THE STATE OF NEW HAMPSHIRE
SUPREME COURT

No. 2020-0165

State of New Hampshire

v.

Daswan Jette

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

BRIEF FOR THE DEFENDANT

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(15 minutes oral argument)

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QUESTIONS PRESENTED

1. Whether the court erred by excluding evidence that a buyer stole drugs from S.G. and Samuel Chase during a prior drug sale.

Issue preserved by the State's motions in limine #2 and #3, A* 7, 12, Jette's objections to those motions, A 16, 21, the parties' arguments at the motion hearing, H 3–28, and the court's order, AD 3.

2. Whether the court erred by failing to disclose records submitted for in camera review.

Issue preserved by Jette's Motion for Discovery and in Camera Review, A 41, the State's response to Jette's motion, A 45, and the court's order, AD 12.

* Citations to the record are as follows:
"AD" refers to the appendix containing the appealed decisions;
"A" refers to the appendix containing documents other than the appealed decisions;
"H" refers to transcript of the motion hearing on November 22, 2019;
"JS" refers, by volume and page number, to the transcript of jury selection on December 16 to 19, 2020.
"T" refers, by volume and page number, to the transcript of trial on January 7 to 29, 2020.

STATEMENT OF THE CASE

In August 2017, the State obtained from a Merrimack County grand jury two indictments charging Daswan Jette with first- and second-degree murder. A 3–4. Prior to the indictments, Jette filed notice of his intent to rely on the defense of self-defense. A 5. At the conclusion of a sixteen-day trial on January 7–29, 2020, the jury found Jette not guilty of first- and second-degree murder, but guilty of manslaughter as a lesser included offense. T16 2679–83. On February 19, 2020, the court (Kissinger, J.) sentenced Jette to serve fifteen to thirty years at the State Prison. A 48.

STATEMENT OF THE FACTS

Undisputed Facts

In May 2017, Samuel Chase and his girlfriend Madison Campbell lived in a tent in Contoocook. T2 262, 331, T6 964, T7 1101. They had recently dropped out of college and used heroin, methamphetamine, marijuana and alcohol. T2 261, 264, 330, T3 405, T6 963, 967. They hoped to get an apartment with three friends, including S.G., who was twenty-three years old and living with her parents in Concord. T2 264–65, 331–32, T6 964–66, 971, 1025, T7 1106, T10 1733, T11 1942, 1952. To raise money for the apartment, Chase, Campbell and S.G. sold marijuana. T2 265, T6 971, 1025, T7 1106.

Daswan Jette was twenty years old. T12 2109. He lived in Boston, but frequently stayed with his girlfriend and her four-year-old daughter at her apartment in Concord. T4 729–30, T12 2110, 2113, 2209. He worked as roofer for a business in Concord, but the job wasn't steady. T12 2111. Jette used marijuana and occasionally resold small amounts of it. T12 2114, 2125, 2216.

Jette asked a friend where he could buy marijuana in Concord. T6 969, T12 2115. The friend gave Jette the number to a cell phone Campbell shared with Chase. T2 267, T6 970, T12 2116. When Jette texted the phone, Chase

responded. T6 971, T7 1109, T12 2117. Chase agreed to sell Jette half an ounce — 14 grams — of marijuana for $150. T2 267, T3 437, T7 1145, T12 2237–38. Chase explained at trial that he needed the money, and that he wanted Jette as future customer. T7 1251.

Chase did not have a half-ounce of marijuana on hand to sell to Jette. T6 972. He asked to buy the marijuana from an ex-girlfriend, but she refused. T2 205, T6 972, T7 1113–14. He then asked to buy the marijuana from S.G. T2 205–06, T6 972, T7 1102. S.G. offered to sell half an ounce of marijuana to Chase for $140, but Chase wanted a larger profit. T7 1102, 1145–46. So he instead purchased 12 grams of marijuana from S.G. for $120, and added what was left of a bag of marijuana he had been smoking, which he visually estimated to be about 2 grams. T6 972, 979, T7 1102, 1146–47, 1185–87. Chase didn't have the $120 to give to S.G., so S.G. decided to accompany Chase when he went to sell it to Jette. T7 1147.

Chase and Campbell didn't have a car, so, on the evening of May 30, 2017, Chase's best friend, Annika Tidd, drove them to S.G.'s house in her black Chevrolet Cruze. T2 156–57, 161–62, 189, 266, T3 403, T6 970, 974. Tidd's car had a red temporary license plate. T1 69–70, 129–31, T13 2453, 2462. From S.G's house, the four drove to Jette's apartment complex. T2 157, 162–63, 268, T3 468–69. Tidd

drove, Campbell sat in the front passenger seat, S.G. sat in the rear driver-side seat, and Chase sat in the rear passenger-side seat. T2 158, 271, T6 975–78.

The four arrived at Jette's apartment complex at about 7:00 to 8:15. T2 163, T6 987–88. Jette initially approached the driver's side, but Chase told Jette to enter the rear passenger-side door while he moved to the rear middle seat. T2 165–66, 277, T6 990–91.

As explained in detail below, witnesses disputed what happened next. Some basic facts, however, were not in dispute. The drug deal fell apart. Jette ran from the car to the vestibule of his apartment building. Chase and S.G. pursued him, and Campbell followed shortly afterward. Chase and S.G. cornered Jette in the vestibule. Jette pulled a folding knife and opened it. A physical struggle ensued. Either during that struggle or shortly thereafter, S.G. suffered a deep stab wound to her chest, which perforated her heart. T10 1805–13.

Chase, S.G., Campbell and Tidd quickly drove out of the apartment complex. T2 173, 304–05, T3 538, T6 1042. On the way to the hospital, Tidd called 911. T2 173–75, 248, 305, T6 1044. The dispatcher told Tidd to pull over, and police and paramedics went to their location. T2 175–77, 305–07. S.G. died within minutes. T10 1838–39, T11 1899–1900.

Disputed Facts

Chase testified that, when Jette sat down in the car, Jette asked Chase to show him the marijuana. T6 1004. Chase asked Jette show him the money first, but Jette flashed the money too quickly for him to see. T6 1004. No other witness testified to these events.

Chase testified that he took the marijuana from his underwear. T6 1005. Jette testified that S.G. handed the marijuana to Chase. T12 2145.

