THE STATE OF NEW HAMPSHIRE
SUPREME COURT

No. 2008-0601

The State of New Hampshire

v.

Christopher Hutchins

APPEAL PURSUANT TO RULE 7 FROM A JUDGMENT OF THE ROCKINGHAM COUNTY SUPERIOR COURT

BRIEF FOR THE STATE OF NEW HAMPSHIRE

THE STATE OF NEW HAMPSHIRE

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(3JX, 5 minutes)

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ISSUES PRESENTED

1. Whether the trial court correctly denied the defendant's motion *in limine*, which sought to exclude evidence that the defendant had been told not to enter the premises where the incident occurred, when the defendant raised a defense-of-others claim and the court found that evidence was relevant and more probative than prejudicial.

2. Whether the trial court's jury instruction on the deadly weapon element of the charged offenses was proper.

STATEMENT OF THE CASE

The defendant, Christopher Hutchins, was indicted by a Rockingham County Grand Jury on two counts of felony reckless conduct and two counts of second degree assault against the victim, Sean Beuque on August 1, 2007. *See* RSA 631:2 (2007); RSA 631:3 (2007). The two reckless conduct indictments alleged that the defendant recklessly engaged in conduct which placed, or may have placed, Beuque in danger of serious bodily injury by striking Beuque on the head with an electric grinding tool and a hammer, both being deadly weapons as defined in RSA 625:11, V (2007).[1] T1 22–23. The two second degree assault indictments alleged that the defendant recklessly caused bodily injury to Beuque in the form of a laceration or hematoma to his head by striking Beuque on the head with an electric grinding tool and a hammer, both being deadly weapons as defined in RSA 625:11, V. T1 23–24.

After a two-day trial, the jury convicted the defendant of the count of reckless conduct involving the hammer and acquitted the defendant of the remaining three charges. T-V 339–40. On August 1, 2008, the trial court (*Lewis*, J.) sentenced the defendant to twelve months at the house of corrections, with nine

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[1] References to the record are as follows:
"T1" through "T2" refer to the transcript of the two-day jury trial;
"DB" refers to the defendant's brief;
"DBA" refers to the appendix to the defendant's brief;
"T-C/JC" refers to the transcript of the closing arguments and the jury charge;

months of that sentence deferred for two years and electronic home monitoring after the defendant had served thirty days of his jail sentence. The defendant was placed on probation for two years and ordered to pay restitution. NOA 5. The court stayed imposition of its sentence pending resolution of this appeal. DBA A17.

"T-V" refers to the transcript of the verdict;
"NOA" refers to the notice of appeal.

STATEMENT OF FACTS

A. The State's Case

Sean Beuque entered into a business partnership with Michael Downing to start a small computer recycling company called Precision Asset Liquidation. T2 154. Subsequently, the defendant joined Beuque and Downing in the business. T1 29. In April 2007, Beuque and Downing signed a lease for a building in Auburn that was owned by Daniel Jaskolka. T1 78. The defendant never signed the lease. T1 80. At the end of April, Beuque and Downing had a falling out and ended their business relationship. T1 29–30; T2 159; T2 162. Shortly thereafter, the business relationship between Beuque and the defendant also dissolved and the two separated on unfriendly terms. T1 30.

In July 2007, the defendant called the landlord, Jaskolka, seeking return of his laptop computer, which was in the building. Jaskolka spoke with Beuque, asked him to take care of the matter and indicated his reluctance to be in the middle of their dispute. T1 80–81. Approximately one week later, the defendant called Jaskolka again looking for the return of his computer and expressed a desire to come to the property. Jaskolka told him to "just hold back," and spoke with Beuque again about the matter. T1 81.

On July 11, 2007, the defendant and his father went to the rental property in Auburn in an attempt to recover property that the defendant had left on the

premises. T1 31–32. The defendant did not have a key to the building. T2 220. That visit led to a confrontation between Beuque and the defendant and his father, resulting in the police being called. T1 32–33. During that confrontation, Beuque told the defendant and his father to leave and threatened to throw the defendant's father off the loading dock. T1 67; T2 209, 264. Auburn police officer David Fletcher responded to what he characterized as "just a civil disturbance—dispute between a couple of tenants." T1 91. The incident ended when Officer Fletcher escorted the defendant and his father out of the premises and ordered them not to return until either Beuque invited them back or they obtained a court order. T1 92; T2 214, 265.

