

THE STATE OF NEW HAMPSHIRE

COOS, SS.

SUPERIOR COURT

STATE OF NEW HAMPSHIRE

v.

JEFFREY WOODBURN

214-2019-CR-00007

STATE'S RESPONSE TO DEFENDANT'S OBJECTION TO REQUEST FOR IMPOSITION OF SENTENCE AND REQUEST FOR SENTENCE MODIFICATION

NOW COMES the State of New Hampshire, by and through the Office of the Attorney General, and submits this response to the defendant's Objection to State's Request for Imposition of Sentence and Request for Sentence Modification. In support of this pleading, the State says as follows:

1. In his pleading, the defendant objects to the State's request that this court impose the sentences handed down on July 13, 2021 for charge IDs 1580451C and 1580455C. The defendant's objection should be summarily denied, as the defendant has waived any and all rights to appeal or request modification of the previously imposed sentence. Furthermore, the defendant has offered no valid basis upon which this court could grant his request.

2. The defendant has requested that this court modify or amend this sentence before. At the hearing on the defendant's Motion for New Trial on August 10, 2023, the defendant, through counsel, made essentially the same argument that he now submits in the form of a request for sentence modification. After the hearing, this court denied the defendant's request, ruling that "Following an evidentiary hearing at which the defendant testified, and for the reasons set forth on the record, the Court DENIES the defendant's Motion for New Trial on his two criminal mischief charges (Charge ID. #1580451C and Charge ID. 1580455C) and **DENIES his request**

to modify or amend his July 13, 2021 sentence on Charge ID #1580455C (emphasis added).
See Order on Defendant's Motion for New Trial, August 10, 2023 (attached as Exhibit A)

3. The defendant's request should therefore be treated as a motion for reconsideration of the August 10, 2023 ruling. New Hampshire Rule of Criminal Procedure 43 states that a motion for reconsideration "shall be filed within ten days of the date on the clerk's written notice of the order or decision." Notice of the order denying the defendant's motion for new trial, and also denying the request to modify or amend his sentence, was provided to the parties on August 11, 2023. *See* Exhibit A. The deadline for filing a motion for reconsideration of this court's order, therefore, was August 21, 2023. The defendant has missed this deadline by nearly one year. His request is untimely and should be rejected.

4. The defendant has had other opportunities to challenge the sentence issued by this court, and has chosen not to avail himself of them. The defendant did not challenge his criminal mischief convictions as part of his direct appeal. *See State v. Woodburn*, 175 N.H. 645 (2023). The defendant also failed to challenge the court's denial of his request to modify or amend the sentence as part of his most recent appeal, in the form of a motion for new trial. Although this court denied both the defendant's request for a new trial and his request to modify the sentence in the same order, the defendant filed a discretionary appeal only as to the portion of the order denying the motion for new trial. *See Notice of Appeal* (attached as Exhibit B). Issues that are not presented in a notice of appeal, presented in the notice of appeal but not briefed, or not adequately briefed on appeal are all deemed waived. *See State v. Ayer*, 150 N.H. 14, 34 (2003); and *State v. Blackmer*, 149 N.H. 47, 49 (2003). Furthermore, questions presented for review in the notice of appeal "will be deemed to include every subsidiary question fairly comprised therein." N.H. Sup. Ct. R. 16(3)(b).

5. The defendant failed to move this court to reconsider its prior order denying his request to modify his sentence in a timely fashion. The defendant has also failed to preserve his right to appeal that order on direct or discretionary appeal. Only now, nearly a year after the court's decision, and after the New Hampshire Supreme Court has rejected his appeal of the denial of his motion for new trial, has the defendant belatedly made this last-ditch attempt to again request a modification to his sentence. There are no available means by which this court, or any other, can provide the defendant with the relief he seeks, and the defendant's request should be summarily rejected without delay.

6. Notwithstanding the fact that the defendant has waived all right to appeal the previously imposed sentence before this or any other court, the defendant's objection is meritless, as he has failed to provide any valid basis for this court to disturb its previous ruling. The defendant's contention that this court imposed the criminal mischief sentences through the lens of an individual who had also been convicted of a domestic violence crime, and should therefore reconsider the sentence now that the domestic violence convictions are no longer applicable, is simply incorrect. On August 10, 2023, at the time the defendant made his first request to modify the sentence, the related conviction for domestic violence simple assault had already been reversed and remanded by the New Hampshire Supreme Court. At that time, therefore, the defendant was not before the court as a convicted person; instead, he was innocent until proven guilty, as are all defendants prior to the moment of conviction. In other words, the defendant stood in the same position then as he does now. This court was undoubtedly aware of that fact, and correctly ruled that the sentences on the criminal mischief charges were nevertheless appropriate.

7. The defendant also, tellingly, ignores the fact that at the time this court imposed the sentence which he now seeks to amend, this court considered all of the factors he now raises

in his favor, and nevertheless chose to impose a sentence including stand committed time. In charge ID #1580455C, the defendant was convicted of criminal mischief for kicking in a locked door of the victim's home so hard that he damaged the door frame and left the door inoperable, after the victim had asked him to leave. In charge ID #1580451C, he was convicted of damaging the door to the victim's dryer by kicking it. Although the state requested stand committed time on each offense, this court imposed it on only #1580455C, the incident involving kicking in the door.

8. This court specifically distinguished the domestic violence conviction for biting the victim on the arm from the two criminal mischief convictions, making clear that the sentence for the criminal mischief convictions was separate and distinct from the sentence for the domestic violence conviction. *See Transcript of July 13, 2021 Sentencing Hearing* (attached as Exhibit C), p. 54 (“With respect to the two criminal mischief charges, I view them a little differently”). This court did not, therefore, conflate the sentences on each charge in such a way that the sentence on the criminal mischief charges punished the defendant for the behavior attributed to the domestic violence conviction.

9. This court also distinguished between the two criminal mischief convictions, highlighting that while kicking a dryer door is by no means acceptable behavior, there is a qualitative difference between that crime and the crime of kicking in the victim's door. *See Id.*, p. 55 (“[I]n my view, the kicking down a locked door after the Defendant had been asked to leave the house is more serious and significant and at least qualitatively different to some extent than kicking the dryer door, admittedly, repeatedly, and damaging it quite significantly”). The kicking the door incident, like the domestic violence incident, was therefore worthy in the court's eyes of stand committed time on its own merits.

10. Although this court mentioned the various incidents together at different times during its sentencing remarks, it is clear from the context and entirety of the court's sentencing remarks that rather than conflate the separate incidents, this court found that both the kicking the door incident and the biting incident were independently worthy of stand committed time.

11. This court noted, with regard to the specific sentencing goals of punishment and general deterrence, that "[t]hese are serious crimes. Admittedly, they are class A misdemeanors, so they are not among the most serious crimes, but kicking down an intimate partner's locked door and biting her on the arm are serious matters that should not be taken lightly or glossed over." *Id.*, p. 57. This court also stated that "[A]mong the norms we should be affirming and maintaining as a society is that situational or not, angry or not, one should not recklessly bite one's intimate partner in the arm and cause bodily injury or kick down their door or break their clothes dryer." *Id.*, p. 58. With regard to the kicking the door incident, this court stated that "the nature and extent of the damage of the door was not insignificant, and that appears affirmatively in the record from the trial testimony. And again, those are things that need to be reaffirmed." *Id.*, p. 59.

12. While noting that the defendant had already paid a price in lost job opportunities, standing in the community, financial setbacks, and so forth, this court stated that "I do think the general deterrence still plays a part in this that I think it sends a wrong message for these types – for a person to be convicted of these crimes, specifically the simple assault, the biting of the arm, and kicking down the door, if no stand-committed time was imposed at all, I do think that...it sends a bad message...[I]mposing some stand-committed time, that is important to promote the goal of general deterrence in this situation." *Id.*, p. 59.

13. At the time of sentencing, this court specifically took into consideration such

mitigating factors as the defendant's lack of a prior criminal record and his record of public service, both of which the defendant now cites in his motion as reasons to amend his sentence.

See Id., p. 56.

14. The defendant has waived all of his rights to appeal the sentence imposed by this court, and his request to amend the sentence at this late juncture should be summarily denied. Notwithstanding that fact, there is nothing that would justify a departure from the previously imposed sentence. The defendant's arguments merely repeat claims that he advanced at the original sentencing hearing, and falsely state that the criminal mischief sentences are tainted by the domestic violence convictions. The defendant thus ignores the detailed analysis previously carried out by this court in imposing sentence on the defendant.

15. For all the reasons stated above, this court should reject the defendant's belated attempts to seek reconsideration of this court's prior order.

Respectfully submitted,

THE STATE OF NEW HAMPSHIRE

By its attorneys,

JOHN M. FORMELLA
ATTORNEY GENERAL

Dated: August 5, 2024

/s/ Joshua L. Speicher
Joshua L. Speicher, NH Bar #273020
Senior Assistant Attorney General
New Hampshire Department of Justice
One Granite Place South
Concord, New Hampshire 03301
(603) 271-3671

CERTIFICATE OF SERVICE

I hereby certify that a copy of this pleading has been forwarded to counsel of record for the defendant through the Court's electronic filing system.

Dated: August 5, 2024

/s/ Joshua L. Speicher
Joshua L. Speicher
Senior Assistant Attorney General

EXHIBIT A

THE STATE OF NEW HAMPSHIRE

COÖS, SS.

SUPERIOR COURT

No. 214-2019-CR-00007

State of New Hampshire

v.

Jeffrey Woodburn

ORDER ON DEFENDANT'S MOTION FOR NEW TRIAL

Following an evidentiary hearing at which the defendant testified, and for the reasons set forth on the record, the Court DENIES the defendant's Motion for New Trial on his two criminal mischief charges (Charge ID. #1580451C and Charge ID. #1580455C) and DENIES his request to modify or amend his July 13, 2021 sentence on Charge ID. #1580455C. The Court GRANTS the defendant's request to stay execution of the sentences on his criminal mischief charges pending the final disposition of his appeal of the Court's order denying his Motion for New Trial. See record.

So Ordered.

Date: 8/10/23



Hon. Peter H. Bornstein
Presiding Justice

Clerk's Notice of Decision
Document Sent to Parties
on 08/11/2023

EXHIBIT B

**THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH**

<http://www.courts.state.nh.us>

RULE 7 NOTICE OF DISCRETIONARY APPEAL

This form should be used only for an appeal from a final decision on the merits issued by a superior court or circuit court in (1) a post-conviction review proceeding; (2) a proceeding involving the collateral challenge to a conviction or sentence; (3) a sentence modification or suspension proceeding; (4) an imposition of sentence proceeding; (5) a parole revocation proceeding; (6) a probation revocation proceeding; (7) a landlord/tenant action or a possessory action filed under RSA chapter 540; (8) an order denying a motion to intervene; or (9) a domestic relations matter filed under RSA chapters 457 to 461-A, except that an appeal from the first final order should be filed on a Rule 7 Notice of Mandatory Appeal form.

1. COMPLETE CASE TITLE AND CASE NUMBERS IN TRIAL COURT

**State v. Jeffrey Woodburn
214-2019-CR-00007**

2. COURT APPEALED FROM AND NAME OF JUDGE(S) WHO ISSUED DECISION(S)

**Coos Superior Court
Hon. Peter H. Bornstein**

3A. APPEALING PARTY: NAME, MAILING ADDRESS, E-MAIL ADDRESS, AND TELEPHONE NUMBER.

**Jeffrey Woodburn
30 King Square
Whitefield, NH 03598**

E-Mail address: _____

Telephone number: _____

3B. APPEALING PARTY'S COUNSEL: NAME, BAR ID NUMBER, FIRM NAME, MAILING ADDRESS, E-MAIL ADDRESS, AND TELEPHONE NUMBER.

Mark L. Sisti, Esq., NH Bar No.: 2357

Sisti Law Offices

**387 Dover Road
Chichester, NH 03258**

E-Mail address: info@sistilawoffices.com

Telephone number: **(603) 224-4220 ext**

4A. OPPOSING PARTY: NAME, MAILING ADDRESS, E-MAIL ADDRESS, AND TELEPHONE NUMBER.

