

THE STATE OF NEW HAMPSHIRE
SUPREME COURT

No. 2019-0072

State of New Hampshire

v.

Joshua Shaw

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

BRIEF FOR THE DEFENDANT

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QUESTIONS PRESENTED

1. Did the court err in denying Shaw’s request for an *in camera* review of information related to the police witnesses in the case?

Issue preserved by Shaw’s motion and the court’s ruling. Add.¹ 34-44.

2. Did the court err in instructing the jury on the disobeying an officer charge by amending the language plead in the charging document?

Issue preserved, in part, by defense argument and the court’s ruling, T2 276-81, and raised, in part, as plain error under Supreme Court Rule 16-A.

¹ Citations to the record are as follows:

“Add.” refers to the Addendum to this brief;

“Exh. A” refers to Defense Exhibit A from trial, a thumb drive containing three video clips of the interaction, transferred to this Court;

“T1 – T3” refers to the consecutively-paginated transcripts of the three-day jury trial held on October 2 – 4, 2018; and

“SH” refers to the sentencing hearing held on January 4, 2019.

STATEMENT OF THE CASE

Joshua Shaw was charged in the Rockingham County Superior Court with two counts of simple assault and one count of attempted simple assault, enhanced because alleged to have been committed against police officers, and also with resisting arrest, disobeying a police officer, and operating after suspension. T1 3-6. A jury found him guilty of all offenses, except one simple assault charge upon which it hung and which the State later nol prossed. T2 357-72; SH 18.

The court (Delker, J.) sentenced Shaw to twelve months in jail, concurrent, on three of the charges, a consecutive suspended prison sentence, and a suspended fine. SH 15-17.

STATEMENT OF THE FACTS

At approximately 8:40 a.m. on March 14, 2018, Salem Police Officer Andrew Feole noticed a pickup truck pulling a trailer. T1 39. It had snowed the night before and the pickup truck's license plate was obscured by snow. T1 39-40. However, the plate on the trailer was visible, so Feole ran the registration and learned that the registered owner, Joshua Shaw, had a suspended license. Id. Seeing that the driver matched the description available for Shaw, Feole stopped the truck. T1 40.

Feole walked up to the driver, introduced himself, advised Shaw of the reason for the stop, and asked for Shaw's license². T1 40-41. Shaw pulled out what appeared to be a license but refused to turn it over to Feole and he wrapped it in a piece of paper before Feole could confirm that it was Shaw's license. T1 42-43, 57, 90; Exh. A. Shaw insisted that Feole had no reason to stop him, so Feole explained that it was a violation to have the plate covered in snow and that Feole suspected Shaw had a suspended license. T1 41-42; Exh. A. Shaw insisted that his license was valid and that he had recently cleared it up with child support. T1 42-43, 58; Exh. A. Feole explained that the stop was for a couple of violation-level offenses, but if Shaw refused to turn over his

² A passenger in the truck, Shannon Whitley, made three videos during Shaw's encounter with the police. T1 124; Exh A.

license, that act would constitute the misdemeanor offense of disobeying an officer for which Shaw could be arrested. T1 43-45; Exh. A.

Shaw responded that they should “get on with getting arrested” and suggested that Feole should call a supervisor to the scene. T1 45, 58-59; Exh. A. Whitley asked for Feole’s name and badge number, which he provided. T1 48; Exh. A.

Although Feole then decided to arrest Shaw, he did not tell this to Shaw. T1 45-46, 59-60; Exh. A. Instead, Feole waited until back-up arrived. T1 45-46; Exh. A. Feole’s supervisor, Sergeant Robert Genest, responded, along with Lieutenant Kevin Fitzgerald, who had gone with Genest to get coffee. T1 47, 93-94, 168-69. Officer Matthew MacKenzie also responded around the same time. T1 47, 94, 169, 195. Fitzgerald hung back while the other three conferred at the back of Shaw’s truck. T1 47, 95, 130, 170, 195-96.

Shaw saw the other officers approaching and told Whitley to roll up her window. Exh. A. When she declined, he made no other comment. Id. He kept his window down. Id.

After a quick discussion, the three officers approached Shaw’s window and told him to get out of the truck. T1 47, 60-61, 196-97; Exh. A. Fitzgerald stood at the end of Shaw’s truck. T1 196; Exh. A. Shaw asked why he was being told to get out. Exh. A. The officers did not tell Shaw that he was

under arrest. T1 60-61, 131-32, 209; Exh. A. One officer started to open Shaw's door. T1 47, 61; Exh. A. When Shaw realized that his door was being opened, he slammed the door shut, locked it, and rolled up his window. T1 47, 61, 96-97, 132-33, 170, 196-97; Exh. A. Both he and Whitley reacted to this event with shock and outrage. Exh. A; T1 97, 133. Shaw pulled out a phone and indicated he was calling the state police. Exh. A. Whitley is heard through the remainder of the video clips asking for a state police response. Id. Fitzgerald joined the commotion at Shaw's window. T1 86, 171.

The officers yelled at Shaw. Exh. A. He responded that he would not get out and expressed fear that they would shoot him or beat him up. T1 61-62, 97, 133; Exh. A. The officers testified that they told Shaw to get out or they would smash his window, though that was not audible inside the truck. T1 48, 97-98, 134, 171; Exh. A; see also T1 130-31. Genest testified that Shaw reached for the shifter on the truck and Genest feared that he would drive away. T1 98; but see Exh. A; T1 142. Genest pulled out his flashlight and smashed Shaw's window. T1 48, 98, 171, 197; Exh. A.

Officers testified that they then tried to reach into the window to open the door but were unable to do so. T1 48-49, 98-99, 153, 172-73, 175, 197-98. Shaw kicked at the officers. T1 49, 98-99, 172, 182, 198; Exh. A. The officers

reached into the window to pull Shaw out. T1 49, 64-65; Exh. A. The officers testified that Shaw began swinging at them while he had a key protruding from his fist. T1 49, 72-73, 106, 173, 183, 203, 214-15.

Officer MacKenzie pulled out his taser. T1 66, 99, 200; Exh. A. He yelled at Shaw, "You're dead. I'm going to fucking knock you out." Exh A; T1 67-68, 86-87, 142-43, 216-17. The taser looks similar to a gun and the officers were trained to yell "taser, taser, taser" before deploying it so that other officers would not misperceive that a firearm had been drawn. Exh. A; T1 66-67, 163-64; Exh. A. There was conflicting evidence about whether a warning was issued before the officers tasered Shaw. T1 66, 99, 149-50, 174, 200; Exh. A. MacKenzie and Genest deployed their tasers at Shaw multiple times. T1 50, 66, 70-71, 99-115, 174, 200-02; Exh. A. Shaw cried out in pain but was not incapacitated and was able to pull the taser prongs out. Exh. A; T1 50, 99, 105-07, 113, 116, 174-75, 201-02. The officers ordered Shaw to open the door and he indicated he could not do anything and Whitley indicated that the door was broken. Exh. A.