After the July incident, the defendant and Beuque exchanged unfriendly text messages, which included Beuque's warning to the defendant not to return to the building in Auburn. T1 33–34. In one text message to the defendant, Beuque threatened to "fuck both of you up. The next time it happens, I will permanently disable your dad so he can watch what happens to you." T1 67–68.

On August 1, 2007, the defendant called Jaskolka and indicated his intention to go to the rental property to see Beuque and retrieve his computer. Jaskolka told the defendant not to return to the property and promised to speak with Beuque. T1 81. Approximately half an hour after that conversation, the defendant and his father disregarded Jaskolka's admonition and returned to the

rental property. T1 35; 81–82. Jaskolka again spoke to the defendant and told him to leave and promised to speak with Beuque later that day. T1 82. The defendant and his father remained on the premises and upon entering the building, the defendant began threatening violence if they did not get what they came for. T1 68. Beuque told them to leave numerous times. T1 35–36; T2 222. Once inside the building, the defendant and his father walked in different directions and Beuque lost sight of the defendant's father, who came from behind Beuque and hit him with an electric grinder. Before hitting Beuque, the defendant's father said he was "so sick of hearing your fucking mouth and you telling us what to do." T1 36 –37. After being hit, Beuque turned around and grabbed the defendant's father by his neck. The two of them dropped to the floor and began wrestling, with Beuque holding him in a headlock. The defendant then swung the grinder and hit Beuque on the side of his head with it. T1 38–39. Beuque grabbed the defendant's legs and when he did that, the grinder fell and hit Beuque on the forehead. T1 39–40. Beuque did not remember being hit with a hammer. T1 74–75. Beuque then went outside the building and called 911, while observing the defendant and his father putting Beuque's tools in their car. T1 40.

The police, including Officer Fletcher, responded, along with an ambulance, and Beuque was brought to the hospital for treatment. T1 44, 45. The defendant admitted to Officer Fletcher that he struck Beuque over the head with a

hammer and that he did so in defense of his father, who had become involved in a physical fight with Beuque. T1 96; T2 119. The defendant's father also admitted that he struck Beuque on the head with the power grinding tool after Beuque pushed him, and that Beuque was the initial aggressor. T1 96, 104; T2 117. Officer Fletcher recovered the grinder from inside the vehicle used by the defendant and his father. T1 96. The officer noticed human blood and flesh fragments on the grinder. T1 98.

The defendant and his father also spoke with Auburn Police Officer Charles Chabot. The defendant's father stated that they had gone to the premises to collect some property. When the situation degraded, Beuque shoved him in the chest, at which point he swung at Beuque, hitting him in the head with the grinder in his hand. The two of them ended up wrestling on the floor. T2 117. The defendant's father also asserted that after they were on the floor, Beuque managed to get up and pull a knife, which had been stuck in a pole, and pointed it at him. T2 118.

The defendant told Officer Chabot that while his father and Beuque were fighting on the floor, he hit Beuque over the head with a hammer in defense of his father, and that while they were wrestling on the floor, the defendant kicked the defendant in the face. T2 118–19, 125. The defendant did not tell Officer Chabot that Beuque was choking his father at the time he stuck Beuque with the hammer. T2 118–19. Officer Chabot did not notice any injuries to the defendant. T2 119.

He noted that the defendant's father had scrapes or abrasions on his left shoulder and elbow, lower back, left knee, right leg, and head, as well as dirt on his shirt which was consistent with someone rolling on the floor. T2 121. Officer Chabot observed what appeared to be human tissue on the hammer that he recovered at the scene. T2, 125–26.

Dr. Richard Marcucci treated Beuque at the emergency room for injuries to his head. He repaired the lacerations with sutures. T2 136. The results of a CAT scan were negative for internal injury or skull fracture. T2 144. Beuque told Dr. Marcucci that he had a history of methamphetamine drug abuse, a drug that can cause a person to act in an aggressive and violent manner. T2 141. Dr. Marcucci did not observe Beuque to be intoxicated or under the influence of drugs. T2 145.

B. The Defendant's Case

According to the defendant, Beuque was the initial aggressor and the defendant hit Beuque over the head with a hammer to defend his father. T1 104; T2 286. On July 11, 2007, the defendant's father accompanied his son to the Auburn business address to act as a witness because Beuque "had threatened [the defendant], and [he] didn't think he'd do anything in front of a witness." T2 185. The defendant's father felt they had the right to be at the premises because the defendant was part owner of the business. T2 209, 219. During the ensuing

confrontation, Beuque threatened to throw the defendant's father off a loading dock. T2 187; T2 212.

