

THE STATE OF NEW HAMPSHIRE
SUPREME COURT

Case No. 2019-0047
STATE OF NEW HAMPSHIRE

v.

BRIM BELL

POSTED
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DIRECT APPEAL PURSUANT TO RULE 7 FROM JUDGMENT
OF THE STRAFFORD COUNTY SUPERIOR COURT

SUPPLEMENTAL-DIRECT APPEAL-BRIEF
WRITTEN BY: BRIM BELL

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(30 Minutes Oral Argument)

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NEW HAMPSHIRE
SUPREME COURT

TABLE OF CONTENTS, Pg. 1

	<u>Page</u>
Table of Authorities	2-5
Questions Presented	6
Statement of the Case	6
Statement of Facts	7-
Summary of Argument	16
Argument: (Pages 17-40)	
I. ISSUE: INEFFECTIVE ASSISTANCE OF COURT-APPOINTED TRIAL COUNSEL	
II. ISSUE: PROSECUTORIAL MISCONDUCT	
III. ISSUE: ABUSE OF DISCRETION	
IV. ISSUE: PLAIN ERROR AND CLEAR ERROR	
V. ISSUE: FRUIT OF THE POISONOUS TREE - doctrine	
VI. ISSUE: EXTORTION AND CRIMINAL THREATS	
VII. ISSUE: GRAND-JURY INDICTMENT	
VIII. ISSUE: CONSPIRACY AND COLLUSION	
IX. ISSUE: DUE-PROCESS CLAUSE	
X. ISSUE: STATE'S CHIEF-WITNESS	(17-40)
CONCLUSION:	41
CERTIFICATE OF SERVICE	42

TABLE OF AUTHORITIES

<u>CASES</u>	<u>Page(s)</u>
<u>State v. Whittaker</u> , 158 N.H. 762, 766 (2009)	17,19,23,24
<u>Wiggins v. Smith</u> , 539 U.S. 510, 521, 123 S. Ct. 2527 (2003)	17
<u>U.S. v. Brissette</u> , 919 F. 3d 670 (2019) B1951(b)(2)	17
<u>U.S. v. Calandra</u> , 414 U.S. 338, 465 F. 2d 1218	18
<u>Monroe v. Pape</u> , 365 U.S. 167	18
<u>Faretta v. Cal.</u> , 422 U.S. 806 (1975)	19
<u>State v. Socci</u> , 166 N.H. 464 (2014)	19
<u>Greelish v. Wood</u> , 154 N.H. 521 (2006)	19
<u>U.S. v. Cronic</u> , 466 U.S. 648	19
<u>Avery v. Alabama</u> , 308 U.S. 444, 446 (1940)	19
<u>State v. Collin</u> , 166 N.H. 210	20
<u>Comm. v. Angiulo</u> , 45 Mass. 502	20
<u>Jimenez v. Heyliger</u> , 792 F. Supp. 910 (1992)	21
<u>State v. Veale</u> , 154 N.H. 130, at 734-35 (2007)	22
<u>State v. Sharkey</u> , 155 N.H. 638 at 640-41	23
<u>Strickland v. Washington</u> , 466 U.S. 688, 695 (1984)	23,24
<u>Washington v. Hofbaver</u> , 228 F. 3d 689, 705 6th Cir. (2000)	24
<u>Martin v. Parker</u> , 11F. 3d 613 6th Cir. (1993)	24
<u>William v. Washington</u> , 59 F. 3d 673, 684 7th Cir.	24
<u>State v. Chaisson</u> , 123 N.H. 17 (1983)	24
<u>Dugas v. Chaplan</u> , 428 F. 3d 317, 336 1st. Cir. (2005)	24
<u>State v. Orde</u> , 161 N.H. 260 (2008)	24
<u>Dorceant v. U.S.</u> , 2015 U.S. Dist. LEXIS 18379	24
<u>Illinois v. Knull</u> , 480 U.S. 340-107 11. 2d 107 481 N.E. 2d 703	24
<u>McDonough v. Smith</u> , 134 S. Ct. 2149 (2019)	25
<u>Gantert v. City of Rochester</u> , 168 N.H. 640 (2016)	25
<u>Coolidge v. N.H.</u> , 403 U.S. 443 (1971)	25
<u>Collins v. Virginia</u> , 138 S. Ct. 1663 (2018)	25

TABLE OF AUTHORITIES

<u>Cases</u>	<u>Page(s)</u>
<u>Duchesne v. Hillsborough County Atty.</u> , 167 N.H. 774 (2015)	25
<u>Brady v. Maryland</u> , 373 U.S. 83-83 S. Ct. 1194 10L Ed. (1963)	25,39
<u>Mounce v. Astrue</u> , 2011 U.S. Dist. LEXIS 127122	26
<u>Waldron v. Tuttle</u> , 4 N.H. 371 (1828)	26
<u>Reyes v. R.I. State Police</u> , 2016 U.S. Dist. LEXIS 185624 (2016)	26
<u>Mancusi v. Deforte</u> , 392 U.S. 364 (1968)	26
<u>State v. Socci</u> , 2015 N.H. LEXIS 259	26
<u>Illinois v. Lafayette</u> , 462 U.S. 640 (1983)	26
<u>Rossi v. Town of Pelham</u> , 35 F. Supp. 2d 58 (1997)	26
<u>Banks v. Dretke</u> , 540 U.S. 668 (2004)	27
<u>State v. Bain</u> , 145 N.H. 367 (2000)	27
<u>U.S. v. Garcia</u> , 574 F. 3d 5 (2009)	27
<u>Garza v. Idaho</u> , 139 S. Ct. 738 (2019)	27
<u>U.S. v Vest</u> , 842 F. 2d 1319 (1988)	27
<u>State v. Sands</u> , 123 N.H. 570 (1983)	28
<u>State v. Murray</u> , 153 N.H. 674 (2006)	28
<u>U.S. v Kelly</u> , 543 F. Supp. 1803 (1982)	28
<u>State v. Ruggiero</u> , 163 N.H. 129 (2011)	28
<u>State v. Richards</u> , 129 N.H. 669-No. 86-384 (1987)	29
<u>Chavez v. Martinez</u> , 538 U.S. 760 (2003)	29
<u>Evans v. U.S.</u> , 504 U.S. 255 (1992)	29
<u>State v. Warren</u> , 143 N.H. 633-636 (1999)	29,33
<u>State v. Douhart</u> , 146 N.H. 445 (2001)	29
<u>Johnson v. Han</u> , 2015 U.S. Dist. LEXIS 43203	29
<u>Toro v. Murphy</u> , 2009 U.S. Dist. LEXIS 117303	29
<u>U.S. v Gagnon</u> , 470 U.S. 522 (1985)	30
<u>GE v. Joiner</u> , 522 U.S. 136 (1997)	31
<u>Denton v. Hernandez</u> , 504 U.S. 25 (1992)	31

TABLE OF AUTHORITIES

<u>Cases</u>	<u>Page(s)</u>
<u>Baker Valley Lumber v. Ingersoll Rand, Co.,</u> 148 N.H. 609 (2002)	31
<u>Business Publications v. Finnegan,</u> 140 N.H. 145 (2002)	32
<u>Buck v. Davis,</u> 137 S. Ct. 759 (2017)	32
<u>State v. Smith,</u> 135 N.H. 524 (1992)	32
<u>Gasperini v. Ctr. for Humanities,</u> 518 U.S. 415 (1996)	32
<u>Thomas v. Tel. Publ'g Co.,</u> 155 N.H. 314 (2007)	32
<u>Perdue v. Kenny A.,</u> 559 U.S. 542 (2010)	32
<u>Cain v. Kramer,</u> 2002 U.S. Dist. LEXIS 1770 (2002)	32
<u>Hilario v. Reardon,</u> 158 N.H. 56 (2008)	32
<u>Wilder v. Eberhart,</u> 977 F. 2d 673 (1992)	32
<u>U.S. v. Soldevila-Lopez,</u> 17F. 3d 480 (1994)	32
<u>Tower v. Glover,</u> 467 U.S. 914 (1984)	32
<u>U.S. v Marcus,</u> 560 U.S. 258 (2010)	32
<u>U.S. v Olano,</u> 507 U.S. 725 (1993)	33
<u>State v. Henderson,</u> 141 N.H. 615 at 620 (1997)	34
<u>Renico v. Lett,</u> 559 U.S. 766 (2010)	34
<u>U.S. v Sabetta,</u> 373 F. 3d 75 (2004)	34
<u>Thun v. Maine,</u> 2009 U.S. Dist. LEXIS 66670	34
<u>Giglio v. U.S.,</u> 92 S. Ct. 763, <u>766</u> , 405 U.S. 150, 153, (1972)	34
<u>Kentucky v. King,</u> 563 U.S. 452 (2011)	34
<u>State v. Beede,</u> 119 N.H. 620, at 626	34
<u>Johnson v. U.S.,</u> 333 U.S. 10	34
<u>Chimel v. California,</u> 395 U.S. 752 89 S. Ct. 2034 23L. Ed. 2d 685 (1969) U.S. LEXIS 1166	36
<u>Ocasio v. U.S.,</u> 136 S. Ct. 1423 (2016)	36
<u>U.S. v. Murphy,</u> 193 F. 3d 1 (1999)	36
<u>Evans v. U.S.,</u> 504 U.S. 255 (1992)	37
<u>Ashcroft v. Tennessee,</u> 322 U.S. 143 (1994)	37
<u>State v. Hynes,</u> 159 N.H. 187 (2009)	37
<u>U.S. v Turner,</u> 684 F. 2d 244 (2012)	37