Campbell, Chase and Jette testified that Jette requested that the marijuana be weighed. T2 278, 341–42, T6 1005, T12 2144. Tidd and Campbell testified that Chase placed his scale on the floor of the car to weigh the marijuana, T2 166, T3 466–67. Chase and Jette testified that Jette placed his own scale on the floor. T6 1006–07, T7 1156–57, T12 2145. Jette testified that, when he pulled the scale from his pocket, his money and phone fell out, so he put those items on his lap. T12 2144–45.

Tidd testified that the marijuana was not actually weighed. T2 168. Campbell, Chase and Jette testified that Chase placed the marijuana on the scale. T2 278–79, T6 1008, T7 1151, T12 2146. Chase testified that the marijuana weighed 13.6 grams, and that Jette complained

about it being underweight, T6 1009, but no other witness testified to those events.

Tidd, Campbell and Chase testified that, without provocation, Jette grabbed the marijuana and ran from the car. T2 168, 279, 343, T6 1012, 1014, T7 1151.

Jette testified that he had to adjust the marijuana on the scale, and that, when he did, Chase grabbed the money and phone from Jette's lap. T12 2146, 2257. Believing that Chase and the other occupants were trying to rob him, Jette ran from the car with the marijuana still in his hand. T12 2146–47.

Jette ran toward the vestibule of his apartment building. T2 168, 279–81, 343, T6 1016, T12 2147, 2149. Chase and S.G. immediately pursued him, and Campbell followed within a minute. T2 168, 280–81, 343, T3 473, 476, T12 2149.

After Jette entered the vestibule, he tried to use his keys to open the interior door leading to the apartments. T6 1016, T12 2149. Before he could do so, Chase pushed him into a wall, causing him to drop his keys. T6 1016–17, T12 2149–50. Jette testified that Chase and S.G. were yelling at him, T12 2152, 2285, but Chase testified that he just tried to talk to Jette, T6 1017–18.

Chase testified that, at that point, Jette pulled out the knife, said, "I'm going to stab someone," and jabbed the knife

in the air. T6 1019, 1024, T13 2404. Chase told Jette, "It's just a bag of weed," and S.G. told him that they needed the money to get an apartment. T6 1024–25. Chase testified that Jette had already pulled the knife when Campbell entered the vestibule. T6 1025.

Campbell testified that Jette had not yet pulled the knife when she arrived in the vestibule. T2 287–88, T3 452. Rather, Chase and S.G. had Jette cornered. T2 285–86, T3 483. S.G. asked for the marijuana back. T2 287. Jette said, "Let's talk outside." T3 483. At that point, S.G. wrestled the marijuana out of Jette's pocket. T2 287, T3 453. As it came out, Jette's lighter and keys fell to the floor. T2 293, T3 452, 499. Either S.G. or Campbell picked up Jette's keys. T2 293, T3 452. At that point, Jette pulled out the knife. T2 287–88, T3 395, 401, 478–79, 499.

Jette testified that he pulled out the knife as Campbell entered the vestibule. T12 2151–52, 2260. He explained that he always carried a knife for protection. T12 2151, 2295. He pulled the knife because he felt threatened, and thought it was a matter of survival. T12 2159. When he pulled the knife, he did not intend to use it, just to keep Chase and S.G. at bay. T12 2152–53, 2159, 2292.

Chase testified that, when Campbell entered the vestibule, she insulted Jette, which angered him. T6 1025. S.G. continued telling Jette to return the weed, which, Chase

claimed claimed, Jette still had. T6 1026. Chase and Campbell testified that Jette held the knife to S.G.'s arm and threatened to cut her. T2 288, T3 452, 506–07, T7 1202, T13 2405. Campbell testified that, in response, she called Jette a "piece of shit," and asked how he could "hurt a girl." T2 289, 338, T3 475.

Chase, Campbell and Jette testified that Chase grabbed Jette and place him in a "headlock" or "chokehold." T2 333, 337, T3 395–96, 454, 540, T6 1026–28, T7 1214, T12 2153, 2263, 2268. Chase testified that he told S.G. to take Jette's knife. T7 1214. Campbell and Jette testified that S.G. held Jette's right arm, the one with the knife. T2 290, T3 480, 491, 499, T12 2155, 2264. Campbell and Jette also testified that Campbell held Jette's left arm, T2 290, T3 478, 480, 491, 499, T12 2156, 2264, but Chase disputed that, T7 1207.

Jette testified that Chase's arms were around his neck, cutting off circulation and making it difficult for him to breathe. T12 2154–57. The more he felt like he couldn't breathe, the more he struggled. T12 2160. At that point, he tried to use the knife against S.G. T12 2156, 2159, 2266. Jette was yanking, pulling, and trying to escape, so the knife was everywhere. T12 2158. Chase agreed that Jette was "flailing." T7 1217.

Campbell testified that S.G. wrestled the knife from Jette, closed it, and kept it for a while. T2 273, 290, 294–95,

T3 478. Chase testified that he thought S.G. had the knife at some point. T6 1031–32. Jette did not testify that S.G. ever took possession of knife.

Chase and Campbell testified that Chase told S.G. and Campbell to run back to the car, then threw Jette toward the interior door. T2 294–95, 337–38, T3 454, T6 1032. Jette testified that Chase jerked his head up, then pushed him to the ground. T12 2158, 2161, 2269–70. Campbell testified that S.G. dropped or threw the knife. T2 294–95. Campbell, S.G. and Chase ran back to the car. T2 169, 297–98, 300, 337–38, T3 396, 454, 529–30, T6 1032, T12 2158, 2161, 2269–70.

Jette testified that he picked up his knife and keys, opened the vestibule's interior door, and returned to his apartment. T12 2162–63, 2167, 2270, 2313. He did not feel the knife entering S.G.'s body and was not aware, at that time, that anyone was hurt. T12 2167, 2271–73. Based on S.G.'s injuries and the evidence discovered, however, he assumed that the knife must have stabbed S.G. during the struggle in the vestibule. T12 2291–92, 2305–06.

Tidd, Campbell and Chase testified that Jette pursued S.G., Campbell and Chase back to the car. T2 169–70, 219, 301–02, 350–51, T6 1034. All occupants returned to their original positions. T2 170, 300–01. Jette either prevented S.G. from closing her door or opened it. T2 172, 303, 354–55,

361, T6 1038–39. Jette then leaned into the car and stabbed S.G. T2 170–71, 304, 350, 354, 356–58, 362, T6 1038–39, 1041. Campbell and Chase testified that Jette stabbed S.G. three to four times. T2 304, 350, 354, 356–58, 362, T6 1041. S.G. exclaimed that Jette had stabbed her. T2 170–72, 231, 300, 303, T6 1041. They closed S.G.'s door and Jette ran back to the apartment building. T2 170, 172, 304, 363, T6 1040–42.