On August 1, 2007, the defendant's father returned to that property with his son "to try and reason with [Beuque], to have him return [the defendant's] laptop and tools." T2 190. Both the defendant and his father denied making any statements about resorting to violence to get back the property. T2 200–01, 289. Once inside, the defendant and his father separated. The defendant went in search of the laptop. The defendant's father spotted an electric grinder. T2 193. He identified that grinder as belonging to him and picked it up. T2 188–89, 194. As he started to walk out the door with the grinder, Beuque followed him and began to make threatening gestures. Beuque then shoved him, causing him to lose his balance. The defendant's father swung at Beuque as he was falling and hit Beuque on the head with the grinder. T2 195–96. Beuque tackled him. They both went to the floor and Beuque began to strangle him. The defendant's father did not see the defendant strike Beuque, but did remember seeing Beuque standing holding a knife and threatening the defendant. T2 197. The defendant's father then picked up a hammer. Beuque put down the knife and stated something to the effect of "I can't believe you did this to me." T2 198. The defendant's father retrieved the grinder and placed it inside his vehicle. T2 199.

The defendant considered himself an equal member of Precision Asset Liquidation with Beuque and Downing. T2 251. The defendant wrote the rent check from his personal account for the months of June and July of 2007 after depositing company funds into his account. T2 256. On July 9, 2007, Beuque told the defendant to leave the business premises after they had an argument. When the defendant attempted to take his property with him, Beuque told him he could not take the laptop and threatened to knock the computer out of his hands and throw him down the stairs. T2 258. On July 11, 2007, the defendant went to the rental property with his father in an attempt to negotiate the return of his property. T2 263. Their conversation became hostile. Beuque threatened to throw the defendant's father off the loading dock and the defendant called 911. T2 264. After being told by Officer Fletcher to leave and to deal with the matter through court, the defendant consulted an attorney about his right to enter the rental property. T2 265, 266. The defendant concluded that he had a right to be on the property. T2 267. After the July 11, 2007 incident, Beuque sent a number of threatening text messages to the defendant, including one that threatened to "permanently disable [his] father, so [his] father would have to watch what he did to [him]." T2 268.

On August 1, 2007, the defendant and his father returned to the rental property to try, again, to get his property back. T2 272–73. The defendant denied

that the landlord, Jaskolka, told him not to come to the property. T2 300–02. The defendant and his father entered the building and the defendant began to search for his laptop. He noticed his father pick up the electric grinder and walk towards the door. Beuque tried to stop his father from leaving with the grinder and pushed him. The defendant's father fell back and Beuque lunged toward his father. His father then swung at Beuque and hit him on the side of the head. Beuque and the defendant's father then wrestled on the floor, with Beuque grabbing him by his neck. The defendant picked up a hammer and hit Beuque on the head. Beuque then punched and kicked the defendant, while still holding onto his father's neck. The defendant hit Beuque two more times with the hammer, at which point Beuque let go of the defendant's father. Beuque then picked up a knife, pointed it at the defendant and called 911. The defendant also called 911. T2 277–84.

Michael Downing, the former business partner, testified to his opinion that Beuque was extremely violent and dishonest. T2 161.

C. Events Before, During, And After Trial

Before trial, the defendant filed a motion seeking, in part, to exclude all evidence under Rules of Evidence 402, 403, and 404(b) that the defendant and his father, John Hutchins, had been instructed by Officer David Fletcher not to enter the premises where the incident occurred without a court order, and all evidence that the landlord of those premises, Dan Jaskolka, had also told the defendant and

his father to stay away from the property. DBA A1–2. The State filed an objection arguing that evidence was relevant to rebut the defendant's defense-of-others claim and the defendant's assertion that the victim was the initial aggressor. DBA A4. The trial court held a hearing on the defendant's motion on the first day of trial. T1 10–20. The court found the proffered evidence relevant and more probative than prejudicial. T1 12.