TABLE OF AUTHORITIES

<u>Cases</u>	<u>Page(s)</u>
<u>U.S. v Mandujano</u> , 425 U.S. 564 (1976)	37
<u>U.S. Nazzaro</u> , 889 F. 2d 1158 (1989)	37
<u>Levesque v. State</u> , 2010 U.S. Dist. LEXIS 57249	38
<u>In re Sawyer</u> , 360 U.S. 622 (1959)	38
<u>Johnson v. U.S.</u> , 576 U.S. 591 (2015)	39
<u>State v. Addison</u> , 165 N.H. 381 (2013)	39
<u>Wolff v. McDonnell</u> , 418 U.S. 539 (1974)	39
<u>Rochin v. California</u> , 342 U.S. 165 (1952)	39
<u>Screws v. U.S.</u> , 325 U.S. 91 (1945)	39
<u>Crawford v. Washington</u> , 541 U.S. 36 (2004)	40
<u>Melendez-Dias v. Massachusetts</u> , 557 U.S. 305 (2009)	40
<u>Idaho v. Wright</u> , 497 U.S. 805 (1990)	40
<u>Coy v. Iowa</u> , 487 U.S. 1012	40
<u>Bouchard v. Rochester</u> , 119 N.H. 799	40
 <u>Statutes</u> : 81951(b)(2)	17
RSA 570-A:2, II-(d)	27,28
18 U.S.C.S. 1951(b)(2)	37
18 U.S.C.S. 1623(a)	37
18 U.S.C.S. 2385	38
 <u>Rules</u> : N.H. R. Pro. Conduct; RULE 1.3	29
N.H. Rules of Evidence 901	29
Fed. R. Crim. P. 52(b)/ Sup. Ct. R. 16-A	30,33
Fed. R. Crim. P. 32(c)(3)(c)	31

QUESTIONS PRESENTED

1. Whether the evidence used at trial was **admissible**?
Issue preserved by Bell's Allocution and the (State's Objection), and the Court's ruling, S-T pgs. 40-60.
2. Whether the Court erred by not allowing the Defendant to be present at all stages of trial. (Oct. 3-4, 2018 **NOT PRESENT**). The State did not object, therefore this Court **must** find (PLAIN-ERROR). T-T pgs. 831-844.

STATEMENT OF THE CASE

The State obtained all evidence from the numerous Unlawful Search and Seizures by the Strafford P.D. (Officer Randolph Young). Former Prosecutor (Robert J. Watkins, Esq.) Knowingly, Willingly, and Purposely, failed to inform his client (Brim Bell), that all indictments were in fact illegally obtained. Also evidence that proves Sgt. Young, gave a perjured testimony, at the GRAND-JURY HEARING in Aug. 2017, which led to the (INDICTMENT OF BRIM BELL)!

(Citations to the record are as follows)

A means APPENDIX

T-T means TRIAL-TRANSCRIPTS

S-T means SENTENCING-TRANSCRIPTS

FACTS: Supplemental Brief Dec. 19, 2020

The Strafford County Attorney's Office proceeded with a Grand Jury Hearing in Aug. of 2017, with the purpose to indict Brim Bell.

After a thorough investigation of my discovery package and Court database, Search Warrants, Arrest Warrants and Eviction Notices, did not exist at the time, (Aug. 2017).

The Defendant (Brim Bell) was indicted, based solely on illegally obtained evidence. See: COURT DATABASE/NO WARRANTS. Robert J. Watkins, Esq. received a complete copy of Mr. Bell's discovery package, four months prior to trial of State of New Hampshire v. Brim Bell No. 2019-0047. Attorney Watkins has been a (prosecutor) for the State of New Hampshire, for most of his career. S-T pgs. 26-32. The Defendant was informed by Watkins that he read the entire case file. (4 months prior to trial). At this point, four months prior to trial, Attorney Watkins states to Mr. Bell; "I believe this case is a winner!" Attorney Watkins never informed his client (Brim Bell), that all the evidence that the State intends to use against Mr. Bell, was illegally obtained. See: Exhibit - A pgs. 13 & 14. All evidence used at trial is derivative evidence, of the initial Unlawful Search & Seizure of Brim's Auto Restoration; by Sgt. Randolph Young of Strafford P.D. on Oct. 20, 2016. S-T pgs. 39-52 and discovery pg. 712. Robert J. Watkins did not motion to suppress the illegally obtained evidence or motion to dismiss all charges, prior -to the trial. Watkins never, at any point, tried to stop Mr. Bell's trail from commencing.

Jury selection begins on Sept. 25, 2018. Four jurors men and 8 women, all were white. Defendant did not get to review the jurors history or had anyway of knowing, if there was any personal ties with me or any of the alleged victims.

Dec. 19, 2020

Attorney Watkins chose to remove 3 men from the jury in hopes of having them replaced with 3 women. Watkins said women might be more understanding with this type of case. I trusted him at this point, so I agreed with his decision. (See: jury selection transcripts). The Strafford County Attorney's Office, will not send me a copy of the jury selection transcripts. I have included in the appendix, the letters and motions asking the Strafford County Attorney's Office, Law Offices of Robert J. Watkins, Strafford County Superior Court and Attorney General's Office, for Exculpatory Court Documents. The Defendant (Brim Bell) requested numerous illegally withheld exculpatory evidence, for the purpose of composing an accurate and effective Supplemental Appeal Brief with the New Hampshire Supreme Court. (See: APPENDIX - A).

This fact, proves to give the Defendant an extreme disadvantage in this case. Furthermore violates the Due-process Rights of Brim Bell. (U.S. & N.H. CONSTITUTIONAL VIOLATION). Defendant motioned the New Hampshire Supreme Court, requesting a Court Order; to have all parties involved in this case, release all exculpatory court documents, that the Defendant must possess for full compliance of U.S. and N.H. Constitutional Rights of Brim Bell, Court did not oblige. (See:MOTION 12/9/20).

Trial commences on Sept. 26, 2018. During Defendant's Opening Statement, Attorney Watkins states; "At some point when Mr. Young testifies, a sergeant's going to testify to the conversation with Brim during that conversation which occurred in January of 2017. He said listen, you've got to come up with a couple of \$100,000 dollars or you're going to prison for a long time. And that was pretty much the end of Brim's business" T-T pg.32 lines 6-11. Immediately after Mr. Watkins finishes the opening statement, the prosecutor (Chelsea E. Lane) states frantically "May we approach, Your Honor?" (Sidebar begins at 11:29 a.m.) T-T pg. 37 lines 6-8.

Dec. 19, 2020

Ms. Lane: "I just wanted to note for the record the State's objection to the Defense opening statement in reference to the Randy Young phone call. Defense-- which our Defense is reference to the Randy Young phone call. The Defense is aware that the State is not going to call Randy Young. If Defense were to call Randy Young themselves, I don't see how that evidence come in as not hearsay, so I just believe that it was"--. **The Court:** But Young's can come in; that can be his own testimony. T-T pg. 31 lines 9-18. Chelsea Lane continues to plead with the Court, to not allow the State's Chief-Witness to testify or allow the (wire-tap) between the Defendant and Sgt. Young on Jan. 31, 2017 to be part of the trial. T-T pg. 38 lines 1-3. At this point Defense Counsel assures the jury and his client, that Sgt. Young will be taking the stand. (Sgt. Young was the investigating officer).

Mr. Watkins: "Oh no, absolutely. In fact, I'll get into that during Mr. Young's testimony." T-T pg. 38 lines 10-11. Attorney Watkins is absolutely sure that Sgt. Young's wire-tap will be played for the jury and Sgt. Young will, with out a doubt testify.

But after a few more days of trial-commence; **The Court;** "All right. And Attorney Watkins, do you anticipate any Defense witnesses on -- I think you'd probably get to it by Tuesday afternoon?" T-T pg. 534 lines 14-16. **Mr. Watkins:** We'd all like to meet Sgt. Young. T-T pg. 534 line 21. After Watkins conspired with Lane about the Defendant's **best-witness** testifying, at the very end of my trial. Bob Watkins comes into the back room to tell me; "Mr. Young is like Rambo. He is too hard to deal with, and frankly, Attorney Lane and I have decided Randy Young is not competent to testify. And so Sgt. Young will not be here for your trial." S-T pg. 45 lines 7-11.

This news put me into shock! The trial proceeded, but the

Dec. 19, 2020

jury never heard the WIRE-TAP recording when Sgt. Young attempted to extort \$200,000 in cash (Two-Hundred Thousand) from Brim Bell. Let me quote from page 13 and 14, lines 21-23 & 1, Sgt. Young states; "I've been to Jim's (Bell's landlord). I've taken all the serial numbers off every one of those cars that are there, I've run all the VIN's. I've taken pictures of everything!" Sgt. Young never obtained a Search Warrant, at any point.

James N. Lund (Mr. Bell's landlord) cut the locks off the garage doors of Brim's Auto Restoration, on Oct. 20, 2016. S-T pg. 43 line 10. Mr. Lund called Sgt. Randolph Young, to inform him that Mr. Bell left the State of New Hampshire driving Mr. Lund's stolen car. (See; EXHIBIT-A). This was a false statement to law enforcement. (Fictitious car) as well as informing the police that his tenant (Brim Bell) had been evicted. See: EXHIBIT -A pg. 44. Lund/Young worked in unison to get Brim Bell indicted. S-T pg. 51 lines 3-4. But Mr. Lund Testified, when asked by the prosecutor; "So have you formally evicted the Defendant?" Mr. Lund's response; "No"! T-T pg. 489 lines 5-7. During Mr. Lund's testimony, both Attorney Watkins and Attorney Lane, never ask the witness about the necessary Search Warrants, that Sgt. Young needed prior to conducting Search and Seizure of Brim's Auto Restoration, on Oct. 20, 2016. T-T Sept. 25 to Oct. 4, 2018.