Evidence affecting witness credibility

While they were driving away from the apartment complex, with S.G. dying from blood loss, Chase, Campbell and Tidd conspired to lie to the police. T2 188, 325, T3 374, 379, 536–37, 548–49. At trial, they explained that they lied because they were scared of getting in trouble for selling marijuana, and for possessing drugs other than marijuana. T2 187–88, 238, 312–13, 316, 325, T3 373, 523–24, T6 1053, 1070–71.

When Tidd called 911, she and Chase told the dispatcher that a stranger approached them in the parking lot of the apartment complex, demanded money, and then stabbed S.G. T2 182, 187, T6 1067, 1070. They did not tell the dispatcher that they were there to sell marijuana. T2 184.

When Chase, Campbell and Tidd spoke to responding police officers, they repeated that lie. T2 177, 192, 206, 210,

310, 313, 316, 321, T3 373, 379, 423–24, 438, 442–43, T6 1047–49, 1073–74, 1078, T7 1173, T12 2323–25, T13 2374, 2419, 2426. They eventually admitted that they were there to sell marijuana. T2 323–25, T3 383, 451, T6 1050, 1058, 1084, T12 2327–28, T13 2431. Tidd told the police that she did not know whether S.G. was stabbed at the car or somewhere else. T13 2429, 2442.

The following morning, police officers knocked on the door to Jette's apartment, and Jette answered. T11 1965, T12 2173. They brought him to the police station for interrogation. T11 1973–79, T12 2176–78. Jette said that he was home all night and wasn't involved in any altercation. T11 1970–71, 1996–97, T12 2173, 2179, 2187.

Physical evidence

Police found three blood stains, matching S.G.'s blood, on the walls and door frame of the vestibule. T4 612, T5 807–11, 848, 854–55, T6 901–02, 939, T8 1357, 1412, T9 1526, 1537, 1681, 1689, 1700. Two stains were two to three feet from the floor, and the third was shin-high. T5 804, 810–11, 850, 855, T6 903, 936–37, 946. In addition to the fatal stab wound to her chest, S.G. sustained minor stab wounds to her knee and buttocks. T10 1796–1802, 1823–30. The State argued that the blood stains in the vestibule could have come from these minor stab wounds, and thus did not

prove that the fatal stab wound was inflicted in the vestibule. T14 2583, 2597.

Police found Jette's black folding knife in his apartment. T9 1681–82, 1703, 1716. The blade was three-and-a-half inches long. T9 1716. It had S.G.'s blood on it. T9 1689, 1695.

The police claimed to have found a steak knife outside the vestibule, but it had no blood on it. T4 612, 615, T5 849, T8 1398, T9 1649, 1701, 1703. Its blade was four-and-a-half inches long. T9 1650. The steak knife matched a knife set in Jette's apartment, which, the police claimed, had knives missing. T12 2298–99.

The State theorized that Jette brought two knives to the encounter. T14 2581, 2588–89, 2627. The State argued that the absence of blood on the steak knife could be explained by the fact that it was left outside in the rain. T14 2582–83.

The State's medical examiner explained that, due to tissue compression, a stab wound may be deeper than the length of the blade used to inflict it. T10 1831–32. She testified that the chest stab wound was more likely to have been inflicted by the steak knife than by the folding knife, but that it was possible that the folding knife caused that injury. T10 1837, T11 1884.

Jette testified that he did not bring the steak knife to the encounter. T12 2294. He added that the knife set was common. T12 2298.

The police dusted Tidd's car for fingerprints. T5 877, T8 1444–46. One palm-print lifted from the rear driver's-side door matched Jette. T8 1455–56, T9 1578–79, 1581, 1600. Defense counsel noted that when Jette initially approached the car, he went to the rear driver's side door, put his hands on the car, and looked in. T6 990–91, T7 1150, T14 2566. Thus, the palm-prints did not prove that Jette pursued S.G., Chase and Campbell back to the car after the altercation in the vestibule. T14 2566.

Police found the bag of marijuana in a backpack on the rear-seat floor of Tidd's car. T5 819–24, T6 921–22. It had S.G.'s blood on it. T8 1435–36, T9 1667–68, 1695, 1712–15.

Independent Eyewitnesses

Shawn Stephenson, a resident of Jette's apartment complex, was leaving his apartment when the altercation in the vestibule took place. T3 558. He saw two women in the vestibule. T3 558. One, with her arm extended, loudly yelled, "Give me the fucking weed." T3 558. Stephenson also heard the low mumble of a man's voice. T3 564–65. Stephenson returned to his apartment. T3 558.

Another resident of the apartment complex, Krystal Zielonko, heard her intercom go off at about 8:30 p.m. and then heard screaming and yelling in the parking lot. T13 2483–84, 2493. She looked outside and saw two or three people running toward a black Chevrolet Cruze or Malibu with a red temporary license plate. T13 2484–85, 2489–90, 2494–95. One of them yelled, "Get the eff out of here." T13 2494–95. The people ran into the car and the car drove away. T13 2485. Zielonko did not see anyone chase those individuals. T13 2486.

Zielonko testified that the car was parked in the middle of the parking lot, not in a parking space. T13 2485. She also testified that she thought she had seen the car in the apartment complex before that day. T13 2496. Because other witnesses testified that Tidd parked her car in a parking space, T2 164–65, 276, 340, T6 980–81, 986–87, T12 2140, and Tidd testified that she had never been to the apartment complex before, T2 163, the State argued that Zielonko observed different people running into a different black Chevrolet with temporary license plates and driving away quickly. T14 2628–30.

SUMMARY OF THE ARGUMENT

1. When a party claims that an individual acted violently, evidence demonstrating that the individual had a motive to act violently is relevant. Consistent with the right to trial by jury, a judge can only exclude relevant evidence under Rule 403 if the judge cites some danger and finds that the cited danger substantially outweighs the probative value. Here, evidence that the drug dealers had previously had their drugs stolen was relevant to show that they had a motive to respond with extreme violence when they falsely believed that another theft was occurring. The court erred by finding the evidence irrelevant, by excluding it without citing any danger posed by its admission, and by finding that any uncited danger substantially outweighed the probative value.

