

THE STATE OF NEW HAMPSHIRE  
SUPREME COURT

No. 2019-0503

State of New Hampshire

v.

Brandon Griffin

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APPEAL PURSUANT TO RULE 7 FROM A JUDGMENT OF THE  
HILLSBOROUGH COUNTY SUPERIOR COURT-NORTH

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**BRIEF FOR THE STATE OF NEW HAMPSHIRE**

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THE STATE OF NEW HAMPSHIRE

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(Fifteen-minute oral argument)

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### **ISSUES PRESENTED**

I. Whether the trial court acted within its discretion in declining to dismiss the drug enterprise leader charge when it was clear that the delay was not excessive, the defendant had agreed to at least part of the delay, the defendant had not asserted his right to a speedy trial before asking for dismissal, and the defendant suffered no prejudice as the result of the delay.

II. Whether the trial court erred when it declined to find a due process violation when the State brought drug enterprise leader charges after the defendant pleaded guilty to comparatively minor drug charges.

### **STATEMENT OF THE CASE**

The Hillsborough County grand jury returned seventy-two charges against the defendant. T<sup>1</sup>166-75. Sixty-six of the charges were related to eleven shooting incidents. For each incident, the defendant was charged with the same six charges:

- accomplice to reckless conduct, RSA 631:3
- accomplice to criminal mischief, RSA 634:2
- solicitation to commit reckless conduct, RSA 631:3
- solicitation to commit criminal mischief, RSA 634:2
- conspiracy to commit criminal mischief, RSA 634:2
- felon in possession of a deadly weapon, RSA 159:3

The remaining six indictments charged the defendant with:

- (1) Solicitation of first-degree assault, RSA 631:1a
- (2) Trafficking in persons, RSA 633:7, I
- (3) First-degree assault, RSA 631:1
- (4) Solicitation of first-degree murder, RSA 630:1
- (5) Conspiracy to commit murder, RSA 630:1-a
- (6) Being a drug enterprise leader (DEL), RSA 318-B:2

T166-69.

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<sup>1</sup> Citations to the record are as follows:

“DB\_\_” refers to the defendant’s brief and page number;

“AD\_\_” refers to the addendum to the defendant’s brief and page number;

“DA\_\_” refers to the appendix to the defendant’s brief and page number;

“T\_\_” refers to the trial transcript and page number;

“ST\_\_” refers to the sentencing transcript and page number.

Other transcripts are identified by the date, followed by “T” and the page number.

Trial took place in May and June 2019. The jury returned guilty verdicts solicitation of first-degree assault, first-degree assault, and DEL, and acquitted solicitation of murder, conspiracy to commit murder, and trafficking in persons. T3592-93, 3598-99. With respect to the shooting charges, the jury returned guilty verdicts on all six charges in connection with seven of the incidents.

As to the other four incidents, the jury returned guilty verdicts on the same two charges (felon in possession and conspiracy to commit criminal mischief), while acquitting on the other four charges. T3584-3614.

On the DEL charge, the trial court (*Anderson, J.*) sentenced the defendant to twenty-five years to life. S39. On the other charges, the court imposed both concurrent and consecutive sentences, resulting in a cumulative stand-committed term of forty-eight and a half years to life. S40-41.

This appeal followed.



## **STATEMENT OF FACTS**

### **A. The State's Case**

As the defendant notes, the facts of this case are complex, DB 8, but the facts are nevertheless important because one of the challenges in the defendant's brief is to the State's decision to bring DEL charges. As a result, the State provides the following account.

#### **1. Background**

The investigation into the defendant's criminal drug activities involved several units from the Manchester Police Department. The Special Investigations Unit carried out investigations that were "long-term in nature." T223. The unit "tracked" gang members through an internal intelligence database. T286. During the course of the investigation, the unit identified the defendant as a gang member of "Squad." T309.

The Department conducted an investigation into eleven residential shootings, for which the defendant was charged. T326. Most of the residences had apartments in them that were "trap houses," which were used for drug trafficking and prostitution. T333.

The first shooting occurred on May 1, 2016 on Cedar Street. T327. As subsequent shootings took place, it became "clear that there was some sort of pattern going on." T328. The purpose of the shootings was to "scare away [drug] customers from there" because the defendant and his gang "would make it known on the street that they were the ones responsible for" the shootings. T339. The shootings would "force those customers to not be

purchasing from [a rival gang], but rather purchase from” Squad, who would take over that territory. T339.

## **2. The Witnesses**

### **i. Amanda Gurley**

Amanda Gurley began buying Percocet after her mother was diagnosed with cancer. T1877. When her mother died in 2013, Gurley “took it really hard” and became an “IV heroin user.” T1878. She began using heroin because her husband used heroin and “it was just cheaper to get heroin when you’re paying for two people.” T1878-79. She also started to smoke crack cocaine and lost her job. T1881.

In May 2015, she met Courtney Barrett, who sold crack cocaine. T1881-82. She became Barrett’s girlfriend for a few months. T1884. After Barrett moved in with her, Gurley met the defendant. T1887. She knew that Barrett was “pretty high up” in the drug organization because everyone “bowed down to him.” T1889. She drove him to places where he could “reup,” meaning to get a new supply of drugs. T1892.

Eventually, Gurley and Barrett were evicted from Gurley’s apartment. T1891. Just before they were evicted, the defendant and a woman named Alysha came to visit. T1896. Gurley and Alysha smoked crack while Barrett and the defendant sat in the living room, drinking. T1898.

In September 2015, the police conducted a raid at a trap house on Central Street and arrested Barrett. T1900. Gurley went to the trap house to retrieve Barrett’s backpack, gun, and phone, but she was also arrested.

T1901. She was released after a few hours on bail. T1902. Gurley owed the defendant money, in part because he had posted bail for her younger brother in November 2015. T1910. At the beginning of January 2016, Gurley and her brother committed a robbery and she was arrested again. T1911.

Gurley remained in jail until April 2016, when Foster Jasmer, a family friend, posted bail. T1912. Jasmer helped her find an apartment on Belmont Street and agreed to pay for it. T1913. At the end of April, the defendant and Tori Caron moved into Gurley's apartment with her. T1925-26. The defendant said that he would pay \$100 a week and "help [her] with [her] drug habit." T1926-27.

The defendant kept three safes in his bedroom. T1925. Gurley saw the interior of one safe and it had drugs and money in it. T1934.

At some point in May or June 2016, the defendant, Caron, and Gurley went to John Gebo's house. T1941-42. Gebo's girlfriend was also there. T1941. Gebo began to spend a great deal of time at Gurley's apartment. T1945. Gebo owed the defendant money and sold drugs to pay him. T1945. Gebo also went on "missions" for the defendant. T1945. At the defendant's direction, T1948, Gurley sometimes drove Gebo and Kelvin Reddick to the "missions," which were sometimes shootings and sometimes beatings, T1946. Gurley filmed the missions on her cell phone as proof of their completion. T1951-52.

Reddick was "pretty much like Gebo. He was a runner. He was selling drugs. He did missions. And they all pretty much stayed at [Gurley's] house." T1962.