Genest went to the passenger's side of the truck. T1 51, 117, 175, 203-04. He ordered Whitley to get out and, when she did not comply, he smashed the passenger's window. T1 51, 117, 127, 175, 203-04; Exh. A. Whitley then got out and Genest went in and began pulling Shaw out. T1 51, 117-18,

126-27, 175-76, 203-04. Shaw clung to the steering wheel and MacKenzie struck his hands and wrists until he let go. T1 73-74, 118, 154-55, 185, 204, 222-23.

Genest was able to pull Shaw out of the truck and he landed on the ground in the narrow space between the truck and the snowbank. T1 51, 118, 156, 176, 204, 223; T2 236-37. Shaw was face down on the ground with his arms beneath him. T1 51, 74, 118, 156-57, 176; T2 236-37, 243, 253-54. Part of Shaw was under the truck, but multiple officers descended on his back and tried to pull his arms out from under him. T1 51, 75-76, 156-57, 186, 223-24; T2 236-38, 243.

Two other officers arrived at this time and joined the fray. T1 118-19, 156, 176; T2 236, 251-52. Feole punched Shaw in the ribs on his right side. T1 51-52. With his taser, Officer Steven DiChiara delivered “drive stuns” to Shaw’s exposed back. T1 76, 118-19, 157, 176-77, 205; T2 236-40, 255. The officers were able to get Shaw’s arms out and handcuff him. T1 118-19, 176-77; T2 244, 255.

Shaw refused medical treatment at the scene. T1 123. Officer Joseph DeFeudis seized Whitley’s phone in order to take the video of the incident into custody. T1 124; T2 256-57. Feole confirmed through dispatch that Shaw’s license was suspended on the date of the incident. T1 53. His license had been suspended for “default child support,” but

the month prior to this incident, child support had notified the court that it may reissue his license. Add. 45-49.

SUMMARY OF THE ARGUMENT

1. The court erred in denying Shaw's request for an *in camera* review of reports that may have been exculpatory. Shaw articulated a potential theory of defense – that he was justified in using force in response to the officers' excessive and unlawful use of force against him. He also sufficiently articulated a basis for believing that the records existed. The State's response was insufficient to ensure it was complying with its obligations and the court erred in denying the request.

2. The court *sua sponte* adopted an erroneous interpretation of the disobeying statute and instructed the jury according to that interpretation, adding language not included in the charging document. The court's jury instruction constituted plain error. That error impacted the jury's consideration of the close evidence on that charge.

I. THE COURT ERRED IN DENYING SHAW'S REQUEST FOR AN *IN CAMERA* REVIEW OF INFORMATION RELATED TO THE POLICE WITNESSES IN THE CASE.

Prior to trial, and in anticipation that the State would call several police officers as witnesses in the case, Shaw moved for an *in camera* review of information regarding the use of force by those officers in other cases and all disciplinary actions regarding the officers. Add. 35-39. Prior to filing the motion, Shaw had requested this information from the State, who responded that it could not provide that information without a court order. Add. 36. Shaw recognized that the information was protected but argued that the court should consider the matter under State v. Gagne, 136 N.H. 101 (1992). Add. 35-39. He argued that the requested materials may be relevant and material to a defense that his use of force was justified “due to the excessive and unlawful force” used by the officers. Add. 37.

The State objected, arguing that the request implicated the witnesses' personnel files and thus was governed by RSA 105:13-b. Add. 40-44. The State argued that Shaw had to show probable cause to believe the personnel files contained relevant information. Id. It asserted that “[i]f there was exculpatory information contained in the officer[s'] personnel files relating to their credibility, it would be disclosed to the Defendant.” Add. 43. Finally, the State seemed to acknowledge that the officers' prior use of force reports were

not contained within their personnel files but asserted that they were not relevant to the case. Id.

The court denied Shaw's motion "for the reasons set forth in the State's Objection." Add. 34. The court found that Shaw failed to meet his burden "to trigger in camera review of the police personnel files or other internal police files." Id. In so ruling, the court erred.

Shaw requested information in two categories: other instances of use of force by the officers and disciplinary actions involving the officers. The former related to reports generated in other cases and the latter implicated RSA 105:13-b, governing the confidentiality of police personnel files. This brief deals with the different law governing each request in separate sections below.

Shaw has a right to due process under Part I, Article 15 of the New Hampshire Constitution, which includes the right to material, exculpatory evidence, including impeachment evidence, in the State's possession. State v. Laurie, 139 N.H. 325, 327-30 (1995). The New Hampshire Constitution is more protective in this area than its federal counterpart. Id. at 330. The duty to turn over this material lies solely with the prosecution, the defendant does not have to ask for it, and there is no good faith exception if the State fails to comply with its obligation. Id. at 327; Gantert v. City of Rochester, 168 N.H. 640, 645 (2016). Nor does the evidence need to be

admissible; rather, the State is obligated to disclose “evidence [that] is material to the preparation or presentation of the defendant’s case.” Laurie, 139 N.H. at 332 (quotation omitted).

Although this Court generally reviews a trial court’s decisions on the management of discovery for an unsustainable exercise of discretion, where the court’s ruling is based on its construction of a statute, the Court’s review is *de novo*. Petition of N.H. Secy. of State & N.H. Attorney Gen., 171 N.H. 728, 734 (2019). For discovery issues generally, the defendant must demonstrate that the court’s rulings were clearly untenable or unreasonable to the prejudice of his case. Kurowski v. Town of Chester, 170 N.H. 307, 315 (2017). This Court has acknowledged the difficulty in determining after trial what effect improperly withheld exculpatory evidence had on the defense strategy and the outcome of the trial. Laurie, 139 N.H. at 332.

A. Reports of Use of Force

The court erred in denying Shaw’s request for an *in camera* review of reports of the officer-witnesses’ use of force in other cases based on its finding that these reports would be contained in “police personnel or other internal police files.” Add. 34. Rather, these reports were not likely to be

contained in personnel or other internal police files.³ As such, the State's only argument regarding this request was that the reports were not relevant under New Hampshire Rule of Evidence 401. In basing its ruling on a finding that these reports would be protected and in denying Shaw's request for an *in camera* review of them, the court erred.

Relevance is a concept governing the admissibility of evidence. N.H. R. Ev. 402. Relevance is not the touchstone for the State's discovery obligations. Rather, those obligations are to disclose evidence that is exculpatory. Exculpatory evidence need not be relevant or admissible, instead it may be "evidence [that] is material to the preparation or presentation of the defendant's case." Laurie, 139 N.H. at 332 (quotation omitted).

Here, Shaw articulated how reports of the officer-witnesses' use of force in other cases could be material to his defense. He was considering a defense that his actions were justified by the officers' excessive and unlawful use of force against him. Reports of use of force in other cases may have provided an argument that the officers were motivated to allege that Shaw assaulted them in order to hide their own, repeated use of force, which, if repeated, could result in disciplinary action. While there was no need to submit such

³ To the extent they may be contained within personnel or other internal police files, Shaw argues in Section B below that he met his burden to trigger an *in camera* review of those files for the requested materials.

reports for an *in camera* review, Shaw sought that relief after the State indicated it could not turn over any of the requested information without a court order.

