THE STATE OF NEW HAMPSHIRE
SUPREME COURT

No. 2019-0407

State of New Hampshire

v.

Melanie Parry

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

BRIEF FOR THE DEFENDANT

Christopher M. Johnson
Chief Appellate Defender
Appellate Defender Program
10 Ferry Street, Suite 202
Concord, NH 03301
NH Bar # 15149
603-224-1236
(15 minutes oral argument)

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QUESTION PRESENTED

Whether the court erred in its rulings about the voluntary-act element.

Issue preserved by defense requests for a jury instruction and defense objection to the prosecutor's closing argument, and the court's rulings. T 142-46, 179-80.*

* Citations to the record are as follows:
"A" refers to the addendum to this brief;
"T" refers to the consecutively-paginated transcript of the two-day trial held in March 2019.

TEXT OF RELEVANT AUTHORITIES

N.H. RSA 626:1 Requirement of a Voluntary Act. –

I. A person is not guilty of an offense unless his criminal liability is based on conduct that includes a voluntary act or the voluntary omission to perform an act of which he is physically capable.

II. Possession is a voluntary act if the possessor knowingly procured or received the thing possessed or was aware of his control thereof for a sufficient period to have been able to terminate his possession.

STATEMENT OF THE CASE

In 2016, a Grafton County grand jury indicted Melanie Parry, charging that on August 18, 2015, she possessed crack cocaine. A29. Parry stood trial over two days in March 2019, and was convicted as charged. T 195-97. The trial court (MacLeod, J.) sentenced her to a stand-committed term of twelve months, deferred for one year, and to three years of probation. A30-A31.

STATEMENT OF THE FACTS

On August 18, 2015, Lebanon police officer Jeremy Perkins was traveling behind a car on I-89 when he saw it experience some "lane-control issues . . . swerving in and out of its lane from the shoulder to the opposite lane, and back . . . ." T 18, 20, 45. Perkins followed the car for a period during which he saw no further driving irregularities, but nevertheless stopped it upon reaching a place on the highway he regarded as safe. T 20-21. Because Perkins delayed more than thirty seconds after seeing the "lane-control issues" before turning on his blue lights to stop the car, his dashboard camera recorded no problematic driving.[1]

The car pulled over promptly, and Perkins approached the driver, Michael LaFountain. T 21. Melanie Parry sat in the passenger's seat. T 21-22. Perkins soon determined that LaFountain was not impaired. T 45-46. While speaking with LaFountain, Perkins smelled the odor of burnt marijuana, and noticed on Parry's arms track marks suggestive of intravenous drug use. T 22-24, 51-52. When he asked about the odor of marijuana, Perkins saw Parry "grab[] her purse, and grasp[] it, almost like hugging it in fear." T 26. Perkins asked LaFountain for consent to search the car, which LaFountain granted. T 27-29, 48.

[1] Perkins testified that the cruiser's automatic dashboard camera is connected to the blue-lights system such that the camera saves for later retrieval video beginning thirty seconds before the officer turns on the blue lights. T 42-43.

When a back-up officer arrived, Perkins began the search process by asking Parry to step out of the car. T 30-31. Parry brought her purse with her out of the car, prompting Perkins to ask to search her purse. T 31-32. Parry replied that she would show him the contents of her purse, and held it out for his inspection, but in such a way that Perkins found it difficult to see its contents. T 32-33, 49. Perkins repeated his request to search the purse, and Parry agreed, while saying she did not want Perkins to dump out the contents. T 33, 49-50. Perkins said that he would not do so and took the purse to the back of LaFountain's truck where, in Parry's presence, he removed one item at a time from the purse. T 34, 50. In it, he found crack cocaine, a crack pipe, and a substance that looked like heroin. T 34, 101.

Perkins asked Parry about those items, and Parry said that she was a heroin addict and admitted that the substance that looked like heroin belonged to her. T 50, 52. At no point, though, did she admit that the crack cocaine was hers. T 57, 59-60, 62. Testing ultimately established that the substance that looked like heroin was not, in fact, heroin or any other controlled drug. T 64, 101. The State accordingly brought no charge for the possession of that substance. The State charged Parry only with possession of crack cocaine.

