THE STATE OF NEW HAMPSHIRE

SUPREME COURT

2023 TERM

NO. 2022-0557

STATE OF NEW HAMPSHIRE

V.

NESTOR ROMAN

BRIEF OF APPELLANT NESTOR ROMAN

Donna J. Brown (N.H. Bar No. 387)
Michael G. Eaton (N.H. Bar No. 271586)
Wadleigh, Starr & Peters, P.L.L.C.
95 Market Street
Manchester, NH 03101
(603) 669-4140
dbrown@wadleighlaw.com
Oral Argument By: Donna J. Brown

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Articles and Secondary Sources

ISSUES PRESENTED

I. Did the trial court err in its application of the opening the door doctrine as to previously excluded evidence and testimony from a Sexual Assault Nurse Examiner?

SUMMARY OF THE CASE AND FACTS

After the State received an unfavorable pretrial ruling prohibiting it from introducing the contents of medical records relating to a nurse's treatment of the alleged victim and prohibiting it from introducing the nurse's testimony due to the State's untimely disclosure of same, the State explicitly referred to those medical records in a prejudicial and misleading manner, forcing the defense to counter that prejudice. In the trial court's pretrial ruling, it predicted precisely the cascade of prejudice that ultimately unfolded at trial. This appeal is about whether the State should have been permitted to marshal that excluded evidence into trial through the back door.

On June 24, 2022, after a three-day jury trial, Nestor Roman was convicted of two counts of attempted aggravated felonious sexual assault ("AFSA"), one count of AFSA–pattern, and two misdemeanor counts of sexual assault. He was sentenced on the pattern conviction to 25 years to life in the New Hampshire State Prison and to a consecutive sentence of 10 to 20 years in the State Prison on one of the attempted AFSA convictions. Appx. 499-500. He also received a fully suspended 10- to 20-year sentence on the second attempted AFSA and concurrent 12-month sentences on the misdemeanor convictions. *Id*.

The charges stemmed from June 25, 2019, allegations that Mr. Roman had sexually assaulted his granddaughter, J.J. Add. 44-45. Jury selection on the indictments that were based on the 2019 allegations was scheduled for September 7, 2021. Conf. Appx[1]. 4. On September 5, 2021,

[1] Confidential Appendix

J.J.'s mother emailed Manchester Police stating that J.J. claimed Mr. Roman had sexually assaulted her on numerous other occasions, dating back to 2013, and that some of these instances involved intercourse. *Id.* The parties appeared for jury selection two days later, but the trial was continued in light of the new allegations. *Id.*

A Child Advocacy Center ("CAC") interview of J.J. was conducted on September 10, 2021, during which J.J. repeated the new allegations. *Id.* at 4-5. J.J. indicated that the last time any sexual intercourse occurred was when she was in ninth grade, which would have been either in 2018 or 2019. *Id*. Ten days later, J.J. underwent a Child Advocacy and Protection Program ("CAPP") examination. Conf. Appx. 75-89. J.J. was examined by Cornelia Gonsalves, APRN, a Sexual Assault Nurse Examiner ("SANE"). *Id*. J.J. made various statements to Gonsalves, and Gonsalves conducted a physical examination. *Id*. at 5. Gonsalves documented her findings as follows:

> With aided eye, there are no bruises, lesions, rashes, discharge, anal gaping, or signs of trauma. The labia revealed no swelling, inflammation, sores, lesions or bruising. There was no vaginal discharge noted, nor any lesions or sores between the labia. With both labial separation and labial traction, the hymen appeared smooth, pink and fimbriated without any significant notches, defects, transections or scars visible. This was confirmed with gentle stretching of the hymenal edge with a Q-tip. Anal folds appeared symmetrical. There was no gaping and no visible lesions or sores within the folds.

Id. at 5-6.

The State obtained additional indictments, and the case was rescheduled for jury selection on June 20, 2022. *Id* at 6. A final pretrial conference ("FPC") was scheduled for June 8, 2022. Appx. 3. Pursuant to the New Hampshire Rules of Criminal Procedure, the State was required to file its witness list at least 20 days, and any motions in limine at least 15 days, prior to the FPC. *Id.* At 4. On the day of the FPC, however, the State filed an amended witness list which, for the first time, identified Gonsalves. *Id.* 3. Mr. Roman moved to exclude the witness based on late disclosure. *Id*. After the FPC, the State filed a motion in limine seeking to admit the alleged victim's statements to Gonsalves, to which Mr. Roman objected. *Id*. After a hearing on June 13, 2022, the Court granted Mr. Roman's motion to exclude and denied the State's motion in limine. *Id*.

In reaching its ruling, the Court noted that "[t]he State has provided no good cause for the late disclosure of the witness and the late-filed motion in limine," and concluded that admitting the witness and evidence would prejudice the defendant and undermine the orderly administration of justice. *Id.* 4-5. The Court noted that Mr. Roman had relied on the fact that the SANE nurse was not on the witness list in preparing for trial and would have deposed her. *Id.* 5. The Court further explained:

> the defendant made a credible argument that if the alleged victim's statements are admitted, defense counsel would be forced to decide whether to explore medical observations of the SANE nurse on cross-examination. The SANE nurse observed no physical signs of sexual abuse on her examination. This is a legitimate area of inquiry on cross-examination. If the defendant cross-examines the witness on this issue it may, in turn, open the door to otherwise inadmissible expert testimony relating to the SANE nurse's

> medical observations and the reasons she did not observe signs of trauma.

Appx. 5.

It concluded by noting that "[n]either the Court nor the defendant should be required to scramble to resolve the substantive issues raised by the State's late disclosure," which would involve "last minute litigation." *Id*.

Trial proceeded as scheduled. Importantly, this was a case based solely on the statements of the alleged victim. There was no other eye-witness testimony, no physical evidence, and no evidence to corroborate the specific allegations. Mr. Roman admitted three exhibits; the State introduced none. The State's witnesses included the alleged victim and her mother, two investigating officers, and Gonsalves. Mr. Roman and his wife testified for the defense.

On day two of trial, the State presented Manchester Police Detective Guy Kozowyk. Appx. 232. Kozowyk was the lead investigator into the allegations against Mr. Roman. *Id*. 235. He largely testified in general terms as to his investigatory process. *See generally*, Appx. at 235-48. Kozowyk explained that he attended J.J.'s CAC interview, which he described as "a child forensic interview" that takes place in a facility that "looks like a little grandma's house." Appx. 236. Thereafter, he testified, he "attempted to speak to Nestor Roman" and spoke with other witnesses. Appx. at 238-43. Kozowyk then drafted an arrest warrant. *Id*. 244.

The State asked Kozowyk what "forensic evidence did you collect?" Appx. 244. He responded that "[t]here was none," and explained that no allegation would have led to the generation of forensic evidence. *Id*.

Kozowyk then explained that, after the new allegations came to light on the eve of trial, they interviewed J.J. twice more. Appx. 245-46. The State then asked Kozowyk whether he "collect[ed] any other additional evidence in this case" following the CAC interview. Appx. 247. Kozowyk responded, "I believe it was just the interviews and the statements." *Id*.

Even though Kozowyk had testified to collecting no additional evidence—and despite the trial court's pretrial order excluding evidence concerning the CAPP examination—the State then prompted Kozowyk: "Okay. Did you collect any medical records?" *Id*. Kozowyk responded:

> Oh, yes. And there was medical records. So when -- when a child indicates that there is some sort of sexual trauma or experience, we refer – there's something called a CAPP, C-A-P-P exam. It's a Child Advocacy Protection Program. It's handled through Dartmouth-Hitchcock. And we say, you know, regardless of what else it is you're going to want to do, this is a doctor that specializes in this sort of exams. They know how to talk to kids, and they know -- they -- they can sexually – it's not the same as like a -- like a rape kit that you'd get at like a -- like the emergency room, but they go through and they -- they do like an exam of the child. And I received medical records from that exam.

Id. The State moved on, leaving the jury wondering why they were not hearing the results of an examination taken by "a doctor that specializes in this sort of exams" and "can sexually" discern whether "there is some sort of sexual trauma or experience," similar to (but not the same as) a "rape kit." Appx. 247-48.

With the door opened and the jury presented with the misleading impression that there were medical records, collected in an investigation that resulted in charges against Mr. Roman, that must look so bad for the

defendant that the jury will not get to see them, the defense had no choice but to correct that misleading impression. Appx. 250-51.

On cross-examination, Kozowyk acknowledged that "[t]here was (sic) no injuries documented" in the medical records, no swelling, and no gaping or visible lesions or sores. *Id*. However, and despite defense counsel's attempts to redirect him to the much more narrow inquiry as to the objective finding of no injuries, Kozowyk explained that "injuries being documented wouldn't be – necessarily a sign of . . . it's not always obvious that – that there'd be injuries present for signs of sex." Appx. 247.

Following this testimony, the parties approached the bench, and the State claimed that the *defense* had opened the door in its effort to correct the misimpression left by the State's direct examination of the Detective on "medical records." Appx. at 251-54. The State argued that it was now permitted to introduce the testimony of Gonsalves. *Id*. The defense noted that it was the *State* who opened the door, referring to an earlier defense objection regarding the relevance of the Detective's detailed testimony on his investigatory efforts and the State's attempt to "backdoor" the evidence that had been excluded prior to trial. *Id*. Defense counsel noted contemporaneously that "everybody assumes when there's medical records that something happened. That there's something bad; that there's injuries," adding that the fact there was a medical examination was not relevant. *Id*. When the State later argued that discussing the medical records specifically was necessary because the defense might argue that the Detective did an inadequate investigation, the defense noted it had not argued as much at any time during the trial and, therefore, it was neither relevant nor proper rebuttal testimony. Appx. 260-261. The defense also noted the lack of

preparation resulting from the State's untimeliness and the inability to challenge Gonsalves's testimony on *Daubert* grounds. Appx. at 262 & 276.

After a recess, the trial court ordered that the defense had opened the door, opining that the curative admissibility doctrine applies, but not the specific contradiction theory. Appx. at 268-75. The court found that the State did not initially open the door because the Detective's testimony was not inadmissible, but found that the defense's questioning—to which the State did not object—would have been inadmissible had the State objected and, therefore, triggered curative admissibility. *Id*. The court concluded that "once the Defense injected issues of specific expert testimony relating to when and what the likelihood of hymenal tears are, I think that is what makes that line of cross-examination prejudicial," making the SANE nurse's testimony "essential to rebut that prejudice." *Id*. Despite the court's pre-trial concern that the defendant should not have to scramble due to the State's late expert disclosure, defense counsel had to hastily conduct a short deposition of Gonsalves, who was only available the following morning, while scheduling trial to resume at 10:00am. Appx. 278-79.

Gonsalves was the first witness to testify the following day, and the last before the State rested. *See* Appx. at 286-320. Gonsalves, a pediatric nurse practitioner, explained that she had been with CAPP, where "we see kids and teenagers when there is suspected sexual abuse, physical abuse, emotional abuse, neglect, or any combination," since 2017. Appx. 287-88. The State sought to recognize Gonsalves as "an expert in the area of pediatric nursing in her subspeciality of child abuse." Appx. 291. The defense again raised its objection regarding the timing and disclosure of Gonsalves as an expert and noted that, while she is an expert in pediatric

nursing, her last-minute deposition revealed that she did not have sufficient expertise and could not articulate a scientific basis for opinions concerning "how often or how frequently there are (indiscernible) positive findings when they examine the genital area" and the "significance of a lack of anything abnormal during the genital exam." Appx. 291-92.