The defendant paid Reddick, Gebo, and Gurley in crack cocaine after they completed a mission, which is partly why Gurley did them. T1949. She also explained: “I didn’t want to deal with the wrath of what would happen if I didn’t do it.” T1953.

The defendant, according to Gurley, was not a drug addict. T1961. She said that he would “drink once in a while or sniff some lines of coke,” but that he was not an addict. T1961.

## **ii. Veronica Paris**

From 2014 through 2016, Veronica Paris used illegal narcotics. T1237, 1270. She met the defendant through Barrett. T1242. When she met the defendant, he was sitting in Barrett’s car with a gun on his lap. T1246-47. The three of them went to La Quinta Hotel in Manchester, where the defendant was staying. T1248. When Paris walked into the defendant’s hotel room, she saw an open safe, money, guns, and heroin and cocaine in the room. T1250, 1252. After Paris lost her job, T1255, Barrett, who had been “locked up,” T1256, in September 2015, T 1900, suggested that she get in touch with the defendant, T1257.

At some point, the defendant told her that he could help her out and provide her with drugs so that she would not suffer from withdrawal. T1259-60. She began selling drugs, in particular crack and heroin, for the defendant. T1273, 1296. She said that the members of Squad included Gurley, Gebo, Charles Morrison, Reddick, and Tori Caron, T1954, who was the defendant’s girlfriend, T1308-09, 1312-13, 1345, 1954. Initially, Caron delivered packages of drugs to sell to her. T1345.

Paris bought drugs from the defendant on credit, so she was always in debt to the defendant. T1333. At some point, she became acquainted with the defendant's enforcer, Charles Morrison. T1271-72. Morrison made sure that she paid the defendant by "force of punishment or beatings." T1273. On one occasion, Morrison found her sleeping and she woke up to a Taser to her neck. T1305. He beat her for the next ten minutes, slamming her head against the wall. T1305. He held the Taser so long to her head that she had a scar on her chin. T1305-06.

On another occasion, Morrison told her that she owed \$200 to the defendant. T1339. Morrison walked her to his apartment door, put his arm around her waist, and sliced her face with a razor blade. T1338. He handed her some paper towels and told her not to tell anyone. T1339.

Gebo and Reddick were also enforcers. T1320. After Barrett was arrested, Squad became "a much uglier organization." T1321. Paris suspected that Morrison, T1321, and Reddick, T1329, were stealing from the packages of drugs that they gave her to sell, T1323. Once they became enforcers, the defendant would not take Paris's calls. T1330.

Gebo also told Paris that she owed the defendant money. T1343. After Morrison cut her face, Paris told Gebo that the defendant would never see a penny from her. T1343. Paris told Gebo: "street code is blood or money, and they got my blood," meaning, "pay with your money or you pay with your blood." T1343.

### **iii. Kelvin Reddick**

Kelvin Reddick did three tours in Iraq in the United States Army before he was discharged. T2376-77. He came to New Hampshire because

he had family in the state and he was trying to deal with the effects of post-traumatic stress disorder. T2381, 2453. Before he came to New Hampshire, he had started drinking and using cocaine and ecstasy. T2451-52.

Eventually Reddick started selling heroin to support his habit. T2456-57. In 2015, he met Barrett, who was also selling drugs. T2461. He also met Gurley through Barrett and met Paris at about this time. T2462-63.

On Christmas Eve 2015, Reddick was arrested for a domestic violence assault. T2465. On February 16, 2016, Morrison and a woman whose name he did not know posted his bail. T2471. Barrett had told him that, when he was bailed, Reddick was to meet with the defendant and get drugs to sell from him. T2472-73. Initially, he gave the money from the sale of the drugs to Morrison, but “it didn’t work out” because Morrison was an addict and Reddick started dealing directly with the defendant. T2475.

Reddick became part of Squad, which, he said, “resemble[d] a gang.” T2491. The defendant was the leader of Squad. T2491. When the defendant told someone to go on a mission, he would also provide a handgun. T2496. When Reddick completed a mission, he would return to Belmont Street, wipe the gun down, and hand it back to the defendant. At one point, Reddick was arrested and the defendant posted bail. T2904. Reddick recalled that the handguns included a .45-caliber and a 9mm handgun. T2503. Gebo said that the defendant got the 9mm in Boston. T3049. Gurley almost always drove them to the missions. T2511.

The defendant did not go to trap houses himself because “after about a week, they’re pretty much being watched. So anybody going in and out is getting their picture taken.” T2521.

**iv. John Gebo**

John Gebo's mother was a drug addict and he spent much of his childhood in foster care. T2833-40. Gebo started out using marijuana and crack cocaine, but moved to using heroin and crack cocaine. T2840. In 2015, he met Reddick, T2846, and began to sell drugs, T2852-53. Through Reddick, he met the defendant. T2853, 2860. In February or March 2016, Gebo and his girlfriend drove the defendant to Lawrence to pick up drugs. T2868-71. Thereafter, they began to provide transportation for the defendant. T2876-77.

Gebo's involvement with Squad began about the end of March 2016. T 2880. His involvement began after Reddick and Morrison jumped him for stealing. T2882. They cut his wrist with a box cutter. T2882. After that, because Gebo had been punished for the theft, the defendant asked him to become a member of Squad. T2885. His first assignment was to jump a man named Mike Jones. T2887. He and Morrison found Mike Jones and punched, kicked, and used a Taser on him. T2888.

Gebo began selling drugs for the defendant and Squad. T2890. At one point, he met Dennis "Mega" Jones, a member of a rival gang, at a Squad trap house and Mega began to "talk[ ] smack" about Squad. T2896. Gebo told the defendant about Mega Jones's remarks and the defendant told Gebo that he "would handle it." T2896. In April 2016, Squad began "taking over" Manchester. T2902. Gebo downloaded a police scanner application to "monitor police activity." T2986. The defendant used the application "to verify things were being done." T2987.

At one point, the defendant and the others thought that a rival gang might have learned that they were staying at Gurley's apartment on Belmont Street and so they stayed in hotels for a few days. T2994-95. They continued to sell drugs from the hotels, meeting buyers in the parking lot. T2994. The defendant never met the buyers; he told Gebo and the others to meet the customers. T2995.

On one occasion, the defendant told Gebo to shoot Six Mosley, a member of Mega Jones's gang, but when Gebo aimed the gun at Mosley, he realized that there were police in the area and he left without shooting Mosley. T3023-24. As they drove back to Gurley's apartment, the defendant berated Gebo and told him that he was "soft." T3024. When they got in the apartment, Gebo put the gun on the counter and, when he turned to leave, the defendant hit him with the firearm on the back of his head, leaving a scar. T3025-26.

When Gebo was arrested on a Derry burglary charge, T2931, he called the defendant, T2932, and the defendant sent a person to post Gebo's bail, T2905.

### **3. The Shootings: 6 Locations, 11 Shootings**

On May 1, 2016, Reddick shot at 271 Cedar Street using a .45-caliber handgun. T331, T2253; *see also* T 2915 (Gebo). Some of the apartments in the multiunit building were trap houses. T333. Mega Jones controlled this trap house. T333, 338, 2038. The assault occurred right after Mega Jones had tried to kidnap Reddick and told Reddick "that he could go blow [Reddick's] brains out on the pavement there." T2543, 2546.