State of New Hampshire

E-Mail address: _____

Telephone number: _____

4B. OPPOSING PARTY'S COUNSEL: NAME, BAR ID NUMBER, FIRM NAME, MAILING ADDRESS, E-MAIL ADDRESS, AND TELEPHONE NUMBER.

Office of the Attorney General

**33 Capitol Street
Concord, NH 03301**

E-Mail address: attorneygeneral@doj.nh.gov

Telephone number: **(603) 271-3658 ext**

RULE 7 NOTICE OF DISCRETIONARY APPEAL

5. NAMES OF ALL OTHER PARTIES AND COUNSEL IN TRIAL COURT

Joshua L. Speicher, Esq., Office of the Attorney General
Zachary C. Wolf, Esq., Office of the Attorney General

6. DATE OF CLERK'S NOTICE OF DECISION OR SENTENCING.

08/11/2023

DATE OF CLERK'S NOTICE OF DECISION ON POST-TRIAL MOTION, IF ANY.

7. CRIMINAL CASES: DEFENDANT'S SENTENCE AND BAIL STATUS

Criminal Mischief: 12 months with all but 30 days suspended.

Criminal Mischief: 12 months all suspended.

PR Bail.

8. APPELLATE DEFENDER REQUESTED? YES or NO: No

IF YOUR ANSWER IS YES, YOU MUST CITE STATUTE OR OTHER LEGAL AUTHORITY UPON WHICH CRIMINAL LIABILITY WAS BASED AND SUBMIT A CURRENT REQUEST FOR A LAWYER FORM (FINANCIAL STATEMENT). SEE SUPREME COURT RULE 32(4).

9. IS ANY PART OF CASE CONFIDENTIAL? YES or NO: No

IF SO, IDENTIFY WHICH PART AND CITE AUTHORITY FOR CONFIDENTIALITY. SEE SUPREME COURT RULE 12.

10. IF ANY PARTY IS A CORPORATION LIST THE NAMES OF PARENTS, SUBSIDIARIES AND AFFILIATES.

N/A

11. DO YOU KNOW OF ANY REASON WHY ONE OR MORE OF THE SUPREME COURT JUSTICES WOULD BE DISQUALIFIED FROM THIS CASE? YES or NO: No

IF YOUR ANSWER IS YES, YOU MUST FILE A MOTION FOR RECUSAL IN ACCORDANCE WITH SUPREME COURT RULE 21A.

12. IS A TRANSCRIPT OF TRIAL COURT PROCEEDINGS NECESSARY FOR THIS APPEAL? SEE SUPREME COURT RULE 15, COMMENT.

YES or NO: Yes

IF YOUR ANSWER IS YES, YOU MUST COMPLETE THE TRANSCRIPT ORDER FORM ON PAGE 4 OF THIS FORM.

RULE 7 NOTICE OF DISCRETIONARY APPEAL

13. NATURE OF CASE AND RESULT (Limit two pages double-spaced; please attach or include.)

For this section and section 14, you may choose to use the five-page, single-spaced Additional Information Pages form. The five-page Additional Information Pages form is available on the judicial branch website: <https://www.courts.state.nh.us/supreme/forms/index.htm>.

14. ISSUES ON APPEAL (Limit eight pages double-spaced; please attach or include.)

You may choose to use the same five-page, single-spaced Additional Information Pages form identified in section 13.

The New Hampshire Supreme Court reviews each discretionary notice of appeal and decides whether to accept the case, or some issues in the case, for appellate review. The following acceptance criteria, while neither controlling nor fully describing the court's discretion, indicate the character of the reasons that will be considered.

1. The case raises a question of first impression, a novel question of law, an issue of broad public interest, an important state or federal constitutional matter, or an issue on which there are conflicting decisions in New Hampshire courts.
2. The decision below conflicts with a statute or with prior decisions of this court.
3. The decision below is erroneous, illegal, and unreasonable or was an unsustainable exercise of discretion.

Separately number each issue you are appealing and for each issue: (a) state the issue; (b) explain why the acceptance criteria listed above support acceptance of that issue; and (c) if a ground for appeal is legal sufficiency of evidence, include a succinct statement of why the evidence is alleged to be insufficient as a matter of law.

15. ATTACHMENTS

Attach to or include with this notice of appeal the following documents in order: (1) a copy of the trial court decision or order from which you are appealing; (2) the clerk's notice of the decision below; (3) any court order deciding a timely post-decision motion; and (4) the clerk's notice of any order deciding a timely post-decision motion.

Do not attach or include any other documents with this notice of appeal. Any other documents you wish to submit must be included in a separate Appendix, which must have a table of contents on the cover and consecutively numbered pages.

16. CERTIFICATIONS

I hereby certify that every issue specifically raised has been presented to the court below and has been properly preserved for appellate review by a contemporaneous objection or, where appropriate, by a properly filed pleading. To the extent that an unpreserved issue is raised as plain error, I hereby certify that I have specifically identified that issue as plain error in section 14.

Appealing Party or Counsel

I hereby certify that on or before the date below, copies of this notice of appeal were served on all parties to the case and were filed with the clerk of the court from which the appeal is taken in accordance with Supreme Court Rules 5(1) and 26(2) and with Rule 18 of the Supplemental Rules of the Supreme Court.

Date

8-21-23

Appealing Party or Counsel

RULE 7 NOTICE OF DISCRETIONARY APPEAL

TRANSCRIPT ORDER FORM

INSTRUCTIONS:

1. If a transcript is necessary for your appeal, you must complete this form.
2. List each portion of the proceedings that must be transcribed for appeal, e.g., entire trial (see Supreme Court Rule 15(3)), motion to suppress hearing, jury charge, etc., and provide information requested.
3. Determine the amount of deposit required for each portion of the proceedings and the total deposit required for all portions listed. Do not send the deposit to the Supreme Court. You will receive an order from the Supreme Court notifying you of the deadline for paying the deposit amount to the court transcriber. Failure to pay the deposit by the deadline may result in the dismissal of your appeal.
4. The transcriber will produce a digitally-signed electronic version of the transcript for the Supreme Court, which will be the official record of the transcribed proceedings. The parties will be provided with an electronic copy of the transcript in PDF-A format. A paper copy of the transcript may also be prepared for the court.

PROCEEDINGS TO BE TRANSCRIBED					
PROCEEDING DATE (List each day separately, e.g. 5/1/11; 5/2/11; 6/30/11)	TYPE OF PROCEEDING (Motion hearing, opening statement, trial day 2, etc.)	NAME OF JUDGE	LENGTH OF PROCEEDING (in .5 hour segments, e.g., 1.5 hours, 8 hours)	RATE (standard rate unless ordered by Supreme Court)	DEPOSIT
08/10/2023	Motion for New Trial Hrg	Peter H. Bornstein	1.5 hours	X \$137.50	\$ 206.25
				X \$137.50	\$
				X \$137.50	\$
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				X \$137.50	\$
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				X \$137.50	\$
				X \$137.50	\$
				TOTAL DEPOSIT	\$ 206.25

PROCEEDINGS PREVIOUSLY TRANSCRIBED					
PROCEEDING DATE (List date of each transcript volume)	TYPE OF PROCEEDING (Motion hearing, opening statement, trial day 2, etc.)	NAME OF JUDGE	NAME OF TRANSCRIBER	DO ALL PARTIES HAVE COPY (YES OR NO)	DEPOSIT FOR ADDITIONAL COPIES
06/06/2023	Status Conference/Hrg on	Peter H. Bornstein	escribers	*	TBD
	Imposition of Sentence				TBD
					TBD

NOTE: The deposit is an estimate of the transcript cost. After the transcript has been completed, you will be required to pay an additional amount if the final cost of the transcript exceeds the deposit. Any amount paid as a deposit in excess of the final cost will be refunded. The transcript will not be released to the parties until the final cost of the transcript is paid in full.

*will provide to the Office of the Attorney General if they do not already have

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

Court Name: New Hampshire Supreme Court
Case Name: State v. Jeffrey Woodburn
Case Number: 214-2019-CR-00007
(if known)

ADDITIONAL INFORMATION PAGES

13./14. NATURE OF CASE AND RESULT/ISSUES ON APPEAL:

This request for review stems from the Trial Judge Denying the Defendant's Motion for New Trial based on ineffective assistance of counsel for failure to sever criminal mischief accusations from Domestic Violence/Simple Assault cases. The Joinder of these matters created a prejudicial atmosphere that impacted the outcome of the original trial. This Court has already reviewed the validity of the DV/Assault conviction and assigned error in that case due to the Trial Court's failure to allow the defense to utilize a justification defense.

Those cases are now scheduled for re-trial in Coos County Superior Court. The Motion for New Trial questions whether there was any strategy or tactical reason that any reasonable defense attorney would have to join all allegations together for Trial. The allegations were separate incidents at different locations sometimes separated by months in time.

The Joinder of all matters allowed the State to introduce unrelated allegations of criminal conduct at trial that normally would have been precluded by N.H.R.E. 403 and 404(B). See also NH Rule of Criminal Procedure R. 20.

Because all matters were joined for Trial, the defendant was denied a fair trial contrary to Pt 1 Art 15 of the NH Constitution and the 5th, 6th and 14th Amendments to the Federal Constitution.

EXHIBIT C

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STATE OF NEW HAMPSHIRE

COOS COUNTY SUPERIOR COURT

STATE OF NEW HAMPSHIRE,) Superior Court Case No.
) 214-2019-CR-00007
Complainant,)
) Lancaster, New Hampshire
vs.) July 13, 2021
) 9:17 a.m.
JEFFREY WOODBURN,)
)
Defendant.)
_____)

HEARING ON SENTENCING
BEFORE THE HONORABLE PETER H. BORNSTEIN
JUDGE OF THE SUPERIOR COURT

APPEARANCES:

For the State:	Geoffrey Ward, Esq. Joshua Speicher, Esq. OFFICE OF THE ATTORNEY GENERAL 33 Capitol Street Concord, NH 03301
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For the Defendant:	Donna J. Brown, Esq. WADLEIGH, STARR & PETERS, P.L.L.C. 95 Market Street Manchester, NH 03101
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Audio Operator:	Electronically Recorded by Sara Beaulieu
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TRANSCRIPTION COMPANY:	eScribers, LLC 7227 N. 16th Street, Suite 207 Phoenix, AZ 85020 (800) 257-0885 www.escribers.net
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Proceedings recorded by electronic sound recording; transcript produced by court-approved transcription service.

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25I N D E XWITNESS (ES) DIRECT CROSS REDIRECT RECROSSFOR THE STATE:

NONE

WITNESS (ES) DIRECT CROSS REDIRECT RECROSSFOR THE DEFENDANT:

NONE

MISCELLANEOUSPAGE

Sentencing

60

Court's Ruling

51

EXHIBITSIDEVD

Defendant's A

Article with comment
from Linda

9

9

Upham-Bornstein

Defendant's B

Letter from Dr. Erinn
Fellner

28

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Defendant's C

Letter from Kelly Manson

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Defendant's D

Letter from Liz
Charlwood

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Defendant's E

Letter from Patricia
Dwyer

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1 (Proceedings commence at 9:17 a.m.)

2 THE COURT: Good morning. Please be seated. This
3 is a sentencing hearing in the matter of State of New
4 Hampshire v. Jeffrey Woodburn. I have reviewed each party's
5 sentencing orders and post-sentencing orders and sentencing
6 memorandum.

7 Atty. Ward, are you ready to proceed?

8 MR. WARD: I am, Your Honor. But I believe that
9 Defense counsel had something she wanted to raise with the
10 Court prior to us beginning.

11 MS. BROWN: Yes, Your Honor.

12 THE COURT: Atty. Brown?

13 MS. BROWN: It was brought to my attention yesterday
14 that there was a comment on The Berlin Sun's Facebook page
15 made by Linda Upham-Bornstein, your wife, in the middle of the
16 trial, commenting about the trial. I was not aware of it
17 during the trial. In fact, I wasn't aware of it until
18 yesterday. I felt that the Court should address that. I
19 don't know much more other than what I found from looking at
20 that Facebook post.

21 But specifically, it doesn't generally comment on
22 domestic violent, but specifically about events going on in
23 the trial. So I've never dealt with that situation before. I
24 don't know if the Court is aware of it. But I wanted to bring
25 it to the Court's attention because at least there's an



1 appearance of bias, and I wanted to address that with the
2 Court.