In its jury instructions, the trial court instructed the jury on the elements of the four indictments and further instructed that the State must prove each element in each indictment beyond a reasonable doubt. T-C/JC 38–40. The instruction for each indictment followed a similar pattern. The court told the jurors that the third element of each crime was that the defendant's reckless conduct involved striking Beuque in the head with either an electric grinding tool or a hammer, "a deadly weapon as defined in RSA 625:11." The court then went on to define the term "deadly weapon" as "any firearm, knife, or other substance or thing which, in the manner it is used, intended to be used, or threatened to be used, is known to be capable of producing death or serious bodily injury." T-C/JC 38. The court referred the jury to that definition during the instruction for all four indictments. T-C/JC 38–40.

At the end of the instructions, the defendant asked the court to clarify that the jury must find that the electric grinding tool and hammer were deadly

weapons. T-C/JC 48. The State asserted that the initial instructions were not ambiguous and objected to further comment by the trial court. T-C/JC 49. The court found that its initial instruction was clear and denied the defendant's request. T-C/JC 50.

Before the sentencing hearing, the defendant filed a motion for a new trial, arguing that the evidence about the defendant and his father being told not to return to the premises was not relevant, that any relevance was substantially outweighed by the prejudice to the defendant and that the evidence was inadmissible under Rule of Evidence 404(b). DBA A7–A9. The State filed an objection. DBA A10–A14. The trial court denied the defendant's motion. DBA A15.

SUMMARY OF THE ARGUMENT

1. The trial court correctly denied the defendant's motion *in limine* to exclude evidence that the defendant was told by a police officer and the landlord not to enter the premises where the incident occurred. That evidence was relevant for the State to rebut the defendant's claim of defense of others and the defendant's assertion that the victim was the initial aggressor. The probative value of that evidence was not substantially outweighed by the danger of unfair prejudice. That evidence was not offered to show the defendant was a bad person who committed an act of criminal trespass, but to show his motive, intent, and state of mind when he entered the premises to confront the victim.

2. The trial court's jury instruction on the deadly weapon element of the charged offenses was proper. Viewing the instruction in its entirety and in light of all the evidence in the case, a reasonable juror would have understood that the jury must find that the State proved each element of each offense beyond a reasonable doubt before it could find the defendant guilty. One of the elements was that the defendant struck the victim on the head with either an electric grinding tool or a hammer, "a deadly weapon as defined in RSA 625:11." The trial court then went on to define the term "deadly weapon." A reasonable juror would have understood that the jury must find that the electric grinder and the hammer

were deadly weapons in order to find the State met its burden with respect to that element of each crime.

ARGUMENT

I. THE TRIAL COURT CORRECTLY DENIED THE DEFENDANT'S MOTION TO EXCLUDE EVIDENCE THAT THE DEFENDANT HAD BEEN TOLD NOT TO ENTER THE PREMISES WHERE THE INCIDENT OCCURRED BECAUSE THAT EVIDENCE WAS RELEVANT TO REBUT THE DEFENDANT'S DEFENSE-OF-OTHERS CLAIM AND THE DEFENDANT'S ASSERTION THAT THE VICTIM WAS THE INITIAL AGGRESSOR.

The defendant argues that the trial court erred in admitting the testimony from two witnesses regarding the defendant being told not to enter the premises where the incident occurred. According to the defendant, such testimony was not relevant and was substantially more prejudicial than probative in that it was confusing and distracting, and resulted in a trial within a trial. Further, the defendant argues that admission of that evidence was inadmissible under Rule of Evidence 404(b).

The admissibility of evidence is committed to the sound discretion of the trial court, and such a ruling will not be disturbed on appeal unless there has been an unsustainable exercise of discretion. *In re Antonio W.*, 147 N.H. 408, 414 (2002). To prevail on appeal, the defendant must show that the trial court's ruling was "clearly untenable or unreasonable to the prejudice of [his] case." *State v. Stayman*, 138 N.H. 397, 402 (1994).

Rule of Evidence 401 defines relevant evidence as "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 that it would be without the evidence." Rule of Evidence 403 provides: "Although relevant, 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 consideration of undue delay, waste of time, or needless presentation of cumulative evidence." "Evidence is unfairly prejudicial if its primary purpose or effect is to appeal to the jury's sympathies, arouse its sense of horror, provoke its instinct to punish, or trigger other mainsprings of human action that may cause a jury to base its decision on something other than the established propositions of the case. *State v. McGlew*, 139 N.H. 505, 510 (1995) (citing *State v. Bruyette,* 604 A.2d 1270, 1274 (Vt. 1992)) (brackets and quotations omitted). This Court affords considerable deference to the trial court's determination in balancing prejudice and probative worth. *State v. Smalley*, 151 N.H. 193, 198 (2004).