On Aug. 14, 2018, Robert Watkins and the State interviewed James N. Lund under oath, titled; Deposition of James Lund. T-T LUND'S TESTIMONY. Ironically Mr. Lund was not asked about Sgt. Young not presenting a Court Ordered Search Warrant. T-T LUND'S TESTIMONY. The deposition was recorded just over one month, prior to trial, 8/14/18. Immediately after the deposition was recorded, the State dropped 13 pending indictments against Brim Bell. Afterward, the State conjured-up 6 new indictments, only a few days prior to the trial date of Sept. 25, 2018. See: "6 INDICTMENTS DATED March 15, 2018 and Sept. 20, 2018.

Dec. 19, 2020

The deposition of James Lund is exculpatory in nature. This transcript reveals vital facts, that the jury should have know during the trial. First, Mr. Lund states when asked by Mr. Watkins; "Have you ever met with Officer Young at the facility to tour the facility?" Lund's response; "Yeah, I probably had to unlock it if he came to meet someone there and they wanted to go inside! I would have had to have unlocked it." Mr. Watkins: "Okay. How many times did he meet people there?" Mr. Lund: "I have no idea!" Mr. Watkins: "But you've been at the facility when Mr. Young was there?" Officer Young was there with other persons?" Mr. Lund: "I think he met someone there to fill out those forms. I think that's what they would do. I wouldn't stay. You know, Randy may be there and whoever filled out a report, may fill it out there, then they would probably go to the police station. I don't know. I didn't stay there."

The deposition of James Lund, was raised by both parties at trial. T-T LUND'S TESTIMONY. When Mr. Lund testified, he was not asked to read the transcript out-loud! Nor did the jury have the transcript, for the deliberation process. T-T Oct. 3-4, 2018. It's overwhelmingly obvious, that Lund's Deposition has Material Weight, that most definitely would have affected the Verdict. Therefore, Lund's Deposition was admissible, and should have been admitted into evidence. Exclusion of exculpatory evidence by Defense Counsel, can not be considered effective trial strategy.

Second, Lund's Deposition reveals Sgt. Young entered Brim's Auto Restoration numerous times, without a Court Ordered Search Warrant. But most importantly, Sgt. Young never wrote incident reports, in regards to the numerous Search and Seizures that occurred after the initial Unlawful Search and Seizure on Oct. 20, 2016. See: DISCOVERY pg. 712. Sgt. Randolph Young played a big part in the illegal dismantling of Brim's Auto Restoration.

Dec. 19, 2020

See: EXHIBIT-A pg. 43. Let's read from EXHIBIT -A pg. 43 lines 18-20. Randy Young: "Well then why was I there at the shop while these people were loading up their cars and your weren't there, videotaping it?" See S-T pg. 60 lines 11-13.

Now let's read from Discovery pg. 790/RE: Testimony Review from: Chelsea E. Lane, A.C.A. 8/15/18 PARAGRAPH #2: "Sgt. Young was asked whether there was a time when he went to Brim Bell's shop in Strafford, N.H. on Jim Lund's property, while anyone was there taking cars, parts or pieces of cars out of the shop. Sgt. Young stated that he was never at Lund's place while anyone was there taking anything." See: MEMO-TESTIMONY REVIEW 8/15/18. Based on these facts alone, we can infer Sgt. Young's testimony at the Grand-Jury Hearing was Perjured! Furthermore proves Brim Bell, was illegally indicted.

Chelsea E. Lane (prosecutor) repeatedly misleads the jury during her opening statement. She said numerous times, that my clients did not get all their property back! The context was obviously putting the blame on Brim Bell. T-T pgs. 17-26. No objection was made by Defense Counsel. See: PLAIN ERROR.

Attorney Lane used illegal trial strategy, with only one objective, to win the case at any cost. Just another example of Ms. Lane's manipulative tactics, used from start to finish at the trial, STATE V. BRIM BELL. See: T-T pg. 32 lines 9-25 and pg. 322 lines 1-4. Ms. Lane: "How do you know this isn't your car?" Mr. Konopacki: "Because I picked it up in a totally different condition than this, and I could tell by the back window that was not my car." The Court: "All right. go ahead. Objection's overruled." Ms. Lane: "And so did you -- I guess where I'm going with this, is did you indicate to the Defendant that you didn't think it was your car?" Mr. Konopacki: "Yes." Ms. Lane: "What was his response?" Mr. Konopacki: "his response was, J, this is your car. What the fuck?"

Dec. 19, 2020

At this point Ms. Lane does not have Mr. Konopacki read his response to Mr. Bell's prior response. Which reads; "I'm **FUCKING WITH YOU!**" (Not read to jury. See: **EXHIBIT-25**). Suppression of exculpatory evidence by the Prosecutor, when the jury is present, is illegal. T-T pg. 321 lines 16-24. Trial proceeds even after Verbal Completeness Issue occurs, with no objection by Defense Counsel. T-T pg. 322 line 4. Ms. Lane: "Your Honor, I would ask to strike the identification and enter 25 as a full-exhibit." The Court: "Any objection to 25?" Mr. Watkins: "Could I see the picture, Judge? I don't seem to have that in my file." The Court: "All right. Sure. Go ahead." Mr. Watkins: "No objection." T-T pg. 322 line 4. The Court: "ID stricken on 25." (State's exhibit-25 received) T-T pg. 322 lines 5-6. Robert Watkins fails to object, even after he examines (Exhibit-25). By Watkins **NOT OBJECTING** to this crucial issue called; **DOCTRINE OF VERBAL COMPLETENESS**, STATING FOR THE RECORD; the Defendant was convicted on this count. We must conclude, Defense Counsel and the Prosecutor failed to expose Mr. Konopacki's **perjured TESTIMONY!** Defense Counsel's failure to object on Exhibit-25, is called **EGREGIOUS ERROR!** T-T pg. 322 lines 5-6.

On Sept. 25, 2018, the Defendant asked the jury for a fair trial. But after a thorough investigation, of all the facts, we must conclude Brim Bell's Civil Rights and U.S. Constitutional Rights have been violated in the Strafford County Superior Court. S-T pg. 48 lines 5-6.

Justice; Mark E. Howard proceeded to sentence Brim Bell, 5 to 10 years in prison. Only minutes after Judge Howard read the Smoking Gun-Exculpatory Evidence, Titled; **EXHIBIT-A**. In this transcript, Sgt. Randolph Young of the Strafford P.D. boastfully informs the Defendant, about the Unlawful Search and Seizure of Brim's Auto Restoration on Oct. 20, 2016. See: pgs. 13-14 lines 21-23 and 1 of **EXHIBIT-A**.

Dec. 19, 2020

Judge Howard read the transcript in his chambers on Jan. 2, 2019! We must conclude the Court Database, would have verified Sgt. Young never obtained a Search Warrant, in regards to Brim Bell. S-T pg. 54 lines 7-25.

This fact alone proves all the evidence used during the trial STATE OF NEW HAMPSHIRE V. BRIM BELL, was inadmissible. Because every piece of evidence used against the Defendant, derived from Sgt. Randolph Young's Unlawful Search and Seizure, on Oct. 20, 2016. See: S-T pgs. 4052 and DISCOVERY pg. 712/ incident - #18STR-620- OF Call #18-59210 8/13/18.

Finally we come to the most important fact. On Oct. 3, 2018, Mark E. Howard recommences at 3 p.m.. The Court: "All right. So first -- is Mr. Bell still over at the jail?" Mr. Watkins: "Yes sir." The Court: "Are you okay with proceeding without him being present?" Mr. Watkins: "I am. I mean, this is a -- this is not something that a client generally has control over how I respond to a question." The Court: "Okay." Mr. Watkins: "So I think I have an obligation at some point to consult with him and let him know that there was a question, what the question is, but I'm not bound to how he wants to respond. So it's my opinion he doesn't need to be HERE."

Remember on Oct. 3, 2018 the jury was brought back out into open-court, for Supplemental Jury Instructions. But the Defendant (Brim Bell), was left over at the County Jail, on Oct. 3 and 4, 2018. T-T pg. 831 lines 4-18.

This fact, is a violation of the Defendant's Fundamentally Guaranteed Protected, U.S. and N.H. Constitutional rights of Due-Process. The Defendant has the Right To Be Present, AT ALL STAGES OF TRIAL.

Dec. 19, 2020

On Oct. 3, 2018, Judge Howard shows the jury his BIAS Demeanor! Ms. Lane: "The only thing that came to my mind was, you know, it means exercising control that's not authorized. And so I don't -- I don't know"-- The Court: "Boy it sure does, doesn't it!" T-T pg. 834 lines 1-4. Defense Counsel does not object. The Defendant was not present to DEFEND himself against the pending charges, in this Tribunal. T-T pgs. 831-844. Mark E. Howard interferes with the Sanctity of the deliberation-room, repeatedly through-out the deliberation process. T-T pgs. 831-844.

SUMMARY OF THE ARGUMENT

1. Brim Bell's convictions must be reversed because the State failed to prove beyond a reasonable doubt that the Defendant had criminal intent. Never, at any point of the trial, did the State or Defense Counsel prove or verify that all evidence used in this case was obtained legally. After a full review of the Courts database, at the time of the Grand-jury Hearing in Aug. of 2017, the record does not show Search or Arrest Warrants or Eviction Notices for Brim Bell. The State of New Hampshire proceeded with the indictment of Brim Bell, solely based on illegally obtained evidence.