At trial, the defense challenged the reliability of the testing that led to the identification of the charged substance as crack cocaine. T 106-19. The defense also contended, on the basis of LaFountain's erratic but unimpaired driving and on the basis of Parry's admission only to possessing heroin, that LaFountain had, while driving and after seeing a police car in his rear view mirror, reached over and put his crack cocaine in Parry's purse. T 165-68. The defense thus advanced the argument that Parry did not perform a voluntary act essential to possession, even though she knew LaFountain had put cocaine in her purse. Id.

SUMMARY OF THE ARGUMENT

The court erred in refusing to give a jury instruction communicating the principles codified in RSA 626:1. That statute establishes the requirement that, to convict a defendant of any crime, the State must prove a voluntary act or omission. RSA 626:1, II, applies the voluntary-act principle to possessory crimes.

In refusing the instruction, the court reasoned that the voluntary-act requirement was subsumed within the instructions relating to the element of custody and control. In so reasoning, the court erred, as circumstances exist in which a person might have custody and control, and yet not have performed a voluntary act.

The court further erred when it overruled the defense objection to the prosecutor's statement in closing argument that "voluntary is not an element." T 176. Moreover, even if the court could sustainably decide initially not to give an instruction based on RSA 626:1, once the prosecutor made that improper argument, the court erred in denying defense counsel's renewed request for the instruction.

Because an important strand of the defense centered on challenging the State's claim to have proved a voluntary act, the errors prejudiced the defense.

I. THE COURT ERRED IN ITS RULINGS ABOUT THE VOLUNTARY-ACT ELEMENT.

The defense asked the court to instruct the jury on the legal principle codified in RSA 626:1. T 143-46. That statute provides in paragraph I that a "person is not guilty of an offense unless his criminal liability is based on conduct that includes a voluntary act or the voluntary omission to perform an act of which he is physically capable." RSA 626:1, I. In paragraph II, the statute provides that:

> Possession is a voluntary act if the possessor knowingly procured or received the thing possessed or was aware of his control thereof for a sufficient period to have been able to terminate his possession.

RSA 626:1, II.

In support of the request, counsel reminded the court that the defense contended that the cocaine belonged to LaFountain who had, just before the stop, put it in Parry's purse without her consent. T 143. The State responded that the standard instructions adequately defined the elements, in that they included "custody and control and knowing possession." T 144. The State therefore objected to the defense request for an instruction communicating the content of RSA 626:1 to the jury. Id. Defense counsel replied that every crime requires the performance of a voluntary act or omission, and that the standard instructions, at least under

the circumstances here, did not adequately communicate that principle. T 144.

The court denied the defense request, reasoning that the standard instructions adequately described the elements. T 144-46. The court explained that:

> [T]he jury is instructed at length on what possession means. That is what custody and controls mean [sic]. And if the jury beyond a reasonable doubt [finds] the four elements of the alleged offense as instructed, or as set forth in the instructions, the jury will, under RSA 626:1, II, necessarily have found that the – such possession was a voluntary act.

T 145. The court noted that counsel could argue

> from the evidence deduced [sic] at trial on that issue, but in my view the instructions as presented accurately state the applicable law. And the proposed instruction, in my view, is both unnecessary and would highlight an aspect of the case that in my view it's not appropriate for me to weigh in on. So the defense request is denied.

T 145-46.

In closing argument, defense counsel contended that LaFountain put the cocaine in Parry's purse, and that the distraction from driving associated with that act caused the swerving observed by Officer Perkins. T 165-68. In the course of making that point, counsel told the jury that "possession

has to be knowing and voluntary. That's what we all talked about at jury selection." T 166. After elaborating on the concept of "knowing," counsel linked the voluntary-act requirement to the jury instruction explaining "custody and control." Id. Counsel argued, "do you really have control of something [if] somebody's pressing it into your bag or your purse without your consent just as a police officer walks up? Is that meaningful control over something?" Id.

During the State's closing, the prosecutor responded to that point. After making legally unobjectionable arguments that Parry in fact had control over the cocaine in her purse, T 175-76, and after acknowledging that a person who does not know of the presence of an item in her purse does not possess that item, T 176, the prosecutor told the jury:

> But also remember the elements of this case. Voluntary is not an element. It is custody and control.

T 176.