The defendant called Gurley, T2034, and told her to pick him up, as well as Reddick and Morrison. T2033. She drove the three of them to Cedar Street. T2033, T2549-50; *see also* 2913 (Gebo). She “did a couple of laps around the building” before the defendant handed Reddick a gun and Reddick “shot out the window of the house.” T2036. Gebo had wanted to go, but the defendant told him that the car was full. T2913.

During the course of that shooting, the building’s “gas line was struck. So [the police] had to have fire and hazmat and what to respond out for that.” T331; *see also* T 502, T2039 (Gurley), T2555 (Reddick).

A K-9 officer responded to the “shots-fired call.” T488. He recovered four Winchester .45-automatic caliber bullets from the scene. T496-97, 500. He found two more .45-caliber bullets inside one of the apartments. T502-03. When Gebo saw the defendant after the shooting, the defendant had a silver .45-caliber handgun with black grips. T2915.

On May 14, 2016, either the defendant or Reddick contacted Gebo, who had been released from jail earlier that day, to shoot at 21 Dubuque Street. T2933. The defendant wanted to go after Mega Jones, T2935, who controlled the building, T333, because of the “whole little war” that was started by Mega Jones “talking trash the prior month,” T2935. At the defendant’s direction, Gurley picked up Gebo and Reddick and drove them to Dubuque Street. T2041, 2043-44; *see also* T2935 (Gebo thought that Morrison was also in the car). Gebo went to point out the house and the apartment. T2938. According to Gebo, Mega Jones’s girlfriend and children lived there. T2934.<sup>2</sup> Squad wanted Mega Jones to know “that [it]

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<sup>2</sup> Gebo thought that the resident was Mega Jones’s sister. T2051.

knew where he was staying.” T2040. Reddick fired the shots, T 2044, 2563, and he used the .45-caliber handgun, T333, T2561; *see also* 2937 (Gebo).

Although Mega Jones was the target, the other residents of the building suffered from the shooting. For example, April Prive lived at 21 Dubuque Street with her ex-fiancé, her son, and her daughter. T527. That evening, she and her ex-fiancé were watching movies in her bedroom and she heard “the sound.” T527-28. She said, “[M]y God, everybody thinks the 4th of July is year-round.” T528. Her ex-fiancé responded, “[T]hat’s not the 4th of July. Those are gunshots. Get out of the room.” T528. She gathered her children in the kitchen and waited until she saw police flashlights. T528.

On May 17, 2016, Gebo shot at 271 Cedar Street. T334-35. Gebo walked to this shooting from Spruce Street, T2049, where he lived with his girlfriend, T2942. Once again, Gebo used the defendant’s .45-caliber handgun. T335. Gebo shot at the house because Mega Jones was using it as a trap house and the shooting would make sure that Mega Jones was not “making any money from there.” T2945. Reddick was supposed to do the shooting, but Gebo wanted the assignment so that he could “work off some of [his] tab” owed to the defendant. T2945. The defendant told him that he did not care who did the shooting “as long as it [got] done.” T2946.

The following night, May 18, 2016, Gebo shot at 271 Cedar. T339. After the defendant told Gebo that 271 Cedar Street had been targeted, T2953, Gurley and Morrison picked Gebo up and drove him to the Cedar Street building. T2954. He cut through a yard to get to the alley as Gurley and Morrison waited in a car. T2956.

Gebo used the .45-caliber handgun. T2947. Police later found Spear .45-caliber ammunition in the alley by the house. T339, 536. The southwest side of the building was struck by multiple bullets. T560. The police entered a vacant apartment and found “damage that was visible from the projectiles having traveled from outside of the residence through an exterior wall, and into parts of the apartment.” T563.

On May 19, 2016, Gebo shot at 21 Dubuque Street again. T2968. The previous attack had been on the wrong apartment and the defendant told Gebo to “hit it again and get it right this time.” T2969. The defendant gave him the .45-caliber gun, instructing him to hit the second floor apartment. T2970, 2972, 2977. The defendant contacted Gurley and told her to pick up Gebo. T2050. When he got into the car, Gebo told her that they were “going to Mega’s sister’s again.” T2051. Gurley drove an SUV that the defendant had “rented” from a drug addict. T2055. Gurley did “a couple of laps” around the house, T2053, before Gebo fired the gun out of his window, T2056.

On this occasion, Prive was folding laundry and, when she heard the gunshots, she again gathered her children in the kitchen. T530. On this second occasion, Prive testified, the shots “went above this window here, which was where my son sleeps.” T533.

David Bell lived at 18 Dubuque Street. T639-40. When he heard gunshots in the early morning of May 19, he looked out the window and saw a white automobile “speeding off.” T641.

The police reviewed video surveillance taken from the corner of Dubuque and Conant Streets. T604. The video recorded a white SUV in the area and three pedestrians walking on Conant Street. T605. Officer Eric

Slocum explained: “And a few seconds after that white SUV goes out of the frame, you see [the pedestrians] react and run the opposite direction from Dubuque Street, which would be consistent with someone reacting - running away from the sound of gunshots.” T605.

On May 22, 2016, Gebo used the .45-caliber gun to shoot at a unit at 395 Lake Avenue. T341, 372, 2060, 2985. The defendant gave him the gun and Gebo walked to the building. T2983-85.

That same day, Dennis Smith, who lived at 395 Lake Avenue, ran into a woman named “Mary,” who asked if she could spend the night and wash her clothes. T1425. He had known Mary for a long time and knew that she was involved in drugs. T1429. He let her in and then went to the store. T1425-26. When he returned, he had “a house full of people that [he] never seen before [in his] life,” and they were “bagging up” drugs. T1426-27. The group also had four or five handguns. T1429-30. He told them to leave, but they paid no attention. T1430. A few hours later, Gebo shot at his apartment. T1431, 2060.

Kenneth Joubert lived at 395 Lake Avenue and awakened to the sound of gunshots. T664. He recalled: “Three loud bangs I heard, and they were followed by dishes rattling.” T664. The following morning, his wife went out to empty the trash and came back with “a slug.” T668. At that point, he called the police. T668.

Heidi Bordeleau also lived at 395 Lake Avenue. T736. On May 22, at approximately 4:30 a.m., she and her roommate awoke to the sound of gunshots. T737. She did not call the police because she was afraid and she “didn't want to get involved.” T739. When she inspected the building later that day, she saw “holes surrounding the back of the apartment. There was

a broken window on the backdoor for apartment number 2. And there were holes going up the back stairs that were next to the backdoor as well.”

T740. Once again, the police found .45-caliber shell casings on the scene. T343.

On May 23, 2016, Gebo fired at Mega Jones’s duplex at 18-20 Auclair Avenue. T347-48, 2997. The defendant gave Gebo the .45-caliber gun, T2999, and Gurley drove Gebo and Reddick to that shooting. T2061, 2593. Reddick and Gurley knew that children lived there and they “didn’t want to be involved in that.” T2593. Gurley dropped Gebo off and waited for him in a nearby parking lot. T2061. She picked Gebo up in a shopping plaza. T2595. When they returned to the hotel where the defendant was staying, the defendant gave Gebo some crack and “[k]nock[ed] money off his tab.” T3007.