The State argued that because there was a "video of nearly the entire encounter between [Shaw] and the officers," there was no need to disclose reports regarding their use of force in other cases. Add. 43. However, that video did not capture the entire interaction, Exh. A, including what was occurring when the officers deployed their tasers against Shaw. For this reason, the video evidence did not obviate the need for the State to disclose exculpatory evidence.

B. Disciplinary Actions

RSA 105:13-b governs the confidentiality of police personnel files. It first provides that "[e]xculpatory evidence in a police personnel file of a police officer who is serving as a witness in any criminal case shall be disclosed to the defendant." RSA 105:13-b, I. However, the statute is silent as to how the initial determination of whether exculpatory evidence exists in a personnel file is to be made or who must make that determination and disclose that information to the defendant. In other words, the statute specifies no mechanism for this required disclosure.

In an effort to meet prosecutors' obligations to provide exculpatory information from police personnel files, the

Attorney General issued a memorandum in 2004 creating such a mechanism, which came to be known as the “Laurie list.” Gantert, 168 N.H. at 645-47. This mechanism requires law enforcement agencies to retain potentially exculpatory material in an officer’s personnel file and to notify the county attorney that such material exists in that officer’s file. Id. at 646. The county attorney then must compile a confidential, comprehensive list of officers who have potentially exculpatory evidence in their personnel files. Id. By checking this list, prosecutors know whether there may be exculpatory evidence in an officer’s file. Duchesne v. Hillsborough County Atty., 167 N.H. 774, 782-83 (2015). However, it is unclear whether the list is complete or accurate. See, e.g., <https://www.concordmonitor.com/NH-Exculpatory-Evidence-Schedule-lawsuit-result-Right-To-Know-23727757>⁴ (unclear whether every agency has complied; “No process or rule forces departments to provide [the] information, officials with the state Department of Justice have said.”).

Evidence that the officer-witnesses in this case had used excessive force in other cases or had faced disciplinary actions is exculpatory. Shaw was exploring whether he could raise a justification defense and argue that the force he was alleged to have used against the officers was justified by their excessive and unlawful use of force against him. While prior

⁴ Last accessed December 17, 2019.

acts of excessive force may not have been admissible at trial, see, e.g., N.H. R. Ev. 404(b) (prior act evidence not admissible to show propensity), admissibility is not required. Rather, such evidence would have been material to the preparation of Shaw's defense. For example, a finding, contained within the officer's personnel file, that the officer used excessive force, could provide a motive to testify falsely if the officer feared more onerous disciplinary consequences of a repeat incident.

Disciplinary action would be contained in the officer's personnel file and is thus covered by RSA 105:13-b. The prosecutor initially responded to Shaw's discovery request by stating that it could not provide the information without a court order. Add. 36. In its objection, the State asserted that if there were any exculpatory information contained in the officers' personnel files, it "would be disclosed" to Shaw. Add. 43. However, the State did not indicate that it had looked in the officer-witnesses' personnel files for exculpatory evidence, that it had checked a list for the possible existence of exculpatory evidence, or that the Salem Police Department had even participated in the mechanism created by the Attorney General. Cf. State v. Amirault, 149 N.H. 541, 542 (2003) (prosecutor advised the trial court that it asked the police to look into the personnel files of all officers to be called as witnesses for Laurie material and police indicated they had done so). Because of the possibility that exculpatory evidence

existed in the personnel files of the officer-witnesses, the court erred in denying Shaw's request based on the State's unexplained assertion that exculpatory evidence, if any, would be disclosed. See, e.g., Amirault, 149 N.H. at 544-45 (remanding for *in camera* review based on State's "tentative and ambiguous" response regarding whether it had fulfilled its discovery obligations).

Even if the State had tried to satisfy its obligation to provide exculpatory evidence by using the list created by the Attorney General, Shaw met his burden to compel an *in camera* review of reports of use of force by the officer-witnesses. RSA 105:13-b, III allows for an *in camera* review of an officer's personnel file if "probable cause exists to believe that the file contains evidence relevant to that criminal case."

Shaw requested an *in camera* review of information related to any officer-witness's use of force. To the extent that information is contained in an officer's personnel file, Shaw established probable cause for an *in camera* review. This Court has looked to the standard for *in camera* review of confidential records found in State v. Gagne, 136 N.H. 101 (1992), in interpreting RSA 105:13-b. State v. Puzzanghera, 140 N.H. 105, 106 (1995). Under the Gagne standard, a defendant "must establish a reasonable probability that the records contain information that is material and relevant to [the] defense." Gagne, 136 N.H. at 105.

This “threshold showing is not unduly high.” State v. King, 162 N.H. 629, 632 (2011) (quotation omitted). “It requires only that a defendant meaningfully articulate how the information sought is relevant and material to his defense.” Id. “To do so, he must present a plausible theory of relevance and materiality sufficient to justify review of the protected documents, but he is not required to prove that his theory is true.” Id. (citation omitted).

Shaw articulated a theory for why the officers’ use of force in other situations could be material and relevant in his case. He argued that he was considering a defense that his use of force against the officers was justified by their excessive and unlawful use of force against him. This case is similar to In re State (Theodosopoulos), 153 N.H. 318, 319-22 (2006), in which this Court held that the defendant met the threshold showing to require review of personnel file for information about an officer-witness’s “use of police vehicles” in a case in which the officer was involved in a motor vehicle accident with the defendant. Here, Shaw sought information about the officer-witnesses’ use of force in other on-the-job situations. Because use of force is a common component of law enforcement, as is driving a police vehicle, Shaw was asking for information that was likely to exist.

While other acts of force against civilians may not be admissible at trial, that is not the standard for whether an *in*

camera review should take place. Rather, Shaw established that the information sought was material to the preparation of his defense. The trial court erred in finding that Shaw had not met his burden to trigger an *in camera* review.

II. THE COURT ERRED IN INSTRUCTING THE JURY ON THE DISOBEYING AN OFFICER CHARGE BY AMENDING THE LANGUAGE PLEAD IN THE CHARGING DOCUMENT.

The disobeying-an-officer charge alleged that “while driving or in charge of a vehicle, [Shaw] knowingly refused on demand of a law enforcement officer, Ofc. Andrew Feole, to produce his license to drive such vehicle.” T1 5-6. Feole testified that Shaw showed him his license but then folded it up in a piece of paper and would not let Feole hold it. T1 42-44, 57, 88-90. Feole’s testimony raised the question of whether Shaw had “produced” his license. T1 89-90, 229-30; T2 270-71. The court considered whether it should provide the jury with a definition of the word “produce.” T1 229-30; T2 271-73.