Evidence that the defendant was told by a police officer and the landlord not to enter the property where the incident took place was relevant to and probative of the merits of the defendant's defense-of-others claim. Because there was some evidence of defense of others introduced at trial, the State had to prove beyond a reasonable doubt that the defendant did not act to defend another. *See State v. Santamaria*, 145 N.H. 138, 141 (2000) (State must disprove self-defense beyond a reasonable doubt). The defendant would not be justified in using non-

deadly force against another person if he was the initial aggressor. RSA 627:4, I(b) (2007). Evidence that the defendant disregarded an order from a police officer and admonitions from the landlord not to enter the property was directly relevant to the issue of who was the initial aggressor.

That evidence was more relevant when paired with testimony about the bad business relationship between the defendant and the victim, past violent threats and text messages between the two of them, insistent demands by the defendant to secure the return of his laptop computer and the prior police intervention. That evidence was probative on the issues of the defendant's motive, intent, and state of mind when he entered the rental property on August 1, 2007. The question of whether the defendant was legally justified in entering those premises was not relevant to the issue of who the initial aggressor was and whether the defendant's justification defense had any merit, but it was an area of inquiry consistently pursued by the defendant and for which he was given free rein on direct and cross-examination.

The defendant also argues that admission of this evidence ran afoul of Rule of Evidence 404(b) in that the testimony of the two witnesses supported the conclusion that the defendant committed the uncharged crime of criminal trespass, and that the evidence was unduly prejudicial. The admissibility of evidence

pursuant to Rule 404(b) by the trial court is reviewed for an unsustainable exercise of discretion. *Smalley*, 151 N.H. at 196.

Rule 404(b) provides: "Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that the person acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident." "The purpose of Rule 404(b) in a criminal trial is to endure that the defendant is tried on the merits of the crime as charged and to prevent a conviction based on evidence of other crimes or wrongs." *State v. Bassett*, 139 N.H. 493, 496 (1995). "Evidence of other crimes is not admissible unless: (a) it is relevant for a purpose other than to show the defendant's bad character or disposition; (2) there is clear proof that the defendant committed the other crimes or acts; and (3) prejudice to the defendant does not substantially outweigh the probative value of the evidence." *Id.*

The defendant cites *State v. Pelkey*, 145 N.H. 133 (2000), in support of his argument that even if evidence has some relevance to a contested issue at trial, this Court should reverse a conviction if the evidence was inherently prejudicial. DB 19. *Pelkey* involved a DWI trial that included a statement by the defendant at the police station that "he had $500 that was in his wallet, that the $500 was proceeds from his drug sales and that it had better be in the truck when he picked

up his truck the next day." *Pelkey*, 145 N.H. at 135. This Court found that although the statement was relevant to the issue of intoxication, the nature of this statement was such that it gave rise to the potential of extreme prejudice. "In this case, a danger of unfair prejudice arose from the possibility that the jurors may have concluded that the defendant's statement was true and treated him unfairly because they believed he was a drug dealer. This is just the type of unfair prejudice that Rule 403 seeks to avoid." *Id.* at 136. This Court also noted in this case that the "State specifically addressed the statement in its closing argument, reinforcing its significant prejudicial impact." *Id.* at 137–38.

Here, the testimony was that the defendant returned to the rental property after being told not to do so by a police officer and the landlord. Officer Fletcher characterized it as a "civil disturbance." T1 91. That testimony was not offered to show the defendant's bad character but was admissible for the other purposes that Rule 404(b) contemplates, including the defendant's intent and motive. There was no testimony that any criminal charges were contemplated or brought against the defendant. The State did not specifically address criminal trespassing conduct in its closing argument; rather, it argued that it did not matter whether the defendant had the authority to enter that building or not. That evidence went to the defendant's state of mind, and could have been used to evaluate the credibility of the defendant and his father. T-C/JC 14, 20.

In short, the evidence that the defendant had been told to stay away from the property did not give rise to the sort of unfair prejudice that Rule 403 seeks to avoid. The defendant's entry onto the property, which was rented by the partnership, simply does not rise to the same level of prejudice as evidence that a defendant in a DWI case is also a drug dealer. Certainly, the "primary purpose or effect" of this evidence was not "to appeal to [the] jury's sympathies, arouse its sense of horror, provoke its instinct to punish, or trigger other mainsprings of human action that may cause a jury to base its decision on something other than the established propositions in the case." *State v. Costello*, 159 N.H. —, 977 A.2d 454, 461 (2009). Moreover, any slight prejudice from this evidence was surpassed by its probative value. The trial court's decision to admit this evidence was therefore neither untenable nor unreasonable to the prejudice of the defendant's case.