2. The State and Federal Constitutions require the disclosure of all exculpatory, material evidence. Court rules require the disclosure of all witness statements, except work product and statements not pertinent to the witness's anticipated testimony. This court should review the materials submitted for in camera review to determine whether they were work product and, if so, whether they should have been disclosed anyway. It should review other records to determine whether they were pertinent to the witness's anticipated testimony. It should review all the records to determine whether they were exculpatory and material.

I. THE COURT ERRED BY EXCLUDING EVIDENCE THAT A BUYER STOLE DRUGS FROM S.G. AND SAMUEL CHASE DURING A PRIOR DRUG SALE.

Prior to trial, the State filed motions in limine seeking to exclude, among other things, evidence of S.G.'s prior illegal drug activity and data from her cell phone and the cell phone that Cambpell and Chase shared documenting activity before the day of the drug sale to Jette. A 7, 12. The State argued that such evidence was not relevant, and even if it was, its probative value was substantially outweighed by the danger of unfair prejudice and confusion of the issues. A 8–9, 14.

Jette objected. A 16, 21. He cited a specific text-message exchange between S.G. and Chase regarding a theft during a prior drug sale. A 17–18, 23. The text messages indicated that, in April 2017, less than two months prior the incident at issue here, Chase arranged for S.G. to sell drugs to a different buyer. A 17–18, 23. When S.G. gave the buyer the drugs, however, the buyer paid S.G. with counterfeit money. A 17, 23. Jette noted that the text messages reflected that S.G. was angry about the event. A 18, 23. He also noted that Chase, at least, "had this prior bad drug deal in mind when he communicated with [Jette,] as he mentioned concern about counterfeit money" in his text messages with Jette. A 18, 23.

The defense explained that its "theory [was] that the April drug deal rip off caused a change in the way [Chase] and

[S.G.] did business, which led to heightened tensions, which led to the aggressive physical assault of [Jette], from which he had to defend himself." A 18, 23. Jette argued that evidence that a drug buyer had recently stolen drugs from Chase and S.G. was relevant and highly probative "to establish motive . . . for the reactions of [S.G.] and [Chase]" during the charged incident. A 18, 23.

Jette noted that other admissible evidence, such as text messages between Chase and Jette, would make clear that Chase and S.G. had a prior history of drug dealing. A 17, 22–23. Thus, he argued, the evidence would "have very little if any prejudicial effect." A 18, 24.

At the motion hearing, the State proffered that the text messages showed that Chase merely referred the buyer who used counterfeit money to S.G. H 5. It was S.G., the State proffered, who negotiated "amounts, prices and where they[were] going go meet." H 5–6. The State further proffered that S.G. wrote afterward, "I got robbed," referring to the buyer's use of counterfeit money. H 6. The State noted that S.G. had a tendency to use the term "robbed" more loosely than "the statutory meaning" of robbery. H 6–7.

The State argued that that incident was "wholly different from the case we have before us where [Jette] is alleged to have taken the drugs, run away, and then a physical confrontation ensued." H 6. The State argued that

the notion that "[S.G.'s] prior experiences informed how she reacted with [Jette] [was] speculation," and "[not] reasonable." H 8. The defense, the State argued, was merely trying to "[p]aint [S.G.] as a drug dealer." H 8–9. It added that Jette was not aware, during the charged incident, that another buyer had previously stolen drugs from S.G. H 9.

The court asked defense counsel, "[H]ow is it relevant if [Jette] didn't even know about these [prior thefts of drugs from S.G.?]". H 15, 19. Jette explained that he was not arguing that the evidence was relevant to Jette's "state of mind," in which case the defendant's knowledge would be a prerequisite. H 15, 25. Rather, his argument was that the evidence was "relevant to explain [Chase's] actions," "why[,] during the encounter, [Chase] acted the way he did." H 20, 23. He noted that the issue of "who was the initial aggressor [wa]s something that [wa]s in dispute," and the prior incident "g[ave] [Chase] a motive to be more aggressive . . . if he thinks he was robbed or this deal has gone bad." H 25. Chase, Jette argued, did not want to "get a reputation as somebody who just sets [S.G.] up with people that are going to rob her." H 25.

Jette submitted the text messages to the court. H 20. They reflected that S.G. wrote to Campbell:

> The guy [Chase] sent to me gave me fake money

> I want his name and ad[dress]
>
> . . .
>
> [Y]ou guys should meet up with him and we[']ll take it back. I'll hook you guys up if you help me get it back
>
> . . .
>
> Cause if not I want his name and address, and I'm slashing his tires. He paid me with two fake hundreds

A 37.

After Campbell provided the buyer's name and town, S.G. wrote:

> Fuck. That kid[']s such a bitch I can't believe he robbed me
>
> . . .
>
> I wish I knew where he lived. Any chance you can find out? At least meet up and rob him back. I'd feel better you guys having it then that scum fuck

A 38.

After Chase offered to "hit him up and 'see if I can buy some weed,'" S.G. responded:

> Hahaha do it! Rob that fuck, I'd love it. Even if I don't get it back it[']d bring me such joy for him to get a taste of his own medicine
>
> . . .
>
> I've never wanted to stab someone before. I'm just so sick of getting robbed. I don't understand like I've

> literally never robbed anyone before. Never once. Yet it seems like these broke bitches never want to pay me. I wish you knew where he lived. His tires would be getting slashed

A 38–39.

Jette noted that he intended to question Chase about the incident and S.G.'s reaction to it, and to admit the text messages only if necessary to impeach Chase. H 20, 25. Jette reiterated his point that other evidence would clearly show that S.G. and Chase "[had] a history of drug dealing." H 16. He detailed several text messages between Chase and Jette, which both parties agreed would be admitted, that would make that clear. H 16–18. He also noted that those text message would make clear that Jette, too, had a history of drug dealing. H 18–19. Thus, he argued, "They're going to be on even footing." H 18–19. The jurors, Jette summarized, "[are] going to know that [Jette] has prior drug activity. They're going to know that Chase and [S.G.] have prior drug activity. So we don't have to tiptoe around that fact." H 19.

The court, in response, stated that it did not disagree with Jette's point that other evidence would "implicit[ly]" show that Chase, S.G. and Jette were all involved in prior drug dealing. H 19. It questioned the relevance of the proffered evidence, however, given that Jette "couldn't have known about that." H 19.

In its order, the court recognized that Jette sought to introduce the evidence "to explain [Chase's] and [S.G.'s] behavior on the night of [S.G.'s] death, including how it allegedly led to an aggressive assault of [Jette] from which he had to defend himself." AD 9. The court, however, found that the evidence was "not relevant" and that "its probative value [wa]s substantially outweighed by the danger of unfair prejudice." AD 9.