In drafting the instructions on the disobeying charge, the court and the parties also discussed the alternate version of disobeying an officer, defined in RSA 265:4, I(e), that had not been charged. RSA 265:4 defines the crime of disobeying an officer as follows:

I. No person, while driving or in charge of a vehicle, shall:

(a) Refuse, when requested by a law enforcement officer, to give his name, address, date of birth, and the name and address of the owner of such vehicle;

. . .

(e) Refuse, on demand of such officer, to produce his license to drive such vehicle or his certificate of registration or to permit such officer to take the license or certificate in hand for the purpose of examination.

Shaw requested an instruction to the effect that Shaw was not charged with refusing “to permit” the officer “to take the license . . . in hand.” T2 271-72. After hearing a response from the State, the court granted that request, “given the testimony in the case, the juxtaposition on the State’s failure to seek to amend the charge at this juncture.” T2 271-72. The court found that it made “sense to draw the jury’s attention to that distinction.” T2 272.

In drafting its instruction, the court concluded that the statute provided two ways it could be violated – refusing, on demand, to “produce” or “to permit” an officer to “take . . . in hand” a driver’s license or registration – but that the statute modified both variations of the *actus reus* with the phrase “for the purpose of examination.” T2 276-77. The court ruled that it would instruct the jury: 1) that Shaw was charged with refusing to produce his license “for the purpose of examination,” 2) that Shaw was not charged with refusing to permit the officer to take the license in hand, and 3) that “produce” means “to offer to view, exhibit, or to show.” T2 277.

Shaw objected to inclusion of the phrase “for the purpose of examination,” arguing that that was not how the State had charged the crime. T2 277-78. Shaw did not object to including a definition of the word “produce.” T2 278. The court understood Shaw to be arguing that the court was “amending the complaint” by adding the phrase “for the purpose of examination.” T2 279. However, the court based its ruling on a finding that its language “correctly informed the jury on the law of the elements of the charge.” T2 280. The court then instructed the jury consistent with its ruling. T2 346-47. In so ruling, the court erred.

The “scope and wording” of an instruction “generally falls within the sound discretion of the trial court.” State v. Woodbury, 172 N.H. 358, 366 (2019). However, when a jury instruction involves the interpretation of a provision of the Criminal Code, the Court will review it *de novo*. Id.

The Court construes “the Criminal Code according to the fair import of its terms and to promote justice.” Id. (quotation omitted). The Court will look first “to the language of the statute itself, and, if possible, construe that language according to its plain and ordinary meaning.” Id. The Court interprets “legislative intent from the statute as written and will not consider what the legislature might have said or add language that the legislature did not see fit to include.” Id.

Although the court considered *sua sponte* whether the phrase “for the purpose of examination” modified the *actus reus* of refusing to produce a license, and Shaw objected to inclusion of that phrase in the jury instructions, Shaw’s objection did not focus on whether the court was correctly interpreting the statute. Thus, Shaw raises this issue as both preserved and as plain error, under Supreme Court Rule 16-A.

“The plain error rule allows [the Court] to exercise [its] discretion to correct errors not raised before the trial court.” State v. Stillwell, ___ N.H. ___ (slip op. at 14) (decided September 18, 2019) (quotation omitted). In order to find plain error, “(1) there must be an error; (2) the error must be plain; (3) the error must affect substantial rights; and (4) the error must seriously affect the fairness, integrity or public reputation of judicial proceedings.” Id. (quotation omitted).

This Court recently engaged in statutory interpretation in a similar context. In Woodbury, the Court interpreted the falsifying physical evidence statute, RSA 641:6, which requires the State to prove one of the following alternatives: that the defendant acted with the belief “that an official proceeding, as defined in RSA 641:1, II, or investigation is pending or about to be instituted.” Woodbury, 172 N.H. at 365. The defendant argued that the adjective “official” modified both “proceeding” and “investigation.” Id. at 365-66.

The Woodbury Court found from the plain language of the statute that the legislature did not intend “official” to modify “investigation.” Id. at 366. It based this conclusion on two findings, id., both of which support Shaw’s argument on appeal.

First, the Woodbury Court found significant that the alternatives were separated by the word “or,” which is a “function word to indicate an alternative between different or unlike things.” Id. (quotation omitted). Here, the two alternative versions of the *actus reus*, “to produce” and “to permit such officer to take the license . . . in hand,” are separated by the word “or.” RSA 265:4, I(e).

Second, the Woodbury Court found significant that the two nouns at issue in the falsifying statute, “proceeding” and “investigation,” were separated by a phrase “as defined in RSA 641:1, II,” which the Court found intended to indicate that “official proceeding” is a term of art whereas “investigation” is not. Woodbury, 172 N.H. at 366.

Here, the two verbs in this subsection of the disobeying statute are separated by the phrase “his license to drive such vehicle or his certificate of registration.” RSA 265:4, I(e). Those concepts are then repeated after the second verb: “to permit such officer to take the license or certificate in hand.” Id. Following this variant are the words “for the purpose of

examination.” Id. See also State v. Brooks, 164 N.H. 272, 292 (2012) (applying “last antecedent rule”).

If the legislature intended “for the purpose of examination” to modify both verbs, it could have included that phrase in the initial part of the subparagraph, which applies to both variants: “refuse, on demand of such officer.” Thus, had the legislature enacted a statute that read “refuse, on demand of such officer for the purpose of examination, to produce his license . . . or permit such officer to take the license . . . in hand,” that would clearly communicate that either variant is triggered by impeding the officer’s ability to examine the driver’s license. That is not the statute the legislature enacted.

Moreover, it makes sense that the legislature would require a driver either to produce a license, that is display or show it, or to allow the officer to demand in-hand possession of the license only for the purpose of examining it. This legislative purpose is reinforced by RSA 263:2, requiring drivers to be in possession of their licenses. That statute provides that a driver shall “display [their license] on demand and manually surrender the same into the hands of the demanding officer for the inspection thereof.” Id.

The court erred in its interpretation of the disobeying statute and, in so doing, the court added words the legislature did not intend to be added to the variant of the

crime that was charged in this case. Because statutes are interpreted first by reference to their plain language, the court plainly erred in its interpretation.

This error affected substantial rights. Feole's testimony established that Shaw produced his license for Feole. T1 90. The court added a concept, the officer's purpose, that was not required by the variant of the crime charged. This was a charge and a set of circumstances the jury clearly considered carefully. Approximately two hours after retiring to deliberate, T2 351, the jury asked the court to define the word "show" in the context of an officer's request to produce a license, asked whether the officer must be able to read and acknowledge the information on the license, and asked whether there was a legal time limit for an officer to be shown a license. Add. 50-51.

Given the jury's close scrutiny of the instruction on the disobeying charge and the erroneous interpretation of that statute upon which the instruction was based, this error seriously affects the fairness, integrity or public reputation of judicial proceedings. This Court must reverse.

CONCLUSION

WHEREFORE, Joshua Shaw respectfully requests that this Court reverse and remand.