2. Defense Counsel erred by not submitting the necessary motions, prior to the trial. First, motion for the State's dismissal of charges, on the grounds that 4 months prior to trial, Robert J. Watkins knew for sure that Strafford P.D. and Somersworth P.D. never obtained Search Warrants, at any point of the investigation of Brim's Auto Restoration. Second, Defense Counsel erred by not submitting a motion to suppress all the evidence, that the State intended to use against his client, in a Court of Law. Case; State of New Hampshire v. Brim Bell is a violation of the U.S. and N.H. - Constitutional Rights of the Defendant. The Court erred on Jan. 2, 2019 by not calling a mistrial based on the fact that Judge Howard read exculpatory evidence (EXHIBIT-A) that proved law enforcement conducted the initial Unlawful Search and Seizure on Oct. 20, 2016, which makes all evidence used at trial on Sept. 25, to Oct. 4, 2018 (Derivative Evidence), that was inadmissible in a Court of Law. "This Court must reverse convictions."

I. INEFFECTIVE ASSISTANCE OF COURT-APPOINTED TRIAL COUNSEL

A. During his allocution, on Jan. 2, 2019, Defendant brought

to the trial Judge's attention that his Court-appointed trial counsel; Robert J. Watkins was ineffective and failed to present clearly exculpatory evidence to the jury; that evidence, being a) A transcript of a phone conversation between the Defendant (Brim Bell), and the police investigator; (Sgt. Randolph Young) that developed the case against Mr. Bell. See: State v. Whittaker 158 N.H. 762, 766, '2009', also Wiggins v. Smith 539 U.S. 510, 521, 123 S.ct. 2527 '2003'. Wherein the police investigator attempted to extort Mr. Bell for \$200,000 (Two hundred-thousand dollars) and professed that , in collusion with Mr. Bell's landlord; James N. Lund, he illegally entered Mr. Bell's business and seized certain business records, including contact information of Bell's clients and other evidence from the premises, and had actually been present at the premises and permitted people to enter the business and remove items of value belonging to Mr. Bell and his clients. See: T-T pg. 32 lines 6-11 and S-T pgs. 40-43/ EXHIBIT-A pg. 22 lines 1-23. See: Deposition of James Lund 8/14/18 and EXHIBIT-A pgs. 13,14 and 43, and S-T pgs. 40-52. See also: U.S. Brissette, 919 F.3d 670 '2019' §1951 (b)(2). b) Evidence in the form of a memorandum dated 8/15/18 DISCOVERY PG. 790, which contains Prima-Facia evidence that Sgt. Young gave PERJURED TESTIMONY before the Grand-Jury, including, but not limited to, an assertion that he had not been present at Defendant's business during the times that he actually permitted people to remove items of value, including evidence belonging to Mr. Bell and his clients. When in fact Sgt. Young arrogantly boasted to Mr. Bell during the wire-tap Conversation that he was present and actually permitted people to remove Mr. Bell's and his clients property from the premises.

B. Compare phone conversation transcript (EXHIBIT-A) See: pgs. 13,14 lines 21-23 and 1, pg. 43 lines 18-21, with memorandum 8/15/18 DISCOVERY PG. 790. c) When, after telling the jury during

the Defense Opening-Statement that they would hear the testimony of Sgt. Young, the Prosecutrix's Chief Witness, that he had told Mr. Bell that ; "I guarantee you, you wouldn't spend a day in jail" if Mr. Bell could come up with Mr. Lund's "FICTITIOUS CAR" and \$200,000 in cash! See: EXHIBIT-A pg. 22 lines 3-23 and T-T pg. 32 lines 6-11. Also testimony that Young entered the business without a Search Warrant and Illegally Searched and Seized evidence. See: U.S. v. Calandra, 414 U.S. 338, 465 F.2d 1218/ Monroe v. Pape, 365 U.S. 167. The Court appointed Defense counsel never called Sgt. Young to TESTIFY, and never presented the jury with evidence from the stranscribed wire-tap between Mr. Bell and Sgt. Young. See: Footnote 1-(fn1), leaving the jury to ponder the absence of Young's promised testimony! d) When after his opening-statement wherein Defense counsel told the jury that they would receive testimony from Sgt. Young. The Prosecutrix disclosed to the trial Judge and Defense counsel that she did not intend to call the investigator who testified before the Grand-Jury, to testify at trial. Trial Counsel assured the Defendant that he would call the STATE'S CHIEF-WITNESS to testify and read from wire-tap transcript and then without explanation, did not call Sgt. Young or introduce

(fn1) Defendant entreats the Court to take note of the colloquy before the bench by the prosecutrix, Defense counsel and trial Judge wherein the prosecutrix attempted to exclude any evidence of Sgt. Young's transcribed statements, arguing that Sgt. Young's statements are HEARSAY and informed both the Defense counsel and trial Judge that she did not intend to call the State's Chief-Witness (Sgt. Randolph Young), who developed the case and presented testimony to the Grand-Jury to indict Brim Bell. See: T-T pgs. 37-38.

the transcribed wire-tap 1/31/17 and the memorandum dated: Aug. 8, 2018. Evidence, that Sgt. Young gave **PERJURED TESTIMONY** to the Grand-Jury. See: Faretta v. Cal., 422 U.S. 806 '1975'.

e) During the progression of the trial Defense Counsel and the Prosecutrix began consulting with each other intimately, and after one such interaction; "At the very end of my trial, Bob Watkins comes into the back room to tell me Mr. Young is like **RAMBO**. He is too hard to deal with, and frankly, Attorney Lane and I have decided Randy Young is not-competent to testify." S-T pg. 45 Lines 7-11. (Footnote 2-(fn2)). f) That counsel failed to object when the Prosecutrix argued that the Defendant was responsible for his client's loss of their property when she had knowledge that that assertion was not-true because Sgt. Young and Mr. Bell's landlord had both stated that they permitted people to remove vehicles, parts and tools from the business and that the landlord had cut the locks on the doors to Brim's Auto Restoration, and moved various items from within, to the fenced in lot out back! See: T-T pgs. 788-810/ DEPOSITION OF JAMES LUND pgs. 68-69/ WIRE-TAP EXHIBIT-A pg. 43/ S-T pgs. 40-52 and pg. 21 line 23 - pg. 36 line 4. See: State v. Socci, 166 N.H. 464, '2014/ Greelish v. Wood, 154 N.H. 521 '2006'.

(fn2) Defendant asserts that it appeared to him that Defense Counsel and the Prosecutrix had begun an inappropriate relationship, which affected the Defense Counsel's ability to effectively represent Mr. Bell and that Counsel's failure to introduce the wire-tap transcript (EXHIBIT-A), or present testimony from the State's Chief-Witness whom developed the case and testified before the Grand-Jury! Was not a Trial-Strategy, but was done at the behest of the Prosecutrix to prevent the jury from receiving testimony from Sgt. Young, that would exculpate Brim Bell. See: U.S. v. Cronic, 466 U.S. 648 and Avery v. Alabama, 308 U.S. 444, 446 '1940'/ State v. Whittaker, Id.

During the allocution, as the Defendant repeatedly asserted that MATERIAL EXCULPATORY EVIDENCE had been withheld by both Defense Counsel and the Prosecutrix. Beseeching the trial-Judge to examine EXHIBIT-A. Mr. Watkins: "I discussed with the Government -- was the possibility of calling Mr. Young to testify. We decided not to do that! There was some issues in the transcript, however, that may have been helpful in Brim's defense." S-T pg. 29 lines 4-8 and 17-25 pg. 31 line 22, pg. 32 line 2. See: State v. Collin, 166 N.H. 210, also Comm. v. Angiulo, 45 MASS. 502.

The Defendant implored the trial-Judge to examine the wire-tap transcript, Judge Howard took the evidence into his chambers. When Howard returned he stated; "There are some things that I think support -- may support the Defense's Argument about the conduct between Mr. Young and Mr. Bell. There's also plenty in there that, frankly supports the State's sentencing." Also stated; "I am certain that it would have not affected the jury's verdict". S-T pgs. 54-60.

E. The Judge went on to suggest that EXHIBIT-A showed that the "Defendant was trying to manipulate the conversation". Judge Howard made no comment relative to the attempt by Sgt. Young to EXTORT Mr. Bell, nor the clearly illegal, numerous violations of the 4th and 14th Amendments of the U.S. Constitution and Part 1 Article 19 of the N.H. Constitution, evidenced by Sgt. Young's own statements during the recorded phone call. See: EXHIBIT-A pgs. 22-13-14 and 43. The Judge exhibited bias and prejudice towards Mr. Bell, in ignoring obvious evidence of Sgt. Young's attempted Extortion and Illegal Search and Seizure. Also, Defense Counsel's failure to introduce clearly exculpatory evidence. That bias was made prominent when, after examining the phone transcript, he berated the Defendant, and praised the work of both the Prosecutrix and Defense Counsel, using

the term "EXEMPLARY"! S-T pgs. 54-60. The trial Judge's comments regarding Mr. Bell as being "manipulative", while ignoring clear evidence of illegal conduct, on the part of Sgt. Young: the Attempt to Extort, the Illegal Search and Seizure, the PERJURED Testimony to the Grand-Jury! Can only be perceived as an attempt to disparage Mr. Bell for his assertions of ineffective assistance of counsel and denigrate the plainly obvious misconduct of Trial Counsel and the Prosecutrix in hiding the illegal, "Unconstitutional Acts" of Sgt. Young, and cover-up that illegal conduct! T-T pg. 32 lines 6-11 pg. 37 lines 9-15 pg. 38 lines 1-11 and pg. 534 lines 14-21. Also See: S-T pg. 29 lines 3-25/ Jimenez v. Heyliger, 792 F. Supp. 910 '1992'.