Almira Zuckanovic lived at 20 Auclair Avenue. T674. She lived there with her husband, her mother-in-law and father-in-law, and her four-year-old son. T675. On the evening of May 23, she and her husband heard gunshots. T675. They ran to check on their son and then on their in-laws. T676. The following morning, she walked outside and saw “the smashed door and the glass on [her] neighbor’s side.” T677. She found a bullet in the front of her porch and a hole, T679, and called the police. T678-79.

On May 24, 2016, T357, Gebo attacked 524 Cedar Street, a Mega Jones trap house, T356, T3029. The defendant gave Gebo the gun and Gebo went to Cedar Street with Morrison and a woman named Maryann. T3029. After the shooting, the police found six .45-caliber shell casings in the rear alleyway. T356, 721.

Four or five hours after shooting at Cedar Street, Gebo and Caron went to shoot at 395 Lake Avenue. T3032-33. The defendant gave Gebo the gun and Caron recorded the shooting. T3034. It was 7:30 or 8:00 a.m. T3034.

That morning, Heidi Bordeleau was in her apartment bathroom at 395 Lake Street and heard six or seven shots in rapid succession. T741-42. Later that day, she went outside and saw that the “front window for apartment number 2 was broken, and there were holes around the front window as well.” T742. Asked why she did not call the police, Bordeleau responded: “Fear.” T741.

Police found three .45-caliber projectiles inside Apartment 2. T755-56. The police also located shell casings in the grassy area of 392 Lake Avenue. T756.

On May 30, 2016, Gebo fired at 253 Spruce Street. T357. This time the defendant gave Gebo a 9mm handgun. T2599, 3051. Gurley and Reddick dropped Gebo off and waited for him in a shopping plaza parking lot. T3046. Gebo said that they targeted this house “[f]or the disrespect” as some of the people had not moved their car when asked. T3041, 3043. Six or seven hours later, Gebo returned and, at the defendant’s direction, shot at the house. T3044-45.

Gebo said that he did not use the .45-caliber gun because “it’d been used too many times” and the defendant had sold the weapon in Lawrence. T3049. After the shooting, the police found five shell casings in the street and on the sidewalk. T791. The ammunition was 9mm. T792.

Witnesses described a motor vehicle leaving the scene. T358-59. At about 2:00 a.m., Ofc. Joseph Tucker drove to Cedar Street to investigate a

report of gunshots in the area. T798. He saw a white SUV with Massachusetts plates on Cedar Street. T799. He had heard that a white SUV had been used on other occasions and so he pulled it over. T800. Gurley was driving and Reddick and Gebo were passengers. T802. Ofc. Tucker asked Gurley to get out of the SUV and then told her that “her car was seen leaving the area where there was a shooting, and at this time, officers on scene had located shell casings.” T803. Gurley refused to allow the police to search the SUV. T804. At that point, Ofc. Tucker concluded that he did not have probable cause to get a search warrant, so he let them go. T807.

On June 8, 2016, Gebo shot at the trap house located at 91 West Street. T361, 375, 3075. It was a triple-decker located in an “[e]xtremely compact area of the city.” T361.

At the defendant’s direction, Gurley drove Jasmer’s RAV4. T2070-2071. Jasmer, who had earlier helped her find an apartment, bought the car for her, but he took it back when he realized that she was “getting high again.” T2052. He did, however, let her borrow it. T2052. She drove Gebo around the neighborhood, then dropped him off, and parked on the side of the building with the engine running and the lights turned off. T2075. Gebo returned with Gurley to Belmont Street and the defendant paid him in crack and reduced the amount of money that Gebo owed the defendant. T3116-17.

Nicole Cepeda-Perez Matteau lived at 91 West Street. T826. Four of her children, her daughter’s boyfriend, and her two grandchildren lived with her. T826. On the night of June 8, 2016, Matteau was awakened by “bullet holes coming through the front of [her] house.” T827. She “grabbed [her] gun and ran out the front door to see who’s shooting at [her] house.”

T828. She did not see anyone and so she went back inside and called 911. T828.

Police reviewed surveillance footage that recorded the activity around 91 West Street. T845. The surveillance recording showed a person, whom Gurley identified as Gebo, 2076, 2078, come from a parking lot across the street, “raise[ ] his arms a couple of times,” and “retreat[ ] back” into the parking lot. T845. He then returned and raised his hand “towards 91 West Street” and “take off east, down Douglas Street on foot.” T845. The manner in which the person raised his hands was consistent with firing a gun. T845. The police later recovered four 9mm shell casings from the parking lot across from 91 West Street. T865, 874.

#### **4. Murder of Hans Odige**

On June 1, 2016, Hans Odige was murdered in downtown Manchester in the area of Spruce Street, Union Street, and Pine Street. T359. Odige had been “security” for Barrett and Gurley. T2125. However, when Barrett was in jail, Odige robbed Gurley as she slept. T2126. Barret decided that Odige would be “beef on sight,” and the defendant “made sure that he stuck with” what Barrett wanted. T2127; *see also* T3080 (Gebo). Gurley picked up Reddick and Gebo and drove around, looking for Odige. T2129. When they found Odige, Gurley and Gebo got out of the car to talk to him. T2130, 2610. Reddick stayed in the car, sending text messages to the defendant. T2610. Gebo told Reddick that he wanted to shoot Odige. T2611. Gebo then talked to the defendant and Reddick, who was armed, gave Gebo the 9mm handgun. T2614, 3084-3085.



When Reddick and Gurley left, Gurley had “a bad feeling.” T2131. She called Gebo, but he did not answer. T2131. After Gebo shot Odige, Gebo returned to Belmont Street gave the defendant the 9mm handgun. T3092. The defendant paid Gebo with “a large amount” of drugs. T3095; *see also* T2615-16.

## **5. 273 Belmont Street Search Warrant**

On June 8, 2016, the police sought and obtained a search warrant for Gurley’s apartment at 273 Belmont Street. T362. The department’s SWAT team helped to secure the building. T1051. Once at 273 Belmont Street, the team used a public address system to give a “surrounding call out,” asking the occupants of the building to leave. T1059. Reddick, Gebo, Gurley, Nicole Pelletier (Gebo’s girlfriend), T1060, and a child came outside, T1060, *but see* 2101 (Gurley remembered two children). The SWAT team then turned the search over to the detectives. T1063.

In the den of 273 Belmont Street, detectives found “lots of drug paraphernalia.” T1101. The police found a firearm and magazine in between the pots and pans in the kitchen. T1103-04. They found three safes, four cellphones, and a guide to gun care of a Hoppe 9mm firearm. T1110, 1117. On top of the safes were baggies used for packaging drugs. 2108. The top safe contained Perfecta 9mm ammunition. T1118. The middle safe contained drugs, including Suboxone strips and fentanyl or heroin, a digital scale, and cash. T1117, 1120. Underneath the narcotics, they found a wallet with Gebo’s identification in it. T1224.