Undersigned counsel requests ten minutes of oral argument before a 3JX panel of this Court.

The appealed decision in Issue I is in writing and is appended to the brief. The decision in Issue II was not in writing.

This brief complies with the applicable word limitation and contains under 5625 words.

Respectfully submitted,

By /s/ Stephanie Hausman
Stephanie Hausman, 15337
Deputy Chief Appellate Defender
Appellate Defender Program
10 Ferry Street, Suite 202
Concord, NH 03301

CERTIFICATE OF SERVICE

I hereby certify that the foregoing brief is being timely provided to the Criminal Bureau of the New Hampshire Attorney General's Office through the electronic filing system's electronic service.

/s/ Stephanie Hausman
Stephanie Hausman

DATED: January 7, 2020

A D D E N D U M

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**THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
SUPERIOR COURT**

Rockingham Superior Court
Rockingham Cty Courthouse/PO Box 1258
Kingston NH 03848-1258

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

NOTICE OF DECISION

FILE COPY

Case Name: **State v. Joshua L. Shaw**
Case Number: **218-2018-CR-00365**

Please be advised that on August 07, 2018 Judge Delker made the following order relative to:

Motion for In Camera Review

"Denied for the reasons set forth in the State's Objection. The defendant has failed to meet its burden to trigger in camera review of the police personnel or other internal police files."

August 22, 2018

Maureen F. O'Neil
Clerk of Court

(695)

C: Melissa E. Fales, ESQ; Joseph J. Prieto, ESQ

STATE OF NEW HAMPSHIRE

Rockingham, ss.

Superior Court

State of New Hampshire

v.

Joshua Shaw

)
)
)
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)

Docket No. 218-2018-CR-365

MOTION FOR IN-CAMERA REVIEW

NOW COMES Joshua Shaw, the Defendant in the above titled matter, by and through counsel, Joseph Prieto, Esq., and requests that this Honorable Court compel the State to provide certain discovery information such that it may conduct an in-camera review. In support, the following is stated:

FACTS

1. The Defendant has been charged with reckless conduct, driving after revocation or suspension, resisting arrest, disobeying an officer, and two counts of simple assault.
2. It is alleged that the Defendant refused to give his license to a Salem Police officer and subsequently refused to exit his vehicle so that Salem officers could effectuate an arrest. As the Defendant refused to exit the vehicle, an officer smashed his driver's side window and multiple officers attempted to pull the Defendant from the vehicle. During this incident, it is alleged that the Defendant kicked out of his window and struck two officers. The Defendant also allegedly placed a key in between his fists and swung the same at officers. Officers were eventually able to pull the Defendant from the vehicle. In doing so, the Defendant was tazed multiple times and struck by several officers.

3. On May 14, 2018, counsel for the Defendant sent a discovery request to the State requesting the following:
 - Please provide us with information concerning any and all matters whereby force was used on an individual and involving any of the Salem Police officers involved in this matter.
 - Please provide us with information concerning any and all disciplinary actions regarding the Salem Police officers involved in this matter.
4. On May 18, 2018, counsel for the State, through email, indicated that the State could not provide this information absent a court order.

ARGUMENT

5. The Defendant seeks an in-camera review of the requested information and subsequent disclosure so that it may be used in his defense.
6. This is the appropriate method to be employed when the defendant seeks materials which are subject to a privilege. See, *State v. Gagne*, 136 N.H. 101 (1992). Thus, the Court's analysis is also twofold. First, the Court must determine if in-camera review is appropriate. Second, if the Court undertakes in-camera review, it must determine whether the defendant is entitled to use the discovery sought. *State v. Gagne*, 136 N.H. at 104.
7. In *Gagne*, the New Hampshire Supreme Court recognized that "trial courts cannot realistically expect defendants to articulate the precise nature of the confidential records without having prior access to them." *Id.* at 105. The Court went on to hold that a defendant need only establish "a reasonable probability that the records contain information that is material and relevant to his defense." *Id.*
8. In *State v. Graham*, 142 N.H. 357 (1997), the New Hampshire Supreme Court stated that:

The threshold showing necessary to trigger an in-camera review is not unduly high. The defendant must meaningfully articulate how the information sought is relevant and material to his defense. To do so, he must present a plausible theory of relevance and materiality sufficient to justify review of the protected documents, but he is not required to prove that his theory is true. At a minimum, a defendant must present some specific concern, based on more than mere conjecture, that, in reasonable probability, will be explained by the information sought. *State v. Graham*, 142 N.H. at 363.

9. Finally, the *Graham* Court recognized that “setting the bar too high” risks violation of the right to due process as guaranteed by Part I Article 15 of the New Hampshire Constitution. *Id.*
10. Here, in-camera review is appropriate as there is a reasonable probability that the review will provide evidence that is relevant and material to the Defendant’s potential defense.
11. The Defendant asserts that any force used by him was justified due to the excessive and unlawful force of the Salem Police officers.
12. There is a reasonable probability that an in-camera review will reveal information relevant to this defense. By way of example, information concerning disciplinary actions of the involved officers and any previous use of force employed by these officers is highly relevant to this defense. It should also be noted that the controversial arrest of Bob Anderson earlier this year involved the Salem Police Department, involved an excessive use of force and use of tasers, and may very well have involved some of the same officers.

13. Further, it seems apparent from the evidence provided that the officers involved did not, at a minimum, follow proper procedure. The Practice and Procedures of the Salem Police Department regarding the use of force state that:

“The TASER may be used in those situations where:

- a. A subject is threatening him/herself, an officer, or another person with physical force and other means of controlling the subject are unreasonable or could cause injury to the officer(s), the subject(s), or other(s), OR
- b. In cases where officer/subject factor indicate the officer(s), offender(s), or other(s) would be endangered by the use of physical force, OR
- c. Other means of lesser or equal force have been ineffective and the threat still exists to the officer(s), subject(s), and others.”

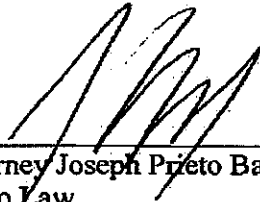
14. None of these three enumerated situations were present in this matter and thus any previous actions by the involved officers whereby they failed to follow policy is extremely relevant.

15. Given the fact that this information potentially implicates the Defendant’s ability to adequately cross-examine the involved officers, as well as present the potential defense of justification, this information should be disclosed to the Court for an in-camera review.

WHEREFORE, the Plaintiff respectfully requests that this Court:

- A. Grant this Motion and compel the State to provide the requested information for an in-camera review; and,
- B. Grant any further relief as is just and fair.

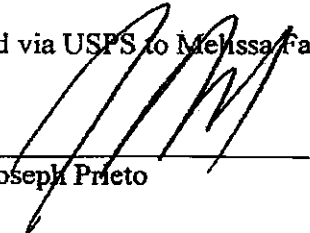
Respectfully submitted,



Attorney Joseph Prieto Bar # 15040
Prieto Law
121 Bay Street
Manchester, N.H. 03104
603-232-2085
603-232-3473 (fax)
207-752-2098 (cell)

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been forwarded via USPS to Melissa Fales, Esq.,
counsel for the State on this 25th day of June, 2018.