The parties then conducted voir dire. Appx. 293. After confirming that she had only been working in the area of child maltreatment for about five years, and before that had focused on neurology, questioning turned towards her experience and knowledge concerning injuries to children who have experienced sexual maltreatment. Appx. at 294-306. Gonsalves acknowledged that she does clinical work, not scientific work, and her knowledge of issues concerning injuries to children is based upon "reading things as opposed to some other way of actually review . . .." Appx. 295. Gonsalves noted that she had read the work of Joyce Adams, an "author that has done a lot of work in the area of child sexual abuse," including, in part, the frequency of noted injuries in children who report sexual abuse. *Id*. She noted that, in her practice, she just does the medical evaluation; she would not follow the case or know if the child later changed their story, said they lied, or got caught lying. Appx. 296. The same would be true for Adams's work, Gonsalves "believe[d]," although she could not explain the methodology of Adams's studies. *Id.* at 296-97. She was also not adequately familiar with other studies on this issue, "without preparation." *Id*. With respect to Gonsalves's own clinical work, "the clinic does not keep track of that–those specific statistics" regarding how many examinations yield findings of significance or nonnormal findings. Appx. at

297-98. The best she could do was say that such findings were "infrequent." *Id*.

Gonsalves tried to explain Adams's studies in more detail, noting that Adams "was attempting" to study the nexus between suspected sexual abuse and physical findings and opining that, based on unspecified "literature that I've read" it "seems like it is somewhere between two and five percent of actually finding physical evidence . . .." Appx. 302. Gonsalves provided other vague summaries of Adams's work, noting her "attempt to classify the differences in terms of findings on a physical exam" and "an indeterminate type of classification." *Id*. In the entirety of her testimony, Gonsalves referred to only one specific article by Adams (or any other individual), which apparently only studied around 1,000 cases. *Id*.

The defense reiterated its objection to Gonsalves's testimony—noting Gonsalves could not provide details as to how the one study she referenced was conducted or scientifically tested, as well as her "vague idea" as to the percentage of physical findings in cases of suspected sexual abuse—and noted that the defense had only learned of this article that morning. Appx. 307. The trial court permitted Gonsalves to testify. *Id*.

Gonsalves explained to the jury that J.J. was 17 at the time of the examination, which is "a complete physical exam like head to toe, but it does include a closer look at the genital/anal area." Appx. 309. She described the examination process in detail. Appx. At 309-311. She then explained that J.J.'s examination "was a normal pubertal female genital and anal exam" with no injuries or abnormalities, or "any concerns for sexual abuse." Appx 311. She explained that the view of "the hymen as something that sort of breaks or the cherry pop when someone is vaginally

penetrated for the first time" is "not consistent with what happens when you look at a person's anatomy." Appx. at 312-13. An intact hymen is not "indicative of – that there was no penetration." Appx. 313. She opined that a "normal exam" is not instructive on the issue of whether there had been penetration. *Id*. She also opined that the majority of cases do not involve physical findings, "our bodies heal remarkably well," younger individuals are less likely to experience tears due to the elasticity of the genital area, and tearing in a younger individual can heal by the time of examination. Appx. at 313-15. She later indicated that the presence of scarring is "extremely rare." Appx. 319.

The State's case was anything but strong. It relied exclusively on the credibility of the alleged victim. Her credibility was significantly compromised due to numerous inconsistent statements. For example, the alleged victim testified that the first time she remembered "something happening" with the defendant was at his house when she was in the school year 2014 – 2015 when she was 10 years old and in fifth grade.[2] Appx. 86. The alleged victim was impeached with an earlier statement that she said "nothing happened" before 2018 when she was 14 years old and in ninth grade. Appx. 112. The alleged victim was also impeached with her 2021 CAC interview wherein she said that "the first time happened" was when she was in fourth grade which would have been the 2013 – 2014 school year. Appx. 114-15. The alleged victim was also impeached with a statement from her 2021 CAC interview where she said the "first time" happened at her house. *Id*. The alleged victim was also impeached on the

[2] During the cross-examination of the alleged victim, she testifies as to her age and grade and the corresponding school year. Appx. at 108-110.

fact that she changed her story about the timing of the alleged assaults after the prosecution told her that the defendant had evidence that he lived in Ohio when she was in fourth grade. Appx. 128-131.

While there was some testimony that the defendant made inculpatory statements about these allegations, the sources of those claims were impeached as to their biases and motives. *See* Appx. at 191-195 and 228-29.

Accordingly, the State's late-disclosed expert added prejudicial weight to the State's case and, indeed, was how the State closed its case. The State emphasized the import of Gonsalves's testimony in summation, using it to bolster the alleged victim's credibility:

> You heard from Gonsalves. [J.J.] went through an internal examination, head to toe, nonacute because the abuse had been going on for years, and she hadn't had contact with Nestor Roman since 2019. And she told you that in her 39 years of nursing and pediatric exams and the 850 exams that have been done by the CAPP program until October 2021, there's only been a handful of kids with a physical injury. The myth of the hymen, it's not true.
>
> And she told you that as kids are younger, they're less likely to have tearing or scarring because of the elasticity that comes with young age. Medical studies, two percent of 1,000 children with suspected sexual abuse, no injury, no sign, fast healing, nothing to pop, no scar. And that's an important detail because the reality is that *you heard that from a medical professional*, not on a PowerPoint by an attorney. And *you heard about the reality of sexual abuse and the lack of injuries that are a majority of the time associated with that*.

(Appx. 421) (emphasis added).

Based upon Gonsalves's testimony, and the State's characterization of same, the jury could have disregarded all the inconsistencies and incredible aspects of the alleged victim's testimony and accepted the State's expert-based argument that the undisputed absence of any evidence of sexual assault supports a finding of sexual assault. *Id*. (equating "the lack of injuries" with "the reality of sexual abuse").

SUMMARY OF THE ARGUMENT

There is no dispute here that the door was opened. It was, however, the State who opened it. And the State cannot force the defense to correct a misleading impression created by the State's reference to evidence that had been explicitly excluded pre-trial, in order to use the defense's correction to admit the evidence it previously could not admit. This kind of gamesmanship—intentional or otherwise—will allow any party, in the criminal or civil context, to slither through a loophole in a court's pretrial order. It throws open a back door when the front door is purposefully fortified. Indeed, the "opening-the-door" doctrine exists to "avoid . . . unfairness and to preserve the truth-seeking goals of our courts." *Calloway v. State*, 210 So.3d 1160, 1186 (Fla., 2017). Here, the State cannot both build the strawman *and* knock it down.

This Brief will address five issues related to the opening-the-door doctrine as applied in this case.

ARGUMENT

I. THE STATE OPENED THE DOOR BY QUESTIONING DETECTIVE KOZOKYK SPECIFICALLY CONCERNING THE MEDICAL RECORDS, WITH HIS

RESPONSIVE TESTIMONY LEAVING AN INCOMPLETE, MISLEADING, AND PREJUDICIAL IMPRESSION, PERMITTING THE DEFENSE TO COUNTER SAME WITH UNDISPUTEDLY ACCURATE INFORMATION CONCERNING THE CONTENT OF THOSE MEDICAL RECORDS

There is no dispute that Kozowyk's testimony on cross-examination—that the medical records documented no injuries or evidence of sexual assault—was a complete and accurate account of what the medical records actually documented. The only issue, with respect to the State's introduction of Gonsalves's testimony, would be whether the State was entitled to present evidence regarding an expert *interpretation* of evidence that was introduced in a complete and accurate manner. We do not reach that question, however, until we first determine which party opened the door to evidence concerning the medical records. Indeed, where the opening-the-door doctrine "is intended to prevent prejudice and is not to be subverted into a rule for the injection of prejudice," the State cannot open the door via the introduction of incomplete and misleading evidence, forcing the defendant to introduce undisputed evidence to counter same, as a means to introduce a prejudicial interpretation of that evidence which was expressly excluded pre-trial. *See State v. Gaudet*, 166 N.H. 390, 396 (2014). This raises a concern as to gamesmanship and gaining an unfair advantage, which this Court has repeatedly sought to combat. *See*, *e.g.*, *State v. Wilson*, 169 N.H. 755, 781 (2017); *State v. Sonthikoummane*, 145 N.H. 316, 327 (2000).

"The opening the door doctrine comprises two doctrines, the 'curative admissibility' and 'specific contradiction' doctrines." *State v.*

Wamala, 158 N.H. 583, 589 (2009). "The 'curative admissibility' doctrine applies when inadmissible prejudicial evidence has been erroneously admitted, and the opponent seeks to introduce testimony to counter the prejudice. *Id*. "The 'specific contradiction' doctrine is more broadly applied when one party has introduced admissible evidence that creates a misleading advantage and the opponent is then allowed to introduce previously suppressed or otherwise inadmissible evidence to counter the misleading advantage." *Id*. In other words, "'curative admissibility' is triggered by the erroneous prior admission of inadmissible evidence, while 'specific contradiction' is triggered by the introduction of misleading admissible evidence." *State v. Morrill*, 154 N.H. 547, 550 (2006). "Under the curative admissibility doctrine, a trial judge has discretion to admit otherwise inadmissible evidence in order to rebut prejudicial evidence that has already been erroneously admitted." *State v. Barr*, 172 N.H. 681, 693 (2019) (quotations omitted). "Under the specific contradiction doctrine, a trial judge has discretion to admit previously suppressed or otherwise inadmissible evidence to directly counter the misleading advantage triggered by the introduction of admissible evidence." *Id*. (quotations omitted).

"For the specific contradiction doctrine to apply, a party must introduce evidence that provides a justification, beyond mere relevance, for the opponent's introduction of evidence that may not otherwise be admissible." *Wamala*, 158 N.H. at 589-90. "The initial evidence must, however, have reasonably misled the fact finder in some way." *Id*. at 590. "The rule thus prevents a party from successfully excluding evidence favorable to his opponent, and then selectively introducing this evidence for

his own advantage, without allowing the opponent to place the evidence in proper context." *Id*.

"The fact that the door has been opened does not, by itself, permit all evidence to pass through." *Wamala*, 158 N.H. at 590 (quotations omitted). "The doctrine is intended to prevent prejudice, and is not to be subverted into a rule for the injection of prejudice." *Id*. Trial court rulings on these issues are reviewed for an unsustainable exercise of discretion. *Id*.

A. The State Opened the Door to Evidence Concerning the Undisputed Contents of the Alleged Victim's CAPP Examination Records After Creating a Prejudicial and Misleading Advantage by Implying to the Jury that the Medical Records Contained Evidence Indicative of Guilt

Before trial, in denying the State's request to introduce Gonsalves and certain aspects of her medical records, the trial court predicted the very position the defense would ultimately be forced into after the State invoked the existence of a medical examination: "the defendant made a credible argument that if the alleged victim's statements are admitted, defense counsel would be forced to decide whether to explore medical observations of the SANE nurse on cross-examination," which could then open the door to the SANE nurse's testimony. Appx. 5. It was, in large part, because of this concern that the court excluded any evidence relating to Gonsalves or her examination. In other words, the trial court acknowledged the prejudicial impact of evidence that would imply the existence of a medical examination and the untenable situation the defendant would face. The State—unintentionally or otherwise—produced the same disconcerting result, and imposed the same Hobson's choice upon the defendant. Where

the subject evidence was excluded pre-trial, however, the only justifiable (and just) conclusion is that the *State* opened the door to discussing the examination's findings, allowing the defendant to provide complete, accurate, and undisputed evidence as to the examination's findings, and the State cannot thereafter benefit from its circumvention of the court's pretrial ruling.