They found computers in the kitchen and in between two computers was another crack pipe. T1111-1112. They found two more crack pipes in a bedroom. T1115.

Detectives searched three black purses, two of which had drug paraphernalia in them. T1107, 1110. In Gurley's black Coach purse, they found a .45 bullet inside. T1114. Gurley testified that, after she used Jasmer's RAV4 she "always used to do a sweep of it to make sure" that she had not dropped any drugs in it. T2122. She found the bullet on one of those sweeps. T2122.

Inv. Michael Buckley conducted surveillance on the day that the warrant was executed. T1012. On the evening of June 9, 2016, as the warrant was being executed, Inv. Buckley and a detective were in an unmarked police car at the intersection of Hayward and Belmont Streets. T1014, 1018. Inv. Buckley saw a silver Nissan sedan approach the intersection and the defendant was the passenger. T1014. The driver, who was later identified as Shannon McFarland, T 1019, and the defendant looked at 273 Belmont Street. T1017. The Nissan failed to stop at the four-way stop sign at Belmont and Hayward Streets and continued up Hayward Street. T1017.

Inv. Murphy's car was not equipped with emergency take down lights and so he followed the Nissan. T1018. They asked for assistance and a marked unit stopped the Nissan. T1018. McFarland gave the police permission to search the Nissan. T1019. During the search, Det. Murphy found a red cigarette pack with a crack pipe inside. T1023. The defendant was arrested and searched. T1027. He had \$1083 in cash. T1027.

## **B. The Speedy Trial Issue**

On April 26, 2019, the defense filed to dismiss on the basis that the defendant's right to a speedy trial had been violated. A50-53. The defendant noted that the court had originally scheduled the defendant's trial for December 2018. A52. When the State moved to continue, the court denied the motion. A53. As a result, the State moved to dismiss the charges (referred to as the -2199 charges or the -2199 case) and re-presented the case to the grand jury, which returned the charges in this appeal. A53. The defense contended that the State's dismissal and re-indictment violated the defendant's due process rights by denying him a speedy trial. A54-61. On May 3, 2019, the State objected. A102-12.

On May 8, 2019, the trial court denied the motion to dismiss. AD41. The trial court first noted the four factors for determining whether the right to a speedy trial had been violated, relying on this Court's decision in *State v. Weitzman*, 121 N.H. 83, 86 (1981). AD42. These factors are: "the length of the delay, (2) the reasons for the delay, (3) whether the defendant asserted his right, and (4) any prejudice to the defendant." AD42 (citing *Weitzman*, 121 N.H. at 86).

The court first found that the length of the delay was sixteen months and was "presumptive[ly] prejudicial." AD43 (citing *State v. Colbath*, 130 N.H. 316, 319 (1988)). But the court also observed that the delay resulted from "an informal agreement to stay the proceedings pending resolution of another case... which contained over one hundred indictments against [the] defendant." AD44. The court noted that the agreement "appear[ed] to have been in place since the end of March 2018." AD44. The court concluded

that “the bulk of the delay” was the result of this agreement, leaving the court with a total of five months of delay which did “not weigh heavily against” the State. AD44-45.

The court then considered the defendant’s assertions of his right to a speedy trial. The court found that the defendant had asserted his right on November 16, 2018 in objecting to the State’s motion to continue, AD45, and again at a status conference on April 4, 2019, AD45; *see also* 4/4/19T8-9. The court also noted that the defendant had not filed the motion to dismiss until April 26, 2019. AD45. The court concluded that the defendant had not “consistently assert[ed] his right and [had] never raised it until the eve of trial.” AD45. As a result, the court concluded that this factor did not “weigh heavily in the defendant’s favor.” AD45.

Turning finally to prejudice, the court considered the three interests identified in *Barker v. Wingo*, 407 U.S. 514, 532 (1972). It cited the factors as: “(1) oppressive pretrial confinement; (2) anxiety and concern; and (3) impairment of the defense.” AD46. The court dismissed the first two factors because the defendant had been detained “on a host of separate indictments, not only on [the] drug enterprise leader charge.” AD46. The court concluded that these interests did “not weigh in [the defendant’s] favor.” AD46.

With respect to prejudice, the court considered the following: (1) that the original trial counsel had to be replaced; (2) that current counsel contended that he was unprepared to proceed to trial; and (3) potential impairment of access to witnesses or evidence. AD47-48. The court noted that original counsel had withdrawn because he anticipated that the trial

would not go forward until 2019 and that co-counsel remained on the case. AD46-47.

The court similarly rejected counsel's counsel that he was unprepared to proceed, noting that he had told the court that he was prepared to go forward the previous December on the DEL charge. AD47. The court observed that the DEL charge "would have required much if not all of the same evidence" as the current charges involved. AD47. The court noted that the asserted prejudice was actually "based largely on the recent joinder of all charges for trial." AD47.

The court concluded by noting that the defendant had not "articulate[d] any concerns about the impairment of access to evidence or witnesses" caused by the delay. AD47. The court then denied the motion to dismiss on speedy trial grounds. AD48.

On May 9, 2021, the defense filed a response to the State's objection. A126. The pleading was not captioned a motion to reconsider. And, although the court held a hearing on the morning of the day that the pleading was filed, the defense did not mention it. *See* 5/9/19T43 (Asked if there was "anything else, defense counsel responded, "I think that's everything. I've crossed it all off.")). As a result, the court did not reconsider and the matter continued to trial.

### **C. The Due Process Ruling**

On April 29, 2019, the defense filed a motion to dismiss based, in part, on an assertion that his due process rights had been violated. A64, A71-76. The defense contended that the State violated the defendant's due

process rights by allowing him to plead guilty in November 2016 and then charging him with DEL. A71-76. The State objected. A113-125.

In the same order addressing the speedy trial claim, the trial court rejected the due process claim. The court had already rejected the defendant's argument regarding compulsory joinder, noting that it applied to "discrete crimes arising out of a single set of facts as opposed to a complex, broadly sweeping conspiracy charge such as drug enterprise leader." AD51-52. The court observed that the defendant had pleaded guilty, "there were many more [predicate acts] to investigate and prove." AD52. The court rejected the defendant's contention that the State "had all the information it needed to charge [the] defendant with drug enterprise leader at the time of his guilty plea." AD53.

### **SUMMARY OF THE ARGUMENT**

The trial court acted within its discretion when it denied the defendant's motion to dismiss the DEL charge based on alleged speedy trial violations. The court properly concluded that, based on representations by the defense during 2018, the defense agreed that the -2199 case should be tried first. The court correctly concluded that the defendant had not asserted his speedy trial rights until the eve of both trials. Finally, the court correctly concluded that the defendant had suffered no prejudice.

In addition, the trial court acted within its discretion in rejecting the defendant's due process argument. This Court's opinion in *State v. Lordan*, 116 N.H. 479 (1976), is distinguishable from this case. Although the defendant did plead guilty to some comparatively minor charges in November 2016, the *Lordan* criteria has not been met. Since there were multiple acts, the defendant did not commit the offenses as a single transaction. Moreover, there is no proof that the prosecutor did have knowledge of the crimes that would give rise to the DEL charges. Finally, the defendant did not plead guilty to all of the criminal acts that would lead to the DEL charge at the time of his guilty plea.