Joseph Prieto

ROCKINGHAM, SS.

STATE OF NEW HAMPSHIRE
SUPERIOR COURT

2018 JUL -5 A 9:52

SUPERIOR COURT
218-2018-CR-00365

STATE OF NEW HAMPSHIRE

v.

JOSHUA L. SHAW

STATE'S OBJECTION TO DEFENDANT'S MOTION FOR *IN CAMERA* REVIEW

NOW COMES the State of New Hampshire, by and through the Office of the Rockingham County Attorney, Melissa E. Fales, Assistant County Attorney and states as follows:

I. Factual and Procedural History

1. On March 14, 2018, at 8:40 in the morning, Salem Police Officer Andrew Feole was working patrol on South Broadway. He observed a gray GMC Sierra pickup truck with the license plate covered with snow. He saw the truck was towing a trailer with a Michigan registration and was registered to this Defendant. A check of the Defendant's license showed that it was suspended. The driver matched the descriptors listed for the Defendant.
2. Officer Feole conducted a motor vehicle stop and asked the Defendant for his license and registration. The Defendant asked why he had been pulled over and Officer Feole explained that his license plate was covered with snow and the registered owner's license was showing suspended based on running the trailer plate. The Defendant insisted that his driver's license was valid and pulled it out of the visor of the vehicle, however, he would not produce his license or registration to Officer Feole and put it back in the visor rather than providing it to Officer Feole.
3. Officer Feole explained that not providing his license was a crime and the Defendant said something to the effect of "let's get on with the getting arrested." Officer Feole called for backup and Officer Mackenzie, Sergeant Genest, and Lieutenant Fitzgerald arrived. Officer Feole asked the Defendant to step out of the vehicle and he said no. Multiple officers told him he was under arrest and needed to step out of the vehicle multiple times. The Defendant then locked the door and rolled the window up. Sergeant Genest attempted to have the Defendant roll down the window or open the door, but he refused. Sergeant Genest then told the Defendant he was going to break the window and he did. After breaking the window, Officers attempted to open the door to remove the Defendant but were unsuccessful because he kept locking the door. The Defendant also took his keys out of the ignition and put them between his fingers and began swinging his fists at

the officers. He then leaned back and kicked his feet out of the window hitting both Officer Mackenzie and Sergeant Genest. Both of those officers deployed their TASERs at after being kicked, but the TASER deployment was unsuccessful. At that point, Sergeant Genest ran around to the passenger side and ordered the Defendant's passenger out of the vehicle. She refused and Sergeant Genest broke the passenger side window and to get her out of the vehicle. At that point, officers were able to pull the Defendant out of the vehicle and on to the ground. The Defendant continued to resist arrest and fight with officers and Officer DiChiara deployed his TASER finally enabling officers to handcuff the Defendant using three sets of handcuffs due to his large size.

4. The Defendant makes two requests:

- a. For any and all matters whereby force was used on an individual and involving any of the Salem Police officers involved in this matter; and,
- b. Any and all disciplinary actions regarding the Salem Police officers involved in this matter.

See Def's. Mot. for In-Camera Review at ¶ 3.

5. The State objects to the Defendant's requests.

II. Legal Analysis

A. The Defendant Has Not Met His Burden for In Camera Review of Personnel Files.

6. The New Hampshire Supreme Court has adopted a statute to ensure the confidentiality of police personnel files. It states, "[n]o personnel file of a police officer who is serving as a witness or prosecutor in a criminal case shall be opened for the purposes of obtaining or reviewing non-exculpatory evidence in that criminal case, unless the sitting judge makes a specific ruling that probable cause exists to believe that the file contains evidence relevant to that criminal case." N.H. RSA 105:13-b.
7. The New Hampshire Supreme Court has had occasion to address the probable cause standard articulated in RSA 105:13-b in State v. Puzzanghera, 140 N.H. 105 (1995)¹. The Court reiterated the statutory standard that probable cause must be established by the defendant showing that the file contains evidence relevant to his case in a manner analogous to the principles set forth in Gagne and Taylor. For the Court to grant an *in camera* review of privileged records, a Defendant is required to articulate "a reasonable probability that the records contain information that is relevant and material to his defense." State v. Gagne, 136 NH 101 (1992). (citing State v. Graham, 142 N.H. 357

¹ RSA 105:13-b was repealed and re-enacted in 2012. The 2012 amendment retained the language of the statute mandating a finding of probable cause to believe the file contains evidence relevant to a criminal case. The amendment imposed additional requirements on the State to disclose exculpatory evidence in a police personnel file to the defendant or seek a determination by the court if the State was unsure whether certain evidence was exculpatory. RSA 105:13-b; see also State v. Rand, 2014 WL 11485797 (December 4, 2014).

(1997)). However, the showing must be based on more than bare conjecture and the defendant must present some specific concern that in reasonable probability will be explained by the information sought. State v. King, 162 N.H. 629 (2011) (quoting State v. Hoag, 145 N.H. 47, 49 (2000)). The defendant in Puzzanghera alleged that the officer had used drugs with him and that he had sought drug rehabilitation. Id. at 107. The Court held that the defendant failed to meet his burden of proof and specifically found that rumors about the officer's participation in a drug rehabilitation program are nothing more than mere assertions of suspicion, which deserve little weight in determining whether probable cause exists. Id.

8. In another case, State v. Ainsworth, the Supreme Court again upheld the trial court's denial of a defense request for police personnel records. State v. Ainsworth, 151 N.H. 691 (2005). In that case, the Defendant filed a notice of self-defense indicating that he needed to defend himself against the arresting officers. Id. at 693. The defendant alleged that the police personnel files may contain information relevant to his claim of self-defense. Id. The trial court denied the motion finding that it is the defendant's burden to establish a realistic and substantial likelihood that evidence helpful to his defense would be obtained from the officers' personnel files. Id. at 694 (citing State v. Gaffney, 147 N.H. 550 (2002)). To meet this threshold requirement, the defendant must present a plausible theory of relevance and materiality sufficient to justify review of otherwise protected documents. Id. (citing State v. Amirault, 149 N.H. 541, 543 (2003)). The Court found that although the standard for *in camera* review is not unduly high, the burden still falls with the defendant to meet the established standard as set forth above. Id. at 695.
9. The Defendant cites the following reasons to support his burden and show that he is entitled to the records that he now seeks.
 - a. Another pending case in this Court, State v. Andersen, involved the Salem Police Department using TASER deployment and force to effectuate an arrest. See Def's. Mot to Compel at ¶12; and,
 - b. The Officers involved did not follow proper procedure when deploying their TASERS;
10. The State has reviewed the discovery in the matter of State v. Andersen. There are no officers that were involved in the traffic stop and arrest of the Defendant that were also involved in the arrest of Mr. Andersen. There was one officer, Officer DiChiara, who was involved in this case and also responded to the scene in the Anderson case after the defendant had already been arrested. In the Andersen case Officer DiChiara's involvement was limited to clearing the scene after the defendant had already been arrested. In this case, he deployed his TASER when the Defendant refused to put his hands behind his back after being removed from his vehicle. The defendant's assertion that some of the same officers were involved in both the use of force against this Defendant and the use of force against Mr. Andersen are simply not true and he presented no information to support his theory, which is refuted by the State.
11. The State disagrees with the Defendant's assertion that the officers did not follow proper procedure when deploying their TASERS. At the time that the officers first used a