3 Is the Court aware of that Facebook post?

4 THE COURT: I do not have a Facebook account. I
5 don't do anything on social media. I don't even know how it
6 works.

7 MS. BROWN: Okay.

8 THE COURT: So I mean, the short answer is no,
9 though that is my wife's name, so I would assume that whatever
10 comment she made was hers.

11 MS. BROWN: Okay. Well, as I said, I just wanted
12 the -- because it had been brought to me by more than one
13 person, I wanted the Court to be aware of it and to address it
14 because it does talk -- it's very much focused on Your Honor's
15 decision to have basically a remote courtroom during the
16 trial. It's referred to as closing the courtroom. It was a
17 remote -- and so the Berlin Sun had published an article about
18 the closing of the courtroom and that the -- so there were
19 comments about that specifically. So it sounds like Your
20 Honor was not aware of that and that you did not have a
21 discussion about --

22 THE COURT: I didn't have any input into that. So
23 is the comment something about that -- it had to do with the
24 decision to not allow the media in this courtroom, but to have
25 them in the next-door courtroom and observing things remotely?



1 MS. BROWN: Exactly, Your Honor. So --

2 MR. WARD: Would you like a copy of it?

3 MS. BROWN: Yeah. I --

4 MR. WARD: I think it would probably make sense for
5 you to --

6 THE COURT: Sure.

7 MR. WARD: -- at least see it if you're being asked
8 to comment on it. We were given that just this morning, Your
9 Honor.

10 MS. BROWN: And Your Honor, what he'd been given is
11 a screenshot of that particular bubble, quote, whatever it is.
12 There's 32 other comments there. A lot of them are from the
13 reporter from The Berlin Sun. But most of them are in reply
14 to a story posted by InDepth New Hampshire about the issue of
15 the "closing of the courtroom". And so this is that back and
16 forth about it, and --

17 THE COURT: Okay. I've read the -- again, it's the
18 block in the middle --

19 MS. BROWN: Yeah. It says --

20 THE COURT: -- on the right-hand side. So is there
21 something you want me to address?

22 MS. BROWN: Well, Your Honor, it sounds like that
23 you had, as you said on the record, had no input on this.
24 There was no discussion about this, and that you were not
25 aware that that was said. That's my understanding. And I



1 don't see an issue. I just thought that because of that
2 comment that I should address it with the Court.

3 THE COURT: I mean, I understood my wife to have
4 either heard about, whether it was an InDepth New Hampshire
5 story or Berlin Daily Sun story, but there was some media
6 coverage about the decision to not allow the media in the
7 courtroom. And I was aware that she was aware of that
8 decision because she read it in the media, apparently. I
9 mean, I read the article after the fact just to see what was
10 said.

11 MS. BROWN: Okay.

12 THE COURT: So I think our -- but in any event. So
13 I was aware of -- and I think it was an InDepth New Hampshire
14 article that I -- I mean, there were a couple of articles
15 that -- but it was mainly that one that talked about the
16 closing of the -- or the -- I don't want to refer to it as the
17 closing of the courtroom. The decision to have the media
18 remotely.

19 And again, in my view, we did what we could, and the
20 clerk made every effort to -- I know there was a problem with
21 the sound the first day, and the clerk actually made recording
22 for the media representatives the next day so they could
23 actually have a better record than they would have if they'd
24 heard it. They had the actual disk.

25 So does this raise any issue for anybody?



1 MS. BROWN: Well, as I said, Your Honor, I felt I
2 had a duty to address because I don't know. And obviously,
3 you've put on the record now that this was -- these statements
4 were not pursuant to a conversation that your wife had with
5 you and then was basically advocating for a position. She
6 certainly is advocating for a position different than
7 publishing -- or advocating for a position different than how
8 the article portrayed what happened.

9 And I disagree with whether a victim's right to
10 privacy trumps the public's right to know, and that's a debate
11 that was going on here. And that's, I think -- in fact, I
12 think, with all due respect, that wasn't even the issue with
13 the article, was the right to privacy. The issue was more the
14 COVID issue and whether because of the COVID rules a certain
15 amount of people could be in the courtroom.

16 But as I said, I felt that it needed to be addressed
17 because several parties had mentioned this to me thinking it
18 was unusual that a judge's wife would comment on an issue in
19 controversy while the trial's going on. And they brought that
20 to my attention, and I thought that it should be addressed for
21 the record.

22 THE COURT: Yeah. I mean, I didn't --

23 MS. BROWN: Better now than later.

24 THE COURT: I mean, the short, I didn't tell her
25 what to say or to post anything. I mean, obviously, I believe



1 that the decision I made as far as keeping the media in the
2 other courtroom, because we had a limited number of people we
3 could have in this courtroom, was the correct decision. So I
4 believe that was a correct decision, otherwise I wouldn't have
5 made it. And I endeavor to balance the public and the press'
6 rights to know versus the realities we were dealing with at
7 the time.

8 Again, if the sentencing hearing had been now -- I
9 mean, if the trial had been now, we'd have the media in the
10 courtroom and life would be easier. But it wasn't, so.

11 MS. BROWN: That's -- that's all, Your Honor, that I
12 was responding to. I just --

13 THE COURT: Okay.

14 MS. BROWN: -- wanted to address it now, so it
15 didn't come up down the road, and give the Court a chance to
16 respond to it and put something on the record.

17 THE COURT: Very good.

18 So Atty. Ward?

19 MR. WARD: From the State's perspective, Your Honor,
20 just so the record is clear, we obviously take no issue with
21 this. As the Court has explained, and as I think is apparent,
22 it's certainly not a comment on any of the actual issues at
23 trial, but procedural issues. And certainly, a judge's
24 spouse, as with anyone, has a freedom of speech and is able to
25 comment on publicly available information. None of this was



1 proprietary. None of this was information that only Your
2 Honor would have had. Rather it was public information.

3 And it's certainly not even as counsel characterized
4 it as a debate between the right to know and the victim's
5 rights. Certainly, there was no issue with the press's right
6 to know where they had access to all of the trial proceedings,
7 albeit perhaps not the way they wanted it, but consistent with
8 their right to access and consistent with the Court's orders
9 during a public health crisis. So certainly, we take no issue
10 with this. I'm not sure what the issue even could have been.

11 I do think because counsel has raised it, Your
12 Honor, quite frankly, that it should probably be marked as a
13 Court's exhibit at this sentencing hearing, so that it could
14 be kept with the file in case there's any issue raised later
15 by the Defense with respect to this.

16 THE COURT: I'll have it marked as an exhibit by the
17 monitor. So that can just be Defendant's Exhibit at
18 sentencing hearing A if that's where we're at.

19 (Defendant's Exhibit A marked and received)

20 MS. BROWN: I'm all set.

21 THE COURT: Okay. You may make your presentation.

22 MR. WARD: Thank you, Your Honor.

23 I'll begin just by going over the State's
24 sentencing, proposed sentencing sheets, the proposed sentence
25 in this State, and that the State has made. I will try not to



1 repeat our sentencing memorandums. I appreciate that the
2 Court has reviewed that prior to today's hearing.

3 But with respect to charge ID 1580453-C, charging
4 domestic violence simple assault, the State recommends the
5 Defendant be sentenced to the House of Corrections for a
6 period of 12 months stand-committed commencing forthwith and
7 that all but 30 days of that sentence be suspended for a
8 period of two years.

9 Because that is a domestic violence offense, there
10 is a mandatory 50-dollar fine that is outlined in the domestic
11 violence addendum to that sentencing form that the State has
12 submitted.

13 In addition, we would ask on this charge and on the
14 remaining two charges that the Defendant be ordered to have no
15 contact Emily Jacobs or her family either directly or
16 indirectly, including but not limited to contact in person, by
17 mail, phone, email, text message, social networking sites,
18 and/or third parties.

19 We would ask that the law enforcement agencies may
20 destroy or return evidence and that the Defendant be ordered
21 to be of good behavior and comply with all the terms of his
22 sentence.

23 In addition, the State is recommending with respect
24 to this and all sentences that the Defendant is to undergo a
25 batterer's evaluation and is ordered to meaningfully comply



1 with all recommended follow-up treatment and counseling, and
2 importantly, that proof of that compliance be provided to the
3 Court.

4 With respect to the remaining two convictions for
5 criminal mischief, charge ID 1580451-C and charge 1580455-C,
6 the State is recommending concurrent sentences of 12 months in
7 the House of Corrections standing committed. All but 30 days
8 of those sentences suspended for a period of two years. And
9 if those sentences run consecutive to the domestic violence
10 simple assault sentence, the additional conditions are as I
11 had outlined with respect to the domestic violence charge.

12 And so what the State is asking for in the aggregate
13 is a 60-day stand-committed sentence in this matter, Your
14 Honor. And the reason the State is making that recommendation
15 is outlined, I think, again, in-depth in the State's
16 sentencing memorandums because it meets the goals of
17 sentencing of punishment, deterrence, both general and
18 specific, and rehabilitation.

19 Rehabilitation, obviously, is addressed through the
20 State's recommendation for a batterer's evaluation and for
21 meaningful compliance with all recommended follow-up treatment
22 and counseling. The Defense certainly based that on those
23 services they need for counseling and for treatment following
24 an incident such as these.

25 But there's no requirement in what the Defense



1 recommends, Your Honor, that it be specific as to batterer's
2 issues. And there's certainly no recommendation that proof of
3 any of that be provided to the Court. Certainly, compliance
4 with that, in term, is as important as anything. It's a
5 hollow term if it doesn't include some compliance and some
6 proof component back to the Court with respect to whether or
7 not it has, in fact, been done.

8 And as to punishment in general and specific
9 deterrence, those are obviously specific, obviously important
10 factors as far as the State is concerned. And the State has
11 balanced what it believes are aggravating factors in this
12 matter with mitigating factors, which we did not address in
13 our motion, but which I will address with the Court today.

14 So not to rehash the facts at the trial, but there
15 were three separate incidents the Defendant was convicted of
16 that span just over a five-month period from August to
17 December of 2017. It's the State's position that those
18 incidents, as outlined, do escalate, and they actually vary
19 over the course of the time.

20 It begins with the destruction of that dryer door in
21 a fit of anger, as the Defendant stated in his journal in
22 State's Trial Exhibit 1, where he was infuriated, as you'll
23 recall, Your Honor, because he was asked to not slam doors and
24 drawers in the house while the victim's children were sleeping
25 that evening. The Defendant did refuse to leave that night



1 and decided to take a shower and do his laundry instead, or
2 take a bath and do his laundry instead, and when confronted by
3 the victim, was, again, infuriated.

4 Speaks later in November of that year of the dynamic
5 in our relationship -- or the relationship is what causes him
6 to lose his temper, yell, say unkind things, and on rare
7 occasions, damaged property. There's obviously, as the
8 Court -- as the State, excuse me, and obviously, as the Court
9 is more than aware when it comes to domestic violence matters,
10 various undertones, or even overtones, quite frankly, Your
11 Honor, are victim blaming. That occurred both during the
12 course of this relationship, as well as during the course of
13 this trial in an attempt to recast blame on the victim for
14 causing these incidents.

15 It occurs even in the Defense's sentencing
16 memorandum where -- and I'll address this more later -- but
17 where the Defense and the Defendant argues, I guess, is a
18 mitigating circumstance that the violence here was
19 "situational" as to the victim, again, as if it were the
20 victim's fault or the relationship's fault that he engaged in
21 this violence as opposed to an acceptance of actual
22 responsibility and response on the part of the Defendant here.

23 We proceed then to December 15th of 2017. And
24 that's the incident in the motor vehicle where the Defendant
25 wants to get out of the car, where there's been an argument,



1 where the victim reaches for his phone, and he bites her hand,
2 leaving marks and bruising that were in State's Trial Exhibits
3 6 and 7. Now, one of the things the Defendant has attempted
4 to say both publicly -- not attempted, has said both publicly
5 and in his sentencing memorandum, is somehow an attempt to
6 recast the jury verdicts here as believing in him, and
7 therefore, that is some sort of mitigating factor.