## ARGUMENT

### **I. THE TRIAL COURT ACTED WITHIN ITS DISCRETION IN DENYING THE MOTION TO DISMISS FOR A VIOLATION OF THE DEFENDANT’S SPEEDY TRIAL RIGHTS.**

“In determining whether a defendant's right to a speedy trial has been violated under the State Constitution, [this Court will] apply the four-part test articulated” in *Barker*. *State v. Allen*, 150 N.H. 290, 292 (2003) (citations omitted). The factors are: “(1) the length of the delay; (2) the reason for the delay; (3) the defendant’s assertion of his right to a speedy trial; and (4) the prejudice to the defendant caused by the delay” *Id.*

“This [C]ourt puts substantial emphasis on the latter two of the *Barker* factors.” *State v. Brooks*, 162 N.H. 570, 582 (2011). *See also Allen*, 150 N.H. at 292 (“If the length of the delay is not presumptively prejudicial, however, [this Court will] not consider the remaining three factors.”). This Court will “defer to the trial court’s factual findings unless those findings are clearly erroneous and consider *de novo* the court’s conclusions of law in respect to those findings.” *State v. Locke*, 149 N.H. 1, 7 (2002). Review of a trial court’s order denying a motion to dismiss on speedy trial grounds “necessarily require[s]” this Court to “consider whether the evidence was sufficient to support the trial court’s challenged findings.” *State v. Bonollo*, 2021 WL 3013462, \*3 (N.H. June 18, 2021) (unpublished) (citation omitted).

In denying the motion to dismiss, the trial court relied, in part, on the agreement between the parties that the trial on the -2199 case would take place first. The defendant notes that the trial court “acknowledged” that this agreement had not been reduced to writing. DB23. However, the court



wrote that defense counsel had “previously represented to the [trial court] that the parties had agreed to go forward with -2199 first.” AD44. The -2199 case, according to the court’s order, involved “over one hundred indictments against [the] defendant.” AD44.

The defense contends that Mr. Utter’s affidavit, attached to the May 9 pleading, should have persuaded the trial court that the decision was not an agreement, but was a “unilateral decision” made by the State before the DEL charges were brought. DB24. There are two problems with this assertion.

First, the defense filed the response after the court had issued its order. It was not captioned as a motion to reconsider; it did not even cite the standard for reconsideration. *See* AD126-27. The defense did not raise the issue at the hearing held that morning. *See* 5/9/19T20. This is despite the fact that the court specifically raised it. *See* 5/9/19T20 (The Court: “You saw the motion [sic] that I sent out yesterday on speedy trial?”). The trial court was operating under time constraints as jury selection was scheduled for Monday, May 13, 2019. T1. On this record, the trial court did not err when it did not rely on the affidavits attached to a pleading that post-dated its order.

Second, although the court and the defense said that the State would control the order in which the cases were tried, the defense did not object to this plan. In his affidavit, Mr. Utter said that the defense had not agreed “that proceeding with 17-CR-2199 in the first instance was preferred by the defense,” DB23 (quoting DA130). But Mr. Utter did not object when the State said that the parties had agreed on the order of trials. 11/27/18T4

(defense objection to characterization of preparedness but not to agreement on order of trials).

Indeed, the record reflects acquiescence if not explicit agreement by the defense. *See* 3/29/18T2 (Mr. Utter: “So Judge, if I could refresh your recollection from February... you said that it was probably appropriate for [the State] to choose, which is probably right.”); 3/29/18T4-5 (Mr. Utter: “If it was me, I would say we should try this case in September, and set it up so that we try it [in] September, organized and ready to go.” Mr. Lenti: “That’s what I was thinking, too, actually...”); *see also* 8/30/2018T2 (Mr. Utter: “It was agreed [in March] that we would proceed on 2199 and to avoid scheduling six other trials... we decided that those docket numbers would tail 2199, which made perfect sense at the time.”).

In short, the trial court fairly concluded that, at least as of March 2018, the parties had agreed that the trial on the -2199 case would take place first. The motion to dismiss was simply a tactic. *Cf. Barker*, 407 U.S. at 535 (“[T]he record strongly suggests” that the defendant “hoped to take advantage of the delay in which he had acquiesced, and thereby obtain a dismissal of the charge.”).

The defense contends that the defendant asserted his right to a speedy trial in August 2018, November 2018, and April 2019. DB25. He asserts that he was “content to stand trial in December 2018” and that he, therefore, did not need to “gratuitously demand a speedy trial.” DB26. Although he acknowledges that he could not assert the right after the State dismissed the indictment and the grand jury returned new charges, DB26, he still asserts that he invoked his right to a speedy trial as to the new charges. DB26.

The trial court correctly noted, however, that the defendant only invoked the right at the eve of both trials. AD45. The August 30, 2018 statement to which the defendant refers was not an invocation of his speedy trial rights, it was an expression of impatience with the State's responsiveness to the defendant's requests. The statement made no mention of the right to a speedy trial. *See* 8/30/18T9 (Mr. Lee: "My client does not want to continue this trial, Judge."). At the time that he filed the April 2019 motion to dismiss, the defendant did not apparently view this statement as an invocation of his speedy trial rights, as he did not draw the trial court's attention to it. *See* DA52-53. The court's reliance on the timing of the assertion was well placed. *See, e.g., United States v. Hopkins*, 310 F.3d 145, 150 (4th Cir. 2002) (assertion five days before trial). In addition, by waiting until the eve of trial, the defendant left the court with only one remedy: dismissal of the charges. *See United States v. Carpenter*, 781 F.3d 599, 614 (1st Cir. 2015) (Courts may be "particularly skeptical of those who raise the issue for the first time in a motion to dismiss.").

The defendant states that he suffered prejudice as a result of the delay in bringing him to trial. He contends that Mr. Utter would have remained his lawyer if the State had not dismissed the charges in December 2018. Because of the dismissal, however, Mr. Utter retired and was replaced by Nicholas Brodich, Esquire. DB27. The defendant contends that, "as a result of the State's self-granted continuance," replacement counsel had "even less time to prepare." DB28.

The trial court rejected the defendant's contention that, although he was prepared to go to trial in December 2018, his lawyers were not as well prepared to go to trial on essentially the same evidence the following May.

AD47. Although in its motion to dismiss, the defense contended that it was “unprepared” to proceed to trial, DA60, it did not seek a continuance. Indeed, the defendant’s brief points to no point at which trial counsel seemed to be unprepared. Of course, claims of ineffective assistance of counsel are usually considered in collateral proceedings, *see State v. Thompson*, 161 N.H. 507, 528 (2011), but nothing would have prevented the defendant from directing this Court to instances where the defendant’s defense suffered. References of this sort would not prove that the trial court erred, but they might call into question the trial court’s ability to predict prejudice.