TASER the Defendant had already assaulted two officers and was swinging his fists at them with his keys protruding as a weapon. Officers had repeatedly tried to reason with him to get him out of the vehicle and attempts to open his door were met with assaultive behavior and resistance. The State firmly asserts that this behavior was threatening to the officers and other means of controlling the Defendant at that point were unreasonable or could cause further injury to the officers. The Defendant continued resisting and assaulting officers when he was removed from the vehicle and would not give the officers his hands so that he could be handcuffed continuing to fight with them. Again, the officers were left with no other recourse at that point then to handcuff the Defendant who had already assaulted two officers and had been resisting arrest for the entire encounter with police.

12. Both of the Defendant's reasons for requesting the officer's personnel records are refuted by the evidence in the case. Even assuming for the purposes of argument only that his assertions were true, the Defendant still does not meet his burden in showing that the personnel files of the officers would contain information that is material and relevant to his defense. If there was exculpatory information contained in the officer's personnel files relating to their credibility, it would be disclosed to the Defendant. That is not the case here, the Defendant is simply on a fishing expedition to obtain any disciplinary actions taken against these officers regardless of whether or not it had to do with credibility issues.

B. Officers Prior Use of Force Reports Are Not Relevant Evidence in this Case.

13. The defendant's request for use of force reports is not relevant to the facts at issue here. There is a video of nearly the entire encounter between the Defendant and the officers that has been provided in discovery. The officer's use of force can be explored by the Defendant on cross examination and the jury can draw conclusions based on the evidence contained in the video and the officer's testimony, as well as any evidence presented by the defendant regarding whether he acted in self-defense. He asserts no basis for the Court to find that any officer's previous use of force is relevant to the question that will be before this jury, which is whether or not the Defendant acted in self-defense in the instant case. The disclosure of prior use of force reports will not have any tendency to make the existence of any fact that is of consequence to the determination of the action more probable than it would be without the evidence. See N.H. Rule of Evid. 401.

III. Conclusion

14. The Defendant's Motion for In-Camera Review should be denied for the following reasons:
 - a. He has failed to meet his burden of showing that records contained in police personnel files contain a substantial and realistic likelihood that the files contain information relevant to his defense; and,
 - b. He has failed to meet his burden of showing that use of force reports are relevant to his defense and will have any tendency to make the existence of any fact that is

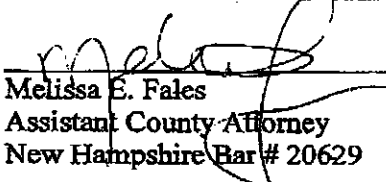
of consequence to the determination of the action more probable than it would be without the evidence.

WHEREFORE, the State requests that this Honorable Court:

- A. Deny the Defendant's Motion without a hearing; or
- B. Hold a hearing on the matter; or
- C. Grant any other relief deemed proper and just.

July 5, 2018

Respectfully Submitted,
STATE OF NEW HAMPSHIRE

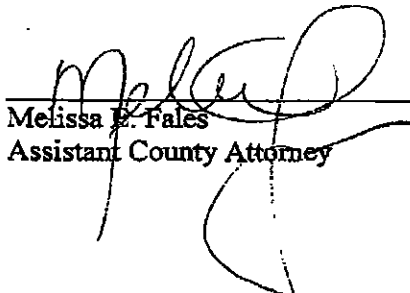


Melissa E. Fales
Assistant County Attorney
New Hampshire Bar # 20629

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing State's Pleading has on this date been forwarded to defense counsel Joseph J. Prieto, attorney for defendant, at 121 Bay Street Manchester, NH 03104.

July 5, 2018



Melissa E. Fales
Assistant County Attorney



John J. Barthelmes
Commissioner of Safety

State of New Hampshire

DEPARTMENT OF SAFETY DIVISION OF MOTOR VEHICLES STEPHEN E. MERRILL BUILDING

23 HAZEN DRIVE, CONCORD, NH 03305
Telephone: (603)227-4000 TDD Access Relay NH 7-1-1



Elizabeth A. Bielecki
Director of Motor Vehicles

Driver Record Report – Driver History

Date of Print: 04/03/2018

Requestor:

ROCKINGHAM COUNTY ATTORNEY
PO BOX 1209
KINGSTON NH - 03848

Driving Record of: JOSHUA L SHAW

PO BOX 1396
DERRY NH - 03038
03/09/1978
NHI18094863

CERTIFIED COPY SHOWING CONVICTIONS, ACCIDENTS, HEARINGS, MAIL RETURN ADDRESS UPDATES AND SANCTIONS.

PROBATIONARY STATUS IS IN EFFECT AS OF: 12/02/2012

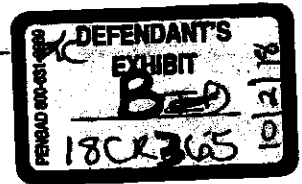
NO PROOF OF FINANCIAL RESPONSIBILITY (SR-22) IS REQUIRED

ADDRESS SHOWN REFLECTS MOST CURRENT ADDRESS APPEARING ON THE FILES OF THE DIVISION OF MOTOR VEHICLES.

SUSPENSION/REVOCATION IN EFFECT FOR LICENSE/OPERATING PRIVILEGE AS OF THE DATE OF THIS RECORD.

SANCTION START DATE: 08/31/2015	PRIVILEGE TYPE: OPERATING PRIVILEGE	SANCTION TYPE: SUSPENSION
RSA/ACD: 161-B:11	RSA/ACD DESCRIPTION: DEFAULT CHILD SUPPORT	DATE OF NOTICE: 8/21/2015
SUSPENSION DURATION: INDEFINITE SUSPENSION	JURISDICTION CODE: NH	
COMPLIANCE REQUIREMENTS: CHILD SUPPORT COMPLIANCE DOCUMENT		
SOURCE OF SANCTION: ADMINISTRATIVE		

SANCTION START DATE: 08/31/2015	PRIVILEGE TYPE: OPERATING PRIVILEGE	SANCTION TYPE: SUSPENSION
RSA/ACD: 161-B:11	RSA/ACD DESCRIPTION: DEFAULT CHILD SUPPORT	DATE OF NOTICE: 8/21/2015
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COMPLIANCE REQUIREMENTS: CHILD SUPPORT COMPLIANCE DOCUMENT		
SOURCE OF SANCTION: ADMINISTRATIVE		



CERTIFICATE OF AUTHENTICITY OF BUSINESS RECORDS

(Pursuant to New Hampshire Rules of Evidence 803(6) and 902(11))

I, Barbara Staires, am employed by/associated with
NH DHHS: Bureau of Child Support Services. My official title is
SUPERVISOR V. By reason of my position I am familiar with how BCSS
maintains records relating to its regularly conducted business activity, and I am authorized and
qualified to make this declaration.