Under either the curative admissibility or specific contradiction doctrine, the State opened the door and permitted the defendant to counter the prejudice and misleading impression left with the jury with brief, unobjected-to, and undisputedly accurate questioning on the findings of the medical examination.

As argued at trial, detailed questioning of the officer as to every investigatory step he took was improper and irrelevant. *See* Appx. 239. There was no argument from the defense that the police conducted an inadequate investigation, and pre-emptive rebuttal evidence is improper. *See State v. Agafonov*, No. 38764, 2012 WL 9496436, at *6, n.1 (Idaho Ct. App. Nov. 27, 2012) (collecting cases). There are several circumstances that make the prosecutor's specific question as to Detective Kozowyk's receipt of medical records inappropriate. First, no witness had testified as to a CAPP examination specifically, the practice of conducting CAPP examinations generally, or the fact that there were medical records to be collected and analyzed. Thus, even if there had been some vague argument as to the inadequacy of the investigation, there would be no reason for the jury to know that the police might have missed something if they had not collected medical records. Second, Detective Kozowyk had already expressly affirmed that there was no additional evidence collected in

response to a question from the prosecutor (perhaps cognizant of the fact that medical records were not to be discussed at trial). *See* Appx. 247. Thus, the State improperly prompted the Detective with a leading question on a topic expressly excluded from trial. Third, the pretrial ruling intended to exclude *any* discussion of the medical records in order to prevent the domino effect that ultimately occurred. Appx. 5. Finally, under Rule of Evidence 403, the prejudice associated with reference to previously excluded evidence and the inference that such evidence is damaging if it was excluded, far outweighs any probative value in telling the jury that an officer collected medical records where the investigation was not challenged and the jury had not previously been aware of the existence of medical records. Accordingly, the specific question regarding the existence and receipt of medical records—and certainly the detailed answer linking the medical records to evidence evaluating the alleged victim's claims—was improper, uncalled for and resulted in inadmissible evidence, and therefore opened the door under the curative admissibility doctrine. As a result, the defendant was permitted to correct the attendant prejudice by offering undisputedly accurate, and narrowly tailored, evidence.

The applicability of the specific contradiction doctrine is more clear-cut. The State's question concerning the medical records, and the Detective's detailed answer, need not be inadmissible for the doctrine to apply, and it need only create a misleading advantage or otherwise reasonably mislead the fact finder "in some way." *See Wamala*, 158 N.H. at 590. Contrary to the purpose of this doctrine, the State selectively introduced evidence concerning the existence and import of the medical records (via Kozowyk's testimony that such records would document an

examination meant to vet allegations of sexual assault) for its own advantage (purportedly, to pre-emptively rebut an inadequate investigation argument), "without allowing the opponent to place the evidence in proper context." *See id*.

Here, the State knew it could not introduce evidence regarding the content of the medical records, due to its untimely, last-minute motion in limine and amended witness list. But it also knew, from the court's pretrial order, that any invocation of the medical records would force Mr. Roman to either correct the misimpression that the medical records obtained in the course of an investigation that resulted in criminal charges must involve inculpatory findings and be subject to the opening-the-door argument the State would subsequently raise, or leave the jury with the misleading impression.

There is significant support—both from this Court and others—for the notion that mere reference to previously excluded or inadmissible evidence, as well as inferences that may be drawn therefrom, is prejudicial, creates a misleading advantage, and, in some cases (without even considering the opening-the-door doctrine), constitutes reversible error. *State v. Ober* is perhaps most instructive on this point. 126 N.H. 471 (1985). In that case, this Court granted a new trial after the prosecutor asked a police officer if he had requested the victim take a polygraph test. *Id*. at 471. Apparently before the officer even responded, the trial court instructed the jury to disregard the question, but denied the defense's motion for a mistrial. *Id*. This Court noted that it has "consistently held that the results of polygraph tests are not admissible as evidence of guilt or innocence in criminal trials" because of the unreliability of such tests and

the "danger that the jury will rely upon them to establish the truth or falsity of a witness's statements." *Id*. at 471-72. Asking whether a victim had been asked to take a polygraph test cannot produce admissible evidence and the jury might "speculate[] from such a question that the victim was not asked to take a polygraph test," enhancing the victim's credibility. *Id*. at 472. Accordingly, the mere question as to this facet of the officer's investigation—without even eliciting a response or getting into the findings of any test—was reversible error because it referred to the general topic of evidence that was inadmissible and the jury could draw prejudicial inferences. *Id*.

We are presented with a strikingly similar factual scenario here. No question concerning the medical records would produce admissible evidence because those records had been excluded. Even if the State was simply attempting to demonstrate a thorough investigation, the fact that the evidence was inadmissible allowed the jury to speculate and draw inferences adverse to the defendant. Here, it was not just a question. The Kozowyk explained the nature of a CAPP examination and suggested that, like a "rape kit," it would include evidence of the alleged victim's claims of sexual assault. This, in turn, would enhance the alleged victim's credibility, where the jury is assuming that a medical examination evaluating the alleged victim's claims was provided to police who then brought charges against Mr. Roman. This assumption is further supported where the prosecutor asking a leading question that placed even more emphasis on the import of the mystery medical records. Accordingly, just like *Ober*—and even more so here, given the officer's response—the State's questioning as to the medical records was prejudicial.

Other cases support this conclusion. This Court has "previously held that the door can be opened by *inferential conclusions* that *may be drawn* from a witness's testimony." *State v. DePaula*, 170 N.H. 139, 146 (2017) (emphasis added). If a prejudicial, incomplete, or misleading interpretation "could logically have been" made by the jury, the door is open, "notwithstanding that there may also have been other responsible interpretations." *Id*. at 147. For example, the defendant opens the door to bad character evidence by testifying that he said, at some point during the evening of an alleged assault, "I'm leaving. This isn't me," because the jury could conceivably view this statement as suggesting that it is not within the defendant's character to participate in assault. *See id*. (citations omitted). Or an alleged victim opens the door to prior sexual encounters where she testifies that she rejected the defendant's advances because she had a boyfriend. *See id*.

Perhaps the issue would be less clear if the Detective had simply responded "yes" when asked whether he received medical records, although the prejudicial inference would still have been triggered. In explaining the nature of a CAPP examination, comparing it to a "rape kit," suggesting that the examination is intended to assess a claim of sexual assault, and noting that he collected the associated medical records in investigating the allegations which ultimately resulted in charges, however, the Detective planted a highly prejudicial and misleading inference that the medical records—the contents of which and their absence from trial being issues on

which the jury would have to speculate—must involve some evidence supportive of the alleged victim's claims.[3]

II. THE DEFENSE WAS FORCED, AND ENTITLED, TO COUNTER THE PREJUDICIAL AND MISLEADING ADVANTAGE CREATED BY THE STATE

In response to the prejudicial and misleading advantage created by Detective Kozowyk's testimony on the purpose and scope of the CAPP examination, as well as his specific confirmation that he received medical records relating to that examination in the course of an investigation that resulted in criminal charges, the defense asked the Detective a narrow and objective question concerning the undisputed factual findings summarized in the medical records.

Defense counsel's rebuttal was narrow: it simply sought to confirm that "[t]here was (sic) no injuries documented," no swelling, and no gaping or visible lesions or sores. Appx. 250-51. Indeed, the defense indicated that its question was narrowly focused on asking whether the medical records noted any sign of injuries, and expressly stated that it was "not asking the significance of it." *Id*. Defense counsel did not seek an interpretation of the findings in the medical records, and defense counsel's questioning did not extend beyond confirming the simple and undisputed fact that the medical records documented no injuries, to correct the misimpression created by the State. This was properly narrowly tailored and proportional to the evidence that created the prejudicial and misleading

[3] *See State v. Hughes*, 122 N.H. 781, 784 (1982) (cautioning, in a case where an officer indirectly referenced the defendant's presence at the State Hospital which fell short of requiring a mistrial, "prosecutors to take all such steps as are necessary to prepare their witnesses in advance of trial to prevent the presentation, in the presence of a jury, of facts excluded by pretrial order").

advantage. Indeed, when Gonsalves was later questioned, she agreed that the examination was normal, which is "consistent with there not being abuse, and it could be possible that there was abuse, but it really doesn't prove it one way or the other." Appx. 316-17. As such, defense counsel's questioning of Detective Kozowyk not only did not inject further prejudice,[4] but it also narrowly and objectively countered the State's misleading evidence. *See Morrill*, 151 N.H. at 333 (noting that the opposing party is permitted "to place potentially misleading evidence in its proper context").

III. THE STATE CANNOT BENEFIT FROM ITS OWN MISLEADING REFERENCE TO EXCLUDED EVIDENCE, AND THERE IS A STRONG BASIS FOR DISINCENTIVIZING GAMESMANSHIP AND MANIPULATING THE OPENING-THE-DOOR DOCTRINE TO FORCE THE ADMISSION OF EXCLUDED EVIDENCE THROUGH THE BACK DOOR

The opening-the-door doctrine "is intended to prevent prejudice and is not to be subverted into a rule for injection of prejudice." *Morrill*, 154 N.H. at 550. Even assuming that the defense's questioning of Kozowyk would, in a vacuum, open the door to Gonsalves's testimony, the State cannot bait the defendant into correcting a misimpression, as a means to introduce evidence the State could not have otherwise introduced. Indeed, the doctrine permits one party (here, the defendant) to "counter the

[4] And even if it did, the State failed to object. If there was any prejudice arising from the defense's narrow and objective question as to the undisputed findings documented in the medical records, the State was not entitled to benefit from its previous introduction of misleading testimony relating to excluded evidence, but was rather entitled to, at most, a limiting instruction. *See*, *e.g.*, *DePaula*, 170 N.H. at 149-50. The State requested no such instruction.

prejudice or misleading advantage *created by the other party's opening of the door*," *see Rasor*, No. 2019-0522, 2020 WL 7776477, at *3 (emphasis added); it does not permit the party who opens the door to benefit by shoving as much prejudicial evidence through as it can. A conclusion to the contrary would subvert the doctrine into a rule for the injection of prejudice; it would permit a party who receives an unfavorable ruling to refer to the evidence excluded by that ruling in an incomplete and misleading way, forcing the other party to rebut the misimpression, in order to then introduce the excluded evidence. Here, it is even more concerning where the subject evidence was excluded pre-trial because of the State's inexcusable, untimely pretrial litigation, which the trial court determined would prejudice the defendant in the very same way he was ultimately prejudiced.

Numerous courts have concluded that a party who opens the door initially cannot then complain when the other party fairly rebuts the evidence that passes through. *See*, *e.g.*, *United States v. Lopez-Medina*, 596 F.3d 716, 731 (10th Cir. 2010) (noting that, where a party "purposefully and explicitly opens the door on a particular (and otherwise inadmissible) line of questioning, such conduct operates as a limited waiver," permitting the other party to introduce further evidence on the same subject); *United States v. Gipson*, 862 F.2d 714, 717 (8th Cir. 1988) ("In this circuit, however, after the instigating party opens the door to an area of inquiry that is not competent or relevant, it is estopped from complaining when its adversary offers fair rebuttal."); *Taylor v. State*, 858 P.2d 843, 851 (Nev. 1993) ("[O]nce appellant himself opened the door, the evidence was properly admitted. Strange cattle having wandered through a gap made by

himself, he cannot complain." (quotations omitted)); *Cason v. State*, 505 A.2d 919, 929 (Md. Ct. App. 1986) ("[The curative admissibility] doctrine applies when the evidence to be rebutted is presented by the defense in the first instance . . . Here, upon cross-examination, *the State* built the strawman which it now seeks to tear down." (emphasis in original)); *Watkins v. Holmes*, 93 N.H. 53, 58-59 (1943) ("The trial justice correctly ruled that the defendants had opened up the field of hearsay sufficiently for her to testify . . . Having first elicited hearsay about "surgery to clear up the condition" as a basis for that very argument, they are in no position to complain that further hearsay was admitted to meet them on that ground.").