The court described the prior incident as "wholly unrelated to [Chase's and S.G.'s] involvement with [Jette]" and again emphasized that Jette "was unaware" of it. AD 9. "It would be highly speculative," the court ruled, "to suggest that, because of prior issues remote in time from the current events, [Chase] and [S.G.] had reason to be aggressive toward [Jette]." AD 9. The court acknowledged that other evidence admitted at trial would "show that both [Chase] and [Jette] had been involved in drug transactions in the past." AD 9. Nevertheless, it ruled that "[t]he danger of unfair prejudice and of misleading the jury is substantial because the connection of the evidence to the case relies on what amounts to little more than pure speculation." AD 9.

By excluding evidence that, less than two months before the events at issue here, Chase referred a buyer to S.G. who stole drugs from her, the court erred.

If the trial court correctly interprets the rules of evidence, its application of those rules is reviewed for an unsustainable exercise of discretion. State v. Munroe, ___ N.H. ___ (Aug. 4, 2020). Under that standard of review, the question is whether the ruling was clearly untenable or unreasonable to the prejudice of the appellant's case. Id. The trial court's interpretation of the rules of evidence, however, is not afforded deference. State v. Saucier, 926 A.2d 633, 641 (Conn. 2007) ("To the extent a trial court's admission of evidence is based on an interpretation of the Code of Evidence, our standard of review is plenary."); see also Koon v. United States, 518 U.S. 81, 100 (1996) (abuse-of-discretion "label" "does not mean a mistake of law is beyond appellate correction," because "[a] district court by definition abuses its discretion when it makes an error of law."). Additionally, questions of constitutional law are reviewed de novo. State v. Benner, 172 N.H. 194, 198 (2019).

Evidence is relevant if it makes a fact of consequence either more or less probable that it would be without the evidence. N.H. R. Evid. 401. Here, the court erred by finding that evidence of the prior theft was irrelevant.

For over a century, this Court has recognized, "as an elementary proposition," the relevance of motive evidence: "When there is a question whether any act was done by any person, any fact is relevant to the issue which supplies a

motive for such an act." State v. Dearborn, 59 N.H. 348, 349 (1879). "[This Court] has long recognized that the absence or presence of a motive renders the alleged fact less or more probable." State v. Addison, 165 N.H. 381, 466 (2013). When a prior act supplies a motive for an individual to act in a particular way during the event in question, then that prior act "often carries high probative value, even when [it] constitute[s] a crime." Id. "Wide latitude is generally allowed in the development of evidence of motive." State v. Mallett, 732 S.W.2d 527, 535 (Mo. 1987) (en banc) (cited with approval in Addison, 165 N.H. at 472).

In every criminal case, the State alleges that the defendant acted in a particular way during the event in question. Thus, it is typically the State who seeks to admit evidence that the defendant had a motive to act in the manner alleged. In that circumstance, this Court has repeatedly held that such evidence is relevant. See, e.g., Addison, 165 N.H. at 464–72 (defendant's recent crimes were relevant to explain why he would shoot a police officer); State v. Legere, 157 N.H. 746, 757–63 (2008) (defendant's involvement with a motorcycle gang was relevant to explain why he would shoot a member of a rival gang); State v. Kim, 153 N.H. 322, 326–30 (2006) (defendant's declining financial situation was relevant to explain why he would rob and kill the victims); State v. Smalley, 151 N.H. 193, 196–98 (2004)

(defendant's drug-dealing activities were relevant to explain why he would shoot the victim); State v. Avery, 126 N.H. 208, 213 (1985) (defendant's involvement in murder of victim's boyfriend was relevant to show why he would also murder the victim); State v. Martineau, 116 N.H. 797, 798–99 (1976) (defendant's prior rape of the victim was relevant to show why he would murder her).

Here, it was not the State who sought to prove that an individual had a motive to act in a particular way during the event in question, but Jette. Jette relied on the defense of self-defense. Central to that defense was his claim that S.G. and Chase behaved so aggressively toward him that he reasonably believed that deadly force was necessary to prevent their use of deadly force against him. Thus, the aggressiveness of S.G. and Chase was a central issue in this case. Just as, in a typical prosecution for assault or homicide, the State is entitled to prove that the defendant had a motive for behaving aggressively toward the alleged victim, a defendant who claims self-defense is entitled to prove that the alleged victim had a motive for behaving aggressively toward him. State v. Thomas, 955 A.2d 1222, 1229 (Conn. Ct. App. 2008) (defendant's proffered evidence was relevant, as "it tended to corroborate the defendant's assertion that [the alleged victim] initially attacked her because it tended to show

that [the alleged victim] had a motive to attack the defendant.").

Evidence that, less than two months prior to the events in question, a drug buyer, referred to S.G. by Chase, stole drugs from S.G. was relevant to show that S.G. and Chase had a motive to respond aggressively when they believed that Jette was trying to steal drugs from them. S.G. and Chase were merchants. It is common knowledge that, if a merchant suffers a loss through theft, that merchant is likely to take steps to deter any future thefts. The common appearance of signs in retail establishments proclaiming that "shoplifters will be prosecuted" confirms this common-sense proposition. When a retail merchant aggressively prosecutes a shoplifter, it is not because the merchant cares deeply about whatever the shoplifter stole; it is because the merchant wants to "send a message" to the broader community that shoplifting will carry severe negative consequences.

In this respect, S.G. and Chase were no different than any other merchant. They had recently suffered a loss from a theft. See RSA 637:1 (single crime of theft includes theft by deception and theft by unauthorized taking). They likely feared that, in the relatively small community of Concord drug buyers, they might come to be seen as an easy target for future thefts, which would not have been good for their struggling business. That fear likely created a motive to "send

a message" to the community that any future attempt to steal drugs from them would be carry severe negative consequences.

Unlike legitimate merchants, of course, drug-dealers cannot call the police and seek prosecution when they are the victims of theft. They must instead respond with extra-judicial measures, physical violence being the most common. When S.G. and Chase believed, albeit mistakenly, that Jette was trying to steal their marijuana, they had a powerful motive to respond with physical aggression, just as Jette claimed. Their aggressive response, in turn, made it more likely that Jette reasonably believed that his use of deadly force was necessary to defend himself.

In its order excluding the evidence, the court stated that the prior theft was "remote in time from the current events." AD 9. The court was mistaken; the prior theft took place less than two months prior to the events at issue here.