F. The Court has appointed counsel from the N.H. Appellate Defender Program, to represent the Appellant. (fn3) The Defendant has repeatedly directed the appellate defender, Anthony Naro to include the claim of Ineffective Assistance of Trial Counsel based upon the above-stated failure of Trial Counsel to present clearly exculpatory evidence to the jury including evidence that the police investigator (Sgt. Young), who developed the charges against Brim Bell and testified at the Grand-Jury, that indicted Mr. Bell. Attempted to extort the Defendant, conducted

(fn3) It is important to note that the exemplary work of the Prosecutrix, included the incongruent attempt to have this same Judge block the admission of any statements made by the investigator (Sgt. Young), contained in the wire-tap transcript 1/31/17 as being "INADMISSIBLE AND HEARSAY"! Although Judge Howard denied that attempt, it is clear that she somehow convinced Attorney Watkins to not present that evidence or call Sgt. Young as a witness. Remember, the Defendant witnessed Attorney Lane invite Attorney Watkins, to go out for cocktails during the Trial! T-T pg. 37 lines 6-21 and S-T pg. 45 lines 14-16.

Numerous Unlawful Search and Seizures of Brim's Auto Restoration!
See: S-T pgs. 39-52/ EXHIBIT-A pgs. 22-13-14/ DEPOSITION OF
JAMES LUND pgs. 60-71. Also presented perjured testimony to the
Grand-Jury to indict Brim Bell. Appellate Counsel, in violation
of N.H. Rules of Professional Conduct 1.1, has adamantly refused
to present the claim of Ineffective Assistance of Trial Counsel.
See: DISCOVERY pg. 790 8/15/18. Attorney Naro has refused to
even discuss the issue! Against appellant's wishes Attorney
Naro has submitted an appellate brief, despite Mr. Bell's direct
objection, citing a Conflict of Interest Issue! Regardless of
the numerous issues, Anthony Naro refused to recuse, even after
the Defendant (Brim Bell) fired Attorney Naro. See: State v.
Veale, 154 N.H. 730, at 734-35 '2007'. Attorney Naro appearantly
believes that Veale stands for the illogical proposition that
he can represent Mr. Bell, but he cannot bring the claim of
Ineffective Assistance against trial-counsel? The direct appeal
brief filed by Anthony Naro, contains no claim that the trial
counsel failed to present clearly exculpatory evidence that
would have resulted in a Favorable Verdict for Brim Bell!
(See: Anthony Naro's Direct Appeal Brief; Submitted Aug. 5,
2020).

CLOSING ARGUMENT; INEFFECTIVE ASSISTANCE OF
COURT APPOINTED TRIAL COUSEL

Defendant contends that the above-stated facts present PRIMA FACIA proof, that Mr. Bell was denied EFFECTIVE ASSISTANCE OF COUNSEL. As well as his trial being a Mockery of Justice, wherein Watkins/Lane and even Judge Howard covered-up the Unconstitutional, illegal ACTS of the police investigator and hid evidence from the jury. This Court has previously determined that; "To prevail upon a claim of Ineffective Assistance of Counsel, a Defendant must show, first, that counsel's representation was Constitutionally deficient and, second, that counsel's deficient performance actually prejudiced the outcome of the case. Id. State v. Sharkey, 155 N.H. 638 -at 640-41. To meet the first prong of this test, the Defendant - must show that counsel's representation fell below an objective standard of reasonableness. Strickland v. Washington, 466 U.S. 668, 688, 104 S.ct. 2052 '1984'." To meet the second prong, the Defendant - must show that there is a reasonable probability that, NOT for Counsel's Unprofessional Errors, the result of the proceeding would have been different! A reasonable probability is a probability sufficient to undermine confidence in the outcome". Cite omitted. Id. State v. Whittaker, 158 N.H. 762, 766 '2009'.

Certainly, this Honorable Court cannot deny that the (Failure of Defense Counsel-Watkins), to call Sgt. Randolph Young, the investigating officer who built the case against Brim Bell, testified at the Grand-Jury to have Mr. Bell indicted! And who, during the transcribed phone conversation, attempted to EXTORT Mr. Bell! Young boasted that - he had conducted numerous illegal searches of Brim's Auto Restoration! Also, confiscated items, including business information. See: wire-tap - EXHIBIT-A 1/31/17 falls far below any objective standard of reasonableness for a defense attorney. Especially in light of the fact that both the defense counsel and the Trial-Judge saw, recognized and

noted on the record that the transcript contains evidence "That may have been helpful in Brim's defense as to -- [SIC]," Id. See: S-T pg. 29 lines 6-8. Mark E. Howard is extremely bias on Sentencing Day! After Howard returns to the Court-Room with (EXHIBIT-A), he states; "I have reviewed Defendant's EXHIBIT-A, the transcript between Mr. Bell and Mr. Young. I have decided upon review of that transcript not to take into account the exchange that occurred. There are some things that I think support--may support the (Defense's argument) about the conduct between Mr. Young and Mr. Bell!" Id. See: S-T pg. 54 lines 9-13.

CASELAW THAT DIRECTLY PERTAINS TO CASE No. 2019-0047

1) FAILURE TO OBJECT BY DEFENSE COUNSEL; (Robert J. Watkins, Esq.).

Washington v. Hofbaver, 228 F. 3d 689, 705 6th Cir. '2000'.

Martin v. Parker, 11F. 3d 613 6th Cir. '1993'

2) FAILURE TO MOUNT EFFECTIVE CROSS EXAMINATION:

William v. Washington, 59 F. 3d 673, 684 7th Cir. '1995.

State v. Chaisson, 123 N.H. 17 '1983' (RIGHT TO CONFRONTATION).

Dugas v. Chaplan, 428 F. 3d 317, 336 1st Cir. '2005'.

3) DEFENSE COUNSEL FAILED TO SUPPRESS EVIDENCE:

State v. Orde, 161 N.H. 260 '2008'.

Dorceant v. U.S., 2015 U.S. Dist. LEXIS 18379.

Strickland v. Washington, 466 U.S. 688, 695 '1984'.

Illinois v. Knull, 480 U.S. 340-107 11. 2d. 107, 481 N.E. 2d.703

PLAIN-ERROR is very repetitive and simply put, the underling theme of the trial STATE OF NEW HAMPSHIRE V. BRIM BELL. From the beginning of trial and all the way to Sentencing Day on Jan. 2, 2019, (PLAIN-ERROR) does in fact exist!

Let me quote on a final-note, that best suits this case; "Failing to present exculpatory evidence is not a reasonable trial strategy!" Id. See: State v. Whittaker, 158 N.H. 762 '2009' (Pg. 775).

II. ISSUE: PROSECUTORIAL MISCONDUCT

A

Malicious Prosecution is the best description of the Strafford County Attorney's Office, in regards to their decision to invoke charges against Brim Bell. When the final decision was made by Thomas P. Velardi in Aug. 2017, to present nothing but illegally obtained evidence, at the Grand-Jury Hearing, with the sole purpose to indict Brim Bell! See: McDonough v. Smith, 134 S. Ct. 2149 '2019' and Gantert v. City of Rochester, 168 N.H. 640 '2016'. Chelsea E. Lane, Esq. was assigned to case State of New Hampshire v. Brim Bell prior to the indictments against the Defendant. Therefore we must infer she attended the Grand-Jury Hearing, with the full knowledge that the investigating officer (Sgt. Randolph Young), never at any point, obtained an Arrest-Warrant - Search Warrant or checked with the Court, prior to his initial Unlawful Search and Seizure of Brim's Auto Restoration in Strafford, N.H. on Oct. 20, 2016 to confirm the alleged eviction. The Prosecutor has easy access to the Court-Database. See: Coolidge v. N.H., 403 U.S. 443 '1971'. If we check the Strafford County Superior Court's database, as stated; Sgt. Randolph Young did not obtain a Court-Ordered Search Warrant. See: Collins v. Virginia, 138 S.Ct. 1663, '2018'. Attorney Lane, did not disclose this crucial fact in my discovery package or the requested (LAURIE LIST) information on Sgt. Young and Detective Sunderland, that Robert Watkins was instructed to get for his client. See: Duchesne v. Hillsborough County Atty., 167 N.H. 774 '2015', and, Brady v. Maryland, 373 U.S. 83-83 S.Ct. 1194 10L Ed. 2d 215 '1963' U.S. LEXIS1615/ S-T pgs. 40-52/ Gantert v. City of Rochester, 168 N.H. 640 '2016'.

The Court unsustainably exercised it's discretion to the prejudice of Brim Bell's case, and shed-light on PLAIN-ERROR. Therefore this Court must reverse.

B Appellate Defender (Anthony Naro), failed to raise any claim that Chelsea Lane Knowingly presented false evidence, or misrepresented evidence that Mr. Bell had the purpose to deprive his clients of their money, when as evidenced by her own words during sentencing, that she knew and had evidence that the Defendant was in constant contact with his landlord; (James Lund). See: Mounce v. Astrue, 2011 U.S. Dist. LEXIS 127122 Waldron v. Tuttle, 4 N.H. 371 '1828' and S-T pg. 35 lines 9-25. The Defendant, was in fact sending money to Mr. Lund in order to preclude being evicted! Attorney Lane knew that Mr. Bell had not been (evicted), she also knew that Mr. Lund, at the behest of Sgt. Randy Young, actually cut the locks off the doors of Brim's Auto Restoration. Then moved Mr. Bell's clients valuable property from within the business to the curtilage, resulting in unidentified people simply going to the business and taking that private property without question and without proof of (ownership). See: EXHIBIT-A pg. 43 lines 4-23/ Reyes v. R.I. State Police, 2016 U.S. Dist. LEXIS 185624 '2016'/ Mancusi v. DeForte, 392 U.S. 364 '1968'/ State v. Socci, 2015 N.H. LEXIS 259. "BUT", the most egregious fact of this theft of Mr. Bell's property is that Sgt. Randolph Young was Present during the taking and allowed, and enabled people to "steal" the clients property! See: S-T pgs. 40-52/ Illinois v. Lafayette, 462 U.S. 640 '1983'. Rossi v. Town of Pelham, 35 F. Supp. 2d 58 '1997'. Sgt. Young and Mr. Lund knew the legal tenant; (Brim Bell) was working out of the State at the time. Therefore, Young/Lund took full advantage of Brim Bell's absence, to illegally dismantle Brim's Auto Restoration.