Finally, the trial court’s assessment of the prejudicial impact is supported by the record. Mr. Utter filed a notice of appearance on February 7, 2018, and moved to withdraw on October 23, 2018. DA182, DA190; *see also* DA11-12 (Motion to Withdraw and Assign Substitute Counsel). He had represented the defendant, therefore, for 258 days. Mr. Brodich, replacement counsel, filed a notice of eligibility and appointment of counsel on November 5, 2018. A196. Jury selection took place on May 13, 2019, some 219 days later. T23. Therefore, the “loss” of time in representation was 39 days, not four months.

Further, when Mr. Utter represented the defendant, the State was still in the process of providing discovery. *See* A143 (motion requesting discovery), A140 (email requesting discovery), A141 (letter requesting discovery). By the time that Mr. Brodich represented the defendant, discovery was apparently largely complete. Indeed, in the defendant’s motion to dismiss, Mr. Brodich complained that he had “three full bankers boxes of discovery and pleadings.” DA60. Therefore, new counsel had

even more time to prepare for the case because discovery was mostly complete.

In sum, if the defense had been truly unprepared to proceed to trial, it could have sought a continuance. Instead, it attempted to have the charges dismissed by arguing a theory prejudice that failed to persuade the court. The trial court committed no error in declining to adopt the arguments pressed by the defendant on this claim.

## II. THE TRIAL COURT PROPERLY CONCLUDED THAT THERE WAS NO DUE PROCESS VIOLATION IN BRINGING THE DEL CHARGE.

The defendant next argues that the trial court erred in declining to dismiss the DEL charge on due process grounds. DB28-37. He contends that the State knew that the State “had knowledge of, and jurisdiction over, all of the offenses” later charged as the DEL charge at the time that the defendant entered his guilty plea in November 2016. DB34.

“The essentials of procedural due process comprise notice of the charges and a reasonable chance to meet them.” *Amsden v. Moran*, 904 F.2d 748, 753 (1st Cir. 1990) (citing *Mathews v. Eldridge*, 424 U.S. 319, 348 (1976)). “In contrast, a substantive due process claim implicates the essence of state action rather than its modalities; such a claim rests not on perceived procedural deficiencies but on the idea that the government's conduct, regardless of procedural swaddling, was in itself impermissible.” *Id.* “[S]ubstantive due process protects individuals against state actions which are ‘arbitrary and capricious,’ or those which run counter to ‘the concept of ordered liberty,’ or those which, in context, appear ‘shocking or violative of universal standards of decency.’” *Id.* (citations omitted). This Court will uphold a ruling on a due process claim unless the ruling is “erroneous as a matter of law.” *State v. Symonds*, 131 N.H. 532, 534 (1989).

In asserting that his due process rights were violated, the defendant relies on *State v. Lordan*, 116 N.H. 479, 481-82 (1976). In *Lordan*, this Court disapproved of prosecutions that arise from the same set of circumstances after the defendant has entered a guilty plea to essentially the

same set of facts. This Court noted that the new charges were prompted by the defendant's successful request to serve the sentences concurrently, which the prosecutor may have felt resulted in too lenient a sentence. *Id.* at 481. This Court, however, observed that "[a] defendant potentially facing multiple charges arising from a single transaction may not escape prosecution on all simply by pleading guilty to one, in the absence of an express or reasonably implied agreement with the prosecutor." *Id.* at 482.

The *Lordan* case set forth three factors for considering a due process claim when subsequent charges are brought after a guilty plea: (1) a defendant must commit the offenses as a single transaction; (2) the prosecutor must have knowledge of, and jurisdiction over, all of the charges; and (3) the defendant must have pleaded guilty to all charges at the time of his guilty plea. *Id.*

. These three requirements are not met here.

First, the DEL crime is not a single transaction. Rather, the defendant committed offenses from January 2014 until December 31, 2016, as charged in the indictments. T166, T169. Although in his brief, the defendant "acknowledges that other subsequently charged offenses, such as the shooting offenses, were not part of the same transaction" covered by the plea, DB34, he criticizes the DEL charge as "incredibly broad" and that it "links together" the other charges. DB34 (quoting the State's pleadings). The DEL charge is, indeed, broad, in contrast to the discrete charges to which the defendant pleaded guilty. The broadness of the DEL charge undercuts the contention that the November 2016 guilty plea "covered" all of the crimes included in the DEL charge.

Second, nothing on the record suggests that the State knew of the scope of the defendant's criminal activities at the time of the November 2016 plea. Indeed, the prosecutor referred only to the search warrant executed at 273 Belmont Street, surveillance that suggested that the defendant bought drugs in Massachusetts, and that drugs were in the car when the defendant was arrested. 11/21/16T6-7. The prosecutor said that the case was "a difficult case to prove" and that the plea agreement was for a reduced sentence. 11/21/16T12-13. If, in fact, the State "knew" as much as the defendant presumes it did at the time of the plea, it is hard to imagine why the prosecutor would characterize the case as difficult, thereby warranting a reduced sentence.

The defendant contends that the State did know that future charges were likely. He points out that the State had already entered into a plea agreement with Gurley and had a statement from Paris. DB30-31, *see also* A65. The record, however, is barren as to what Gurley had agreed to do at that time or how she had fulfilled her obligations. Indeed, the cross-examination pointed out that, by December 2016, Gurley still was not "forthcoming" with the police. T2283-92.

Similarly, Paris made unreliable statements to the police. For example, on cross-examination, it was clear that Paris's statements in her September 2016 interview were not reliable. *See* T1373 (Paris told investigators that 2016 was a "blur"); T1387 (noting that, in her September 2016 interview, Paris did not mention the defendant); 1393-94 (false statements about the murder of Hans Odige); 1396 (defense counsel asked if the detective knew that she was not "telling the truth" to which Paris responded "Correct"); 1397 (agreeing that she lied to the police).



Additionally, after the defendant's 2016 plea, the police continued investigating drug trafficking in Manchester. DA67. This investigation led them to arrest the defendant and Caron in June 2017, four months after the defendant's release from prison. *See* DA67. The police, who were executing a search warrant, found them in an apartment with drugs. DA67. As a result of this development, the grand jury brought new charges. DA57. These charges became part of the broader charge as the result of the ongoing investigation. Indeed, Lt. Brandon Murphy of the Special Investigations Unit testified that the investigations were "long-term in nature." T223.

Moreover, Gebo, who also cooperated with the State and testified at trial, did not waive indictment and plead guilty to second-degree murder until August 28, 2017. *See* SA47; *see also* SA49. The defendant acknowledged that the information supporting the DEL charge continued to develop in his April 29, 2019 motion to dismiss on due process grounds. DA67. The pleading pointed out that after Caron was arrested, she gave "a series of interviews to investigators." DA67. The State brought charges based on Caron's interviews, but Caron died later that year. A68. The State brought the first DEL charge, according to the same pleading, in June 2018, naming Gebo, Reddick, Gurley, Paris, and others as co-conspirators. DA69.