8 Now, I think it goes without saying that even if
9 that were true, he's still guilty of all of these crimes. It
10 did not change that he committed these offenses. But it's not
11 true, Your Honor. It's actually very different than that. As
12 you'll recall, at trial, the Defendant testified in substance
13 that there was an intensive tug-of-war that occurred over that
14 phone.

15 That's not what the victim testified. The victim
16 testified that she simply reached for the phone. He testified
17 as to an extensive tug-of-war over the phone in which he could
18 not overcome her superior physical strength and get the phone
19 from her grasp and that his only ability to do so involved him
20 actually biting her, clamping down on her hand, and that was
21 what eventually led to her letting go of the phone.

22 But the interesting part about that testimony is,
23 while that was the argument of counsel, that's not actually
24 what the Defendant said. Because when we got to the key
25 moment there after the tug-of-war, the Defendant said he



1 couldn't remember what happened. So it's hard to argue that
2 the jury truly believes his account because he doesn't
3 remember what happened in that incidence. He does not recall
4 biting the victim in that incident. Again, I think, even
5 throughout the Defendant's testimony, when critical moments
6 were arrived at, when he actually committed criminal conduct,
7 he would not remember that criminal conduct.

8 So again, it's hard to cast the jury's verdicts as
9 somehow having believed him or exonerated him, especially with
10 respect to that December 15th incident where he had no memory
11 of biting the hand, whereas the victim clearly testified that
12 her hand had been bitten, the pain was some of the worst pain
13 she had ever experienced, and there was obviously exhibits and
14 evidence that backed that up.

15 When you come to the December 24th criminal
16 mischief, I understand it's a criminal mischief crime. It's a
17 property crime, but I think it's important to recognize the
18 context in sentencing of that crime because the Defendant
19 kicked the door into the victim's home and reentered her home
20 after he was told to leave, after the door was locked and
21 closed, and he was asked to go home for the night. He
22 nevertheless broke into that house, and he did so using
23 physical force.

24 Your Honor saw, and the jury saw, the video
25 introduced into evidence, heard the testimony not only of the



1 victim, but of the gentleman who repaired that door. It was
2 clear to that gentleman that the door had been shouldered,
3 rushed, or had been kicked in. The victim testified as to her
4 fear at that point. And that fear is real, and that fear is
5 important for this Court to consider when it comes to
6 sentencing here.

7 Invading the sanctity of one's home is, of course,
8 something that our courts take very seriously in the context
9 of constitutional rights and certainly should be taken
10 seriously in the context of domestic violence offenses by this
11 Court in considering this sentence.

12 Again, when it comes to the Defendant's to attempt
13 to cast this verdict, this guilty verdict on the charges, that
14 somehow belief in him should result in mitigation by this
15 Court. Let's remember the Defendant's testimony as to kicking
16 in this door. It was "accidental". In spite of the
17 admissions made in his journal where he never casts it as
18 such, in spite of the fact that he kicked the door multiple
19 times, he nevertheless cast it as an accidental event.

20 Now, of course, accidents, as the Court is more than
21 aware, are not criminal, are not crimes. Nevertheless, the
22 jury convicted him of a crime in this instance, therefore not
23 believing this Defendant's testimony.

24 Now, in addition to the facts of the incidents
25 themselves, the seriousness with which this Court does and



1 should take domestic violence in this context, especially when
2 it comes to multiple incidents of domestic violence over a
3 span of time, there must be a punishment component; a
4 punishment component that both deters this Defendant from
5 future criminal conduct, but also deters others from
6 committing similar conduct when they learn of the sentence the
7 Defendant receives here.

8 Now, when it comes to factors that would mitigate a
9 sentence imposed, the State has factored those into its
10 proposal here. Certainly, this is not a request for the
11 maximum sentence or quite frankly anything anywhere near that
12 available to this Court to impose on these offenses. So the
13 State has factored in mitigating circumstances here.

14 And the mitigators are, in the State's eyes, that
15 this Defendant has no criminal record, that this Defendant has
16 a record of meritorious public service, and that this
17 Defendant, again, has no criminal record at an advanced age.
18 This is not a youthful offender, but rather someone who has
19 gone most of their adult life without committing criminal
20 conduct. Those are certainly mitigators be taken into account
21 by this Court, mitigators that the State has taken into
22 account in fashioning its proposed recommendation here.

23 Now, there are, of course, also aggravating factors
24 in addition to the facts and circumstances of the offenses
25 themselves, and the State has outlined what it considers



1 additional aggravating factors with respect to these offenses.
2 And one of the things the Court is able to consider in
3 sentencing, in considering aggravating factors, is whether a
4 Defendant has a lack of remorse. And certainly, the Defendant
5 chose to testify at trial and waived his Fifth Amendment right
6 to silence and chose to take the stand and testify.

7 He also chose to make public statements following
8 his convictions. And those things, his testimony as well as
9 his statements, which the State outlines in its pleading,
10 made -- following a few convictions, made clear a lack of
11 remorse on the part of the Defendant. He used what happened
12 in attempts to recast the narrative of the jury's convictions,
13 attempts to spin directed at the media to cast himself as
14 something other than what he is, Your Honor, which is a
15 convicted domestic violence abuser.

16 Again, even if the Court were to accept the
17 proposition that he was believed by the jury and that that is
18 reflected in the jury's verdict, certainly, we've outlined --
19 and there's a compelling case that he was not believed by the
20 jury with respect to those convictions. He nevertheless
21 remains a convicted domestic violence abuser. He must be
22 sentenced as such.

23 And then, this, again, argument, apparently, that
24 the Defense passes as a mitigator is that the violence he
25 committed is a quote, the "violence" he committed in the



1 relationship with Mr. Jacobs was situational as to that
2 relationship. And I spent a lot of time thinking about that
3 sentence because I don't know that I'm aware of criminal
4 conduct that is not situational in one respect or another.
5 Even random crimes, crimes of opportunity, are certainly ones
6 that arise given certain situations.

7 So an attempt to cast it as a specific or only in
8 the context of that relationship does nothing to mitigate
9 offenses where he had the opportunity as a grown, educated
10 adult to stop, to breathe, to think, and to choose to make
11 different choices than he did when he committed these acts
12 against the victim. There was certainly nothing that
13 compelled him or caused him to commit any of these crimes. He
14 chose to commit all three of these crimes, made the conscious
15 choice to do so.

16 And attempt to recast blame either on, again, the
17 relationship or the victim, in this case, is just further
18 evidence that this Defendant does not get it, is not taking
19 responsibility yet for the crimes he's committed, and that a
20 strong message needs to be sent by this Court and should be
21 sent by this Court. And the only way to do that is to include
22 stand-committed incarceration here for these offenses.

23 Again, a short-term in the larger context of things,
24 certainly nowhere near the maximum sentences available, but
25 necessary for this Defendant to understand that punishment



1 comes with the commission of these crimes, with the conviction
2 for these crimes, and/or both general and specific deterrence
3 aspects.

4 Another aggravating factor the State raised was the
5 Defendant's prior contempt of a court order, something done as
6 the Court outlined in its public order with respect to that
7 issue, something the Defendant admitted to having done, was
8 act in defiance of the court order with respect to the
9 dissemination of an image protected by a protective order
10 issued by this Court. That, again, is relevant when it comes
11 to your assessment, Your Honor, of this Defendant's character
12 and his ability to abide by court orders, including a
13 sentencing order, and the need for the Defendant, again, to
14 appreciate the significance and severity of the conduct he's
15 committed.

16 We also outlined, as I've touched on already, false
17 testimony, false statements made during the course of his
18 sworn testimony in this case, specific as to his claims of
19 having no memory of biting the victim on December 15th and to
20 his claim of accident when it came to kicking the door in on
21 December 24th of 2017, statements that were clearly not
22 credited by the jury, statements that clearly were incredible
23 on their face in terms of the Defendant's testimony.

24 With that, Your Honor -- and I'll probably have
25 brief concluding remarks after it -- the victim has chosen not



1 to be here in person today but did prepare a statement. I'll
2 have, with the Court's permission, victim/witness advocate
3 Lynda Ruel read that into the record and provide the Court
4 with a copy.

5 THE COURT: You may do that.

6 Good morning. First, state your name, please? And
7 then you may read the statement.

8 MS. RUEL: Good morning, Your Honor. My name is
9 Lynda Ruel, R-U-E-L. And I am reading a victim impact
10 statement on behalf of Emily Jacob, J-A-C-O-B-S.

11 "I am not appearing today in person because my
12 privacy has been violated throughout this process.
13 Most recently, a reporter followed me around the
14 courthouse during the trial. This individual asked
15 for my picture, and against my objections, they took
16 it and published it along with my name. They caught
17 me off guard moments after testifying, when I was
18 distraught and had tears in my eyes. They even went
19 to the extent of calling my parents to obtain
20 information about me years after Mr. Woodburn's
21 arrest.

22 "I understand enablers can share the same patterns
23 of abuse as abusers, and I refuse to empower them by
24 providing them with further access to unauthorized
25 pictures of me that will be used by others to harass



1 me. No victim should have to forfeit their right to
2 privacy when they report a crime.

3 "Words cannot explain the suffering I endured as a
4 victim of domestic violence. Testifying at the
5 trial was one of the hardest things I've ever had
6 to -- I've ever done. It forced me to relive many
7 terrifying incidents of abuse that I wish I did not
8 have to revisit. And I had to see Mr. Woodburn
9 every day in court. There were many times when I
10 was so emotionally and physically exhausted I was
11 unable to focus on daily tasks.

12 "My home was the scene of a crime for two of Mr.
13 Woodburn's convictions. The home I share with my
14 two children, the place I should feel the most safe
15 and secure. But instead, I was left feeling very
16 scared and traumatized.

17 "In August of 2017, Mr. Woodburn voiced a desire to
18 commit acts of violence against me. I asked him to
19 leave my home. He did not leave. I took refuge in
20 a room to avoid Mr. Woodburn. I was very scared.
21 Mr. Woodburn became violent. He kicked my dryer
22 door so many times that the hinges came off, and the
23 door hit the floor. I remember the fear. I was
24 terrified. Ever since that day, I have painful
25 flashbacks when I do my laundry.



1 "Christmas Eve 2017 was my son's birthday. Mr.
2 Woodburn, again, took out his rage on me by forcibly
3 kicking the door in. He did not stop kicking. I
4 had asked him to leave my home. He did not leave.
5 I was terrified of what could happen next. It's
6 hard to explain the terror that comes from losing
7 one's sense of security in their own home. This
8 exceptionally large, tall, raging, strong man kicked
9 in the door to my home on one of the coldest nights
10 of the year. We lost a lot of heat. There are no
11 words to describe the impact this had on myself and
12 my family, who showed up for Christmas the very next
13 day and observed the door to my home had been kicked
14 in, door frame busted into pieces.

15 "Mr. Woodburn bit my hand. This bite caused me some
16 of the most intense pain I have ever endured. I
17 struggled to grip objects and lost significant
18 amount of strength. My hand was so badly bruised.
19 Bruises that Mr. Woodburn told me he believed should
20 be covered up with makeup. Mr. Woodburn left me
21 with a scar. A scar that I see every day and is a
22 haunting reminder of the pain I suffered of the
23 three-plus years Mr. Woodburn stole of my life.

24 "When I reflect on why I did not leave Mr. Woodburn
25 sooner, I hear Mr. Woodburn's words. He promised to



1 change and said I was the only one who could help
2 him. Mr. Woodburn also told me if I ever said
3 anything to anyone, he would come after me hard.
4 There was not a safe option. I feared Mr. Woodburn.
5 I knew he would retaliate if I had left or if I had
6 stayed, and he did.

7 "Mr. Woodburn followed through on his threats to
8 retaliate by: providing the media with my place of
9 employment, falsely accusing me of brandishing a
10 knife sometime during the relationship -- he failed
11 to make this allegation during his testimony under
12 oath at trial -- making false claims to my employer
13 regarding confidential records, disseminating an
14 image under a court protective order to his family
15 for public distribution, using information derived
16 through my private, confidential counseling records
17 provided without my consent to a counselor to
18 intimidate me.