The concern for gamesmanship in this respect is particularly potent where the State first introduced the topic of the medical records and then failed to object when the defense sought to counter the prejudicial and misleading impression. *See State v. Richardson*, No. 50424, 1986 WL 5124, at *2 (Ohio Ct. App. May 1, 1986) ("Attorneys may, as a tactical matter, fail to object to a line in order to have the door opened to their own equally objectionable inquiries. The court ought to intercede to prevent this kind of gamesmanship when it can be foreseen."). And it is further troublesome where the rebuttal evidence the State successfully introduced after initiating a cascade of prejudice was expert testimony of which the State failed to provide timely disclosure.

Allowing a party to proceed in this way would open the floodgates to intentionally misleading and prejudicial references that would both impose upon the other party the choice of either allowing the jury to draw prejudicial inferences from references to clearly, and sometimes unconstitutionally, inadmissible evidence or rebut those inferences and gift

the instigating party the opportunity to introduce that unconstitutional or otherwise inadmissible evidence. For instance, in an effort to demonstrate to the jury the thoroughness of an investigation (even where, as here, there was no defense argument to the contrary) by asking such questions as "officer, did you collect any criminal records in the course of investigating this crime?"; "officer, did you attempt to learn of any similar incidents involving the defendant?"; or, for that matter, "officer, did you attempt to conduct a polygraph test?" In every case, while the State would not be eliciting direct testimony that the defendant has a criminal record, or engaged in bad conduct similar to the charged offenses, or underwent a polygraph test, the jury would clearly make those inferences, to the defendant's prejudice. And if the officer responds to those questions in as much detail as Kozowyk responded to the medical records question, the prejudice only grows.

One final point bears note. In permitting Gonsalves to testify, the trial court noted that "once the Defense injected issues of specific expert testimony relating to when and what the likelihood of hymenal tears are, I think that is what makes that line of cross-examination prejudicial." Appx. 268-275. However, the transcript makes clear that it was the *State's witness*, Kozowyk, who gratuitously provided testimony concerning the likelihood of injuries in sexual assault cases; the defense's questioning was limited to the objective and undisputed findings in the subject CAPP records. Appx. 247-251. Accordingly, the defense did not *choose* to advance this issue and, as such, the trial court erred in concluding that the defense opened the door with its questioning of Kozowyk (ignoring, for a moment, that the State had initially opened that door).

IV. EVEN IF WE IGNORE THAT THE STATE OPENED THE DOOR, THE TRIAL COURT NONETHELESS ERRED IN ALLOWING THE STATE TO INTRODUCE THE TESTIMONY OF A LATE-DISCLOSED EXPERT

A. The Defense's Questioning of Kozowyk Did Not Open the Door to Gonsalves's Expert Testimony

On a fundamental level, the trial court erred in allowing the State to introduce the testimony of Gonsalves because the defense's narrow questioning of Kozowyk did not invoke the most basic tenet of either opening-the-door sub-doctrine: it did not give rise to prejudice or a misleading advantage. *See Wamala*, 158 N.H. at 589. Kozowyk was not asked to interpret the CAPP examination's findings or discuss their significance (he gratuitously testified that a CAPP examination that reveals no injuries is not necessarily revealing as to whether sexual assault occurred, but that testimony was favorable to the State). He was merely asked a narrow question as to the undisputed, objective findings as documented in the medical records. This does not give rise to prejudice or a misleading impression requiring or permitting countering evidence (or, in this case, an expert interpretation of indisputably accurate information).

In *State v. Morrill*, for instance, the State argued, and the trial court agreed, that the defendant opened the door to testimony that a DCYF worker had closed her initial investigation into the alleged conduct "uncomfortably" and that she "[felt] something happened to this child" (the initial investigation was closed after the alleged victim recanted). 151 N.H. 331, 333 (2004). This arose from the defense's questioning of the DCYF worker, during which the worker testified that the initial investigation "was

closed because DCYF was 'unable to substantiate any of the allegations stated and [the] determination was unfounded,' and that the term "unfounded" meant that DCYF could not "'substantiate the allegations . . . and [was] not able to move forward and prove it actually happened.'" *Id*. The State did not object to this questioning, but later argued that this questioning "gave the misleading impression that DCYF concluded that the assaults did not occur." *Id*. This Court disagreed. This Court noted that the testimony did nothing more than establish the objective facts: that the alleged victim recanted and DCYF could not independently substantiate the allegations; it did not suggest that DCYF concluded that the assaults did not occur. *Id*. at 333-34. Further, this Court rejected the argument that the testimony "gave the impression that the witness believed [the alleged victim's] recantation." *Id*. at 334. "The testimony did not reveal any subjective opinions about the case." *Id*.

Similarly, here, the Detective merely stated the results of the CAPP examination as reflected in the medical records. He did not comment on the significance of those findings, offer any subjective opinions, or provide testimony that would allow for an inference that the medical records are in conflict with the alleged victim's claims. Further, his testimony did not suggest or imply that Gonsalves determined whether the alleged sexual assaults occurred, nor did it suggest or imply that the CAPP examination's findings affected the investigation.[5] Accordingly, just like in *Morrill*, the defense's questioning of Kozowyk did not create a prejudicial or

[5] If anything, the State's invocation of the medical records in its direct examination of Detective Kozowyk suggested that the medical records *supported* the alleged victim's claims, because they were invoked in the course of detailing an investigation that *resulted in a criminal prosecution*.

misleading impression and, therefore, did not open any doors.[6] *See also Morrill*, 154 N.H. at 551.

B. Even if the Defense Opened the Door, Gonsalves's Expert Testimony Interpreting the Medical Records and Opining on the Significance Thereof Was Improperly Admitted Because it Exceeded the Scope of Any Open Door

"The fact that the door has been opened does not, by itself, permit all evidence to pass through." *Wamala*, 158 N.H. at 590 (quotation omitted). Indeed, the opening-the-door doctrine is one of "proportionality and fairness." *State v. Nohava*, 960 N.W.2d 844, 851 (S.D. 2021) (quoting *United States v. Jett*, 908 F.3d 252, 271 (7th Cir. 2018)); *United States v. Martinez*, 988 F.2d 685, 702 (7th Cir. 1993) ("Where the rebuttal evidence does not directly contradict the evidence previously received, or goes beyond the necessity of removing prejudice in the interest of fairness, it is within the district court's discretion to deny its admittance." (citing 1 David W. Louisell & Christopher B. Mueller, Federal Evidence § 11, at 49 (1977)).

Even if we erroneously assume the defense opened the door to further inquiry as to the significance of the CAPP examination findings, whatever prejudice or misleading impression the State can drum up as related to Kozowyk's objective testimony as to the undisputed findings did not require, or allow for, calling a late-disclosed expert. It would have been

[6] As will be discussed below, this Court noted in *Morrill* that the DCYF worker had already testified that "recantations are common in intra-familial sexual abuse cases and do not mean that the abuse did not occur," which is similar to Detective Kozowyk's gratuitous testimony, before the State sought to introduce the SANE nurse, that examinations that result in no injuries do not necessarily mean no assault occurred. *See Morrill*, 151 N.H. at 334.

one thing to further explore the gratuitous testimony Kozowyk provided, regarding the fact that a lack of injuries does not rule out assault, *with Kozowyk*. It is another matter to call an expert to introduce expanded testimony on the significance of CAPP examination findings in a way that enhanced the State's case, and the alleged victim's credibility, in an otherwise expert-free trial.[7]

Like in other cases involving the opening-the-door doctrine, the typical cure—assuming, *arguendo*, that one was necessary in this case—should have been to simply allow the State to question Kozowyk on redirect regarding what he had already gratuitously testified to: his experience that a CAPP examination resulting in no findings of injuries is not necessarily indicative of the veracity of the alleged victim's claims. *See*, *e.g.*, *State v. Lesnick*, 141 N.H. 121, 130-31 (1996). To call an expert to interpret the results, prop up the alleged victim's credibility, and provide testimony that allowed the State to argue in closing that findings of no injuries actually suggest that the alleged assaults occurred was—to put it charitably—overkill. This is particularly true where Gonsalves did not dispute the accuracy of the defense's questioning of Kozowyk, and his answers, or otherwise provide testimony that would support a finding that the defense's questioning resulted in prejudice or a misleading advantage.

C. Even if the Defense Opened the Door, Gonsalves's Expert Testimony Interpreting the Medical Records and Opining on the Significance Thereof Was Improperly Admitted Because Detective

[7] This issue is further explored below, and the prejudice emanating from the SANE nurse's testimony is patent in light of the State's closing. *See* Appx. 421.

Kozowyk's Testimony Had Already Countered Any Potential Misunderstanding by the Jury

Where evidence has already been introduced that would rebut any prejudice or misleading advantage, the admission of additional evidence to counter same is "rendere[d] . . . unnecessary." *Rasor*, No. 2019-0522, 2020 WL 7776477, at *3; *see also Morrill*, 151 N.H. at 334.

Here, Kozowyk had already given testimony to rebut any arguable prejudice or misleading advantage. Before the State had even raised the opening-the-door issue, he testified that "injuries being documented wouldn't be – necessarily a sign of . . . it's not always obvious that – that there'd be injuries present for signs of sex." Appx. 247. Thus, to the extent there was any misleading impression as a result of the medical records recording no sign of injuries, the State already had the benefit of Kozowyk's testimony that such findings are not necessarily informative. This is precisely what Gonsalves ultimately agreed to on cross-examination (after she had provided prejudicial expert testimony that allowed the State to argue in closing that findings of no injuries are indicative of sexual assault). *See* Appx. 316-17; Appx. 421 (arguing that "you heard about the reality of sexual abuse and the lack of injuries that are a majority of the time associated with that"). Accordingly, whether or not the defense opened any doors, the trial court erred in allowing the State's eve-of-trial-disclosed expert to testify.

V. THE INTRODUCTION OF THE SANE NURSE'S TESTIMONY PREJUDICED MR. ROMAN AND REQUIRES A NEW TRIAL

The prejudice resulting from Gonsalves's testimony is patent. The trial court predicted the prejudice in its pretrial ruling, the defense repeatedly articulated the disadvantages it faced, and the State's closing argument solidified the prejudicial impact Gonsalves's testimony would have on the case.

There can be no credible argument that the State's "evidence of the defendant's guilt is of an overwhelming nature, quantity, or weight." *See State v. Peters*, 162 N.H. 30, 36 (2011). There was no direct evidence, other than the alleged victim's testimony, no physical evidence to support her claims, and no corroboration. Further, the alleged victim's credibility was significantly undermined. It was marred by inconsistencies, late disclosures, new allegations on the eve of trial after repeatedly insisting she had disclosed all alleged conduct, memory problems, and unreasonable assertions. *See id*. While the State introduced some circumstantial evidence based on behavioral observations of the alleged victim and the defendant after the alleged conduct, make no mistake: this case hinged exclusively on the credibility of the alleged victim.