The court also labelled as "highly speculative" and "pure speculation" the possibility that the prior theft gave S.G. and Chase a "reason to be aggressive toward [Jette]." AD 9. Again, the court was mistaken. As explained above, a merchant who suffers a loss through theft has a powerful motive to deter future thefts, and physical violence is one of the only tools drug-dealers have to deter theft. Here, moreover, Jette cited specific evidence that the prior theft

continued to weigh prominently on Chase mind. In his communication with Jette, Chase specifically "mentioned concern about counterfeit money." A 18, 23; see also Addison, 165 N.H. at 467 ("[T]he State's proffered evidence created a strong inference that the three prior crimes figured prominently in the defendant's mind" during the event in question). Finally, S.G.'s text messages about the prior theft confirm that she considered physical violence to be an appropriate response. A 37–39. In light of this evidence, there was nothing "speculative" about the possibility that the prior theft gave S.G. and Chase a motive to respond violently when they believed that Jette was trying to steal their drugs.

Both at the motion hearing and in its written order, the court focused on the fact that Jette was not aware of the prior theft at the time of the events at issue here. AD 9; H 15, 19. In some cases, a defendant who claims self-defense attempts to show that he reasonably feared the alleged victim based on the alleged victim's prior violence. See, e.g., State v. Vassar, 154 N.H. 370, 374–76 (2006). In that circumstance, the alleged victim's prior violent acts are relevant to the defendant's state of mind, but only if the defendant was aware of those acts at the time of charged offense. Id.

As Jette's explained at the motion hearing, H 15, 25, his argument here was completely different. He did not claim that the prior theft were relevant to his state of mind during

the events in question. Rather, he claimed that the prior theft was relevant to prove Chase's and S.G.'s motive to act aggressively toward him during those events. "[I]n the context of a self-defense claim, if the evidence has some relevance as to whether the victim had a motive to be the initial aggressor, then the defendant need not have prior knowledge of such fact." State v. Musick, 2009 WL 9151873, at *2 (Idaho Ct. App. Nov. 13, 2009). The court committed legal error by finding the prior theft irrelevant because Jette was not aware of it.

For these reasons, the prior drug theft was both relevant and highly probative to show that S.G. and Chase had a motive to respond with violence when they falsely believed that Jette was trying to steal their drugs.

The court also erred by excluding the prior theft under Rule 403. The court's Rule 403 ruling should not be viewed with deference, because the court misconstrued the rule.

Rule 403 permits a trial court to exclude evidence only "if its probative value is substantially outweighed by" a specified danger. Under the proper construction of Rule 403, the "probative value" prong of the analysis is distinct from the "danger" prong of the analysis. Evidence may only be excluded under the rule if the court identifies a "danger," distinct from probative value, and additionally finds that that danger substantially outweighs the probative value.

Part I, Article 15 of the New Hampshire Constitution and the Sixth and Fourteenth Amendments to the United States Constitution guarantee the right to trial by jury. Neither Rule 403 nor any other rule of evidence permits a trial judge to exclude relevant evidence merely because the judge believes that the evidence has low probative value. It would violate the defendant's right to a trial by jury for a judge to exclude the defendant's proffered evidence solely because the judge, if he or she were factfinder, would give the evidence little weight. Absent one of the dangers identified in Rule 403, it is for the jury, not the judge, to determine the probative value of relevant evidence.

While the court here addressed the probative value of the prior drug sales — calling its connection to the case "speculative" — it failed to cite any distinct danger of unfair prejudice or of misleading the jury. AD 8–10. Much less did it find that any distinct danger substantially outweighed the probative value of the evidence. Instead, it simply reiterated its finding that the connection was "pure speculation," and, on the basis of that finding alone, it asserted that there was a "substantial" "danger of unfair prejudice and of misleading the jury." AD 9. Because the court misconstrued Rule 403 and, in so doing, violated Jette's right to trial by jury, this Court should reverse without affording that ruling deference.

Even if this court reviews the court's Rule 403 ruling with deference, it was clearly untenable or unreasonable. "Evidence is unfairly prejudicial if its primary purpose or effect is to appeal to a jury's sympathies, arouse its sense of horror, provoke its instinct to punish, or trigger other mainsprings of human action that may cause a jury to base its decision on something other than the established propositions in the case." State v. Colbath, 171 N.H. 626, 636 (2019) (quotation and brackets omitted). "Unfair prejudice is not mere detriment to a [party] from the tendency of the evidence to prove [the other party's theory], in which sense all evidence offered . . . is meant to be prejudicial." Id. (ellipsis omitted). Courts consider: "(1) whether the evidence would have a great emotional impact upon a jury; (2) its potential for appealing to a juror's sense of resentment or outrage; and (3) the extent to which the issue upon which it is offered is established by other evidence, stipulation, or inference." Id.

Evidence that another buyer had previously stolen drugs from S.G. would not have had a great emotional impact on the jury, nor would it have appealed to the jurors' sense of resentment or outrage. No other evidence, stipulation, or inference tended to show that Chase and S.G. had reason to fear that they were developing a reputation among local drug buyers as easy targets for theft.

The only potential danger of admitting the evidence was its implicit tendency to show that S.G. and Chase had previously dealt drugs. However, as Jette emphasized both in his written objection and at the motions hearing, other evidence — including evidence the State sought to introduce — would clearly establish that anyway. "That [Chase] and [S.G.] had a prior history of drug activity together," Jette noted in his objection, "will actually be known to the jury through the messages already deemed admissible." A 17, 22. He explained that Chase wrote to Jette that S.G.'s drugs were of inconsistent quality, while his drugs, of which he was then out-of-stock, were much better. A 17, 22. At the motion hearing, Jette detailed the text messages — which the State planned to introduce — that "implicit[ly]" showed that "[Chase and S.G.] ha[d] a prior history of drug dealing." H 16–19.

The court responded to Jette's point by stating, "I don't disagree with what [Jette's lawyer] just said about this implicit drug activity." H 19. In its order, the court acknowledged that "[t]hese text exchanges show that both [Chase] and [Jettte] had been involved in drug transactions in the past." AD 9. Thus, the court acknowledged that the Jette's proffered evidence would not have created any danger of unfair prejudice by revealing that Chase and S.G. had previously dealt drugs.