19 "Mr. Woodburn's retaliation caused people in my
20 hometown and our North Country community to question
21 me. Mr. Woodburn put my family and myself in a very
22 vulnerable position. Mr. Woodburn never thought he
23 had to play by the rules. He once stated words to
24 the effect, Emily, when you are in a position of
25 power, you do not have to follow the rules. Mr.



1 Woodburn knew how to play people. He took pride in
2 that.

3 "He manipulated me. He physically abused me. He
4 emotionally abused me. He used me for his own
5 personal and political gain. Mr. Woodburn is a
6 taker. He took what I loved most about myself to
7 convince me he was in touch with my feelings and
8 values. He later used this to his advantage by
9 getting me to believe his many lies.

10 "Mr. Woodburn pled not guilty on all charges. Yet
11 after the verdict was rendered and Mr. Woodburn was
12 convicted of acts of assault domestic violence and
13 two counts of criminal mischief against me, Mr.
14 Woodburn made public statements stating he felt
15 vindicated by the split verdict, making it sounds
16 like a 5-4 win. So I guess in his mind, being
17 convicted of kicking in my door, kicking off my
18 dryer door, domestic violence, and biting me
19 constitutes innocence.

20 "Mr. Woodburn has only shown disrespect for the
21 jury's verdict and a lack of remorse for his violent
22 acts against me. So I ask Your Honor to consider
23 sentencing Jeffrey Robert Woodburn to the maximum
24 allowable under the law. Please send a clear
25 message to him and all those who enable and



1 supported him after his conviction that those who
2 are convicted of violent offenses against loved ones
3 and their families must be held accountable.

4 "Thank you for listening.

5 "Sincerely, Emily Jacobs."

6 THE COURT: Thank you. Atty. Ward?

7 MR. WARD: Thank you, Your Honor. Just briefly.

8 Again, the facts of this crime for which -- the
9 crimes for which the Defendant were convicted, the aggravating
10 factors we discussed, the victim impact you've now been
11 provided, all justifies the State's requested stand-committed
12 sentence in this matter. Considerations of punishment,
13 rehabilitation, and both specific and general deterrence weigh
14 in favor likewise with the State's sentence request.

15 Domestic violence is a serious crime, a serious
16 problem New Hampshire, and strong sentences like this one are
17 necessary to deter not only this Defendant, but others in New
18 Hampshire from similar future conduct. Domestic violence is
19 also an issue that persists and in which recidivism rates are
20 high. As such, the State has recommended a batterer's
21 evaluation and meaningful participation in any recommended
22 follow-up.

23 Finally, the victim impact caused by the Defendant's
24 actions was significant and protracted in ways in favor of the
25 State's requested sentence. The Defendant, certainly, under



1 the State's proposal, would have to serve 60 days in jail.
2 That is no doubt difficult and uncomfortable, but it is
3 nothing compared to what the victim endured over the course of
4 this relationship, the physical pain, a lasting injury, and
5 the still-present trauma years later that exists for her.

6 Therefore, for all the reasons stated and for the
7 reasons outlined in our sentencing memorandum, the Defendant
8 should be sentenced to that aggregate 60-days sentence with
9 the additional terms and conditions recommended by the State.

10 Thank you, Your Honor.

11 THE COURT: One question. Since the victim
12 requested the Defendant be sentenced the maximum penalty,
13 provided my law, may I infer that she's not entirely
14 supportive of the State's proposed sentencing recommendation?

15 MR. WARD: So we certainly had a conversation, a
16 lengthy conversation with the victim about the State's
17 proposed sentencing recommendation. The victim understood and
18 appreciated the State's position with respect to that.

19 Not surprisingly, and as I'm sure this Court could
20 see in plenty of circumstances, the victim wants a more
21 significant punishment as outlined in her victim witness
22 impact -- in her victim impact statement. Excuse me. But
23 understood and appreciated the State's recommended sentence
24 and was nevertheless, and I think, hopeful that the Court
25 understood the impact statement and the message is supportive



1 of the State's request that there be a stand-committed portion
2 to this sentence, as well as the State's request that there be
3 counseling and treatment with a component of proof of
4 compliance with those.

5 THE COURT: Okay. Thank you.

6 MR. WARD: Thank you, Your Honor.

7 THE COURT: Atty. Brown?

8 MS. BROWN: Thank you, Your Honor. If I can first
9 approach the court monitor for exhibits?

10 THE COURT: You may.

11 MS. BROWN: And I'll give them to the State. You
12 can mark them in the order that they're in.

13 THE MONITOR: Okay.

14 MS. BROWN: Thank you.

15 THE MONITOR: Yeah.

16 (Counsel confer)

17 THE MONITOR: Are they full exhibits?

18 MS. BROWN: Any objection to them being full
19 exhibits?

20 MR. WARD: No. Of course not.

21 MS. BROWN: Okay.

22 THE COURT: Okay. They may be marked as full
23 exhibits.

24 (Defendant's Exhibits B through E marked and received)

25 MS. BROWN: I want to start off by talking, I think,



1 about the most important issue. And --

2 THE COURT: Okay. Slow down for a minute --

3 MS. BROWN: Oh, I'm sorry. I thought
4 (indiscernible).

5 THE COURT: -- until the monitor finishes marking
6 exhibits so we can get what you're saying in the record.

7 MS. BROWN: Sure.

8 THE MONITOR: Okay. Are you ready?

9 THE COURT: I'll take those when you're done. Thank
10 you.

11 Okay. Fire away.

12 MS. BROWN: I think one of the biggest arguments the
13 Prosecution makes to justify a stand-committed sentence, and
14 just so you know, that we agree, are recommending a
15 completely suspended sentence and not a stand-committed
16 sentence, and I'll get to the conditions of that later when I
17 speak specifically about counseling. But one of, I think, the
18 biggest arguments that the State makes to justify a stand-
19 committed sentence is they quote a 2011 case from the federal
20 court First Circuit Court of Appeals that in the arena of
21 domestic violence, cases where offenders often repeat their
22 domestic violence crimes.

23 And that got me to thinking about that. Like, where
24 is this coming from? Where is this research? Is this true?
25 Is this not true? Like, is there science behind it? So I did



1 some research on that. And what I found was that when I use
2 the word situational violence, there's actually some science
3 behind that. It wasn't just a term I came up with.

4 And I appreciate the Prosecution's argument that all
5 crimes are situational. I think when they say that they're
6 misinterpreting. What I mean is that situational is not a
7 long-term -- and I can name crimes that are not situational:
8 looting, plotting, planning, fraud. I mean, there are lots of
9 crimes where people put lots of mental energy into how they're
10 going to commit the crime, when they're going to commit the
11 crime, who they're going to commit the crime to.

12 This is not that. That's what I meant by
13 situational. It is something that came up sporadically in
14 this relationship over arguments, over -- I think both -- one
15 thing that Jeff and Emily agreed on was most of their
16 arguments were stupid and minor and petty. And that's how it
17 happened.

18 So the term "situational couple violence" came
19 about, about, I don't know, say 10, 15 years ago, and I found
20 several cases where it's cited to, and I could give the Court
21 those cites. It comes up a lot in family court because
22 there's an issue of, okay, now there's a divorce; one party is
23 saying the other party committed domestic violence, and the
24 courts are deciding how much do I take it into consideration
25 as to whether someone gets custody.



1 And what those courts have looked at is, okay, if
2 there's this multi-year history of domestic violence that is
3 one-sided, that it amounts to "domestic terrorism" where one
4 person is not allowing the person to leave the relationship,
5 that's one type of violence.

6 Another is what's called situational couple
7 violence. It's exemplified by outbursts by either party and
8 does not involve coercive control. It's cited in a couple of
9 the family court cases I found, was Duke v. Duke at 457 P.3rd
10 1073. It was an Oklahoma case from 2020. I found another
11 case in Maine, Malenko, M-A-L-E-N-K-O, v. Handrahan, which is
12 at 479 A.2d 1269, and that was 2009.

13 In fact, in that case, the guardian ad litem had
14 submitted two reports. In the first report, the guardian
15 concluded that the episodes of domestic violence were
16 attributable to "situational couple violence" arising from
17 conflicts in the marriage as opposed to "coercive, controlling
18 violence", which is characterized by power and control and
19 often results in serious injuries.

20 So that is a real thing. It is recognized in
21 literature. In fact, there's been an article from a
22 professional at Dartmouth on this subject. Any why is that
23 important? It's the State saying just one more instance of
24 the Defendant not showing remorse and offering excuses.

25 Well, one thing that is important is the truth. And



1 that is why Mr. Woodburn went to trial. This relationship was
2 characterized as him being the guy and Emily being the good
3 guy, and he was this controlling monster who wouldn't let him
4 leave -- let her leave over the year of violence and control.
5 That's not what the jury heard, and that's not what was true.
6 You look at -- first of all, they're three acts spread over
7 the course of five months, and two of them are property
8 crimes. That is the evidence.

9 That doesn't excuse them. They are crimes, and we
10 agree with that, and we've said that, that those are crimes.
11 And Mr. Woodburn got on the witness stand and admitted to
12 those, and he admitted that he was responsible for the biting,
13 though he didn't have a specific memory of the night where heh
14 was drinking, and I'll get to that in a minute. But this is a
15 situational couple violence.

16 Now, does that mean he's not guilty? No. That's
17 not a defense like self-defense. But as these cases are
18 recognized, it's something that goes to his future
19 dangerousness. It's something that goes to his culpability
20 and deterrence. And that is backed up by Exhibit A, which is
21 Mr. Woodburn's counselor, who wrote a letter saying she has
22 provided psychiatric treatment to Jeff Woodburn since April
23 2nd --

24 THE COURT: Is this Erinn Fellner?

25 MS. BROWN: Yes, it is.



1 THE COURT: Okay. That's marked as B. Is there an
2 A?

3 MS. BROWN: Oh, I'm sorry. That was you. Okay.

4 THE COURT: Is there an A somewhere, Ms. Beaulieu?

5 THE MONITOR: There is. It's the --

6 MS. BROWN: No, that's the one I want then.

7 THE COURT: Okay.

8 THE MONITOR: (Indiscernible).

9 MS. BROWN: I thought because I --

10 THE COURT: Oh, okay. That's the -- okay.

11 MS. BROWN: -- (indiscernible).

12 THE COURT: Yeah. So this is Defendant's Exhibit B,
13 Erinn Fellner. Go ahead.

14 MS. BROWN: Thank you. I had forgotten about the
15 (indiscernible). Thank you. Yeah. So it's Exhibit B.

16 She said that she has treated Mr. Woodburn since
17 April 17th, 2018, which was around the time of this breakup.
18 So he sought treatment for assistance related to relationship
19 distress.

20 "He has been well engaged in treatment and highly
21 motivated to resolve relationship issues and move
22 forward in his life. In my opinion, his risk of
23 future domestic issues is minimal to none. He
24 remains in active treatment with myself and plans to
25 continue. Thank you for your time and consideration



1 in this matter."

2 I just also mention that she is a certified
3 psychiatrist. So he has been in the care of a certified
4 psychiatrist for three years who is well aware of his
5 relationship issues and domestic violence issues, so there's
6 no need to have him get an evaluation, that this counseling
7 should continue. He would continue it regardless of whether
8 this Court ordered it or not. So I think that addresses the
9 State's argument regarding the situational violence. It is
10 something that is recognized, and especially relevant to
11 future dangerousness.

12 The second thing that goes to that same issue -- so
13 it'll be Exhibit C, D, and E, which are letters from Kelly
14 Manson, Liz Charlwood, and Patricia (phonetic) Dwyer. The
15 first two people I mentioned are my client's two ex-wives who
16 he had been in long-term relationships with and is on a
17 friendly basis with both of them. They both wrote letters
18 talking about how they did not -- there were no instances of
19 domestic violence in their relationships with Mr. Woodburn.

20 And the third letter is from Patricia Dwyer, who is
21 currently in a relationship with Mr. Woodburn, who says
22 something very similar. She says something almost exactly the
23 same as that, that though she's knows him -- well, she's been
24 in a relationship with him not as long, she has not
25 experienced any domestic violence.



1 So why is that important to sentencing? Obviously,
2 that wouldn't be important at trial. But it's very important
3 at sentencing because it's just further evidence of this
4 situational couples violence, where he's been in three two
5 extremely long-term relationships and one that's been going on
6 for about six months. And in those relationships, there's no
7 domestic violence. So that's just further evidence that this
8 is a situational thing that occurred between him and Emily
9 Jacobson (sic).