The defendant states that the State "stood by silently" as the defendant's lawyer told the court that the defendant "intended to make a fresh start in Florida" upon his release. DB36; *see also* 11/21/16T15-16. But the defendant did not go to Tallahassee to live with his mother upon his release. Instead, as his June 2017 arrest demonstrates, he continued to commit drug-related crimes in Manchester. Moreover, the State's silence

only reinforces the view that the prosecutor did not know the extent of the defendant's criminal activity. As the defendant acknowledges, the plea did not include the shooting charges – which the record reflects occurred on eleven different occasions at six different residences. DB34. The prosecutor's proffer at the November plea painted the defendant as a low-level drug dealer with a criminal record in Massachusetts. It did not characterize the defendant as a mastermind in charge of a significant drug dealing operation. Given the State's willingness to agree to a reduced sentence, the only conclusion is that it simply did not know.

The trial court, therefore, committed no error in declining to dismiss the DEL charge on the basis that the defendant's due process rights were violated.

**CONCLUSION**

For the foregoing reasons, the State respectfully requests that this Honorable Court affirm the judgment below.

The State requests a fifteen-minute oral argument.

Respectfully Submitted,

THE STATE OF NEW HAMPSHIRE

By Its Attorneys,

JOHN M. FORMELLA  
ATTORNEY GENERAL

September 15, 2021

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**CERTIFICATE OF COMPLIANCE**

I, Elizabeth C. Woodcock, hereby certify that pursuant to Rule 16(11) of the New Hampshire Supreme Court Rules, this brief contains approximately 9,364 words, which is fewer than the words permitted by this Court's rules. Counsel relied upon the word count of the computer program used to prepare this brief.

September 15, 2021

/s/Elizabeth C. Woodcock  
Elizabeth C. Woodcock

**CERTIFICATE OF SERVICE**

I, Elizabeth C. Woodcock, hereby certify that a copy of the State's brief shall be served on Chief Appellate Defender Christopher M. Johnson, counsel for the defendant, through the New Hampshire Supreme Court's electronic filing system.

September 15, 2021

/s/Elizabeth C. Woodcock  
Elizabeth C. Woodcock

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

Court Name: **Hillsborough Superior Court Northern District**

Case Name: **State v. John Gebo**

Case Number: 216-2017-CR- Charge ID #: \_\_\_\_\_  
 (if known)

**WAIVER OF INDICTMENT**

The undersigned defendant in the above-captioned criminal matter(s) hereby certifies that:

1. I have been fully informed by my attorney that I have an absolute right to be indicted by the Hillsborough County Grand Jury before the State may proceed with any felony prosecution against me. I hereby waive my right to Grand Jury presentation and indictment.
2. I have received a copy of all charging document(s) against me
3. I waive all further formalities of service.
4. ☐ I request to be arraigned on the charge(s) listed on the next page(s).

**OR**

- ☒ I waive arraignment on the charge(s) listed on the next page(s) and hereby enter (a) plea(s) of Not Guilty. I have consulted with my attorney who has fully explained the charge(s) and possible punishment(s) and I understand the substance of the charge(s) and the possible punishment(s).
5. I understand that having waived my right to indictment and agreeing to proceed by way of felony complaint, I cannot later challenge any conviction entered on the felony complaint(s) listed on the next page(s) on the basis that I was not indicted by the Grand Jury.

6. This waiver of indictment is made after full consultation with and advice of counsel and is knowing, intelligent, and voluntary.

August 29, 2017  
 Date

[Signature]  
 Defendant

I hereby certify that I have discussed the charging document(s) with the defendant on August 29, 2017, and believe that the defendant understands the nature of the charge(s) and the punishment therefore, which I have also explained to the defendant.

August 29, 2017  
 Date

18409  
 Attorney for the Defendant  
Anthony J. Naro  
8/29/2017

Case Name:

State v. John Gebo

Case Number:

**WAIVER OF INDICTMENT**

\*\*\*\*\*

**TO BE COMPLETED BY COUNTY ATTORNEY**

NAME OF CHARGE

DATE OF OFFENSE

☒ New Charge☐ Existing Charge ID: \_\_\_\_\_☐ Replace Charge ID: \_\_\_\_\_Second-Degree Murder06/01/2016☒ New Charge☐ Existing Charge ID: \_\_\_\_\_☐ Replace Charge ID: \_\_\_\_\_First-Degree Assault06/01/2016☐ New Charge☐ Existing Charge ID: \_\_\_\_\_☐ Replace Charge ID: \_\_\_\_\_☐ New Charge☐ Existing Charge ID: \_\_\_\_\_☐ Replace Charge ID: \_\_\_\_\_☐ New Charge☐ Existing Charge ID: \_\_\_\_\_☐ Replace Charge ID: \_\_\_\_\_☐ New Charge☐ Existing Charge ID: \_\_\_\_\_☐ Replace Charge ID: \_\_\_\_\_☒ Additional charges are attached on the Waiver of Indictment; Additional Charges form(s).**AFFIDAVIT OF SERVICE**

I certify I have provided a copy of the above listed charging document(s), including those that may be on any attached Additional Charges form(s), to the defendant/defense counsel.

Date

8/28/2017

County Attorney

Assistant Attorney General

MELISSA S. LOGEMANN

State of Justice of the Peace - New Hampshire

My Commission Expires January 27, 2021

This instrument was acknowledged before me on

August 28, 2017by Melissa Logemann

My Commission Expires \_\_\_\_\_

Affix Seal, if any

Melissa S. Logemann

Signature of Notarial Officer / Title

**ORDER**

The above waiver of Grand Jury indictment is approved.

Date

Presiding Justice



THE STATE OF NEW HAMPSHIRE  
SUPERIOR COURT

HILLSBOROUGH, SS.  
Northern District

AUGUST TERM, 2017

**FELONY COMPLAINT AND WAIVER OF INDICTMENT**

WHEREAS, the within named defendant has waived indictment and applied to the Superior Court for prompt arraignment upon the complaint herein set forth;

NOW, therefore, the Attorney General for the State of New Hampshire upon oath does hereby complain that:

**JOHN GEBO**  
(DOB: 03/15/1986)

of Manchester, New Hampshire, in the State of New Hampshire, on or about June 1, 2016, at Manchester in the County of Hillsborough aforesaid, with force and arms, did commit the crime of


**SECOND-DEGREE MURDER**  
(RSA 630:1-b, I(a))

in that, John Gebo did knowingly cause the death of Hans Odige, by physically shooting him with a firearm.

Said acts being contrary to the form of the Statute, in such case made and provided, and against the peace and dignity of the State.

WHEREFORE, the State of New Hampshire prays that the within named Defendant may be held to answer to this complaint, and that justice may be done.

Dated: August 28, 2017

  
\_\_\_\_\_  
Jeffery A. Strelzin (Bar ID #8841)  
Senior Assistant Attorney General

STATE OF NEW HAMPSHIRE  
MERRIMACK, SS.

Personally appeared before me, Jeffery A. Strelzin, who signed the above complaint  
and made oath based on information and belief that the above complaint is true.

Melissa S. Logemann

Notary Public/Justice of the Peace

My Commission Expires:

**MELISSA S. LOGEMANN**  
Justice of the Peace - New Hampshire  
My Commission Expires January 27, 2021

Name: John Gebo  
DOB: 03/15/1986  
Address: P.O. Box 14  
Concord, New Hampshire  
RSA: 630:1-b, I(a)