Smalley is analogous. There, the defendant was charged with first-degree murder. Smalley, 151 N.H. at 195. Two individuals, Clough and Emra, robbed a third, Frost, during a drug sale. Id. at 194. In retaliation, Frost's friends planned to lure Clough and Emra to a motel room, "ambush them, break their kneecaps with a baseball bat, bind them with duct tape and hold them until Frost arrived." Id. Before Frost's friends could execute this plan, however, Clough observed, from a distance, several hooded men enter the motel room. Id. at 195. Clough responded by recruiting three men, including the defendant, to confront the group in the motel room. Id. During that confrontation, the defendant fatally shot one of Frost's friends. Id. The defendant claimed that he acted in self-defense. Id. at 197.

At trial, the court admitted evidence of the defendant's prior drug-dealing activities over his relevance and unfair-prejudice objections. Id. at 195. On appeal, this Court affirmed. It first held that the evidence was relevant because it showed that the defendant had business relationship with Clough and "painted a picture of a drug gang struggling to survive." Id. at 198. Thus, it showed "that [the defendant's] motivation for going to the motel with Clough was not just to protect his friend, but to preserve his livelihood." Id. This Court further held that the evidence was "highly probative" because it "was the only evidence of [the defendant's]

motivation, beyond friendship, for going to the motel to protect Clough and his business interests." Id. at 199.

Next, this Court addressed whether any prejudicial effect substantially outweighed the probative value. Id. It noted that "evidence of drugs and drug-dealing pervaded the case," "the drug-dealing evidence was not similar to charged crime," and "the evidence was not inflammatory." Id. The court also noted that the danger of unfair prejudice was lessened because defense counsel screened the jury panel with voir dire questions about drug-dealing. Id. at 200. In light of these factors, this Court held, "the probative value of the challenged evidence was not substantially outweighed by the danger of unfair prejudice." Id. at 201.

Here, as in Smalley, the evidence was highly probative to explain the drug dealers' motivation for acting violently during the events in question. As in Smalley, "evidence of drugs and drug-dealing pervaded the case." Additionally, this case did not involve any charges against S.G. or Chase, so there was no danger of evidence "similar to the charged crime." The evidence was not even similar to S.G.'s and Chase's actions, as claimed by Jette; there was no evidence that S.G. or Chase angrily confronted or physically attacked the buyer who gave S.G. counterfeit money, as Jette alleged they did to him. The evidence here was not inflammatory, just as the evidence of the defendant's drug activity in

Smalley was not inflammatory. Finally, just as defense counsel in Smalley screened the jury panel with voir dire questions, the court here screened the jury panel with similar questions. At the outset of jury selection, it told the panel, "You will hear evidence in this case that [Jette], [S.G.], and other witnesses were involved in illegal drug activity." JS1 20. It then asked, "If selected to serve on this jury, will the fact that people involved in this case were engaged in drug activity affect your ability to impartially hear and evaluate the evidence presented at trial?" JS1 20.

Although the jury here heard evidence that S.G. and Chase believed that Jette was trying to steal their drugs, that evidence was insufficient to establish the extent of their motive to act aggressively toward him. A one-time theft from a group of drug dealers wouldn't threaten their reputation and livelihood. And even if did, it is unlikely that the drug dealers would immediately recognize and respond to that threat. Having been the victim of theft already, however, S.G. and Chase were already on edge and hypervigilant from the beginning of their encounter with Jette. See Addison, 165 N.H. at 467 ("We reject the defendant's argument that the trial court failed to appreciate what he characterizes as other 'ample evidence' available to the State to prove the disputed issues of motive and intent."); Kim, 153 N.H. at 329 (rejecting defendant's argument that "the relevance of specific details

concerning his excessive gambling was eliminated by his admission to police that he drugged and robbed the victims due to financial desperation."); Smalley, 151 N.H. at 199 (affirming admission of prior drug activity "although there was other evidence that [the defendant] knew that Clough had robbed Frost and that there were other people in Clough's motel room").

For these reasons, there was no danger, either of unfair prejudice or of misleading the jury. And even if there was, any such danger did not substantially outweigh the prior theft's probative value to prove S.G. and Chase's motive to respond with violence when they believed that Jette was trying to steal their drugs.

The ruling was prejudicial. Without evidence of the prior theft, the jury was left to evaluate the possibility that S.G. and Chase would respond with violence and threats — sufficient to justify Jette's use of deadly force — over a $150 bag of marijuana. As this Court has recognized, "[t]he human mind searches for a rational explanation for an irrational act." Kim, 153 N.H. at 328. The purpose of motive evidence is to explain "why [someone] would commit an otherwise senseless . . . act." Addison, 165 N.H. at 466; see also Legere, 157 N.H. at 760 (2008) (motive evidence "helped to explain an otherwise inexplicable act"). When a party alleges that an individual acted violently, but cannot explain why, "the lack

of a motive operates as a distinct disadvantage." Addison, 165 N.H. at 466.

The State exploited the exclusion of the evidence at trial, asking Campbell, "[W]ith regards to everything that you saw and you experienced, and everything that you've described for us for the jury today, all of this was over a bag of weed?" T2 329. In its closing argument, the State argued that it was Jette, not S.G. or Chase, who wanted to "teach someone a lesson not to challenge [his] authority" and to "show [that he was] in control." T14 2627, 2641.

Had the prior theft been admitted, the State could not have made these arguments. The evidence would have shown that, for S.G. and Chase, this wasn't about "a $150 bag of marijuana," it was about "preserv[ing their] livelihood." Smalley, 151 N.H. at 198. And it would have shown that it wasn't Jette who had motive to exert his "authority" and "control," or to "teach someone a lesson"; it was S.G. and Chase who had "a motive to take extreme measures," Addison, 165 N.H. at 467, to "build respect through fear," Legere, 157 N.H. at 760, so as to deter any future thefts from their drug-dealing enterprise.

For these reasons, the court's error was prejudicial, and this Court must reverse.

II. THE COURT MAY HAVE ERRED BY FAILING TO DISCLOSE RECORDS SUBMITTED FOR IN CAMERA REVIEW.

Prior to trial, the State disclosed to Jette 248 pages of documents related to forensic testing at the New Hampshire State Police Laboratory. A 41. Ten pages, however, were completely redacted, and an eleventh page was partially redacted. A 42.

When Jette asked the prosecutors about the redactions, they stated that the redacted information was confidential work product. A 42. They did not, however, provide a more precise statement of the basis for the redactions. A 42; but see N.H. R. Crim. Pro. 12(b)(5) (requiring party invoking work-product privilege to provide opposing party with "a general statement of the basis for the redactions."). They also said that they would not submit the redactions to the court for in camera review. A 42, but see id. (requiring party invoking work-product privilege to submit, upon request, redactions to court for in camera review).