10 Now, the reason that the truth matters, Your Honor,
11 is that any time the Defendant tries to add perspective or
12 context to what happened that is different from the State's
13 narrative, he gets called -- he gets labeled as lack of
14 remorse. And we shouldn't have a system where someone tries
15 to have a whole story exposed, and they get labeled as having
16 a lack of remorse. And so I disagree with that argument.

17 I also want to address the State's sentencing
18 memorandum where they put an oddball about -- there was a
19 posting, I think, by InDepth New Hampshire. And I think,
20 actually, Emily Jacobson referred to it as well. The
21 Defendant did not take that photograph. But the Defendant did
22 have a right to say what he wanted to say about the verdict.
23 And the State continues to deny that verdict, and they
24 continue to ask this Court to rely on the testimony of Emily
25 Jacobson.



1 It is uncontroverted that the three acts which the
2 Defendant was convicted of are three acts that he did not
3 deny. And here's the problems with the State's argument on
4 this. So they try to say that Mr. Woodburn was dishonest, and
5 they can prove that because he said that pushing down the door
6 was accidental. Now, pushing down a door, as it was charged
7 with criminal mischief of damaging a door, was a reckless
8 crime. It was a nonintentional crime.

9 Now, people use the term "accident" all the time to
10 mean nonpurposeful, and that was how the Defendant used that
11 word. "Accident" meaning I didn't do it on purpose. That's
12 how the Defendant used that term at trial. I didn't do it on
13 purpose. And that's kind of uncontroverted that he didn't do
14 it on purpose. But the jury found that when he said he didn't
15 do it on purpose, it was still reckless. That is in no way,
16 shape, or form inconsistent with the Defendant's testimony.

17 But look a little deeper from that same event, from
18 that door knocking down. Emily Jacobson (sic) said I sent him
19 out and told him not to come back in, and he came back in
20 after I just told him not to come back in. She just repeated
21 that in that letter. That right there is more than enough
22 evidence to convict someone of criminal trespass. You tell
23 them to leave, and then they come back in right after you tell
24 them to leave. But the jury acquitted Mr. Woodburn of
25 criminal trespass.



1 And that's important because in the State's
2 sentencing memorandum, they argued -- first of all, they say
3 he was lying when he said it was an accident because it was
4 really reckless. I don't see the difference there of how that
5 makes a lie. But what the jury did do is reject their
6 argument that this was an invasion into the sanctity of
7 someone's home because they found him not guilty of the
8 invasion of the sanctity of a person's home when acquitted him
9 of criminal trespass.

10 It is the Defendant who is trying to honor that
11 verdict. And what the State is trying to do is say by
12 pointing those things out to the press that he was somehow --
13 that that's something that should land him in jail by
14 exercising his right to freedom of speech.

15 And here's the thing, Your Honor. I know you said
16 you read some of the articles. I know I haven't read all of
17 them in this case. But one thing I can say is the media
18 outlets that Jeff Woodburn talked to about the story more
19 accurate than the media outlets he didn't talk to. The New
20 Hampshire Public Radio covered the story -- and I don't
21 remember them being in the courtroom because I didn't see any
22 of the reporters.

23 But they covered this story saying Jeff Woodburn was
24 convicted of domestic violence. And the way the story was
25 portrayed, it made it sound (sic) he was convicted of



1 everything. They didn't explain how what he said was that he
2 was acquitted of many charges.

3 And he felt that by telling his story, that he was
4 convicted of the things that he admitted to but not convicted
5 of the things that he denied -- so by telling his story to the
6 media outlets, he helped some of the media outlets get the
7 story right while other media outlets got the story -- I don't
8 know if I would say wrong, but it wasn't complete.

9 And as we know, as members of the court, it's not
10 just the truth that matters. It's the truth and the whole
11 truth and nothing but the truth that matters. And by him
12 saying that to those media outlets, of saying that I was
13 acquitted of the things I denied, that's truth. And it's the
14 whole truth.

15 I want to address the contempt charge. Both parties
16 spilled a lot of ink on that. And I think we spent a whole
17 summer a couple summers ago addressing this issue, and I
18 didn't think we'd have to revisit it, but I guess we do. And
19 what is important from that is the State never sought a
20 finding of contempt. Now, I know that the courts can consider
21 uncharged crimes, things that the Defendant wasn't convicted
22 of sentencing.

23 But the State could have filed a motion for contempt
24 of court. They didn't. At that time, they were talking about
25 going to grand jury and subpoenaing witness at the grand jury.



1 They didn't do that either -- or I don't -- if they did, no
2 one -- I was never told anything about it.

3 What they relied on is a statement that Mr. Woodburn
4 made after they -- so they made representations that we're
5 going to the grand jury. We need his lawyer. So he's got to
6 get rid of his lawyer and start all over again so we can
7 investigate this case to the grand jury. And they don't do
8 that.

9 But in order to fight that off, in order to keep his
10 lawyer that he had had for over a year, he had to make a
11 statement to this Court because that was the only way he was
12 going to be able to keep his lawyer. And he wouldn't have had
13 to do that in any other -- so they get this statement that
14 they got by saying they were investigating this contempt. And
15 here's the most important part, Your Honor. The State lead --
16 Mr. Woodburn says yes, I was the one who distributed it, not
17 Atty. Brown. She didn't tell me to, and she didn't say it was
18 okay. Yeah. He said all of that. But the question is, is
19 that contempt of court?

20 Now, it is a violation of the protective order.
21 Contempt of court requires a willful mental state, like I am
22 intentionally violating a court's order, and that's my
23 purpose. We never had a hearing on that. We never had a
24 trial on that. And now, after taking advantage of a situation
25 they created, they want to use that statement. And they never



1 sought any consequences for that, and they want to use that
2 statement to give Mr. Woodburn jail time. And they very
3 easily could have got jail time if he was convicted -- if he
4 was guilty of contempt by filing a motion for contempt.
5 That's how you get a contempt charge.

6 We do believe that the jury's verdict means
7 something and that they spoke. The chart that I put in, our
8 motion very clearly shows that, that the jury only convicted
9 the Defendant of the charges that he did not deny. And that's
10 important. A lot of the facts that were exposed during this
11 trial would never have come about if Mr. Woodburn didn't go to
12 trial. And that's what trials are about. They're about the
13 truth.

14 There's a lot of talk these days about the
15 disappearing jury trial and that a jury trial brings out
16 evidence and perspective that is not always there in a guilty
17 plea. And this case is a perfect example of that. The truth
18 came out. It wasn't the way the case was originally portrayed
19 in the media. In fact, the case that was first talked about
20 in the media and publicized, he was acquitted of that charge.
21 That was the alleged assault later in the spring. So the
22 trial got us to the truth, and that's important. And the
23 Defendant is not going to commit this crime or any other crime
24 again.

25 This was a situational thing. In terms of



1 deterrence, I can't see anybody out there thinking, okay,
2 well, I'll lose a really good paying job with benefits, and
3 I'll lose most of my life's savings, and I will have public
4 disgrace for three years. And yeah, that sounds like it's
5 worth it. That definitely sounds like it's worth it.

6 Those are all things that are important to
7 deterrence. And we're not saying them to be poor guy; here's
8 all the bad things that happened to him. Obviously, his toxic
9 relationship had consequences for both of these people, and
10 Jeff talked about that on the stand. But there's plenty of
11 deterrence here without sending someone to jail, especially on
12 a first offense.

13 Where -- I mean, this is not -- I mean, very rarely
14 does a court have a domestic violence case where you have a
15 long before and after. So you've got 50 -- I want to say 40-
16 something years because it's probably been 50, but 40-
17 something years of being an adult and no crime, and then we've
18 now had three years of no crime, other than the allegation of
19 contempt of court. Very rarely does the Court have that, know
20 how someone's going to behave for three years after the crime
21 is committed.

22 So for those reason, we'd ask this Court to adopt
23 the Defendant's recommendations. Mr. Woodburn has a letter
24 that he wants to read to the Court.

25 THE COURT: Thank you.



1 Atty. Ward, did you wish to add anything?

2 MR. WARD: Sure. But she said he's --

3 MS. BROWN: Oh, yeah. Mr. --

4 THE COURT: Oh. Mr. Woodburn, I'm sorry. Mr.

5 Woodburn, would you like to speak? Just stand up and --

6 THE DEFENDANT: Thank you, Your Honor.

7 THE COURT: Go ahead.

8 THE DEFENDANT: It's time to separate the process

9 and even the results from the actions that brought me here

10 today and put my conduct under a moral microscope. Most

11 importantly, evaluating it against my own values and our

12 community standards. On these measures, I failed. I failed

13 my former partner. I failed myself. I failed my family and

14 those who entrusted me.

15 There were isolated incidents that occurred in this

16 relationship where I should have responded better. I let

17 anger get the best of me. I felt trapped. I made clumsy

18 efforts to end it, and it always made things worse. I went to

19 couple counseling, individual sessions with a psychologist,

20 but ambition, pride, and inertia took over, along with fear,

21 fear of the consequences of ending this relationship, that

22 would and ultimately did lead to harming my reputation.

23 It was -- it was with my position and with my

24 position of power and ambition. It was only with the help and

25 guidance of professionals that it helped me navigate my way



1 out.

2 From the moment I was arrested three years ago to
3 this day, I had a singular goal: To tell my side of the story
4 and to do it in public, have the evidence fairly evaluated,
5 and have the truth come out. And the truth is I did some, but
6 not all of the things that I was accused of. And then the
7 narrative was one-sided. And that's why I refused to consider
8 a plea bargain and resign from the senate.

9 And of course, this raised the stakes and the
10 pressure on me, through deeper investigation, dangling more
11 charges, costly delays, and greater scrutiny. Cutting a deal
12 would have solved my legal problems, but it would have buried
13 the truth.

14 An unusual story unfolded thereafter. After three
15 years, after losing my seat in the senate, my paying job, my
16 savings, and eventually, fortunately, finding work for the
17 chef who hired me 40 years ago as a 14-year-old kid, I got my
18 day in court. I knew my admission of some of the charges
19 would be hard -- a hard hurdle to overcome, but that was the
20 only way to be heard. I was convicted of things I admitted to
21 doing, but I finally got some degree of validation on the
22 remaining charges.

23 After all, I did not come to court, Your Honor, to
24 beat a rap. I came to get the truth out. I turned down pleas
25 that I -- that ended up being much better than what I ended up



1 with. But I think the jury untangled the truth and put the
2 whole thing in perspective. I realize their mixed verdict
3 reflects a truer reality that there are two sides to every
4 story and that both sides need to be heard.

5 I said as much a few days after the trial in the
6 Colebrook Sentinel when they asked for a written response to
7 the verdict. And this is what I wrote them:

8 "There are no winners. The story was only put in
9 perspective. I wasn't as bad as my critics made me
10 out to be or as good as I had hoped to be."

11 I feel shame and remorse for the things that I --
12 happened -- the things that happened and I did in this
13 relationship. And if the State wants to look for inner
14 feelings, my most deep and personal feelings, they can look to
15 my journal; a safe place for my most inner thoughts, my most
16 private thoughts, that was taken from me and continues to be
17 used against me. But still, it outlines my heartfelt sorrow,
18 my attempts to make things right, and the struggles with the
19 conflict in this relationship.

20 Your Honor, no matter the outcome here today, I will
21 leave this courtroom with my head high, not because I didn't
22 make mistakes. I did. But because I took responsibility, I
23 apologized, and I took action. I stood for principal,
24 trusting in the ideals of our justice system. And while the
25 outcome is not what I had hoped for, I have learned a lot from



1 this experience. I carry the challenge of living up to
2 proverbs, love, and truth, bring forgiveness a sin.

3 Through the doors of failure, I have found peace,
4 perspective, love, happiness. I am richly blessed and deeply
5 changed.

6 THE COURT: Thank you, sir.

7 Atty. Brown, anything further from the Defense at
8 this point?

9 MS. BROWN: No. Thank you. No.

10 THE COURT: Atty. Ward, did you want to make some
11 concluding remarks?

12 MR. WARD: Thank you, Your Honor. I do think there
13 are a couple things to address with respect to Defense
14 counsel's arguments and the statement.