C Chelsea E. Lane (prosecutor), knew that Mr. Bell was sending money to Mr. Lund, that he had not been evicted! Nor had he "ABANDONED" his business, she also knew that the Defendant had been on a business trip before Sgt. Young initiated any

investigation! "HOWEVER", she misrepresented those facts, hid from the jury, that the property that was stolen, had been stolen as the result of Lund/Young permitting anyone who showed-up at the business in Strafford N.H., to remove those items without any proof of ownership! "YET", she argued to the jury that the Defendant was culpable for the THEFT! See: T-T State's opening statement/ Banks v. Dretke, 540 U.S. 668 '2004'. Quote: "when police or prosecutors conceal significant exculpatory or impeaching material in a State's possession, it is ordinarily incumbent on the State to set the record straight." State v. Bain, 145 N.H. 367 '2000'.

Appellate Counsel presented "NO" claim, nor did Attorney Watkins, argue those facts! During sentencing, the colloquy between Watkins/Lane and Howard, evinces serious misconduct, in the form of both counsel laying a foundation to indemnify Sgt. Young, and/or cover-up his illegal, unlawful conduct! see: U.S. v. Garcia, 574 F. 3d 5 '2009'/ Garza v. Idaho, 139 S.Ct. 738 '2019'/ S-T pg. 28 line 1 pg. 33 line 15/ (PLAIN-ERROR ALONE IS GROUNDS FOR REVERSAL).

In that colloquy the attorney's and Howard discuss a wire-tap violation relating to (EXHIBIT-A). Id. In telling the Judge that he ; "discussed with the Government-- [SIC] was the possibility of calling Mr. Young to testify!

D

We decided not to do that . There was some issues in the transcript, however, that may have been helpful in Brim's defense Id. S-T pg. 29 lines 3-8. The whole conversation relates to some (wire-tap violation), however, Mr. Bell had NO issue against the transcript, nor should "Defense Counsel", in fact RSA 570-A:2, II-(d) unequivocally permits a police officer conducting an investigation, and who is a party to a phone conversation to record or intercept the conversation. See: U.S. v. Vest,

842 F. 2d 1319 '1988', quote; "To warrant dismissal of an indictment, a prosecutor's misconduct must amount to serious and blatant Prosecutorial Misconduct that distorts the integrity of the judicial process"1/ State v. Sands, 123 N.H. 570 '1983'/ S-T pgs. 26-33. Both Watkins/Lane make it a point that "it was not a violation by Officer Young". Id. S-T pg. 30 line 2. "...it was clear at that point it wasn't Officer Young who recorded the conversation, but the Sheriff's Department. Id. S-T pg. 30 lines 9-11, quote; "The State opted not to call Randy Young, but had--Defense Counsel had filed a motion for a Richards Hearing, the State objected! Basically, by offer of proof, Randy Young would have testified that he didn't know that it was recorded; therefore, he did not commit any sort of crime by recording it himself. He didn't record it. It was just recorded by the Sheriff's Department". Id. S-T pg. 30 line 23 and pg. 31 line 4. See: State v. Murray, 153 N.H. 674 '2006' quote; "A defendant may obtain a mistrial by showing prosecutorial gross negligence." U.S. v. Kelly, 543 F. Supp. 1303 '1982' quote; "the deliberate use of false testimony by a prosecutor violates a defendant's DUE-PROCESS RIGHTS."

E

Since the Defendant had no reason or desire to block introduction of the wire-tap transcript, nor was there any legal issue to challenge the recording of the phone conversation "by a police officer who is conducting an investigation and a party to the conversation." See: RSA 570-A:2 II (d). In fact, Mr. Bell wanted the transcript presented during trial. See: State v. Ruggiero, 163 N.H. 129 '2011'. It is plainly obvious that the State opted not to call Randy Young! And objects to the wire-tap being presented to the jury, to withhold Exculpatory Evidence from the jury, and to protect Sgt. Young from (criminal charges)! See: T-T pg. 37-38. Mr. Bell was not asserting any privilege under the 5th or 6th Amendments to the U.S. Constitution or pursuant to part 1, Art. 15 of the N.H. Constitution, against self-incrimination. See: State v. Richards.

129 N.H. 669-No. 86-384 '1987'. Also, the motion for a Richard's Hearing was obviously directed to testimony anticipated from Randy Young, that could potentially lead to criminal charges for (EXTORTION) and being an accomplice in the theft of Mr. Bell's client's property! See: Chavez v. Martinez, 538 U.S. 760 '2003'/ UNDER COLOR OF OFFICIAL RIGHT-HOBBS ACT, S-T pgs. 26-38/ CRIMINAL THREATS BY SGT. YOUNG. Despite these facts and their implications for Ineffective Assistance, Prosecutorial Misconduct, complicity between defense counsel and prosecutrix, to prevent the jurors from hearing evidence of Sgt. Randolph Young's criminal conduct! See: Evans v. U.S., 504 U.S. 255 '1992' Appellate Counsel (Anthony Naro), made no claims relating to these violations of Defendant's Constitutional Rights. Which Mr. Bell specifically directed the Appellate Defender to do! See: N.H. R. Pro. Conduct; Rule 1.3 "Diligence"; "A lawyer should pursue a matter on behalf of a client despite Opposition, Obstruction, or Personal Inconvenience to the lawyer and take whatever LAWFUL AND ETHICAL measures, are required to VINDICATE a client's (cause or endeavor)"!

F

The Prosecution never used a (Digital Forensics Expert) to have Text and E-Mail evidence AUTHENTICATED under; N.H. Rules of Evidence 901. Considering most evidence submitted, and used for the Deliberation Process, was in fact photo copies of TEXT MESSAGES. I believe this issue is grounds for Ineffective Assistance of Counsel Claim. Robert J. Watkins fails to object on Rule 901 violation. Also, defense counsel failure to object to (EXHIBIT-25) for reasons of verbal completeness issue. See: State v. Warren, 143 N.H. 633-636 '1999'/ State v. Douthart, 146 N.H. 445 '2001'/ Johnson v. Han, 2015 U.S. Dist. LEXIS 93203/ Toro v. Murphy, 2009 U.S. Dist. LEXIS 117303.

Prosecutorial Misconduct seems very prevalent on (EXHIBIT-25) issue of verbal completeness. Chelsea E. Lane knowingly,

willingly, and purposely, misled the jury! In the context that (EXHIBIT-25) was presented to the jury, was to convince them that Mr. Bell was not doing any work on Jason Konopacki's car. But, had Ms. Lane asked Mr. Konopacki to read the very last line of the text, the jury would have known Mr. Konopacki's testimony was in fact perjured! T-T pg. 321 lines 16-24 and pg. 322 line 4. (STATE MUST REVERSE ON PLAIN-ERROR).

Jason Konopacki would meet privately with Attorney Lane prior to the (Grand-Jury Hearing). We must infer, this was in preparation for his testimony in front of the Grand-Jury! Therefore we must conclude Mr. Konopacki knowingly, willingly, and purposely, gave perjured testimony at trial. (See: State's Witness List for Grand-Jury Hearing, Aug. 2017).

I will now quote from the best case law, that sums up (Plain-Error) from my trial; "Without the written consent of the Defendant, Defense Counsel CAN NOT proceed in any type of Court Proceeding, especially his trial"! Id. See: U.S. V. Gagnon, 470 U.S. 522 '1985' (THIS COURT MUST REVERSE). See: PLAIN-ERROR Fed. R. Crim. P. 52 (b) and Sup. Ct. R. 16-A.

III. ISSUE: ABUSE OF DISCRETION Dec. 28, 2020

October 3, 2018 (Justice) Mark E. Howard - the Prosecutors, Defense Counsel and Jury, recommence at 3:00 p.m. without the presence of the (defendant) Brim Bell. THE COURT: "All right. So first -- is Mr. Bell still over at the jail?" MR. WATKINS: "Yes, Sir." THE COURT: "Are you okay with proceeding without him being (present)? MR. WATKINS: "I am. I mean, this is -- this is not something that a client generally has control over, how I respond to a question." THE COURT: "Okay" MR. WATKINS: "So I think I have an obligation at some point to consult with him and let him know that there was a question, what the question is, but I'm not-bound to how he wants to (respond). So it's my opinion, he doesn't need to be here!" T-T pgs. 831. The Prosecutor decides to chime-in on the jury question. MS. Lane: "The only thing that came to my mind was, you know, it means exercising control that's not authorized. THE COURT: "Boy it sure does, doesn't it!" Defendant was not present, to (defend) himself. Defense Counsel did-not object, to Howard's BIAS, PREJUDICE AND IMPARTIAL remark! See: PLAIN-ERROR STANDARD) T-T pgs. 832-834/ See: GE v. Joiner, 522 U.S. 136 '1997' / Denton v. Hernandez, 504 U.S. 25 '1992'/ Baker valley Lumber v. Ingersoll Rand, Co., 148 N.H. 609 '2002'. January 2, 2019 (Defendant) Brim Bell exercises his U.S. Constitutional Right of ALLOCUTION. See: Fed. R. Crim. P. 32(c)(3)(c). MR. BELL: "My trial was a miscarriage of justice. I will now go through the list of all the misconduct that will apply to my case. The illegal search and seizure" -- THE COURT: "Mr. Bell, Mr. Bell, before you go any further, the right of Allocution is to speak to me about your sentencing. This is not a motion for a new-trial or to revisit those issues. So if you have further comments about sentencing, I'd be happy to hear you. Your complaints about your trial is the subject for another day," Mark E. Howard abused his discretion, by deliberately stopping the Defendant from exposing the fact, that all the evidence in case State

v. Brim Bell, was illegally obtained by law enforcement. See: S-T pg. 48 lines 16-24/ Business Publications v. Finnegan, 140 N.H. 145 '1995'/ Ex parte Haymann, 302 U.S. 653 '1937'/ Buck v. Davis, 137 S. Ct. 759 '2017'. Only minutes after THE SMOKING GUN evidence was read in Judge Howard's chamber's, that proves Mr. Bell's trial unlawful. Mark E. Howard state's; "I'll comment at this point that I thought Attorney Watkins' conduct at the trial was exemplary!" S-T pg. 60/ State v. Smith, 135 N.H. 524 '1992'/ Gasperini v. Ctr. for Humanities, 518 U.S. 415 '1996'.