Prior to trial, Jette filed a motion for discovery and in camera review, seeking to enforce the provisions of Rule 12(b)(5). A 41. He also cited his rights to Due Process under Part I, Article 15 of the New Hampshire Constitution and the Fourteenth Amendment to the United States Constitution, and his right to all proofs favorable under Part I, Article 15 of the New Hampshire Constitution. A 41.

In response to Jette's motion, the State submitted the documents at issue to the court for in camera review. A 45. It asserted that prosecutors made "strategic decisions . . . as to what evidence would be tested and what it would be tested for." A 46.

The State asserted that three of the redacted pages consisted of the hand-written notes of Emily Rice, the State Laboratory's major case coordinator, from a meeting that prosecutors attended. A 45. The State asserted that one page was "a typed note to the file by Ms. Rice detailing a conversation she had with [a prosecutor] regarding which latent lifts were to be examined for fingerprints." A 46. The State asserted that two additional pages "contain similar information." A 46. The State claimed that these six pages were work product. A 46.

The State asserted that five additional pages consisted of emails between a prosecutor and State Laboratory employees. A 46. The State claimed that those emails "[were] administrative in nature and [did] not contain information that [was] pertinent to the anticipated testimony of any witness." A 46.

Following in camera review, the court ordered the disclosure of three pages of Rice's hand-written notes, but ordered that the remaining material would not be disclosed.

AD 12. By failing to disclose some or all of the remaining material, the court may have erred.

New Hampshire Criminal Procedure Rule 12(b)(1)(B) requires the State to disclose to a criminal defendant "[c]opies of all . . . statements of witnesses," "results or reports of . . . scientific tests or experiments," and "any other reports or statements of experts." Rule 12(b)(4)(A) additionally requires the state to disclose "all statements of witnesses the State anticipates calling at the trial." Rule 12(b)(4)(C) defines a witness's "statement" as:

> (i) a written statement signed or otherwise adopted or approved by the witness;
>
> (ii) a stenographic, mechanical, electrical or other recording, or a transcript thereof, which is a substantially verbatim recital of an oral statement made by the witness and recorded contemporaneously with the making of such oral statement; and
>
> (iii) the substance of an oral statement made by the witness and memorialized or summarized within any notes, reports, or other writings or recordings, except that, in the case of notes personally prepared by the attorney representing the State or the defendant at trial, such notes do not constitute a "statement" unless they have been adopted or approved by the witness or by a third person who was present

> when the oral statement memorialized or summarized within the notes was made.

The State is obligated, under the due-process and all-proofs-favorable clauses of Part I, Article 15 of the New Hampshire Constitution, the due-process clause of the Fourteenth Amendment to the United States Constitution, and Rule 12 (b)(1)(E), to disclose all material, exculpatory information to the defendant.

Rule 12(b)(5) permits a party to redact, from witness statements, "information concerning the mental impressions, theories, legal conclusions or trial or hearing strategy of counsel," as well as "information that is not pertinent to the anticipated testimony of the witness on direct or cross examination." The rule further provides that, upon request, such redactions must be submitted to the court for in camera review to determine whether the material should be disclosed.

A trial court's discovery rulings are reviewed for an unsustainable exercise of discretion. Vention Med. Advanced Components v. Pappas, 171 N.H. 13, 24 (2018). The question is whether the ruling was clearly untenable or unreasonable to the prejudice of Jette's case. Kurowski v. Town of Chester, 170 N.H. 307, 315 (2017).

This Court's review will involve four issues.

First, this Court will review the State's claim that the three pages of Rice's undisclosed notes constituted work

product. "At its core, the work-product doctrine shelters the mental processes of the attorney, providing a privileged area within which he can analyze and prepare his client's case." Balzotti Glob. Grp. v. Shepherds Hill Proponents, ___ N.H. ___ (May 27, 2020). Work product is defined as "the result of an attorney's activities when those activities have been conducted with a view to pending or anticipated litigation." Id.

"[T]rue work product is comprised of an attorney's ideas, theories and trial strategy," in other words, the attorney's "mental impressions, conclusions or legal theories." State v. Zwicker, 151 N.H. 179, 191 (2004). "For the work product doctrine to apply, [t]he lawyer's work must have formed an essential step in the procurement of the data which the opponent seeks, and he must have performed duties normally attended to by attorneys." Balzotti, ___ N.H. at ___ (quotation omitted). Courts "focus upon the substantive information that the material contains, rather than the form the information takes or how it was acquired." State v. Laux, 167 N.H. 698, 705 (2015).

Second, even if the Rice's notes constituted work product, this Court will determine whether they should have been disclosed anyway. As this Court has recognized:

> Work product . . . is not beyond pretrial discovery. Such matters might be facts admissible in evidence at the

> trial or might give clues to the existence or location of relevant facts. Or they might be useful for purposes of impeachment or corroboration. The determination whether to compel disclosure of work product is a matter for the trial court, which should consider the reasons which motivate the protection of the work product of the lawyer together with the desirability of giving every plaintiff and defendant an adequate opportunity to properly prepare his case before trial.

State v. Chagnon, 139 N.H. 671, 674 (1995) (citation, quotation and brackets omitted).

Third, this Court will review the claim that five pages of emails contained only "information that [wa]s not pertinent to the anticipated testimony of the witness on direct or cross examination." N.H. R. Crim. Pro. 12(b)(5).

Fourth, this Court will determine whether any of the withheld information should have been disclosed because it was material and exculpatory. State v. Laurie, 139 N.H. 325 (1995); Brady v. Maryland, 373 U.S. 83 (1963); see also State v. Girard, ___ N.H. ___ (Oct. 16, 2020) (following in camera review, trial court must disclose confidential records that are material and relevant to the defendant's defense).

If this Court concludes that the trial court erred by failing to disclose any material, it should disclose such

material to Jette before addressing whether he is entitled to a new trial.

CONCLUSION

WHEREFORE, Daswan Jette respectfully requests that this Court reverse.

Undersigned counsel requests 15 minutes oral argument.

The appealed decisions were in writing and are included in a separate appendix with no other documents.

This brief complies with the applicable word limitation and contains 9,233 words.

Respectfully submitted,

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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/ Thomas Barnard
Thomas Barnard

DATED: December 3, 2020