15 It's certainly easy to make unsubstantiated
16 assertions, Your Honor, during the course of this. But
17 whether there is a term of art in family court or not, the
18 Defendant's acts certainly were not charged as being
19 purposeful and with premeditation, but you've heard testimony,
20 and certainly from your own experience, you're aware that the
21 way the Defendant behaved over the course of this relationship
22 was an exertion of power and control and violence in that
23 context. The truth certainly is important. And that is the
24 truth that came out during the course of this trial.

25 And it's important as well, Your Honor, to recognize



1 in the context of what the Defense has argued with all of
2 their concerns about the Defendant's reputation, what the
3 Defendant is telling you what was taken from him, and how he
4 was portrayed, feel free to review any and all media accounts
5 of this case over the case of three years. The State never
6 made one out-of-court statement to the press, to the media, or
7 to otherwise.

8 The State filed charges supported by the evidence,
9 supported by probable cause, and proceeded to trial. To
10 suggest that the State somehow went after the Defendant's
11 reputation by filing charges for which there was probable
12 cause, and as you know, some of which he was convicted, the
13 State made no comment on this Defendant or his reputation or
14 attempted to exert any pressure. The State did its job. But
15 the State is being faulted for attacking the Defendant or
16 tarnishing his reputation for exerting pressure on him somehow
17 by working through the criminal justice system.

18 On the contrary, the Defendant attempted on many
19 occasions to try this case through the press, through the
20 media, filing motions that were not sealed that were sent to
21 the press at the same time they were sent to the Court that
22 included confidential information related to the victim and
23 engaged in the maybe small seed, but contempt of court act
24 that we have discussed in which the Court's order was defied,
25 and the Defendant disseminated imaged protected by -- an image



1 protected by a protective order.

2 The Defendant certainly has a right to say what he
3 wants to say to the press. That is protected by the First
4 Amendment, and the State is not suggesting that he be jailed
5 because he exercised that right. Btu the Court also has the
6 right to take into account the statements the Defendant has
7 made to determine whether or not he has exhibited a lack of
8 remorse, whether or not he had taken responsibility, and to
9 evaluate his character.

10 What you just heard here was no different than what
11 he said throughout. He took no responsibility. He told you
12 about how hard this has been for him. He exhibited no remorse
13 other than that which has affected him. He continues to not
14 get it, Your Honor. The truth matters.

15 And in addition, Your Honor, what you say by this
16 sentence matters. What you say by this sentence matters. It
17 is not uncontroverted that the three acts he was convicted for
18 are acts which he did not deny. And not denying is very
19 different than making admissions, Your Honor, as well. But
20 the Defense would have you believe that the Defendant used a
21 term of art, a legal term of art in disputing the kicking in
22 the door incident when he was referencing accident in the
23 context of the various mental state he might have exhibited.

24 That's just a little bit too cute, Your Honor, given
25 the testimony that the Defendant provided. The Defendant



1 denied having committed a crime during the course of that
2 incident, and the jury found otherwise.

3 And further, I have no choice but to take issue with
4 the Defense portrayal -- again, not an acceptance of
5 responsibility, not an understanding of the seriousness of the
6 conduct engaged in, is counsel suggesting somehow that the
7 State has a situation, in fact, said we created this
8 situation, and are taking advantage of the Defendant's
9 admissions in that contempt of court issue because we created
10 that issue.

11 Certainly, no one from the State disseminated that
12 image. No one disseminated the number of times the Defendant
13 made admissions to disseminating it. The State did not create
14 that situation. That scenario was not the State's fault. And
15 the State merely sought to ensure that, as this matter
16 proceeded, it did so in line, as the Court was aware. And as
17 the Court -- as the Court held, the saving issue there was, in
18 fact, the Defendant's admissions and waivers in terms of
19 keeping his counsel, but that was entirely a situation of the
20 Defendant's own making by his own admission.

21 We are further, Your Honor, not asking you to
22 sentence the Defendant to jail on a first offense. Again,
23 these were three offenses committed over the course of the
24 five months. This is more than a first offense scenario that
25 you are faced with imposing sentence on here.



1 Finally, Your Honor, the Defendant made statements
2 to you just a moment ago that he both took responsibility and
3 did not come to court to beat the rap. That is not what
4 occurred at trial. The Defendant, again, did not make
5 admissions, as we've discussed, but professed a lack of
6 memory, and further claimed accidents occurred. And then,
7 again, with the phone, that there was this significant
8 struggle over the phone.

9 And beyond that, Your Honor, I think it's worth the
10 Court remembering the argument made by Defense counsel. I can
11 only assume the consultation with the Defendant was that the
12 jury should nullify here. That is someone who comes to court
13 to beat a rap. That is not someone who is taking
14 responsibility for what they believe they've made admissions
15 on.

16 And I don't know to what the Defendant refers when
17 he says that he refused please that could have been better.
18 Certainly, that's not within the Court's consideration here,
19 but I certainly don't know what those references would be with
20 respect to, but I know the Court, regardless of what you would
21 learn about plea negotiations one way or the other, is aware
22 those happen in every case and is aware that those are not
23 relevant to your decision here today.

24 So Your Honor, again, the truth, the truth does
25 matter, and the truth is what came out. And the truth is that



1 this Defendant was found guilty of domestic abuse. And what
2 you say here today also matters, Your Honor. And for this
3 Defendant to understand the severity of these crimes, for the
4 public in general to understand the severity of these crimes,
5 and to have faith in the justice system and the court system
6 for the victim, this Court needs to sentence this Defendant to
7 a stand-committed term.

8 THE COURT: Thank you.

9 Atty. Brown, any concluding words?

10 MS. BROWN: Just quickly, Your Honor.

11 I'm trying to find the case, and the Court may be
12 familiar with it. There's a case -- I know it came out of
13 Rockingham County -- that says that the Court should not use
14 trial counsel's trial strategy against the Defendant at
15 sentencing, and I think that's kind of what the State -- at
16 least that's how I'm interpreting that.

17 So they are not arguing that. But to the extent
18 that they said because Defense counsel argued nullification,
19 that that should be used against him in trial. So the case is
20 not coming to me right now, but I know there's case law on
21 that.

22 THE COURT: I'm not familiar with the case, although
23 I understood -- I did not understand the State to be arguing
24 that the Defendant's trial strategy should be used against him
25 at sentencing, but mainly responding to Mr. Woodburn's --



1 MS. BROWN: Okay.

2 THE COURT: -- statement that he wasn't trying to
3 beat a rap, and the State's arguing he was.

4 MS. BROWN: I think that's a fair argument then.

5 THE COURT: So.

6 MS. BROWN: I just wanted to clarify that.

7 THE COURT: Yeah.

8 MS. BROWN: Other than that, I have nothing else.

9 THE COURT: All right. Well, I'll take a recess for
10 15 or so minutes, and I will then come out and impose
11 sentence.

12 THE BAILIFF: All rise.

13 (Recess at 10:32 a.m., recommencing at 10:51 a.m.)

14 COURT'S RULING

15 THE COURT: I have considered all the information
16 presented to me, which includes the parties' respective
17 sentencing memorandums, their respective sentencing proposals,
18 the exhibits that have been submitted by the Defendant today,
19 the Defendant's statements, the victim impact statement, and
20 all the other relevant information. I have come to the
21 following conclusions.

22 Before we get to that, let me explain what I am
23 considering or giving weight to and what I am not considering
24 or giving much weight to.

25 As far as what I'm not considering in the sentencing



1 determination, I'm not considering what the State
2 characterizes as three aggravating factors in this case, the
3 alleged lack of remorse, the alleged contempt of court, and
4 the alleged false testimony. So to the extent there's been a
5 lot of attention devoted to those three things, I'm not
6 factoring those into the equation at all.

7 Other than to the extent that it relates to the
8 particular facts and circumstances of the crimes in which the
9 Defendant was convicted, of course, I'm considering that. But
10 to the extent the parties have presented competing arguments
11 and perspectives on the dynamics of domestic violence and the
12 social science underlying it and whether that science shows
13 the Defendant will or won't repeat these type of domestic
14 violence offenses in the future, I'm not embarking on a
15 journey into the world of the social science of domestic
16 violence either, other than to the extent that there's
17 information that I've heard today and any exhibits that helps
18 me make determinations that are relevant to sentencing. I'm
19 considering that.

20 So what I'm considering, obviously, the goals of
21 sentencing, punishment, general deterrence, specific
22 deterrence, and rehabilitation, and I'll explain how I've
23 prescribed varied and appropriate weights to each of those
24 factors.

25 I've considered the individual characteristics of



1 the Defendant prior to sentence being imposed today. I've
2 considered what both parties have identified as mitigating
3 factors, that is the Defendant's lack of any criminal record
4 prior to these charges being brought, and what the State
5 described as his record of meritorious public service, both of
6 which are mitigating factors and are good things in
7 determining sentencing.

8 I have considered the facts and circumstances of the
9 crimes of which the Defendant was convicted that affirmatively
10 appear in the record. And to the extent that there was
11 competing testimony about specific acts or specific things, in
12 my view, those competing factual determinations don't weigh
13 into my calculation. What weighs into my calculations is a
14 jury unanimously found the Defendant guilty of these three
15 offenses on which the parties are -- well, which the Defendant
16 will be sentenced today, and that settles it to that extent.

17 With respect to -- and again, with the two areas in
18 play or disputed portions of the competing sentence proposals,
19 whether the Defendant should serve stand-committed time and
20 whether he should -- as the State requests, or fully suspended
21 time, as the Defendant requests, and then what type of
22 counseling or programming should be a condition of the
23 suspended sentence.

24 That is, the State's requesting the so-called
25 batterer's evaluation, and then comply with recommended



1 counseling and follow-up resulting from that. The Defendant
2 has proposed that he continued to participate in his ongoing
3 counseling. And so those are the two areas of disagreement.

4 With respect to the second one, I'm not going to
5 order the Defendant to undergo the batterer's intervention
6 program. Basically, I am going to order that he continue
7 participate meaningfully in his ongoing counseling and comply
8 with all recommended follow-up as a condition of the suspended
9 sentence, and also that he provide proof to the State.

10 With respect to the fully suspended versus 60 days
11 of stand-committed time, I think that generally the State's
12 (sic) has struck the correct balance. And what I will do, and
13 I will be specific when I read the imposed sentences, and I'll
14 explain generally what I'm doing, and then I'll explain why.
15 But I will impose the 12 months with all but 30 days suspended
16 on the domestic violence simple assault charge, ending in
17 charge ID 453-C.

18 I've indicated that the sentence will -- again, the
19 State had proposed it commenced today. I'm changing that to
20 August 13th at 9 a.m. in the event the Defendant appeals. If
21 he doesn't, then he will report at 9 a.m. on August 13th. If
22 he does, then that will stay his sentences for the time being.

23 With respect to the two criminal mischief charges, I
24 view them a little differently. The State had proposed that a
25 12 months with all but 30 days suspended be imposed on each of



1 them to run concurrently with one another but consecutive to
2 the simple assault charge. What I'm going to do is impose the
3 12 months with all but 30 days suspended on charge ID ending
4 in 455-C, the criminal mischief charge in which the Defendant
5 was convicted of kicking the locked door in the victim's home
6 and damaging it.

7 On the so-called -- the second criminal mischief
8 charge, the one in which he was alleged to have recklessly --
9 was convicted of recklessly damaging the clothes dryer, that
10 will be 12 months all suspended. Again, concurrent with the
11 other criminal mischief charge, but consecutive to the other.

12 Again, in my view -- and again, not that kicking
13 your clothes dryer is a good thing by any means, but at least,
14 in my mind, there's a qualitative difference between the facts
15 and circumstances of those two crimes, although they both
16 involve a reckless, culpable mental state. The criminal act
17 in each case is not the same. That is, in my view, the
18 kicking down a locked door after the Defendant had been asked
19 to leave the house is more serious and significant and at
20 least qualitatively different to some extent than kicking the
21 dryer door, admittedly, repeatedly, and damaging it quite
22 significantly.