Yet bolster the credibility of the alleged victim is precisely what Gonsalves's testimony did. *See*, *e.g.*, *State v. Wilbur*, 171 N.H. 445, 454-57 (2018) (granting a new trial where a State expert testified that a child's behaviors were "typical of children that have been abused" where "the case turned on the child's credibility" and "allowing the State to bolster the child's credibility through the testimony of the CPS worker").

Further, the defense's ability to challenge Gonsalves's credentials, pursue countering evidence, or generally prepare for her testimony was derisory and, in some cases, nonexistent. *See*, *e.g.*, *Lawes v. CSA*

Architects and Engineers LLP, 963 F.3d 72, 95-96 (1st Cir. 2020) (collecting cases where experts were excluded because a party's "foot-dragging in announcing [its] expert and providing his report deprived the defendants of the opportunity to depose him, impeach his credentials, pursue countering evidence, or generally prepare for their defenses"). Gonsalves was not available the day on which the court decided she could testify. She would be available the next morning, at which point defense counsel would be able to hastily depose her shortly before she was scheduled to testify at 10:00am. This is far from an acceptable process to satisfy the defendant's constitutional rights to confront the evidence against him, present all proofs favorable, and otherwise adequately prepare to address who would become the only expert in the case. Even Gonsalves admitted that she was not prepared. Appx. 297.

Equally as important, the defense had no opportunity to adequately challenge Gonsalves's credentials or the bases for the "opinions" she would offer. The defense noted as much after Gonsalves's voir dire. Appx. 307. Specifically, Gonsalves could only speak in vague terms, devoid of details, statistics, or scientific evidence to support what amount to her guess that it "seems like it is somewhere between two and five percent of actually finding physical evidence . . .." Appx. 302. The State failed to disclose the sole article upon which Gonsalves would base her "opinions." *Id*. Gonsalves's testimony was replete with unsupported postulation, an admitted lack of data to support her speculation, and an admitted lack of preparation for the testimony she would provide. Appx. at 295-307. The defense was deprived of the opportunity to address or challenge any of this. The defense was deprived of the opportunity to prepare for and address a

Daubert challenge. The defense was deprived of the opportunity to review Gonsalves's credentials, opinions, and bases therefore with an expert of its own. The defense was deprived of the opportunity to offer an expert of its own to rebut Gonsalves's testimony, specifically, her astonishing suggestion (as characterized by the State) that a lack of injuries is actually consistent with sexual assault.[8]

In fact, the State argued, in the pretrial hearing on its motion in limine, that the prejudice resulting from the Nurse's testimony would be mitigated because the State would introduce the Nurse as an RN and not "as a medical professional in the field of sexual abuse." Appx. 520-21. However, Kozowyk's testimony explicitly identified Gonsalves's examination as a CAPP examination, he described the purpose and scope of a CAPP examination, and Gonsalves ultimately testified as an expert CAPP examiner.

CONCLUSION

For the foregoing reasons, the Defendant respectfully requests that this Honorable Court reverse the judgment below.

REQUEST FOR ORAL ARGUMENT

The defendant requests a fifteen-minute oral argument.

[8] Even if we assume that the State was permitted to offer rebuttal to the defense's counterevidence after the State opened the door, then the same right should have been afforded to the defense to rebut the testimony of Gonsalves. Because that was rendered impossible by the State's unjustified, dilatory pretrial conduct, the Nurse's testimony should have remained excluded.

RULE 16(3)(i) CERTIFICATION

Under N.H. Supreme Court Rule 16(3)(i), the defendant certifies that the appealed decision is in writing and is appended to this brief. Add. 52-69.

STATEMENT OF COMPLIANCE

The undersigned hereby certifies that this Brief complies with New Hampshire Supreme Court Rule 26(2)-(4). Further, this Brief complies with N.H. Supreme Court Rule 16(11), in that this Brief contains 9183 words (including footnotes) from the "Issues Presented" to the "Request for Oral Argument" sections of the Brief.

Respectfully submitted,

NESTOR ROMAN

By his attorneys,

Wadleigh, Starr & Peters

Dated: March 30, 2023

/s/ Donna J. Brown

Donna J. Brown
(N.H. Bar No. 387)
Wadleigh, Starr & Peters
95 Market Street
Manchester, NH 03101
(603) 669-4140
dbrown@wadleighlaw.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on today's date, the foregoing was served on all counsel of record through the Court's electronic filing system.

Dated: March 30, 2023

/s/ Donna J. Brown
Donna J. Brown

ADDENDUM

ADDENDUM TABLE OF CONTENTS

D.O.B. 04/08/1952
MPD# 19-8996
Cir. Ct. # (1667872C)
Sup. Ct. #216-2019-CR-01623 (1667872C)

RSA Ch. 632-A:2,I(j); 629:1
AFSA - Household Member
Class S Felony
632-A:10-a

STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS.

SUPERIOR COURT
HNSC #216 2019 CR 1623
CHG ID# 1667872C

INDICTMENT

At the Superior Court, holden at **Manchester,** within and for the County of Hillsborough aforesaid, in the month of **December** in the year **Two Thousand Nineteen** the **GRAND JURORS FOR THE STATE OF NEW HAMPSHIRE,** on their oath, present that

NESTOR ROMAN
343 AUBURN STREET , APT. 2
MANCHESTER, NH 03103

between or about the **15th** day of **October 2018** and the **15th** day of **November 2018,** at **Manchester** in the County of Hillsborough, aforesaid, did commit the crime of **Attempted Aggravated Felonious Sexual Assault** in that **with a purpose that the crime of Aggravated Felonious Sexual Assault be committed, he engaged in conduct which, under the circumstances as he believed them to be, was an act or omission constituting a substantial step toward the commission of the crime, in that Nestor Roman placed his hand on the inner thigh and adjacent to the genitalia of J.J., d.o.b. 6/26/04, who was not Nestor Roman's legal spouse but to whom Nestor Roman is related by blood or affinity,**

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

This is a true bill.

12/10/19
Date

Foreperson

by:
Andrew A. Ouellette #1942
Assistant County Attorney
On behalf of Hillsborough County

D.O.B. 04/08/1952
MPD# 19-8996
Cir. Ct. # (1667873C)
Sup. Ct. #216-2019-CR-01623 (1667873C)

RSA Ch. 632-A:2,I(j); 629:1
AFSA - Household Member
Class S Felony
632-A:10-a

STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS. SUPERIOR COURT

INDICTMENT

HNSC #216 2019 CR 1623
CHG ID# 1667873C

At the Superior Court, holden at **Manchester,** within and for the County of Hillsborough aforesaid, in the month of **December** in the year **Two Thousand Nineteen** the **GRAND JURORS FOR THE STATE OF NEW HAMPSHIRE,** on their oath, present that

NESTOR ROMAN
343 AUBURN STREET , APT. 2
MANCHESTER, NH 03103

on or about the **25th** day of **June 2019,** at **Manchester** in the County of Hillsborough, aforesaid, did commit the crime of **Attempted Aggravated Felonious Sexual Assault** in that **with a purpose that the crime of Aggravated Felonious Sexual Assault be committed, he engaged in conduct which, under the circumstances as he believed them to be, was an act or omission constituting a substantial step toward the commission of the crime, in that Nestor Roman placed his hand on the inner thigh and adjacent to the genitalia of J.J., d.o.b. 6/26/04, who was not Nestor Roman's legal spouse but to whom Nestor Roman is related by blood or affinity,**

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

This is a true bill.

12/18/19
Date

Foreperson

by:
Andrew A. Ouellette #1942
Assistant County Attorney
On behalf of Hillsborough County

D.O.B. 04/08/1952
MPD# 21-012871
Cir. Ct. #
Sup. Ct. #216-2021-CR-01769 (1912128c)

RSA Ch. 632-A:2,III; 651:6, I(n); 651:6, IV(a)
AFSA - Pattern Sexual Assault
Class S Felony; 25 YEARS – LIFE; $4,000

STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS.

SUPERIOR COURT
HNSC #216 2021 CR 1769
CHG ID# 1912128C

INDICTMENT

At the Superior Court, holden at **Manchester,** within and for the County of Hillsborough aforesaid, in the month of **December** in the year **Two Thousand Twenty One** the **GRAND JURORS FOR THE STATE OF NEW HAMPSHIRE,** on their oath, present that

NESTOR ROMAN
343 AUBURN STREET , APT. 2
MANCHESTER, NH 03103

between or about the **1st day of August 2013** and the **1st** day of **August 2018,** at **Manchester** in the County of Hillsborough, aforesaid, did commit the crime of **Aggravated Felonious Sexual Assault** in that **Nestor Roman knowingly engaged in a pattern of sexual assault against another person, specifically J.J. (DOB:06/26/2004), his biological granddaughter, a person who was not his legal spouse and who was under 16 years of age, to wit, Roman committed more than one act under NH RSA 632-A:2 and/or NH RSA 632-A:3 upon J.J. over a period of two months or more and within a period of five years;** contrary to the form of the Statute, in such case made and provided, and against the peace and dignity of the State.

This is a true bill.

12-29-21
Date

Foreperson

John J. Coughlin
Hillsborough County Attorney

by: #18935 for
Shaylen Roberts #270925
Assistant County Attorney

D.O.B. **04/08/1952**
MPD# 21-012871
Cir. Ct. #
Sup. Ct. #216-2021-CR-01769

RSA Ch: **632-A:2,II; 651:6, I(m); 651:6, IV(a)**
AFSA - Without Penetration / V<13
Class S Felony; 25 - LIFE; $4,000

STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS.

SUPERIOR COURT
HNSC #216 2021 CR 1769
CHG ID# 1939241C

INDICTMENT

At the Superior Court, holden at **Manchester,** within and for the County of Hillsborough aforesaid, in the month of **December** in the year **Two Thousand Twenty One** the **GRAND JURORS FOR THE STATE OF NEW HAMPSHIRE,** on their oath, present that

NESTOR ROMAN
343 AUBURN STREET , APT. 2
MANCHESTER, NH 03103

about or between the **1st** day of **August 2013** and the **30th** day of **June 2014** , at **Manchester** in the County of Hillsborough, aforesaid, did commit the crime of **Aggravated Felonious Sexual Assault** in that **Nestor Roman intentionally touched, whether directly, indirectly, through clothing, or otherwise, the genitalia of a person under the age of 13, specifically J.J. (DOB: 06/26/2004), his biological granddaughter, to wit, Roman used his hand to reach under J.J's clothing and to touch her genital opening under circumstances that could be reasonably construed as being for the purpose of sexual arousal or gratification, at which time Roman was 18 years of age or older;** contrary to the form of the Statute, in such case made and provided, and against the peace and dignity of the State.

This is a true bill.

12-29-21
Date

Foreperson

John J. Coughlin
Hillsborough County Attorney

by:

Shaylen Roberts #270925
Assistant County Attorney

D.O.B. **04/08/1952**
MPD# 21-012871
Cir. Ct. #
Sup. Ct. #216-2021-CR-01769

RSA Ch. **632-A:2,I(l); 651:6, I(m); 651:6, IV(a)**
AFSA - Victim<13
Class S Felony; 25 YEARS – LIFE; $4,000

STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS.

SUPERIOR COURT
HNSC #216 2021 CR 1769
CHG ID# 1939242C

INDICTMENT

At the Superior Court, holden at **Manchester,** within and for the County of Hillsborough aforesaid, in the month of **December** in the year **Two Thousand Twenty One** the **GRAND JURORS FOR THE STATE OF NEW HAMPSHIRE,** on their oath, present that

NESTOR ROMAN
343 AUBURN STREET , APT. 2
MANCHESTER, NH 03103

about or between the **1st** day of **August 2014** and the **30th** day of **June 2015,** at **Manchester** in the County of Hillsborough, aforesaid, did commit the crime of **Aggravated Felonious Sexual Assault** in that **Nestor Roman knowingly engaged in sexual penetration with another, specifically J.J. (DOB: 06/26/2004), his biological granddaughter, when Roman inserted his penis into J.J.'s genital opening, at which time J.J. was under 13 years of age, and at which time Roman was 18 years of age or older, this being a first instance;** contrary to the form of the Statute, in such case made and provided, and against the peace and dignity of the State.

