug debt. The Defendant requires Sarah Bradstreet, Anthony Venuti's girlfriend, to pay him for her firearm. It is unclear where the other two firearms went.
- y. Michael Kirby Holmes

z. Joshua Lamb

aa. Amy Raynes

bb. Christopher Leal

cc. Taylor Nelson – Ms. Nelson died at the age of 19 as a driver in a car accident. She had heroin in her system at the time of her death. Facebook messages indicate that Ms. Nelson got heroin/fentanyl from the Defendant in return for sex during the time leading up to her death.

dd. Hailey Allen

ee. Brett Hoover

ff. Mathew Massey

gg. Emily Lavoie

hh. Tyler Sadley

ii. Kecia Bonenfant

jj. David Rousseau

27. While evidence does not suggest that the Defendant was selling fingers (10 grams) on a regular basis, the Defendant's transactions were so numerous that he achieved a significant profit off of fueling the drug addictions of numerous people in the area.
28. Several of the State's witnesses testified that James Castine would send them to purchase heroin/fentanyl in Massachusetts. That they would purchase the heroin for about \$40.00 to \$50.00 a gram. State's witnesses also indicated that James Castine would set prices at about \$40.00 to \$50 for ½ a gram and \$80.00 to \$100.00 for a gram. This would be a net profit of between \$40.00 to \$60.00 for every gram sold.
29. In isolation, these prices and profits are commonly found in Rockingham County by local law enforcement. Generally, the same gram of heroin goes for half the price in Massachusetts than it does in Rockingham County.
30. However, given the quantity that James Castine had transported and the number of transactions uncovered in the investigation, James Castine was acquiring a significant profit in the course of his drug transactions.
31. Known buyers that the State has interviewed have stated that they would purchase from James Castine directly or more often than not through Shawn Cabral and/or Michelle Fugere (7) days a week sometimes (2) to (5) times a day over the course of (3) to (5) months. Moreover, that in the course of being at James's garage for 30 to 60 minutes they would observe about 3-5 people come, buy drugs from James Castine, and go.

2 One of the runners was arrested by law enforcement in the state of New Hampshire in 2016 and is currently in the custody of James Castine. This runner was arrested for selling drugs under James Castine's supervision with a small amount of heroin.

33. Several of the runners indicated that they would buy Drugs in Massachusetts and deliver it to James Castine in Epping, NH. One witness indicated that he, separate from the other runners, would purchase on average 25 grams of heroin/fentanyl a day.
34. Even assuming that the Defendant used 5 grams a day, an exceptionally high amount for any addict, and only considering the drugs that one runner was bringing in, the Defendant was still making a daily net profit of between \$800 to \$1,200 a day.¹ This profit is of course increased when considering that James Castine used several other additional runners to bring drugs into the State.
35. Given these considerations, it is not a surprise that on December 21, 2016 the Defendant told Steve Garcynski on Facebook that his supplier made \$800 to \$1,000 a day off of the Defendant's business. It is important to consider that at a price of \$40 a gram the suppliers net profit would likely be less than James Castine's profit.
36. James Castine did not have employment during this time and yet was able to purchase a number of vehicles and survive on the income he was making from drug sales.

EXPLOITATION OF DRUG ADDICTS

37. More than profiting off of fueling the addictions of addicts the Defendant chose to exploit these addictions.
38. At this point, the Court is well aware that heroin/fentanyl is extremely addictive and causes a physical dependency. In this case, users have described withdrawals as being hot and cold, feeling like something is crawling inside of you, and the worst illness you have ever felt. One user stated that he has been in a bad car accident and also been jumped by a number of people and beaten; he stated that going through withdrawals is worse than being in a bad car accident being removed from the vehicle and beaten. Many described it as worse than death.
39. Several of his runners indicated that they would start to get "sick" or go through withdrawals after a few hours if they did not use. Lower level addicts may have been able to last a little longer than that.
40. The Defendant used this as a tool to manipulate and control these runners. To these individuals, he was the source of heroin/fentanyl. If they did not do what he asked, the runners told law enforcement that he would threaten to cut them off. He simply would cease to give them heroin/fentanyl until they got so "sick" that they would what he asked.

¹ (25 grams * \$40.00) - (5 grams * 40) = (20 grams at a cost of \$800); 20 grams * \$80 (price) - (\$800 cost) = \$800;
20 grams * \$100 (price) - (\$800 cost) = \$800.