I further certify the attached records are originals or true copies of records which:

- A. Were made at or near the dates specified on each record and were accurate as of that date as set forth in the records by a person with knowledge of those matters, or from information transmitted by a person with knowledge of those matters;
- B. Were kept in the course of regularly conducted business activity;
- C. Were made by the said business activity as a regular practice; and
- D. If not original records, are duplicates of original records.

I declare under penalty of criminal punishment for perjury and false statement that the foregoing is true and correct.

Executed on: 10/2/18

Barbara Staires
Signature
Barbara Staires
Printed Name

Xerox WorkCentre 5335

Transmission Report

G3-ID
Local Name
Company Logo

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DHHS-CNW-DO-DVYF-227

Date & Time : 02/07/2018 3:59 PM
Page : 1 (Last Page)

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Jeffrey A. Morone
Acting Commissioner
Carol K. Elders
Director

STATE OF NEW HAMPSHIRE DEPARTMENT OF HEALTH AND HUMAN SERVICES

130 PLEASANT STREET, CONCORD, NH 03301
603-271-8404 1-800-953-3246 Ext. 2101
Fax: 603-271-4133 TDD Access: 1-800-735-1291 www.dhhs.nh.gov

FAX COVER SHEET

Family Assistance Division, Elderly & Adult Services Bureau and Child Support Services
FAX Number: 603-447-1996

Children, Youth & Families Division
FAX Number: 603-447-3388

DATE: 2/7/18
NUMBER OF PAGES (INCLUDING FAX): 2
TO: NH DMV - Inger
AGENCY/COMPANY: Att: Michele or Danielle
FAX NUMBER: 271-1555
FROM: Barbara Stares
AGENCY/COMPANY: NH DCS
FAX NUMBER: - Phone #- 603-447-1457
COMMENTS: Please rescind license rev. Payor has come
into Compliance. Thank You

The information contained in this facsimile is confidential information intended for the individual or company named above. If the reader of this message is not the named addressee, or the person responsible to deliver it to the named addressee, you are hereby notified that any dissemination, distribution or duplication of this communication, or any part thereof, is strictly prohibited. If you have received this communication in error, or are not sure whether it is privileged, please notify this office immediately by telephone and return the original to us at our expense. Thank you.

The Department of Health and Human Services' mission is to join communities and families in providing opportunities for citizens to achieve health and independence.

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1	2576	2711555	2-7: 3:58 PM	23 Secs	2/2	Super G3		Completed

CONWAY DISTRICT 11016
NH Department of Health & Human Services
Division of Child Support Services
73 HOBBS ST
CONWAY NH 03818-6188

DCSS 617
08/06

FEBRUARY 6, 2018

DEPT OF MOTOR VEHICLES
DIVISION OF MOTOR VEHICLE
23 HAZEN DRIVE
CONCORD NH 03305-0002

NOTICE TO RESCIND LICENSE REVOCATION

RE: JOSHUA L SHAW
75 ROUTE 16B UNIT 3A
CTR OSSIPEE NH 03814-6843

DOB: 03/09/1978
SSN: 031-68-9430
Court: MERRIMACK CNTY SUPERIOR COURT
Court Case: 04M0475
Child Support Case ID: 00087502C
Child Support Out-of-State Case ID:

The NH Division of Child Support Services (DCSS) has determined you may now grant, reissue, or renew the above-named individual's license(s), unless the license was revoked for another reason. If any fee(s) are associated with the process, it is NOT DCSS' responsibility to pay the fee(s).

If you need confirmation of the information in this notice, you may contact me at the telephone number listed below

Sincerely,



Child Support Representative
Division of Child Support Services
(603)447-3841

cc: JOSHUA L SHAW



State of New Hampshire • Department of Health and Human Services • Division of Child Support Services

TDD Access: Relay NH 1-800-735-2964

EN47
DCSS PR 01-06

CONWAY DISTRICT 11016
NH Department of Health & Human Services
Division of Child Support Services
73 HOBBS ST
CONWAY NH 03818-6188

DCSS 617
08/06

FEBRUARY 6, 2018

DEPT OF MOTOR VEHICLES
DIVISION OF MOTOR VEHICLE
23 HAZEN DRIVE
CONCORD NH 03305-0002

NOTICE TO RESCIND LICENSE REVOCATION

RE: JOSHUA L SHAW
75 ROUTE 16B UNIT 3A
CTR OSSIPEE NH 03814-6843

DOB: 03/09/1978
SSN: 031-68-9430
Court: CONCORD FAMILY DIVISION
Court Case: 62908M0241
Child Support Case ID: 00099799C
Child Support Out-of-State Case ID:

The NH Division of Child Support Services (DCSS) has determined you may now grant, reissue, or renew the above-named individual's license(s), unless the license was revoked for another reason. If any fee(s) are associated with the process, it is NOT DCSS' responsibility to pay the fee(s).

If you need confirmation of the information in this notice, you may contact me at the telephone number listed below

Sincerely,



Child Support Representative
Division of Child Support Services
(603)447-3841

cc: JOSHUA L SHAW

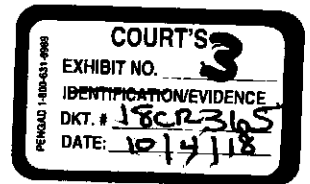


State of New Hampshire • Department of Health and Human Services • Division of Child Support Services

TDD Access: Relay NH 1-800-735-2964

EN47
DCSS PR 01-06

**The State of New Hampshire
Superior Court**



Rockingham, SS.

STATE OF NEW HAMPSHIRE

V.

JOSHUA SHAW

NO. 218-2018-CR-0365

JURY QUESTION (10/3/2018 AT 3:20 PM)

You asked: "Please define 'show' when an officer asks someone to produce a license. Must the officer be able to read and acknowledge the info. on the license?" You also asked "Is there a legal time limit for an officer to be "shown a license"?"

Answer: The law does not further define the term "show." You are to consider that word in the way it is used in ordinary English language. With respect to your other questions, you should determine whether from all of the facts and circumstances the State has proven each element of the charge beyond a reasonable doubt.

10/3/2018
DATE:

N. William Delker
N. William Delker
Presiding Justice

332 JRB

Is there a
legal time
limit for an
officer to be "shown"
a license

10/3 3:20 pm

10/3/18
8:19
Please define "show"
When an officer asks
someone to produce a license,
must the officer be able to
read & acknowledge the
info. on license?