This is a true bill.

12-29-21
Date

Foreperson

John J. Coughlin
Hillsborough County Attorney

by:

Shaylen Roberts #270925
Assistant County Attorney

D.O.B. 04/08/1952
MPD# 21-012871
Cir. Ct. #
Sup. Ct. #216-2021-CR-01769

RSA Ch. 632-A:2,I(l); 651:6, I(m); 651:6, IV(a)
AFSA - Victim<13
Class S Felony; 25 YEARS – LIFE; $4,000

STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS.

SUPERIOR COURT

HNSC #216 2021 CR 1769
CHG ID# 1939243C

INDICTMENT

At the Superior Court, holden at **Manchester,** within and for the County of Hillsborough aforesaid, in the month of **December** in the year **Two Thousand Twenty One** the **GRAND JURORS FOR THE STATE OF NEW HAMPSHIRE,** on their oath, present that

NESTOR ROMAN
343 AUBURN STREET , APT. 2
MANCHESTER, NH 03103

about or between the **1st** day of **August 2014** and the **30th** day of **June 2015,** at **Manchester** in the County of Hillsborough, aforesaid, did commit the crime of **Aggravated Felonious Sexual Assault** in that **Nestor Roman knowingly engaged in sexual penetration with another, specifically J.J. (DOB: 06/26/2004), his biological granddaughter, when Roman inserted his penis into J.J.'s genital opening, at which time J.J. was under 13 years of age, and at which time Roman was 18 years of age or older, this being a second instance;** contrary to the form of the Statute, in such case made and provided, and against the peace and dignity of the State.

This is a true bill.

12-29-21
Date

Foreperson

John J. Coughlin
Hillsborough County Attorney

by:
Shaylen Roberts #270925
Assistant County Attorney

D.O.B. **04/08/1952**
MPD# 21-012871
Cir. Ct. #
Sup. Ct. #216-2021-CR-01769

RSA Ch. 632-A:2,I(l); 651:6, I(m); 651:6, IV(a)
AFSA - Victim<13
Class S Felony; 25 YEARS – LIFE; $4,000

STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS. SUPERIOR COURT

INDICTMENT

HNSC #216 2021 CR 1769
CHC ID# 19392446

At the Superior Court, holden at **Manchester,** within and for the County of Hillsborough aforesaid, in the month of **December** in the year **Two Thousand Twenty One** the **GRAND JURORS FOR THE STATE OF NEW HAMPSHIRE,** on their oath, present that

NESTOR ROMAN
343 AUBURN STREET , APT. 2
MANCHESTER, NH 03103

between or about the **1st** day of **August 2015** and the **30th** day of **June 2016,** at **Manchester** in the County of Hillsborough, aforesaid, did commit the crime of **Aggravated Felonious Sexual Assault** in that **Nestor Roman knowingly engaged in sexual penetration with another, specifically J.J. (DOB: 06/26/2004), his biological granddaughter, when Roman inserted his penis into J.J.'s genital opening, at which time J.J. was under 13 years of age, and at which time Roman was 18 years of age or older, this being a third instance;** contrary to the form of the Statute, in such case made and provided, and against the peace and dignity of the State.

This is a true bill.

12-29-21
Date

Foreperson

John J. Coughlin
Hillsborough County Attorney

by:
Shaylen Roberts #270925
Assistant County Attorney

D.O.B. 04/08/1952
MPD# 21-012871
Cir. Ct. #
Sup. Ct. #216-2021-CR-01769

RSA Ch. 632-A:2,IV
AFSA - Family Member
Class S Felony; 10 – 20 YEARS; $4,000

STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS.

SUPERIOR COURT

HNSC #216 2021 CR 1769
CHG ID# 1939245C

INDICTMENT

At the Superior Court, holden at **Manchester,** within and for the County of Hillsborough aforesaid, in the month of **December** in the year **Two Thousand Twenty One** the **GRAND JURORS FOR THE STATE OF NEW HAMPSHIRE,** on their oath, present that

NESTOR ROMAN
343 AUBURN STREET , APT. 2
MANCHESTER, NH 03103

on or between the **1st** day of **August 2018** and the **30th** day of **June 2019,** at **Manchester** in the County of Hillsborough, aforesaid, did commit the crime of **Aggravated Felonious Sexual Assault** in that **Nestor Roman knowingly engaged in sexual penetration as defined in RSA 632-A:1, V, with another person whom Roman knew to be his ancestor or descendant, specifically J.J. (DOB: 06//26/2004), his biological granddaughter, when Roman inserted his penis into J.J.'s genital opening (DOB: 06/26/2004), at which time J.J. was under 18 years of age;** contrary to the form of the Statute, in such case made and provided, and against the peace and dignity of the State.

This is a true bill.

12-29-21
Date

Foreperson

John J. Coughlin
Hillsborough County Attorney

by:
Shaylen Roberts #270925
Assistant County Attorney

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
SUPERIOR COURT

Hillsborough Superior Court Northern District
300 Chestnut Street
Manchester NH 03101

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

RETURN FROM SUPERIOR COURT – STATE PRISON SENTENCE

Case Name: **State v. Nestor Roman**
Case Number: **216-2021-CR-01769**

Name: **Nestor Roman, c/o Valley Street Jail 445 Willow Street Manchester NH 03103**
DOB: **April 08, 1952**

Charging document: Indictment

Offense:	**GOC:**	**Charge ID:**	**RSA:**	**Date of Offense:**
AFSA		1912128C	632-A:2	June 01, 2013

Disposition: Guilty/Chargeable By: Jury

A finding of GUILTY/CHARGEABLE is entered.

Conviction: Felony

Sentence: see attached

September 08, 2022 — Date
Hon. N. William Delker — Presiding Justice
W. Michael Scanlon — Clerk of Court

MITTIMUS

In accordance with this sentence, the Sheriff is ordered to deliver the defendant to the **New Hampshire State Prison.** Said institution is required to receive the Defendant and detain him/her until the Term of Confinement has expired or s/he is otherwise discharged by due course of law.

Attest: _____
Clerk of Court

SHERIFF'S RETURN

I delivered the defendant to the **New Hampshire State Prison** and gave a copy of this order to the Warden.

_____ Date
_____ Sheriff

J-ONE: ☒ State Police ☐ DMV

C: ☐ Dept. of Corrections ☒ Offender Records ☐ Sheriff ☐ Office of Cost Containment
☒ Prosecutor Shaylen Elizabeth Roberts, ESQ ☐ Defendant ☒ Defense AttorneyDonna Jean Brown, ESQ
☒ Sentence Review Board ☒ Sex Offender Registry ☒ Other Jailer ☐ _____ Dist Div. _____

NHJB-2572-Se (08/06/2019)

Filed
File Date: 9/7/2022 3:17 PM
Hillsborough Superior Court Northern District
E-Filed Document

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

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

Case Name: **State v. Nestor Roman**

Case Number: **216-2021-CR-01769** Charge ID Number: **1912128C**

STATE PRISON SENTENCE

Verdict: GUILTY	Wickwire
Crime: **Aggravated Felonious Sexual Assault - Pattern**	Date of Crime: **08/01/2013** to **08/01/2018**

A finding of GUILTY is entered.

CONVICTION AND CONFINEMENT

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

☒ B. The defendant is sentenced to the New Hampshire State Prison for not more than **LIFE**, nor less than **25 YEARS**

There is added to the minimum sentence a disciplinary period equal to 150 days for each year of the minimum term of the defendant's sentence, to be prorated for any part of the year.

Pretrial confinement credit: 75 days.

☒ C. This sentence is to be served as follows:

☒Stand committed ☒Commencing **FORTHWITH**

☐ _____ of the minimum sentence and _____ of the maximum sentence is suspended.

Suspensions are conditioned upon good behavior and compliance with all of the terms of this order. Any suspended sentence may be imposed after a hearing at the request of the State. The suspended sentence begins today and ends _____ years from ☐today **or** ☐release on _____

☐ _____ of the sentence is deferred for a period of _____ year(s). The Court retains jurisdiction up to and after the deferred period to impose or terminate the sentence or to suspend or further defer the sentence for an additional period of _____ year(s). Thirty (30) days prior to the expiration of the deferred period, the defendant may petition the Court to show cause why the deferred commitment should not be imposed, suspended and/or further deferred. Failure to petition within the prescribed time will result in the immediate issuance of a warrant for your arrest.

☐ D. The sentence is ☐consecutive to case number and charge ID _____

☐concurrent with case number and charge ID _____

☒ E. See Addendum to State Prison Sentence Sexual Offender Assessment and Treatment.

☐ F. See Addendum to State Prison Sentence Substance Use Disorder Assessment and Treatment.

☐ G. The Court recommends to the Department of Corrections:

☐Screen and/or assess for drug and alcohol treatment needs.

☐Sentence to be served at House of Corrections

☐ _____

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

PROBATION

☐ A. The defendant is placed on probation for a period of_____year(s), upon the usual terms of probation and any special terms of probation determined by the Probation/Parole Officer.

Effective: ☐Forthwith ☐Upon release from _____

The defendant is ordered to report immediately, or immediately upon release, to the nearest Probation/Parole Office.

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

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

FINANCIAL OBLIGATIONS

☐ **A. Fines and Fees:**

Fine of $_____, plus a statutory penalty assessment of $_____to be paid:

☐Today

☐By _____

☐Through the Department of Corrections as directed by the Probation/Parole Officer. A 10 % service charge is assessed by DOC for the collection of fines and fees, other than supervision fees.

☐$_____of the fine and $_____of the penalty assessment is suspended for _____ year(s).

A $25.00 fee is assessed in each case file when a fine is paid on a date later than sentencing.

☐ **B. Restitution:**

The defendant shall pay restitution of $_____to_____

☐ Restitution shall be paid through the Department of Corrections as directed by the Probation/Parole Officer. A 17% administrative fee is assessed for the collection of restitution.

☐ At the request of the defendant or the Department of Corrections, a hearing may be scheduled on the amount or method of payment of restitution.

☐ Restitution is not ordered because: _____

☐ **C. Appointed Counsel: NOTE:** Financial Obligations, Section C is NOT a term and condition of the sentence.

☐The Court finds that the defendant has the ability to pay:

counsel fees and expenses in the amount of $ _____

payable through_____in the amount of $_____per month.

☐The Court order for repayment is suspended until the time of the defendant's release from state prison.

☐The Court finds that the defendant has no ability to pay counsel fees and expenses.

_____

_____

OTHER CONDITIONS

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

☐ B. Subject to the provisions of RSA 651-A:22-a, the Department of Corrections shall have the authority to award the defendant earned time reductions against the minimum and maximum sentences for successful completion of programming while incarcerated.

☐ C. Under the direction of the Probation/Parole Officer, the defendant shall the

☐New Hampshire State Prison ☐House of Corrections

☐ D. The defendant shall perform_____hours of community service and provide proof to _____ within_____of today's date.

☒ E. The defendant is ordered to have no contact with **J.J. or any member of her immediate family** either directly or indirectly, including but not limited to contact in-person, by mail, phone, email, text message, social networking sites or through third parties.