Robert J. Watkins failed to present (exculpatory evidence) to the jury, the list includes;

- a) DISCOVERY pg. 712 Incident Record No. 18 STR-620-OF Call No. 18-59210.
- b) DISCOVERY pg. 790 TESTIMONY REVIEW OF (Sgt. Randolph Young)-MEMORANDUM BASED ON GRAND-JURY HEARING Aug. 2017.
- c) WIRE-TAP RECORDING OF (Sgt. Randolph Young's) ATTEMPTED EXTORTION.
- d) EXHIBIT-A CALL TO STRAFFORD POLICE 1/31/17 (Transcript).
- e) DEPOSITION OF JAMES LUND Aug. 14, 2018.
- f) STATE'S CHIEF-WITNESS: Sgt. Randolph H. Young - Strafford P.D.

See: Thonas v. Tel. Publ'g Co, 155 N.H. 314 '2007'/ Perdue v. Kenny A., 559 U.S. 542 '2010'/ See: Cain v. Kramer, 2002 U.S. Dist. LEXIS 1770 '2002'.

Defense Counsel (ex-prosecutor) did everything in his power to make sure Brim Bell gets convicted, for a crime that he did not commit! Robert J. Watkins, Esq. only works for State of New Hampshire. (CRIMINAL PROFESSIONAL CONDUCT) Hilario v. Reardon 158 NH. 56 '2008'/ Wilder v. Eberhart, 977 F. 2d 673 '1992'/ U.S. v. Soldevila-Lopez, 17 F. 3d 480 '1994'/ Tower v. Glover, 467 U.S. 914 '1984'.

IV. ISSUE: PLAIN ERROR AND CLEAR ERROR DEC. 28, 2020

Oct. 4, 2018 (Justice) Mark E. Howard violated the **sanctity** of the deliberation room. T-T pgs. 831-844. After a full-review of Deliberation Process, the Court **never** used a messenger for the purpose of retrieving (jury notes). **THE COURT:** -- "back on the record. And for the record, I retrieved the (EXHIBIT-25) from the jury room and instructed the jury to **cease** their deliberations until they've received an answer from us. Counsel's free to approach to look at the exhibit! It does appear to be consistent with the copy ~~that~~ you have." T-T pg. 842 lines 6-11. **MR. WATKINS:** "Yeah. So if the question is, the last line was not presetned to us. I'm not quite sure what that **means**? See: DOCTRINE OF VERBAL COMPLETENESS .. State v. Warren, 143 N.H. 633-636 '1999'/ U.S. v. Marcus, 560 U.S. 258 '2010'. See: Fed. R. Crim. P. 52 (b) and Sup. Ct. R. 16-A; (FORFEITED-BUT-REVERSIBLE ERROR). **THE COURT:** "So Chrystal, if you can mark the jury-question, the answer, and then I'll bring everything back in so that I can (instruct) them, that they can start." T-T pg. 844 lines 17-19/ U.S. v. Olano, 507 U.S. 725 '1993', quote: "There must be an error that is plain and that (affects) substantial rights." ORE-TENUS was necessary on Oct. 4, 2018. 'But', Judge Howard chose to debate the question in **open-court** without the presence of the (jury or defendant)! "On State's EXHIBIT-25 the last **cut-off** line, was not presented to us and changes the (context) of the evidence. Can we use the last line in our deliberation? 10/4/18 - 2:15 p.m. Judge Howard stated on the **record** in open-court; "**yes**" -- the jury should consider all of the evidence admitted during the trial!" The jury was **not present** for Howard's response. Because Howard personally walked his response back to the deliberation-room, where the jury was waiting for the **messenger** to bring back the Court's decision. Until we question the jurors, we **must** infer that Judge Howard told jurors 'NO', because the Defendant was found (guilty)

on that particular count! If Judge Howard said 'YES', the jury would have KNOWN (WITNESS) Jason Konopacki's testimony was in fact (perjured)! See: T-T pg. 844 lines 2-13/ EXHIBIT-25 UNREAD BY WITNESS; "I'm fucking with you!" which completely contradicts the point that Chelsea E. Lane was trying to make during trial. Even after Defense Counsel read EXHIBIT-25, he failed to object! T-T pgs. 831-844/ State v. Henderson, 141 N.H. 615 at 620 '1997', quote; "When trial counsel's error prevents the MEANINGFUL ADVERSARIAL TESTING of the State's case, a (defendant) is not required to prove actual-prejudice". See: Renico v. Lett, 559 U.S. 766 '2010'/ U.S. v. Sabetta, 373 F. 3d 75 '2004'/ Thun v. Maine, 2009 U.S. Dist. LEXIS 66670 quote; "Denial of his right to a fair and impartial jury, Defense Counsel's failure to VOIR-DIRE THE JURY!"

IV. ISSUE: FRUIT OF THE POISONOUS TREE - DOCTRINE:

IV AMENDMENT OF THE U.S. CONSTITUTION (Context)

January 2, 2019 (DEFENDANT) Brim Bell raised Illegal Search and Seizure Issue (STATE OBJECTED). S-T pg. 48 line 18. In the context that all evidence used during trial was in fact (derivative evidence) of Sgt. Randolph Young's Illegal Search and Seizure of Brim's Auto Restoration on Oct. 20, 2016. Therefore, Fruit of the Poisonous Tree-Doctrine best describes case (STATE OF NEW HAMPSHIRE V. BRIM BELL). 1948 CRIMINAL PROCEDURE: "the rule that evidence derived from an illegal search, arrest, or interrogation is inadmissible, because the evidence (the 'fruit') was tainted by the illegality (the 'poisonous-tree')". See: BLACK'S LAW DICTIONARY/ S-T pgs. 40-52/ pg. 52 lines 21-23/ Giglio v. U.S., 92 S. Ct. 763, 766 405 U.S. 150, 153 '1972', quote; "Deliberate Deception of a Court and Jurors by the Prosecutor"./ Kentucky v. King, 563 U.S. 452 '2011'/ State v. Beede, 119 N.H. 620, at 626/ Johnson v. U.S., 333 U.S. 10/

Chimel v. California, 395 U.S. 752 89 S. Ct. 2034 23L. Ed. 2d 685 '1969' U.S. LEXIS 1166 quote; "Even with an Arrest Warrant, the (Police) still need a separate warrant for your home or business!"

VI. ISSUE: EXTORTION AND CRIMINAL THREATS

January 31, 2017 Sgt. Randolph Young of the Strafford P.D. informed James N. Lund (Bell's landlord) that he urgently needed to speak with Mr. Bell! The Defendant (Brim Bell) called Sgt. Young at Mr. Lund's request. I was on my way home from my business trip, with plenty of money to keep my auto business afloat. Because Sgt. Young is a good friend of James Lund, Young was informed in regards to how much money I was returning home with. Just for the record, I did not have the \$200,000.00 in cash that Sgt. Young attempted to EXTORT from me! Sgt. Young used EXTORTION to destroy my livelihood. S-T pgs. 4052. Please allow me to quote Sgt. Young from the wire-tap transcript (EXHIBIT-A). RANDY YOUNG: "Because this started out as a civil and now it has gone way over (that), and now it's a criminal case, which that's where I fall in. That is the only way that you will not see a day in jail. and I know damn-well, you don't have that amount of money, because that alone is -- last time I checked was two hundred thousand! See: S-T pg. 29 lines 3-16. MR. WATKINS: "SO I'd like to -- I have a transcript of that. I'd like to mark this as Defense Exhibit-A, and I'd ask the Court to -- I've got a clean copy here --consider it --" THE COURT: "Hold on. This is a transcript of what?" MR. WATKINS: "This is a transcript of my client's conversation with Ofc. Randy Young back in January of last year." THE COURT: "Is this the one that you say was the wire-tap violation?" MS. LANE: "And your Honor, I would object. I don't think that it was any (relevance) on Sentencing whatsoever. I'm not sure, and I would have to check my notes, I don't believe that the jury even heard evidence of him absconding or not coming back. The State had opted not to call Randy Young, but had -- Defense Counsel had

filed a MOTION: FOR A RICHARDS HEARING, (The State Objected). Basically, by offer of proof, Randy Young would have Testified that he didn't know that it was recorded; therefore, he did not commit any (sort) of crime by recording it himself. He didn't record it! It was just recorded by the Sheriff's Department. See: wire-tap; EXHIBIT -A WAS ADMISSIBLE EVIDENCE (SUPPRESSED). S-T pgs. 39-52. Randy Young did not testify! The State, (again) opted not to call him! I had notified Defense Counsel that he was going to be left under subpoena, and he was, in fact, left under subpoena as he could have been called as a (witness) by Defense Counsel. They chose not to call him. I don't see how this is relevant for Sentencing purposes, I guess, in any-way shape, or form? S-T pgs. 30-31 lines 19-25 & 1-11/ Ocasio v. U.S., 136 S. Ct. 1423 '2016'.