Defense counsel objected, arguing that the prosecutor's assertion that "voluntary is not an element" misstated the law. T 179. At the bench, the prosecutor repeated that the instruction defining the custody and control element "clearly establishes what is meant by voluntary possession . . . in this case." Id. The defense replied that even if the concept of custody and control adequately defined the element, the prosecutor's explicit statement that voluntariness is not an

element required a corrective instruction along the lines the defense had earlier requested, based on RSA 626:1. T 179-80. The court overruled the defense objection, saying:

> I agree [voluntariness] is not an element in the offense, which is why I didn't include it as an element in the offense [instructions]. Again, possession, as I observed yesterday or ruled yesterday, if the State proves possession as the jury is instructed on it, they will necessarily have proved it was voluntary.
>
> I mean, again, Counsel, as you have addressed this in closing argument, but I'm not going to add an element in the offense, to this particular offense. So the objection's overruled.

T 180.

Section A below advances the claim that the court erred in its initial ruling denying the requested jury instruction. Section B claims that the court erred in overruling counsel's objection to the prosecutor's argument, and in denying the renewed request for the instruction.

A. The court erred in denying the requested jury instruction based on RSA 626:1

"The necessity and the particular scope and wording of a jury instruction generally fall within the sound discretion of the trial court." State v. Boggs, 171 N.H. 115, 122 (2018). "However, when a particular jury instruction raises a

question of law relating to the State's burden of proof, [the Court will] review such matters *de novo*." Id.

Also, when a jury-instruction dispute raises a question as to the proper interpretation of a statute, this Court will review such questions *de novo*. State v. Etienne, 163 N.H. 57, 70 (2011). This Court is the "final arbiter[] of the legislature's intent as expressed in the words of the statute considered as a whole." State v. Kousounadis, 159 N.H. 413, 423 (2009). This Court construes "provisions of the Criminal Code according to the fair import of their terms and to promote justice." Id. The Court "first look[s] to the language of the statute itself, and, if possible, construe[s] that language according to its plain and ordinary meaning." Id. The Court "interpret[s] a statute in the context of the overall statutory scheme and not in isolation." Id.

As described above, RSA 626:1, I, codifies the principle that conviction for a crime requires proof of a voluntary act or omission. RSA 626:1, II, defines possession as a voluntary act "if the possessor knowingly procured or received the thing possessed or was aware of his control thereof for a sufficient period to have been able to terminate possession." RSA 626:1, II. This Court has described the voluntary-act requirement as "a matter of fundamental criminal law." State v. Starr, 170 N.H. 106, 108 (2017) (quoting State v. Fortier, 146 N.H. 784,

797 (2001)). In that sense, the voluntary-act requirement constitutes an element of all crime.

As described above, the State argued, and the trial court concluded, that the other element-defining jury instructions adequately communicated the State's obligation to prove a voluntary act. That argument and the principle that this Court reviews claims of instructional error by examining the instructions in their entirety, State v. King, 168 N.H. 340, 344 (2015), directs attention to the other instructions the trial court gave.

In its instruction introducing the jury to the idea that crimes are defined by reference to elements, the court said:

> All crimes have at least two parts. First, a criminal state of mind and, second, an act. In deciding whether a person is guilty of a crime, it is absolutely necessary for you to know both what the person's actions were and what her state of mind was. The phrase 'state of mind' refers to what a person mentally believes her physical acts will accomplish. The word 'act' refers to a physical deed. Thus, for a person to be guilty of a crime, he or she must have done the following two things. Must have had the required state of mind and he must have physically acted to do something that is criminal. Unless a person both had the required mental state and acted to do something criminal, that person has

> not committed a crime. This means if a person either did not have the required mental state or if a person did not physically act to do something criminal, then he is not guilty of a crime.

T 161-62. At no point in describing the act requirement did the court use the word "voluntary." Rather, the court described the requirement as satisfied by proof of a "physical deed."

When defining the charged crime of possession of cocaine, the court began by listing its elements as follows:

> The definition of the crime of possession of a controlled drug has four parts or elements. . . . Thus, the State must prove that, first, the defendant had the drug under her custody and control, and, second, the Defendant knew that the drug was in her vicinity, and, third, the Defendant knew that the drug found was a controlled drug, that is crack cocaine, and, fourth, the drug found was in fact crack cocaine.