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

☐ G. The defendant and the State have waived sentence review in writing or on the record.

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

☒ I. Other:

See attached addendum.

For Court Use Only

All conditions of this sentence other than the stand-committed portion are recommendations to the department of corrections for conditions to impose, including the no contact provisions.

N. William D

Honorable N. William Delker

September 8, 2022

9/8/22 scanned to NHSP, VSJ & cellblock

THE STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS.
DOCKET NO. 216-2021-CR-01769

SUPERIOR COURT
NORTHERN DISTRICT

STATE OF NEW HAMPSHIRE

v.

NESTOR ROMAN

ADDENDUM TO SENTENCE

The following additional terms are incorporated into the defendant's sentence:

1. No unsupervised contact with anyone under 16 by any means including in person, by phone, computer, e-mail, or otherwise. No contact with victim.
2. No possession or viewing of obscene matter or pornography as defined in RSA 649-A and 650.
3. The defendant's use of computers and the Internet shall be limited as Probation/Parole deems appropriate. At the very least, probation shall have full access to his Internet accounts and history including any social networking sites which the defendant utilizes. Probation shall also have access to the defendant's cell phone(s) including call history, pictures, and Internet history;
4. Sex Offender Registration per RSA 651-B.
5. Meaningfully participation, completion and compliance with all sex offender treatment and aftercare provisions. His compliance with this part of the sentence is to be determined by probation. This shall include the taking of a polygraph to test his sexual history, something done pursuant to the usual terms of any sex offender treatment.
6. Comply with all rules of Probation/Parole as determined by Probation/Parole, including any rules determined to be appropriate but not listed at the time of sentencing.
7. If the defendant is to live in a dwelling in which a child under 16 resides, at least one adult who also resides in that dwelling must take and pass a "supervision" program equivalent to those done at places such as the Clearview Center or RTT in Manchester.

N. William D

September 8, 2022
Date

Honorable N. William Delker
Presiding Justice

D.O.B. 04/08/1952
MPD# 21-012871
Cir. Ct. # (1912128c)
Sup. Ct. #216-2021-CR-01769 (1912128c)

RSA Ch. 632-A:2,III; 651:6, I(n); 651:6, IV(a)
AFSA - Pattern Sexual Assault
Class S Felony; 25 YEARS – LIFE; $4,000

STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS.

SUPERIOR COURT
HNSC #216 2021 CR 1769
CHG ID# 1912128C

INDICTMENT

At the Superior Court, holden at **Manchester,** within and for the County of Hillsborough aforesaid, in the month of **December** in the year **Two Thousand Twenty One** the **GRAND JURORS FOR THE STATE OF NEW HAMPSHIRE,** on their oath, present that

NESTOR ROMAN
343 AUBURN STREET , APT. 2
MANCHESTER, NH 03103

between or about the **1st day of August 2013** and the **1st** day of **August 2018,** at **Manchester** in the County of Hillsborough, aforesaid, did commit the crime of **Aggravated Felonious Sexual Assault** in that **Nestor Roman knowingly engaged in a pattern of sexual assault against another person, specifically J.J. (DOB:06/26/2004), his biological granddaughter, a person who was not his legal spouse and who was under 16 years of age, to wit, Roman committed more than one act under NH RSA 632-A:2 and/or NH RSA 632-A:3 upon J.J. over a period of two months or more and within a period of five years;** contrary to the form of the Statute, in such case made and provided, and against the peace and dignity of the State.

This is a true bill.

12-29-21
Date

Foreperson

Verdict: GUILTY
Entered June 24, 2022

Nancy L. Wickwire

John J. Coughlin
Hillsborough County Attorney

by: #18935 for
Shaylen Roberts #270925
Assistant County Attorney

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
SUPERIOR COURT

Hillsborough Superior Court Northern District
300 Chestnut Street
Manchester NH 03101

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

RETURN FROM SUPERIOR COURT – STATE PRISON SENTENCE

Case Name: **State v. Nestor Roman**
Case Number: **216-2019-CR-01623**

Name: **Nestor Roman, c/o Valley Street Jail 445 Willow Street Manchester NH 03103**
DOB: **April 08, 1952**

Charging document: Indictment

Offense:	**GOC:**	**Charge ID:**	**RSA:**	**Date of Offense:**
AFSA	Attempt	1667872C	632-A:2	October 15, 2018

Disposition: Guilty/Chargeable By: Jury

A finding of GUILTY/CHARGEABLE is entered.

Conviction: Felony

Sentence: see attached

September 08, 2022 — Date
Hon. N. William Delker — Presiding Justice
W. Michael Scanlon — Clerk of Court

MITTIMUS

In accordance with this sentence, the Sheriff is ordered to deliver the defendant to the **New Hampshire State Prison.** Said institution is required to receive the Defendant and detain him/her until the Term of Confinement has expired or s/he is otherwise discharged by due course of law.

Attest: _____
Clerk of Court

SHERIFF'S RETURN

I delivered the defendant to the **New Hampshire State Prison** and gave a copy of this order to the Warden.

_____ Date
_____ Sheriff

J-ONE: ☒ State Police ☐ DMV

C: ☐ Dept. of Corrections ☒ Offender Records ☐ Sheriff ☐ Office of Cost Containment
☒ Prosecutor Shaylen Elizabeth Roberts, ESQ ☐ Defendant ☒ Defense AttorneyDonna Jean Brown, ESQ
☒ Sentence Review Board ☒ Sex Offender Registry ☒ Other Jailer ☐ _____ Dist Div. _____

NHJB-2572-Se (08/06/2019)

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

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

Case Name: **State v. Nestor Roman**

Case Number: **216-2019-CR-01623** Charge ID Number: **1667872C**

STATE PRISON SENTENCE

Verdict: GUILTY	Wickwire
Crime: **Attempted Aggravated Felonious Sexual Assault**	Date of Crime: **10/15/18** to **11/15/18**

A finding of GUILTY is entered.

CONVICTION AND CONFINEMENT

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

☒ B. The defendant is sentenced to the New Hampshire State Prison for not more than **20 YEARS**, nor less than **10 YEARS**

There is added to the minimum sentence a disciplinary period equal to 150 days for each year of the minimum term of the defendant's sentence, to be prorated for any part of the year.

Pretrial confinement credit:_____days.

☒ C. This sentence is to be served as follows:

☒Stand committed ☒Commencing **FORTHWITH**

☐ _____ of the minimum sentence and_____of the maximum sentence is suspended.

Suspensions are conditioned upon good behavior and compliance with all of the terms of this order. Any suspended sentence may be imposed after a hearing at the request of the State. The suspended sentence begins today and ends_____years from ☐today **or** ☐release on _____

☐ _____ of the sentence is deferred for a period of_____year(s). The Court retains jurisdiction up to and after the deferred period to impose or terminate the sentence or to suspend or further defer the sentence for an additional period of_____year(s). Thirty (30) days prior to the expiration of the deferred period, the defendant may petition the Court to show cause why the deferred commitment should not be imposed, suspended and/or further deferred. Failure to petition within the prescribed time will result in the immediate issuance of a warrant for your arrest.

☒ D. The sentence is ☒consecutive to case number and charge **ID 216-2021-CR-01769 (Charge ID#: 1912128C)**

☐concurrent with case number and charge ID _____

☒ E. See Addendum to State Prison Sentence Sexual Offender Assessment and Treatment.

☐ F. See Addendum to State Prison Sentence Substance Use Disorder Assessment and Treatment.

☐ G. The Court recommends to the Department of Corrections:

☐Screen and/or assess for drug and alcohol treatment needs.

☐Sentence to be served at House of Corrections

☐ _____

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

PROBATION

☐ A. The defendant is placed on probation for a period of_____year(s), upon the usual terms of probation and any special terms of probation determined by the Probation/Parole Officer.

Effective: ☐Forthwith ☐Upon release from _____

The defendant is ordered to report immediately, or immediately upon release, to the nearest Probation/Parole Office.

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

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

FINANCIAL OBLIGATIONS

☐ **A. Fines and Fees:**

Fine of $_____, plus a statutory penalty assessment of $_____to be paid:

☐Today

☐By _____

☐Through the Department of Corrections as directed by the Probation/Parole Officer. A 10 % service charge is assessed by DOC for the collection of fines and fees, other than supervision fees.

☐$_____of the fine and $_____of the penalty assessment is suspended for _____ year(s).

A $25.00 fee is assessed in each case file when a fine is paid on a date later than sentencing.

☐ **B. Restitution:**

The defendant shall pay restitution of $_____to_____

☐ Restitution shall be paid through the Department of Corrections as directed by the Probation/Parole Officer. A 17% administrative fee is assessed for the collection of restitution.

☐ At the request of the defendant or the Department of Corrections, a hearing may be scheduled on the amount or method of payment of restitution.

☐ Restitution is not ordered because: _____

☐ **C. Appointed Counsel: NOTE:** Financial Obligations, Section C is NOT a term and condition of the sentence.

☐The Court finds that the defendant has the ability to pay:

counsel fees and expenses in the amount of $ _____

payable through_____in the amount of $_____per month.

☐The Court order for repayment is suspended until the time of the defendant's release from state prison.

☐The Court finds that the defendant has no ability to pay counsel fees and expenses.

_____

_____

OTHER CONDITIONS

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

☐ B. Subject to the provisions of RSA 651-A:22-a, the Department of Corrections shall have the authority to award the defendant earned time reductions against the minimum and maximum sentences for successful completion of programming while incarcerated.

☐ C. Under the direction of the Probation/Parole Officer, the defendant shall the

☐New Hampshire State Prison ☐House of Corrections

☐ D. The defendant shall perform_____hours of community service and provide proof to _____ within_____of today's date.

☒ E. The defendant is ordered to have no contact with **J.J. or any member of her immediate family** either directly or indirectly, including but not limited to contact in-person, by mail, phone, email, text message, social networking sites or through third parties.

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

☐ G. The defendant and the State have waived sentence review in writing or on the record.

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

☒ I. Other:

See attached addendum.

Because this is a fully stand-committed sentence, the sentencing addendum and no contact provisions are recommendations to the department of corrections.

For Court Use Only

N. William D

Honorable N. William Delker

September 8, 2022

Filed
File Date: 9/7/2022 4:03 PM
Hillsborough Superior Court Northern District
E-Filed Document

THE STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS.
DOCKET NO. 216-2019-CR-01623

SUPERIOR COURT
NORTHERN DISTRICT

STATE OF NEW HAMPSHIRE

v.

NESTOR ROMAN

ADDENDUM TO SENTENCE

The following additional terms are incorporated into the defendant's sentence:

1. No unsupervised contact with anyone under 16 by any means including in person, by phone, computer, e-mail, or otherwise. No contact with victim.
2. No possession or viewing of obscene matter or pornography as defined in RSA 649-A and 650.
3. The defendant's use of computers and the Internet shall be limited as Probation/Parole deems appropriate. At the very least, probation shall have full access to his Internet accounts and history including any social networking sites which the defendant utilizes. Probation shall also have access to the defendant's cell phone(s) including call history, pictures, and Internet history;
4. Sex Offender Registration per RSA 651-B.
5. Meaningfully participation, completion and compliance with all sex offender treatment and aftercare provisions. His compliance with this part of the sentence is to be determined by probation. This shall include the taking of a polygraph to test his sexual history, something done pursuant to the usual terms of any sex offender treatment.
6. Comply with all rules of Probation/Parole as determined by Probation/Parole, including any rules determined to be appropriate but not listed at the time of sentencing.
7. If the defendant is to live in a dwelling in which a child under 16 resides, at least one adult who also resides in that dwelling must take and pass a "supervision" program equivalent to those done at places such as the Clearview Center or RTT in Manchester.