41. Yet, when some of these buyers would attempt to break clean, James Castine would send them messages offering to sell them drugs or to give them drugs. Bringing them back into their addiction. Multiple runners stated that he did this to them.
42. Yet, this is not the total extent of James Castine's exploitation of drug users and addicts. Facebook messages show that James Castine would pay in the form of heroin/fentanyl for sex or naked images of buyers.
43. Through the investigation law enforcement is aware of a number of individuals who used drugs for the first time with or because of James Castine. One witness indicated that her first time was free, and then she would be forced to pay for the drugs with either money or sexual images of herself. This person eventually began dating James Castine after promises that she would be given free drugs.
44. If these buyers attempted to break clean, he would try to lure them back by offering discounts and messaging them.
45. More than just supplying heroin to support their addiction, James Castine was perpetuating their addictions for his own personal gain.

DEFENDANT'S REJECTION OF REHABILITATION

46. The Defendant's own actions speak to his absolute refusal to be deterred or rehabilitated.
47. Not only did he commit these offenses with suspended jail time hanging over his head, during the deferred sentence in 2016 he was still selling. In fact, Facebook records show that he was coordinating drug sales before, during, and after some of his HiSET classes.
48. After the arrest on this case, the Defendant attempted to flee to South Carolina and was picked up in Sturbridge, MA in possession of heroin/fentanyl.
49. When he returned to New Hampshire, he was taken into custody and again found to be in possession of fentanyl/heroin in the Rockingham County Jail.
50. Despite this additional charge, jail calls evidence repeated attempts to get Michelle Fugere and others to provide him with drugs while in jail.
51. There are numerous jail calls where the Defendant seems to be coordinating drug transactions while still in jail.
52. The most telling jail call however, occurred 5/19/17, when the Defendant tells an unknown female, thought to be Michelle Fugere, that it was worth the 14 felonies and then **James Castine stated I'll do it again** or words to that effect.

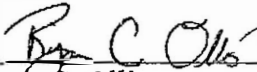
53. Before this Court is not a small time drug dealer. It is clear that his goals do not appear to be in large quantities. The Defendant sold in large volume equating to large quantities and large profits.
54. James Castine uses drugs to exploit and manipulate others for his own personal gain. James Castine used runners to expand his drug sale operation and controlled those runners by controlling the runners' supply of drugs. These runners were also used to insulate James Castine from law enforcement detection and investigations.
55. James also used his control of the supply of drugs to exploit women for sex and sexual images.
56. Beyond the profits and volume, the sheer number of individuals that the Defendant sold to is alarming to the State. But, more than looking at those people as numbers, the stories of those buyers around when the Defendant sold to him is equally as alarming.
- a. For instance, Taylor Nelson, who died, at the age of (19), from a motor vehicle crash in a vehicle she was operating, had heroin in her system shortly after James Castine gave her drugs for sex.
 - b. Kristina Tirone, overdosed twice in one day during June, 2016 from drugs supplied by James Castine. The Defendant continued to sell to her even after her boyfriend emailed the Defendant informing him that she had overdosed before and asking him to stop selling to Kristina Tirone.
57. The State has significant interest in deterring this behavior. As the Court is aware, the price of fentanyl/heroin in Rockingham County is double the price just over the border in Methuen, MA or Lawrence, MA. This, in part, could be caused by the more significant sentences drug dealers receive in Rockingham County in comparison to in Lawrence of Methuen. The increased price makes it more difficult for heroin/fentanyl users to afford and therefore have access to fentanyl/heroin.
58. Moreover, while the State seeks to deter all drug dealers. That need is heightened when dealing with someone of this scale. A gram level dealer selling to a CI might be sentenced in this Court to 1 ½-3 years in the New Hampshire State Prison. The State has evidence of 44 different individuals that the Defendant dispensed drugs to (including runners and buyers), most of which continuously purchased from him over a period of time.
59. This sentence serves as a deterrent to James Castine, James Castine's runners, and any other person even considering dispensing controlled drugs. It sends the message that individuals who sell drugs to others will be punished. It sends the message that individuals exploiting the addiction of others in order to profit and personally gain will be punished. Finally, it sends the message that individuals using others to commit criminal acts on your behalf to avoid detection or punishment will be punished.

WHEREFORE, the State respectfully requests that this Honorable Court

- A. Sentence James Castine in accordance with the State's recommendation; and
- B. Grant such further and other relief as justice may demand.

Respectfully submitted,
THE STATE OF NEW HAMPSHIRE


04/04/2018



Ryan C. Ollis
Assistant County Attorney
New Hampshire Bar # 20808

CERTIFICATION OF SERVICE

I hereby certify that a copy of the foregoing State's Pleading has on this date been forwarded to defense counsel Neil J. Reardon, attorney for defendant, at Village Square 472 State Route 111, Hampstead, NH 03841.



Ryan C. Ollis
Assistant County Attorney