T 163. The court proceeded next to define "custody and control" as follows:

> In deciding whether the Defendant had custody and control over the drug, you should consider where the drug was found, the Defendant's control over the place where the drug was found, and any other evidence presented. If you

> decide that the evidence only proves that the Defendant was present where the drug was found, then the State has not proven custody and control. If you decide that the evidence only shows that the Defendant knew where the drug was but exercised no control over the drug, then the State has not proven custody and control. However, the State does not have to prove that the drug was found on the Defendant's person to prove custody and control. It is sufficient if the drug was found in a place over which the Defendant exercised control and the Defendant knew what the drug was and that it was there.

T 163. The instruction continued with a statement of the principle that more than one person could have custody and control over an item. T 163-64.

Nowhere in that definition of the custody and control element did the court use the word "voluntary." The case, therefore, raises the question whether the court, in defining custody and control, effectively covered the concept that, to commit a crime, the defendant must perform a voluntary act. This Court must reverse because the jury instructions did not do so.

Parry's claim focuses on language in RSA 626:1, II, that has no equivalent in the above-quoted jury instructions. As quoted above, the statute provides that

> [p]ossession is a voluntary act if the possessor knowingly procured or received the thing possessed or was aware of his control thereof for a sufficient period to have been able to terminate his possession.

RSA 626:1, II (emphasis added).

An example illustrates the meaning of that language. Suppose person "A" locks another person "B" in a room and, before closing the door, "A" puts cocaine in the room, saying to "B", "this is cocaine." In a real sense, "B" thereafter has custody and control over the drug, because the drug is in a room in which "B" is alone. "B" can pick up the drug, move it around the room, and choose whether to consume it. Nevertheless, though "B" in some sense knowingly received the drug when "A" threw it in the room, "B" has committed no voluntary act of possession, because "B" has no way to terminate her possession, when possession is defined as knowing custody and control of the drug.

Nothing in the jury instructions given by the court would communicate the concept contained in the underlined language. As the example above illustrates, it is possible to have knowledge of a drug's presence and nature, and to have custody and control over it without having performed a voluntary act of possession. Because the instructions given by the court failed to communicate the voluntary-act requirement, the court erred in denying the requested

voluntary-act instruction. Because the instructional error related to a central point in Parry's defense, this Court must reverse her conviction.

B. The court erred in its rulings relating to the prosecutor's statement in closing.

A trial court's ruling on the propriety of closing argument is reviewed under an unsustainable exercise of discretion standard. State v. Collins, 168 N.H. 1, 6 (2015). To prevail, Parry must show that the ruling was clearly untenable or unreasonable to the prejudice of her case. Id. Here, Parry claims that the prosecutor misstated the law in closing argument, as described above and incorporated herein by reference. See State v. Paiz, 149 P.3d 579, 591 (N.M. App. 2006) ("A misstatement of the law may constitute misconduct;" "Counsel may not misstate the law"). Because the propriety of the prosecutor's argument thus depends on whether it correctly stated the law, the real dispute turns on a matter – the interpretation of the law – as to which *de novo* review is customary and appropriate.

"[I]mproper argument, while objectionable in any case, is especially troublesome when made by a prosecutor, as the prosecutor is likely to be seen by the jury as an authority figure whose opinion carries considerable weight." State v. Ellsworth, 151 N.H. 152, 154 (2004). "[W]hile a prosecutor

may strike hard blows, he is not at liberty to strike foul ones. This maxim is particularly relevant to closing arguments, for such arguments come at an especially delicate point in the trial process and represent the parties' last, best chance to marshal the evidence and persuade the jurors of its import." Id. at 154-55 (quotation omitted).

In deciding whether a prosecutor's improper statement in closing argument warrants reversal, this Court examines three factors: "(1) whether the prosecutor's misconduct was isolated and/or deliberate; (2) whether the trial court gave a strong and explicit cautionary instruction; and (3) whether any prejudice surviving the court's instruction likely could have affected the outcome of the case." State v. Addison, 165 N.H. 381, 547-548 (2013). Here, the three factors weigh in favor of reversal.

First, as shown both by the prosecutor's position during the prior discussion about jury instructions and by her defense of the argument made at the bench conference, the prosecutor's statement was deliberate. See Ellsworth, 151 N.H. at 157 (finding that "although isolated, the prosecutor's remark was nonetheless deliberate;" and citing prosecutor's defense of remark at bench conference). Its deliberate character shows that, though not repeated, the statement formed an important part of the prosecutor's closing argument.

