

THE STATE OF NEW HAMPSHIRE

ROCKINGHAM, SS.

JULY TERM, 2009

SUPERIOR COURT

State of New Hampshire

v.

Jesse Brooks

07-S-2885, 08-S-579, 09-S-319

RECEIVED  
ROCKINGHAM  
SUPERIOR COURT  
2009 AUG -3 A 9:47

**STATE'S MOTION *IN LIMINE* TO EXCLUDE EVIDENCE REGARDING THE  
VICTIM'S CRIMINAL RECORD**

NOW COMES the State of New Hampshire, by and through its attorneys, the Office of the Attorney General, and respectfully moves for an order excluding any reference to the victim's criminal record in this matter. Jack Reid was approaching sixty-years-old in June 2005 when the defendant's co-conspirators killed him. Almost thirty years prior to his death, he was convicted of misdemeanor criminal threatening in Nashua District Court when he was in his early thirties. More than a decade prior to that, he was convicted of a cluster of crimes in New York, as a teenager, for which he received minor sentences. The State anticipates that the defendant may seek to introduce evidence of Jack Reid's convictions at trial. This evidence is irrelevant to any issue in dispute between the parties in this matter. It involves conduct that occurred decades ago, and would fail to support any claim the defendant might make that it may be used even for the impermissible purpose of demonstrating Jack Reid's character. Any mention of the victim's criminal record should therefore be prohibited from trial. In further support of the State's motion, the State says as follows:

## BACKGROUND

1. Jack Reid, Sr. was killed with a sledgehammer at 145 North Road in Deerfield, New Hampshire on June 27, 2005. He was 57 years old at the time of his death. The investigation that ensued culminated in the defendant's arrest and pretrial incarceration pending trial on charges of conspiracy to commit murder.

2. The State's investigation into the matter revealed the following facts about the victim. In 1966, Jack Reid, Sr. was eighteen-years old and was living in New York. A check of his criminal record reflects that during that year he pled guilty in a New York court to separate charges of unlawful intrusion and buying and receiving stolen property, for which he was sentenced to 30 and 60 days of incarceration respectively. (Bates # 28826). The next year, at the age of nineteen, Reid pled guilty to possessing burglar tools, a misdemeanor, for which he was sentenced to 60 days incarceration by a New York court. (Bates # 28827). In 1968, Reid, who was just short of his twentieth birthday, pled guilty to misdemeanor assault and was sentenced to time-served. (Bates # D5044).<sup>1</sup>

3. Eleven years passed during which Reid moved to New Hampshire and settled in Derry. In 1979, at the age of thirty-one, he was found guilty of misdemeanor criminal threatening (RSA 631:4) in Nashua District Court, and received a sentence of 60 days in the house of corrections, all of which was suspended. (Bates # 9304-05). A check of his record reveals no convictions since 1979.

## ARGUMENT

4. Any evidence related to the defendant's criminal record is inadmissible at this trial. Evidence of the defendant's criminal record bears no relevance to any of the issues in

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<sup>1</sup> See attached records which were provided as defense reciprocal discovery in State v. John Brooks.

dispute between the parties. Indeed, mention of the victim's record would carry a risk that the jury would resolve issues regarding defendant's guilt on the basis of prejudice rather than reason. The defendant should therefore be prohibited from referencing the victim's criminal record in his opening statement, during cross-examination of the State's witnesses, or in the course of his examination of any witnesses he may offer after the State has rested.

5. Under New Hampshire Rule of Evidence 402, "[e]vidence which is not relevant is not admissible." New Hampshire Rule of Evidence 401 explains that, "Relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." See also In re Gina D., 138 N.H. 697, 700-01 (1994) ("to be relevant, evidence must have probative value that logically supports a resulting conclusion.") (citing Goldsmith v. Kingsford, 92 N.H. 442, 448 (1943)); Welch v. Bergeron, 115 N.H. 179, 182 (1975) (to be relevant, evidence "must have some tendency to establish a fact of consequence to the determination of the action.").

6. The criminal record of the victim does not have any tendency to make any fact at issue in this matter more or less probable than would be the case if the evidence did not exist. It neither proves nor disproves any of the elements of any of the crimes with which the defendant is charged. Nor can the defendant argue that it is relevant to any affirmative defense. Other than asserting that he may rely on the defense of alibi, the defendant has provided no notice that he intends to offer an affirmative defense that would somehow place the defendant's character or conduct at issue.