23 So those are -- that's the overview of the sentences
24 that I would impose. And again, with respect to the
25 counseling, I do find Dr. Fellner is a board-certified



1 psychiatrist. He (sic) indicates that the Defendant's risk of
2 future domestic violence is minimal to none. And again, the
3 fact that the Defendant had no criminal record prior to these
4 charges being brought and no charges that have been -- since
5 these charges were brought, it at least seems to bode -- or
6 not (sic) indicate that there's not a need for the batterer's
7 intervention program, which is specifically designed for or
8 targeted at batterer's, people who have a high-risk of future
9 domestic violence incidents. So that's at least the reasoning
10 behind that.

11 And again, it seems to me, that as far as promoting
12 to go with rehabilitation, the ongoing counseling that the
13 Defendant is -- in which the Defendant is participating with
14 the board-certified psychiatrist is adequate and appropriate
15 to promote the goals of rehabilitation and protect others from
16 future criminal conduct if there were to be from the
17 Defendant, and I'm sure that there isn't future criminal
18 conduct.

19 With respect to the goals of sentencing, again, in
20 my mind -- or the other three; I've addressed
21 rehabilitation -- specific deterrence does not weigh heavily.
22 On the one hand, the State is correct. These were three
23 separate incidents over a five-month span of time. Having
24 said that, at least the 12 months' suspended sentences,
25 ultimately 24 months with 11 available on each and 12 on the



1 third one, seems to me to be adequate specific deterrence to
2 apply in this case.

3 With respect to both punishment and general
4 deterrence, I agree with the State that those are important
5 considerations. These are serious crimes. Admittedly, they
6 are Class A misdemeanors, so they are not among the most
7 serious crimes, but kicking down an intimate partner's locked
8 door and biting her on the arm are serious matters that should
9 not be taken lightly or glossed over.

10 In each of these cases, the jury found that the
11 Defendant acted recklessly. That's what the Defendant was --
12 the requisite culpable mental state that the Defendant was
13 convicted in each of these crimes, recklessly causing the
14 bodily injury to the victim, and then recklessly causing
15 property damage to the door and the clothes dryer.

16 Although it's not the most serious requisite
17 culpable mental state, as Atty. Brown observed, it wasn't
18 purposeful or willful or even knowing -- the Defendant acted
19 knowingly, but the culpable state of reckless isn't as
20 innocuous or passive or benign as, at least, I inferred from
21 Defense counsel's arguments. Again, the jury, in order to
22 convict the Defendant of these crimes, necessarily found that,
23 as the jury instructions instructed them, the Defendant knew
24 there was a substantial risk that his conduct would cause a
25 particular result; that he consciously disregarded the risk.



1 So there was some active mental processes going on
2 with respect to each of the criminal acts in that he decided,
3 again, a conscious decision, to disregard the risk, and took a
4 chance that in doing things, a particular result would occur.
5 And finally, the jury had to find, as the jury instructions
6 explained to them, that what the Defendant did, his actions
7 constituted a gross deviation from what a law-abiding person
8 would have done. And the key words as a jury is gross
9 deviation.

10 So the culpable mental state at play, at issue in
11 these charges, was not as innocuous or passive these -- I
12 understood Defense counsel to be arguing. And I know she
13 wasn't minimizing or poopooing it, but it's a serious -- it's
14 a serious mental state.

15 Again, these are serious crimes. Another thing that
16 I'm considering apart from the facts and circumstances of each
17 specific crime that appear on the record is the reaffirmation
18 of social norms, excuse me, for the purpose maintaining
19 respect for those norms. And at the risk of stating what may
20 be obvious, among the norms we should be affirming and
21 maintaining as a society is that situational or not, angry or
22 not, one should not recklessly bite one's intimate partner in
23 the arm and cause bodily injury or kick down their door or
24 break their clothes dryer.

25 Again, the nature and extent of the damage to the



1 door -- and that's another thing that makes me distinguish
2 the -- not that the damage to the dryer was de minimis by any
3 means. But the nature and extent of the damage of the door
4 was not insignificant, and that appears affirmatively in the
5 record from the trial testimony. And again, those are things
6 that need to be reaffirmed.

7 I do think. And I understand Atty. Brown's
8 arguments that the Defendant has already paid a price in lost
9 job opportunities, standing in the community, financial
10 setbacks, and so forth. But I do think the general deterrence
11 still plays a part in this that I think it sends a wrong
12 message for these types -- for a person to be convicted of
13 these crimes, specifically the simple assault, the biting of
14 the arm, and kicking down the door, if no stand-committed time
15 was imposed at all, I do think that, A, it sends a bad
16 message.

17 And by imposing the amount of stand-committed time
18 that the State has proposed -- and again, I think that the
19 State has balanced the competing considerations, the
20 mitigating factors. But imposing some stand-committed time,
21 that is important to promote the goal of general deterrence in
22 this situation.

23 I'm also mindful of -- again, I'm mindful of the
24 adverse impacts that the whole process has had on the
25 Defendant. I'm mindful of the significant adverse impacts



1 that the charged conduct in which the Defendant was committed
2 has had on the victim, as articulated in the victim impact
3 statement. And again, some of that was testified to at trial
4 as well, though not so much because it wasn't necessarily
5 relevant to guilt or innocence, other than the nature and
6 extent of the injury sustained as to when the Defendant bit
7 the victim.

8 So having said all of that, in my view, the State
9 has mainly got it right.

10 So if you'd stand up, Mr. Woodburn?

11 SENTENCING

12 THE COURT: And I will impose sentence first on the
13 domestic violence simple assault charge identified as charge
14 ID 1580453-C.

15 The Defendant is sentenced to the House of
16 Corrections for 12 months. That sentence will be served as
17 follows: Stand-committed, commencing August 13th, 2021, at 9
18 a.m. All but 30 days of the sentence is suspended during good
19 behavior and compliance of all terms and conditions of this
20 order. Any suspended sentence may be imposed after a hearing
21 brought at the State's request. The suspended sentence begins
22 today and ends two years from today.

23 And counsel, I have stricken the fine provision on
24 page 2 because the statute provides there's no penalty
25 assessment, so that's included in the domestic violence



1 addendum. I didn't overlook it.

2 Other conditions of this sentence are the Defendant
3 is ordered to have no contact with Emily Jacobs or her family
4 either directly or indirectly, including but not limited to
5 contact in person, by mail, phone, email, text messages,
6 social networking sites, and/or third parties.

7 Law enforcement agencies may destroy the evidence or
8 return the evidence to its rightful owner.

9 The Defendant is ordered to be of good behavior and
10 to comply with all terms of this sentence.

11 The Defendant shall participate meaningfully in
12 ongoing counseling and comply with all recommended follow-up
13 treatment in counseling with proof to be provided to the
14 State.

15 Finally, the Defendant, having been convicted of a
16 domestic violence crime under RSA 631:2-b, the 50-dollar
17 mandatory fine is imposed payable today.

18 With respect to the second sentence, the criminal
19 mischief charge identified as charge ID 1580455-C, the
20 Defendant is sentenced to the House of Corrections for 12
21 months, stand-committed with all but 30 days suspended during
22 good behavior and compliance with all terms and conditions of
23 this order. Any suspended sentence may be imposed after a
24 hearing brought at the State's request. The suspended
25 sentence begins today and ends two years from the Defendant's



1 release on the sentence that I just read to him in charge ID
2 1580453-C.

3 This sentence is consecutive with that sentence in
4 charge ID 1580453-C and concurrent with the criminal mischief
5 charge sentence that I'll read in a moment.

6 Additional conditions of this sentence are the
7 Defendant shall have no contact with Emily Jacobs or her
8 family either directly or indirectly, including but not
9 limited to contact in person, by mail, phone, email, text
10 messages, social networking sites, and/or third parties.

11 The law enforcement agency may destroy the evidence
12 or return the evidence to its rightful owner.

13 The Defendant is ordered to be of good behavior and
14 to comply with all terms of this sentence.

15 And the Defendant shall participate meaningfully in
16 ongoing counseling and comply with all recommended follow-up
17 treatment in counseling with proof to be provided to the
18 State.

19 Finally, on the criminal mischief charge identified
20 as charge ID 1580451-C, the Defendant is sentenced to the
21 House of Corrections for 12 months. All of that sentence is
22 suspended during good behavior and compliance with all terms
23 and conditions of this order. Any suspended sentence may be
24 imposed after a hearing brought at the State's request. The
25 suspended sentence begins today and ends two years from the



1 Defendant's release on charge ID 1580453-C.

2 This sentence is consecutive to the one in ID
3 1580453-C and concurrent with the other criminal mischief
4 charge in 1580455-C.

5 The other conditional -- additional conditions of
6 this sentence are identical to the additional conditions of
7 the others, namely, the Defendant shall have no contact with
8 Emily Jacobs or her family either directly or indirectly,
9 including but not limited to contact in person, by mail,
10 phone, email, text messages, social networking sites, and/or
11 third parties.

12 Law enforcement agencies may destroy the evidence or
13 return the evidence to its rightful owner.

14 The Defendant is ordered to be of good behavior and
15 to comply with all terms of this sentence.

16 And the Defendant shall participate meaningfully in
17 ongoing counseling and comply with all recommended follow-up
18 treatment in counseling with proof to be provided to the
19 State.

20 Atty. Brown, anything further?

21 MS. BROWN: Yes, Your Honor. Two things.

22 One, I want to clarify that -- well, I guess, I
23 don't need to ask. The Court's position is Mr. Woodburn does
24 file a notice of appeal, is it the Court's opinion that that
25 automatically stays the committal, or that we need to file a



1 motion to stay it once we file the notice of appeal?

2 THE COURT: Atty. Ward, do you have a -- I mean, I
3 know what I think, but let me hear what the State things.

4 MR. WARD: I think pursuant to 597:1-a, paragraph 4,
5 with the conviction for a misdemeanor, that the filing with
6 the appeal would stay the imposition on that August 13th date.
7 Certainly, we would want to see the notice of appeal prior to
8 that deadline. But assuming that that happens, that would
9 stay the imposition of the stand-committed sentence -- well,
10 it would stay the imposition of the suspended sentences as
11 well.

12 THE COURT: Yeah. And that is my understanding, and
13 that's my intention of having a stand-committed sentence begin
14 31 days from today. If you file an appeal within 30 days,
15 notify the State, and they will know not to expect Mr.
16 Woodburn to report to the House of Corrections on August 13th
17 at 9 a.m.

18 MS. BROWN: That was my main consideration, the
19 County jail isn't saying where is he --

20 THE COURT: Yeah.

21 MS. BROWN: -- and looking for him. So I --

22 THE COURT: Yeah. I mean, somebody should notify --

23 MS. BROWN: I could do that.

24 THE COURT: It wouldn't hurt to notify the House.

25 And obviously, notify the State. But when you electronically



1 file your appeal, the State will get a notice whether it --
2 again, it may be a bit of -- if you file it on day 3, they
3 might not get it the next day --

4 MS. BROWN: I --

5 THE COURT: -- but I'm sure you have a way of
6 getting the State notice.

7 MS. BROWN: I mean, and I do have my legal assistant
8 to do that, to file it and update everybody, so.

9 THE COURT: Okay. So do you have a second thing, or
10 was that it? You said two things, unless I heard wrong.

11 MS. BROWN: Oh, yes. So the thing that it would
12 also stay, I think, kind of answers, is the destruction of
13 property. So the order of destroying the property would also
14 be held in abeyance while the case is on appeal, and that's my
15 understanding as well.

16 MR. WARD: No objection to that.

17 THE COURT: Yeah. It will be. And again, I think
18 both parties would want the evidence preserved just in case.

19 MS. BROWN: All right. Thank you, Your Honor.

20 THE COURT: Atty. Ward, anything further on behalf
21 of the State?

22 MR. WARD: No, Your Honor. Thank you. Nothing from
23 the State.

24 THE COURT: Okay. Then this matter is concluded.

25 (Proceedings concluded at 11:16 a.m.)



CERTIFICATE

I, Erin Perkins, a court-approved proofreader, do hereby certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter, to the best of my professional skills and abilities.

TRANSCRIPTIONIST(S): Amanda J. Orlando, CDLT-260

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Proofreader

May 6, 2023