N. William Delker

September 8, 2022
Date

Honorable N. William Delker
Presiding Justice

D.O.B. 04/08/1952
MPD# 19-8996
Cir. Ct. # (1667872C)
Sup. Ct. #216-2019-CR-01623 (1667872C)

RSA Ch. 632-A:2,I(j); 629:1
AFSA - Household Member
Class S Felony
632-A:10-a

STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS.

SUPERIOR COURT
HNSC #216 2019 CR 1623
CHG ID# 1667872C

INDICTMENT

At the Superior Court, holden at **Manchester,** within and for the County of Hillsborough aforesaid, in the month of **December** in the year **Two Thousand Nineteen** the **GRAND JURORS FOR THE STATE OF NEW HAMPSHIRE,** on their oath, present that

NESTOR ROMAN
343 AUBURN STREET , APT. 2
MANCHESTER, NH 03103

between or about the **15th** day of **October 2018** and the **15th** day of **November 2018,** at **Manchester** in the County of Hillsborough, aforesaid, did commit the crime of **Attempted Aggravated Felonious Sexual Assault** in that **with a purpose that the crime of Aggravated Felonious Sexual Assault be committed, he engaged in conduct which, under the circumstances as he believed them to be, was an act or omission constituting a substantial step toward the commission of the crime, in that Nestor Roman placed his hand on the inner thigh and adjacent to the genitalia of J.J., d.o.b. 6/26/04, who was not Nestor Roman's legal spouse but to whom Nestor Roman is related by blood or affinity,**

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

This is a true bill.

12/10/19
Date

Foreperson

Verdict: GUILTY
Entered June 24, 2022

Nancy L. Wickwire

by:
Andrew A. Ouellette #1942
Assistant County Attorney
On behalf of Hillsborough County

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
SUPERIOR COURT

Hillsborough Superior Court Northern District
300 Chestnut Street
Manchester NH 03101

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

RETURN FROM SUPERIOR COURT – STATE PRISON SENTENCE

Case Name: **State v. Nestor Roman**
Case Number: **216-2019-CR-01623**

Name: **Nestor Roman, c/o Valley Street Jail 445 Willow Street Manchester NH 03103**
DOB: **April 08, 1952**

Charging document: Indictment

Offense:	GOC:	Charge ID:	RSA:	Date of Offense:
AFSA	Attempt	1667873C	632-A:2	June 25, 2019

Disposition: Guilty/Chargeable By: Jury

A finding of GUILTY/CHARGEABLE is entered.

Conviction: Felony

Sentence: see attached

September 08, 2022 (Date) | Hon. N. William Delker (Presiding Justice) | W. Michael Scanlon (Clerk of Court)

MITTIMUS

In accordance with this sentence, the Sheriff is ordered to deliver the defendant to the **New Hampshire State Prison.** Said institution is required to receive the Defendant and detain him/her until the Term of Confinement has expired or s/he is otherwise discharged by due course of law.

Attest: _____
Clerk of Court

SHERIFF'S RETURN

I delivered the defendant to the **New Hampshire State Prison** and gave a copy of this order to the Warden.

_____ (Date) _____ (Sheriff)

J-ONE: ☒ State Police ☐ DMV

C: ☐ Dept. of Corrections ☒ Offender Records ☐ Sheriff ☐ Office of Cost Containment
☒ Prosecutor Shaylen Elizabeth Roberts, ESQ ☐ Defendant ☒ Defense AttorneyDonna Jean Brown, ESQ
☒ Sentence Review Board ☒ Sex Offender Registry ☒ Other Jailer ☐ _____ Dist Div. _____

NHJB-2572-Se (08/06/2019)

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

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

Case Name: **State v. Nestor Roman**

Case Number: **216-2019-CR-01623** Charge ID Number: **1667873C**

STATE PRISON SENTENCE

Verdict: GUILTY	Wickwire
Crime: **Attempted Aggravated Felonious Sexual Assault**	Date of Crime: **06/25/2019**

A finding of GUILTY is entered.

CONVICTION AND CONFINEMENT

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

☒ B. The defendant is sentenced to the New Hampshire State Prison for not more than **20 YEARS**, nor less than **10 YEARS**

There is added to the minimum sentence a disciplinary period equal to 150 days for each year of the minimum term of the defendant's sentence, to be prorated for any part of the year.

Pretrial confinement credit:_____days.

☒ C. This sentence is to be served as follows:

☐Stand committed ☐Commencing

☒ **ALL** of the minimum sentence and **ALL** of the maximum sentence is suspended.

Suspensions are conditioned upon good behavior and compliance with all of the terms of this order. Any suspended sentence may be imposed after a hearing at the request of the State. The suspended sentence begins today and ends **10** years from ☐today **or** ☒release on **1667872C**

☐ _____ of the sentence is deferred for a period of_____year(s). The Court retains jurisdiction up to and after the deferred period to impose or terminate the sentence or to suspend or further defer the sentence for an additional period of_____year(s). Thirty (30) days prior to the expiration of the deferred period, the defendant may petition the Court to show cause why the deferred commitment should not be imposed, suspended and/or further deferred. Failure to petition within the prescribed time will result in the immediate issuance of a warrant for your arrest.

☒ D. The sentence is ☒consecutive to case number and charge ID **216-2021-CR-01769 (Charge ID#: 1912128C) and 216-2019-CR-01623 (Charge ID# 1667872C)**

☐concurrent with case number and charge ID _____

☒ E. See Addendum to State Prison Sentence Sexual Offender Assessment and Treatment.

☐ F. See Addendum to State Prison Sentence Substance Use Disorder Assessment and Treatment.

☐ G. The Court recommends to the Department of Corrections:

☐Screen and/or assess for drug and alcohol treatment needs.

☐Sentence to be served at House of Corrections

☐ _____

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

PROBATION

☐ A. The defendant is placed on probation for a period of_____year(s), upon the usual terms of probation and any special terms of probation determined by the Probation/Parole Officer.

Effective: ☐Forthwith ☐Upon release from _____

The defendant is ordered to report immediately, or immediately upon release, to the nearest Probation/Parole Office.

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

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

FINANCIAL OBLIGATIONS

☐ **A. Fines and Fees:**

Fine of $_____, plus a statutory penalty assessment of $_____to be paid:

☐Today

☐By _____

☐Through the Department of Corrections as directed by the Probation/Parole Officer. A 10 % service charge is assessed by DOC for the collection of fines and fees, other than supervision fees.

☐$_____of the fine and $_____of the penalty assessment is suspended for _____ year(s).

A $25.00 fee is assessed in each case file when a fine is paid on a date later than sentencing.

☐ **B. Restitution:**

The defendant shall pay restitution of $_____to_____

☐ Restitution shall be paid through the Department of Corrections as directed by the Probation/Parole Officer. A 17% administrative fee is assessed for the collection of restitution.

☐ At the request of the defendant or the Department of Corrections, a hearing may be scheduled on the amount or method of payment of restitution.

☐ Restitution is not ordered because: _____

☐ **C. Appointed Counsel: NOTE:** Financial Obligations, Section C is NOT a term and condition of the sentence.

☐The Court finds that the defendant has the ability to pay:

counsel fees and expenses in the amount of $ _____

payable through_____in the amount of $_____per month.

☐The Court order for repayment is suspended until the time of the defendant's release from state prison.

☐The Court finds that the defendant has no ability to pay counsel fees and expenses.

_____

_____

OTHER CONDITIONS

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

☐ B. Subject to the provisions of RSA 651-A:22-a, the Department of Corrections shall have the authority to award the defendant earned time reductions against the minimum and maximum sentences for successful completion of programming while incarcerated.

☐ C. Under the direction of the Probation/Parole Officer, the defendant shall the

☐New Hampshire State Prison ☐House of Corrections

☐ D. The defendant shall perform_____hours of community service and provide proof to _____ within_____of today's date.

☒ E. The defendant is ordered to have no contact with **J.J. or any member of her immediate family** either directly or indirectly, including but not limited to contact in-person, by mail, phone, email, text message, social networking sites or through third parties.

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

☐ G. The defendant and the State have waived sentence review in writing or on the record.

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

☒ I. Other:

See attached addendum.

For Court Use Only

N. William Delker

Honorable N. William Delker

September 8, 2022

THE STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS. SUPERIOR COURT
DOCKET NO. 216-2019-CR-01623 NORTHERN DISTRICT

STATE OF NEW HAMPSHIRE

v.

NESTOR ROMAN

ADDENDUM TO SENTENCE

The following additional terms are incorporated into the defendant's sentence:

1. No unsupervised contact with anyone under 16 by any means including in person, by phone, computer, e-mail, or otherwise. No contact with victim.
2. No possession or viewing of obscene matter or pornography as defined in RSA 649-A and 650.
3. The defendant's use of computers and the Internet shall be limited as Probation/Parole deems appropriate. At the very least, probation shall have full access to his Internet accounts and history including any social networking sites which the defendant utilizes. Probation shall also have access to the defendant's cell phone(s) including call history, pictures, and Internet history;
4. Sex Offender Registration per RSA 651-B.
5. Meaningfully participation, completion and compliance with all sex offender treatment and aftercare provisions. His compliance with this part of the sentence is to be determined by probation. This shall include the taking of a polygraph to test his sexual history, something done pursuant to the usual terms of any sex offender treatment.
6. Comply with all rules of Probation/Parole as determined by Probation/Parole, including any rules determined to be appropriate but not listed at the time of sentencing.
7. If the defendant is to live in a dwelling in which a child under 16 resides, at least one adult who also resides in that dwelling must take and pass a "supervision" program equivalent to those done at places such as the Clearview Center or RTT in Manchester.

N. William Delker

September 8, 2022
Date

Honorable N. William Delker
Presiding Justice

D.O.B. 04/08/1952
MPD# 19-8996
Cir. Ct. # (1667873C)
Sup. Ct. #216-2019-CR-01623 (1667873C)

RSA Ch. 632-A:2,I(j); 629:1
AFSA - Household Member
Class S Felony
632-A:10-a

STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS. SUPERIOR COURT

INDICTMENT

HNSC #216 2019 CR 1623
CHG ID# 1667873C

At the Superior Court, holden at **Manchester,** within and for the County of Hillsborough aforesaid, in the month of **December** in the year **Two Thousand Nineteen** the **GRAND JURORS FOR THE STATE OF NEW HAMPSHIRE,** on their oath, present that

NESTOR ROMAN
343 AUBURN STREET , APT. 2
MANCHESTER, NH 03103

on or about the **25th** day of **June 2019,** at **Manchester** in the County of Hillsborough, aforesaid, did commit the crime of **Attempted Aggravated Felonious Sexual Assault** in that **with a purpose that the crime of Aggravated Felonious Sexual Assault be committed, he engaged in conduct which, under the circumstances as he believed them to be, was an act or omission constituting a substantial step toward the commission of the crime, in that Nestor Roman placed his hand on the inner thigh and adjacent to the genitalia of J.J., d.o.b. 6/26/04, who was not Nestor Roman's legal spouse but to whom Nestor Roman is related by blood or affinity,**

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

This is a true bill.

12/18/19
Date

Foreperson

Verdict: GUILTY
Entered June 24, 2022

Nancy L. Wickwire

by:
Andrew A. Ouellette #1942
Assistant County Attorney
On behalf of Hillsborough County