7. Moreover, the victim's most recent conviction is thirty-years-old and could only provide the slightest support for any claim the defendant might make that the victim had a violent character. Of course, a purpose to prove the victim's violent character is no basis for admitting evidence under New Hampshire law. See N.H. R. Ev. 404(a). The victim's teenage convictions are over forty-years old, and provide even less support for the proposition that the victim was a violent man.

8. The defendant cannot alternatively claim that such evidence bears on any witness's credibility. In another case, he might argue that it could be used to impeach the victim. However, the victim in this case is deceased and will not be a witness whose credibility will be judged by the jury at trial. Cf. State v. Kelly, 120 N.H. 14, 18 (1980) ("If the defendant here had elected to testify, his credibility, like that of any other witness, could have been impeached by evidence of prior criminal convictions.") (citing State v. LaVallee, 119 N.H. 207, 211 (1979); State v. Cote, 108 N.H. 290, 296 (1967)). Even if the victim had survived, however, his criminal convictions are for misdemeanors from the 1960's and 1979, and would be inadmissible under the applicable rule of evidence. See N.H. R. Ev. 609 (only felony convictions and misdemeanor convictions relating to honesty within the last 10 years are admissible to impeach).

9. In the end, the prejudicial effect of permitting the defendant to admit these records would far outweigh any probative value they may have. Under Rule 403, "evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." The, at best, minimal probative value of the victim's criminal record is substantially outweighed by the risk that

evidence of the victim's criminal record will confuse the jury regarding the issues properly before it, induce the jury to render a verdict on an improper basis, and waste the court's time on collateral issues.

WHEREFORE the State of New Hampshire respectfully requests that this Honorable Court:

- A. Grant the State's motion to exclude any mention of the victim's criminal record at trial; and
- B. Grant such other and further relief as may be deemed just and proper.

Respectfully submitted,

THE STATE OF NEW HAMPSHIRE

By its attorneys,

Orville B. Fitch  
Deputy Attorney General  
Acting Attorney General



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Janice K. Rundles, N.H. Bar #2218  
Senior Assistant Attorney General



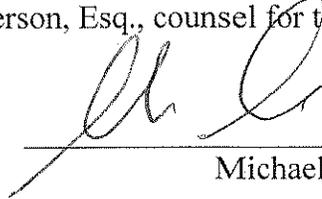
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Michael S. Lewis, N.H. Bar #16466  
Assistant Attorney General  
Criminal Justice Bureau  
33 Capitol Street  
Concord, New Hampshire 03301  
(603) 271-3671

**CERTIFICATE OF SERVICE**

July 31, 2009

I hereby certify that I have forwarded a copy of the foregoing Motion in Limine – Regarding Victim’s Criminal Record – via electronic mail to William B. Kettlewell, Esq., Maria R. Durant, Esq., and Peter D. Anderson, Esq., counsel for the defendant.



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Michael S. Lewis



CRIMINAL COURT OF THE CITY OF NEW YORK  
100 CENTRE STREET  
NEW YORK, NEW YORK 10013

Name of Defendant: Joelle Reid

Date of Arrest: 8-30-66

Docket No.: A11339/66

Dear Sir/Madam:

*Please be advised that the retention period for Criminal Court Papers is Twenty-five (25) years for Misdemeanor convictions and Six (6) years for Violation convictions.*

*Therefore, we are unable to honor your request for copies of the court papers for the above docket number. However, the disposition information is always available.*

Date: 9/26/08

C. Amster  
Sr. Court Clerk

CCO 20

D5042



CRIMINAL COURT OF THE CITY OF NEW YORK  
100 CENTRE STREET  
NEW YORK, NEW YORK 10013

Date: 9/26/2008

Name: Jack Reid

AKA: Oleg Melander, Robert Knowles

Docket # : A11339/66

Date of Arrest: 8-30-1966

Original Charges: Burglary

Final Charge: Unlawful intrusion on real property

NYSID: 1220170Y

Date of Disposition: 9-16-1966

Disposition: Pled guilty to unlawful intrusion

Sentence: Thirty (30 ) Days

Judge: Edwards

*C. Amster Sr.*  
By: Clare Amster  
Sr. Court Clerk

Additional information:

250 West 45<sup>th</sup> St  
New York, N.Y.

Mr. Reid was represented by Legal Aid on this case  
(212)732-5000

D5043



CRIMINAL COURT OF THE CITY OF NEW YORK  
100 CENTRE STREET  
NEW YORK, NEW YORK 10013

Date: 9/26/2008

Name: Jack Reid

AKA: Robert Knowles, Oleg Melander

Docket # : Y5602-66

Date of Arrest: 11-11-66

Original Charges: 1308 P.L. 1897 P.L.