Second, the trial court did not give any cautionary instruction, much less a strong and explicit instruction. Id. (citing as weighing "heavily in favor of the defendant" the fact that court "gave no immediate curative instruction"). As noted above, during the bench conference occasioned by the closing-argument objection, defense counsel renewed the request for a jury instruction, arguing that the prosecutor's explicit statement to the contrary eliminated any possibility that the jury might understand a voluntary-act requirement as implicit in the custody and control element. T 179-80. As also noted above, the court gave no cautionary instruction because the court regarded the prosecutor's argument as proper and overruled the defense objection. Compare People v. Modrowski, 696 N.E.2d 28, 34 (Ill. App. 1998) (prosecutor's misstatement of law in argument does not require reversal where court gave correct jury instructions on the point). The second factor thus also favors Parry's claim of error.

Third, because the trial court failed to correct the prosecutor's misstatement of law, the last word the jury heard on the subject – the prosecutor's claim that the State need not prove a voluntary act – undoubtedly influenced the jury's deliberations on the point. By the time of deliberations, the jury had received instructions that make no mention of a voluntary-act requirement, and had heard the prosecutor, in closing, say that "voluntary is not an element." T 176. A jury

in that position has no reason to think that the State has to prove a voluntary act. The third factor therefore likewise supports Parry's claim.

Here, the trial court committed two errors in its bench-conference rulings. First, for the reasons already stated, the court erred in overruling defense counsel's objection to the prosecutor's statement. Second, the court erred in refusing counsel's renewed request for an explicit voluntary-act instruction. For all the reasons stated in Section A above, the proposed instruction accurately stated the law and should have been given initially. The court then compounded that error when, after the prosecutor's erroneous statement of law, it re-affirmed its refusal to give the instruction.

These errors prejudiced the defense. A substantial strand of Parry's defense involved an argument that she performed no voluntary act of possession. The court's errors in ruling on her instructional requests, and on her objection to the prosecution's improper argument, undermined that defense in a significant way. See, e.g., State v. Garvin, 117 P.3d 970 (N.M. App. 2005) (reversing conviction, relying in part on prosecutor's closing-argument misstatement of law relating to elements, notwithstanding defense failure to object); State v. Davenport, 675 P.2d 1213 (Wash. 1984) (reversing conviction for prosecutor's closing-argument

misstatement of law relating to elements). This Court must reverse her conviction.

CONCLUSION

WHEREFORE, Ms. Parry respectfully requests that this Court reverse her conviction.

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

The appealed decision was not in writing and therefore is not appended to the brief.

This brief complies with the applicable word limitation and contains approximately 3818 words.

Respectfully submitted,

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

CERTIFICATE OF SERVICE

I hereby certify that a copy of this 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/ Christopher M. Johnson
Christopher M. Johnson

DATED: February 13, 2020

A D D E N D U M

ADDENDUM – TABLE OF CONTENTS

Count 1
RSA 318-B:2,I
Offense: Controlled Drug Act; Acts Prohibited
CLASS B Felony
Information Use Only

Superior Court Case: 215-2016-CR 147
Charge ID: 12148290

THE STATE OF NEW HAMPSHIRE

GRAFTON, SS.

At the Superior Court holden at North Haverhill within and for the County of Grafton, upon the 15th day of April, in the year of our Lord Two Thousand Sixteen

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

MELANIE PARRY

DOB: 07/05/1969

of or formerly of 31 Pumping Station Road, Sutton, VT 05867, on or about the 18th day of August 2015, in Lebanon, in the County of Grafton, aforesaid

1. KNOWINGLY
2. DID POSSESS, ACTUALLY OR CONSTRUCTIVELY,
3. A CONTROLLED DRUG, TO WIT: CRACK COCAINE

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

This is a true bill.

Foreperson

Assistant County Attorney
TJH

Arraignment_____ Trial: Bench ☐ Jury ☐
Waiver Date_____ Judge_____ Reporter_____

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

Court Name: GRAFTON COUNTY SUPERIOR COURT

Case Name: STATE v MELANIE PERRY

Case Number: 16-CR-[illegible] Charge ID Number: _____
(if known)

HOUSE OF CORRECTIONS SENTENCE

Plea/Verdict: GUILTY	Clerk: CARLSON
Crime: CONTROLLED DRUG-ACTS PROHIBITED	Date of Crime: 8/5/15
Monitor: BENIS / MARTIN	Judge: BORNSTEIN / MACLEOD

A finding of GUILTY, TRUE is entered.