B

We must ask the million-dollar question, why would the (State) choose to opt-out of calling the State's CHIEF-WITNESS, even after they (subpoenaed) Sgt. Young to testify? See: U.S. v. Murphy, 193 F. 3d 1 '1999' (EXTORTION AND CRIMINAL THREATS).

C

Sgt. Young is essentially my accuser, who entered Brim's Auto Restoration without a Court-ordered Search Warrant and illegally took my business files. Used the stolen information to coerce my clients to meet with him, at my auto shop to fill out police reports. Considering Sgt. Young told my clients, that I abandoned my business, and left the State in my landlord's car. Young convinced them, that they were robbed by Brim Bell! (See: STATEMENTS MADE BY MY CLIENT'S) and EXHIBIT-A pg. 22 lines 1-25/ pgs. 13-14 lines 21-23. But, the Strafford County Attorney said the dollar amount, was not enough to indict Mr. Bell! Sgt. Young and Mr. Lund needed more time to gather more evidence from my auto shop. This issue will explain why Sgt. Young used CRIMINAL-THREATS-COERCION-ILLEGAL SEARCH AND SEIZURE-EXTORTION, to make sure that I did not board my plane on Jan. 31 2017.

Sgt. Young's illegal tactics worked! I did not return on 1/31/17, this decision would be the DEMISE OF Brim's Auto Restoration! See: S-T pgs. 39-52/ Evens v. U.S., 504 U.S. 255 '1992'/ Ashcroft v. Tennessee, 322 U.S. 143 '1994'/ State v. Hynes, 159 N.H. 187 '2009'/ U.S. v Turner, 684 F. 2d 244 '2012', quote; "The Hobbs Act, 18 U.S.C.S. B1951, makes it a crime for anyone to obstruct, delay, or affect commerce, by robbery or **extortion** or **attempts** or conspires so to do, B1951(a) and it defines (extortion) as, among other things, the obtaining of property from another, with his consent, under color of official right, B1951(b)(2).

VII . ISSUE: GRAND-JURY INDICTMENT

On August 2017 the investigating officer, that built the case for the State; Sgt. Randolph Young gave a perjured testimony! Chelsea Lane, A.C.A. stated; "Sgt. Young was asked whether there was a time when he went to Brim Bell's shop in Strafford, N.H. on Jim Lund's property, while anyone was there taking cars, parts or pieces of cars out of the shop. Sgt. Young stated that he was never at Lund's place while anyone was there taking anything." Now let's quote Sgt. Young from (EXHIBIT-A); "Well then why was I there at the shop while these people were loading up their cars and you weren't there, videotaping it?" See: EXHIBIT-A pg. 43 lines 18-20/ DISCOVERY pg. 790 8/15/18 TESTIMONY REVIEW/ DEPOSITION OF JAMES LUND 8/14/18 pgs. 65-71. U.S. v. Mandujano, 425 U.S. 564 '1976', quote; "A grand-jury witness might answer truthfully and thereafter assert the Constitutional Guaranty. Under no circumstances, however, could he commit perjury and successfully claim that the Constitution afforded him protection from prosecution for that crime."/ U.S. v. Nazzaro 889 F. 2d 1158 '1989', quote; "To be material under 18 U.S.C.S. B1623(a), testimony need not directly concern an element of a crime for which the grand-jury may indict."

VIII. ISSUE: CONSPIRACY AND COLLUSION

I ask for this Court to take **Judicial-Notice**, that a full review of all trial-transcripts be read, as a very necessary step in case STATE OF NEW HAMPSHIRE V. BRIM BELL, to shed-light on PLAIN-ERROR! Defense Counsel and the State chose not to present any exculpatory evidence for the jurors, to study in the deliberation room. Only illegally obtained evidence was used at my trial. Robert J. Watkins read my discovery package 4 months prior to trial. Watkins is a former Prosecutor. When he noticed NO WARRANTS of any kind, we must infer he contacted the Court immediately to check the Court database for Search and Arrest Warrants, Eviction Notices etc. See: S-T pgs. 39-52/ DEPOSITION OF JAMES LUND 8/14/18/ EXHIBIT-A 1/31/17. See: Green v. U.S., 158 F. Supp. 804 '1958'/ Levesque v. State, 2010 U.S. Dist. LEXIS 57249/ In re Sawyer, 360 U.S. 622 '1959' (INDICTED FOR CONSPIRACY UNDER THE SMITH ACT, 18 U.S.C.S. 82385).

IX. ISSUE: DUE-PROCESS CLAUSE Dec. 30, 2020

The Constitutional Provision that prohibits the Government from unfairly or arbitrarily depriving a person of LIFE, LIBERTY, OR PROPERTY. The Defendant's Due-Process Rights are so fundamentally important as to require compliance with Due-Process Standards of FAIRNESS AND JUSTICE. See: Johnson v. U.S., 576 U.S. 591 '2015'/ IV-V-VI-and XIV Amendments of the U.S. Constitution/ N.H. Constitution part I, Article 15. State v. Addison, 165 N.H. 381 '2013'

Due-Process requires that an (accused) must receive a trial by a fair and impartial jury. After full-review of the deliberation process, of Brim Bell's Trial in the Strafford County Superior Court, we find the (Due-Process Rights) of the Defendant were violated, on Oct. 3-4, 2018. See: T-T pgs. 831-844/ PLAIN-ERROR DOES EXIST Wolff v. McDonnell, 418 U.S. 539 '1974', quote; 'Private Interest that has been affected by governmental action'.

Law Enforcement made numerous illegal Searches of the Defendant's Auto Business. This fact alone, is a violation of Defendant's Due-Process Rights. Without the illegally obtained evidence, the Strafford County Attorney's Office could not have INDICTED BRIM BELL! See: Rochin v. California, 342 U.S. 165 '1952'/ S-T pgs. 39-52/ Screws v. U.S., 325 U.S. 91 '1945'/ Brady v. Maryland, 373 U.S. 83 '1963', quote; "The suppression of evidence favorable to an (accused), is itself sufficient to amount to a denial of Due-Process. See: T-T pgs. 831-844 and pgs. 321-322 lines 8-25 & lines 3-25.

X. ISSUE: STATE'S CHIEF WITNESS DID NOT TESTIFY AT TRIAL
(DEFENDANT'S ACCUSER)

Robert J. Watkins (preserved) this vital issue, when he filed his MOTION: FOR DEFENDANT'S DIRECT APPEAL. Brim Bell's best-witness is Exculpatory in nature. Sgt. Randolph H. Young is the investigating officer that built this case for the State. Officer Young conducted numerous Unlawful Search and Seizures of Brim's Auto Restoration, prior to the Grand-Jury Hearing, when Sgt. Young gave a (perjured-testimony) and failed to tell the Grand-Jury, that he never at any point obtained a COURT-ORDERED SEARCH WARRANT! See: Crawford v. Washington, 541 U.S. 36 '2004'/ (VI Amendment violation - Right to confront the witnesses against him) See: Melendez-Dias v. Massachusetts, 557 U.S. 305 '2009'/ Idaho v. Wright, 497 U.S. 805 '1990'

Just for the record, Sgt. Young must testify based on; FACE TO FACE CONFRONTATION - RIGHT TO DUE PROCESS. See; U.S. Constitution - Amendments VI and XIV/ Coy v. Iowa, 487 U.S. 1012 or N.H. Constitution part I Article 15 Bouchard v. Rochester 119 N.H. 799.

MS. LANE: "I just wanted to note for the record the State's Objection to the Defense opening Statement in reference to Randy Young phone call. Defense -- which our Defense is aware that the State is not going to call Randy Young. If the Defense were to call Randy Young (themselves), I don't see how that evidence comes in as NOT HEARSAY, so I just believe that it was." -- T-T pg. 31 lines 9-16.

Robert J. Watkins, Esq. saw the (State's) very desperate-
ploy to persuade the Court, for the exclusion of any testimony from the STATE'S CHIEF WITNESS (Sgt. Randolph Young). Also, the transcript (EXHIBIT-A) or allowing the jury to hear Sgt. Young's numerous illegal-acts from the wire-tap recorded by the Sheriff's Department on January 31, 2017. T-T pgs. 32-39.

CONCLUSION

WHEREFORE pro-se Defendant (Brim Bell) prays this Court finds PLAIN-ERROR, and see no other option, but to reverse.

- a) GRANT Defendant 30 minutes or oral argument.
- b) This Supplemental Brief was mailed on Dec. 30, 2020. (Please send confirmation of delivery)?
- c) Acknowledge the fact that Thomas Barnard and Anthony Naro were (fired) by letter and orally.
- d) All five Attorney's affiliated with the New Hampshire Public Defender Program failed to effectively defend Brim Bell.
- e) Understand Attorney Barnard visited me in person for 3.5 hours, informing me that we have **nothing** to work with for my Direct Appeal and desperately **coerced** me to DROP my appeal.
- f) GRANT Defendant a private attorney for the oral argument.
(Or allow me to give my own oral argument)?

Dec. 30, 2020

Respectfully Submitted,

By; 

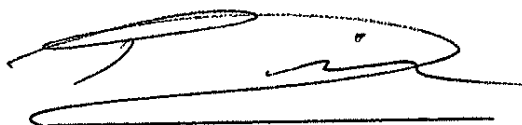
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CERTIFICATE OF SERVICE

I hereby certify that a copy of this brief has been timely provided to the Criminal Bureau of the New Hampshire Attorney General's Office through FIRST-CLASS U.S. POSTAL SERVICE.

12/30/20

Date

A handwritten signature in black ink, appearing to read 'Brim Bell', with a horizontal line drawn underneath it.

Brim Bell 116957

NOTE: (APPENDIX MAILED SEPARATELY)