II. THE TRIAL COURT'S INSTRUCTION ON THE DEADLY WEAPON ELEMENT OF THE CHARGED INSTRUCTION WAS PROPER WHEN VIEWED IN ITS ENTIRETY AND IN LIGHT OF ALL THE EVIDENCE IN THE CASE.

The defendant challenges the trial court's instruction to the jury on the deadly weapon element of the offenses and characterizes the instruction as confusing and seeming to direct a verdict on that element.

The trial court instructed the jury as follows:

> Thus, *the State must prove*, one, that the defendant acted recklessly, as I've already defined this term; and, two, that the defendant engaged in conduct which placed or may have placed Sean Beuque in danger of serious bodily injury; and, three, that the defendant did this by striking Beuque in the head with an electric grinding tool, *a deadly weapon, as defined in RSA 625:11*.
>
> Serious bodily injury means any harm to the body which causes serious permanent, or protracted loss of or impairment to the health or of the function of any part of the body. *A "deadly weapon under RSA 625:11(V)" means* any firearm, knife, or other substance or thing which, in the manner it is used, intended to be used, or threatened to be used, is known to be capable of producing death or serious bodily injury."

T-C/JC 38 (emphasis added).

"The purpose of the trial court's charge is to state and explain to the jury, in clear and intelligible language, the rules of law applicable to the case." *Fletcher v. Kunze*, 125 N.H. 277, 279 (1984). "The trial court has no obligation to employ specific language requested by a party so long as the court otherwise adequately states the law." *State v. Saucier*, 128 N.H. 291, 299 (1986). This Court has also held that "a single instruction must be considered in light of whether the overall

charge fully communicates the relevant applicable law and standards to be followed by the jury." *State v. Sands*, 123 N.H. 570, 613 (1983). "The scope and wording of jury instructions is generally within the sound discretion of the trial court, and any allegations of error will be evaluated by interpreting the disputed instructions in their entirety, as a reasonable juror would have understood them, and in light of all the evidence in the case.... [R]eversal of a jury verdict is unwarranted when a jury charge fairly covers the issues and law of a case." *State v. Plante*, 134 N.H. 456, 460 (1991).

Here, while the trial court's instruction could have been more explicit, the jury instruction, viewed in its entirety, was clear and fairly covered the law. The trial court began its instruction on the elements of the offense by stating "the State must prove ...." And, in fact, the court instructed that the jury must find that the State proved each element in each indictment beyond a reasonable doubt. T-C/JC 38–40.

An element of each offense was whether the defendant struck the victim with either an electric grinder tool or a hammer, a deadly weapon as defined in RSA 625:11. The court then went on to define the term deadly weapon. A reasonable interpretation of that instruction is that the jury must find that the defendant struck the victim with either an electric grinding tool or hammer and that the jury must find those implements are deadly weapons as defined by statute.

The trial court never directed a verdict on that element. If the court intended to direct a verdict, the instruction would not have included the "State must prove" language, nor would it have included a definition of the term deadly weapon. The instruction, viewed in its entirety, required the jury to determine if the grinder and hammer were deadly weapons under the definition that trial court provided. It is clear that the overall charge fully communicated the relevant applicable law and standards to be followed by the jury.

CONCLUSION

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

The State requests five minutes of oral argument before a 3JX panel.

Respectfully submitted,

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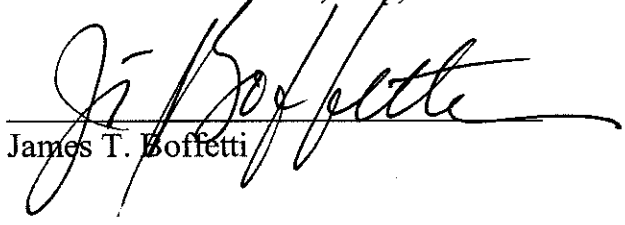
September 30, 2009

I hereby certify that two copies of the foregoing were mailed this day, postage prepaid, to Paul J. Garrity, Esq. and Theodore Lothstein, Esq., counsel of record.



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