Final Charge: 1897 P.L. - as a Misdemeanor

N.Y.S.I.D.: 1220170Y

Date of Disposition: 12-9-66

Disposition: Pled guilty to 1897 P.L.

Sentence: Sixty (60 ) Days

Judge: Conudo

By: Clare Amster

*C. Amster*

Sr. Court Clerk

Additional information:

132 West 45<sup>th</sup>  
NY, N.Y.

Mr. Reid was represented by Legal Aid on this case  
(212)732-5000

D5046



CRIMINAL COURT OF THE CITY OF NEW YORK  
100 CENTRE STREET  
NEW YORK, NEW YORK 10013

Date: 9/26/2008

Name: Jack Reid

AKA: Robert Knowles, Oleg Melander

Docket # : Y5603-66

Date of Arrest: 11-11-66

Original Charges: VTL 501

Final Charge: VTL501

N.Y.S.I.D.: 1220170Y

Date of Disposition: 12-9-66

Disposition: Pled guilty to VTL501

Sentence: Two ( 2 ) Days

Judge: Conudo

By: Clare Amster

A handwritten signature in cursive script that reads "Clare Amster".

Sr. Court Clerk

Additional information:

132 West 45<sup>th</sup>  
NY, N.Y.

Mr. Reid was represented by Legal Aid on this case  
(212)732-5000

D5047



CRIMINAL COURT OF THE CITY OF NEW YORK  
100 CENTRE STREET  
NEW YORK, NEW YORK 10013

Date: 9/26/2008

Name: Jack Reid

AKA: Robert Knowles, Oleg Melander

Docket #: Y5604-66

Date of Arrest: 11-11-66

Original Charges: 1308 P.L.

Final Charge: Dismissed

N.Y.S.I.D.: 1220170Y

Date of Disposition: 12-9-66

Disposition: Charges Dismissed

Sentence: N/A

Judge: Conudo

By: Clare Amster

*Clare Amster*  
Sr. Court Clerk

Additional information:

132 West 45<sup>th</sup>  
NY, N.Y.

Mr. Reid was represented by Legal Aid on this case  
(212)732-5000

D5048



CRIMINAL COURT OF THE CITY OF NEW YORK  
100 CENTRE STREET  
NEW YORK, NEW YORK 10013

Date: 9/26/2008

Name: Robert Knowles

AKA: Jack Reid, Oleg Melander

Docket # :A7192-67

Date of Arrest: 5-23-67

Original Charges: Att. Burglary, Burglar's Tools

Final Charge: Unlawful entry 408 P. L. -as a misdemeanor

N.Y.S.I.D.: 1220170Y

Date of Disposition:5-31-67

Disposition: Pled guilty to 408 P.L. Unlawful entry

Sentence: Sixty (60 ) Days

Judges: Shea & Hoffman

By: Clare Amster

*Clare Amster*

Sr. Court Clerk

Additional information:

824 Van Hauer Street  
Clifton, N.J.

Mr. Reid was represented by Legal Aid on this case  
(212)732-5000

D5045



CRIMINAL COURT OF THE CITY OF NEW YORK  
100 CENTRE STREET  
NEW YORK, NEW YORK 10013

Date: 9/26/2008

Name: Oleg Melander

AKA: Jack Reid, Robert Knowles

Docket # :A862-68

Date of Arrest: 01-21-68

Original Charges:120.05P.L.

Final Charge:120.00P.L. A Class A misdemeanor

NYSID: 1220170Y

Date of Disposition: 03-01-68

Disposition: Pled guilty to 120.00P.L. Assault 3

Sentence:Time Served

Judge: Solniker

By: Clare Amster

Sr. Court Clerk

Additional information:

250 West 45<sup>th</sup> St  
New York, N.Y.

Mr. Reid was represented by Legal Aid on this case  
(212)732-5000

D5044