This conviction is for a ☒ Felony ☐ Misdemeanor ☐ Violation of Probation

☐ The defendant has been convicted of Domestic Violence contrary to RSA 631:2-b or of an offense recorded as Domestic Violence. See attached Domestic Violence Sentencing Addendum.

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

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

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

☒ 344 DAYS _____ of the sentence is deferred for a period of 1 YEAR.
The Court retains jurisdiction up to and after the deferred period to impose ~~terminate the sentence~~ or to suspend or further defer the sentence for an additional period of 2 YEARS.
Thirty (30) days prior to the expiration of the deferred period, the defendant may petition the Court to show cause why the deferred commitment should not be imposed. Failure to petition within the prescribed time will result in the immediate issuance of a warrant for the defendant's arrest.
☐ Other: _____

☐ 3. The sentence is ☐ consecutive to _____
(Charge ID Number)
☐ concurrent with _____
(Charge ID Number)

☒ 4. Pretrial confinement credit: 21 days.

☐ 5. The court recommends to the county correctional authority:
☐ Work release consistent with administrative regulations.
☐ Drug and alcohol treatment and counseling.
☐ Sexual offender program.
☐ _____

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

Case Name: _____
Case Number: _____
HOUSE OF CORRECTIONS SENTENCE

PROBATION

☒ 6. The defendant is placed on probation for a period of 3 year(s), upon the usual terms of probation and any special terms of probation determined by the probation/parole officer.
Effective: ☒ Forthwith ☐ Upon Release _____
The defendant is ordered to report immediately to the nearest Probation/Parole Field Office.

☒ 7. Subject to the provisions of RSA 504-A:4, III, the probation/parole officer is granted the authority to impose a jail sentence of 1 to 7 days in response to a violation of a condition of probation, not to exceed a total of 30 days during the probationary period.

☒ 8 **Violation of probation or any of the terms of this sentence may result in revocation of probation and imposition of any sentence within the legal limits for the underlying offense.**

OTHER CONDITIONS

☒ 9. Other conditions of this sentence are:

☒ A. The defendant is fined $ 500, plus statutory penalty assessment of $ 120
☐ The fine, penalty assessment and any fees shall be paid: ☐ Now ☐ By _____ OR
☐ Through the Department of Corrections as directed by the Probation/Parole Officer. A 10 % service charge is assessed for the collection of fines and fees, other than supervision fees.
☒ $ 500 of the fine and $ 120 of the penalty assessment is suspended for 3 year(s).
A $25.00 fee is assessed in each case file when a fine is paid on a date later than sentencing.

☐ B. The defendant is ordered to make restitution of $ _____ to _____
☐ Through the Department of Corrections as directed by the Probation/Parole Officer. A 17% administrative fee is assessed for the collection of restitution.
☐ At the request of the defendant or the Department of Corrections, a hearing may be scheduled on the amount or method of payment of restitution.
☐ Restitution is not ordered because: _____

☒ C. The defendant is to participate meaningfully and complete any counseling, treatment and educational programs as directed by the correctional authority or Probation/Parole Officer.

☐ D. The defendant's ☐ license ☐ privilege to operate in New Hampshire is revoked for a period of _____ effective _____

☐ E. Under the direction of the Probation/Parole Officer, the defendant shall tour the ☐ New Hampshire State Prison ☐ House of Corrections

☐ F. The defendant shall perform _____ hours of community service and provide proof to ☐ the State or ☐ probation within _____ of today's date.

☐ G. The defendant is ordered to have no contact with _____ either directly or indirectly, including but not limited to contact in-person, by mail, phone, e-mail, text message, social networking sites and/or third parties.

☒ H. Law enforcement agencies may ☒ destroy the evidence ☐ return evidence to its rightful owner.

☒ I. The defendant is ordered to be of good behavior and comply with all the terms of this sentence.

☐ J. Other:
Defendant shall undergo a CADAC evaluation and a mental health evaluation within 90 days of sentencing and abide by all treatment recommendations as a Special condition of her defined sentence and probation.

Date 6/20/19

Presiding Justice

Lawrence A. MacLeod, Jr.

NHJB-2312-S (01/01/2018)