

**THE STATE OF NEW HAMPSHIRE
SUPREME COURT**

No. 2009-0230

State of New Hampshire

v.

Shannon Boyle

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

BRIEF FOR THE DEFENDANT

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(15 Minutes Oral Argument)

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QUESTION PRESENTED

Whether the trial court erred in permitting the State, in its case-in-chief, to introduce evidence that Boyle refused to answer certain questions and refused to give a recorded statement to the police at the hospital after the accident.

Issue preserved by defense objection and the trial court's ruling admitting the evidence. T. 200-02.*

*Citations to the record are as follows:

"T." refers to the consecutively-paginated transcript of Boyle's four-day trial, held October 28-31, 2008;

"App." refers to the Appendix filed with this brief.

STATEMENT OF THE CASE

In April 2008, the Strafford County grand jury indicted Shannon Boyle on four charges arising out of a late-night, two-car automobile accident that took place in Rochester on September 20, 2007. Two indictments alleged second degree assault and two indictments alleged reckless conduct. One second degree assault indictment and one reckless conduct indictment alleged offenses against Brian Paquette, the driver of the other involved car. App. 1, 7. The other two indictments alleged offenses against Sandra Natoli, the passenger in Paquette's car. App. 3, 5.

Boyle stood trial over four days in October 2008, and was convicted as charged. T. 511-12. For each second degree assault conviction, the trial court (Brown, J.) sentenced Boyle to suspended terms of twelve months, to restitution, and to two years of probation. App. 2, 4. On each reckless conduct conviction, the court sentenced Boyle to suspended terms of one and a half to three years, to run consecutive to the sentences for second degree assault. App. 6, 8.

STATEMENT OF THE FACTS

On the night of September 20, 2007, Shannon Boyle went to Wentworth-Douglass hospital, suffering from a severely swollen knee. T. 426. Her fiancé, Carl Machado, drove her to the hospital, and then from the hospital to Walgreens pharmacy in Rochester to fill a prescription. T. 153-54. Meanwhile, Brian Paquette drove his girlfriend Sandra Natoli to the same hospital, seeking treatment for Natoli's pneumonia and collapsed lung. T. 27-28, 90-91. Natoli also received a prescription, and also went to the Rochester Walgreens to have it filled. T. 28, 92. Both couples arrived at Walgreens after midnight, and both learned from the pharmacist that it would take approximately thirty minutes or more to fill their prescriptions. T. 29, 93, 428.

Paquette and Natoli left Natoli's prescription to be filled and drove out of Walgreens onto Columbus Avenue, looking for a place to eat while they waited. T. 29. Boyle decided not to wait and left Walgreens with Machado, intending to go to Frisbie Hospital where she thought she could more quickly fill her prescription. T. 155, 428. Although the nature of their errands had put both sets of people on peculiarly parallel courses that evening, they did not encounter each other until just after leaving Walgreens to turn onto Columbus Avenue.

Paquette and Natoli drove away first. They testified that they first noticed the Boyle-Machado car because it was

tailgating them. T. 30-32, 95. Paquette and Natoli testified that the car driven by Machado nearly forced them off the road as it passed them. It then slowed, allowing them to pass it, and then continued to drive in an unsafe and harassing manner. T. 33-36, 68-70, 95-97. Boyle testified that Machado did initially tailgate the Paquette car, but soon backed off at her insistence. T. 429, 453. Both Boyle and Machado testified that the Paquette car then drove erratically, slamming on its brakes causing Machado to have to take evasive action. T. 157, 169, 429, 453.

After turning onto Wakefield Street, Machado pulled over, and the Paquette car passed and drove on. T. 36, 99, 158. Machado testified that he pulled over because Boyle seemed to be having an anxiety attack, leaving her "almost at a state of panic," and he sought to calm her down before they continued on to the hospital. T. 158-60. Moreover, he was unfamiliar with the area, and Boyle told him that he was driving in the wrong direction, away from Frisbie Hospital. T. 156, 431. At some point, in order to calm Boyle, Machado got out of the car. T. 177. When he started to walk around to the passenger side, Boyle slid into the driver's seat and departed, leaving Machado behind. T. 162, 165-66, 177. She testified that she intended to turn around and pick him up. T. 431, 441, 443. The State introduced a statement Boyle later made to a police officer to the effect that Machado was a "big boy" who could take care of himself. T.

441-42. When she drove away, Boyle continued down Wakefield Street, looking for a place to turn around. T. 443.

Meanwhile, Paquette had passed the McDonald's restaurant at which he hoped to eat, and found it closed. T. 39. He pulled into a lot where he and Natoli briefly considered their dining options, before deciding to drive back to Walgreens to await Natoli's prescription. T. 39, 102, 422. The accident giving rise to the charges occurred when Boyle's car, proceeding north on Wakefield, collided with Paquette's in the northbound lane of that street. T. 40-42. The collision happened slightly less than four-tenths of a mile from the place Boyle had left Machado. T. 254-55.

Paquette and Natoli testified that, upon seeing no cars approaching, Paquette began to drive across the northbound lane in the process of turning left to drive southbound. T. 41, 105. Immediately after committing to the turn, he suddenly saw the lights of an oncoming vehicle. T. 41. Boyle testified that, while driving north, she encountered a car that seemed to be stopped in and across the traffic lane. T. 433. She attempted to brake and turn to avoid the car, but struck it on the driver's side. Id.

Paquette, who was not wearing a seatbelt, was ejected from his car and awoke on the pavement just after the collision. T. 42-43. Natoli, who was wearing a seatbelt, remained inside the

car. T. 42, 44. When Boyle's car came to a rest, she was inside it. T. 434.

All three persons suffered injuries, and were taken to a hospital, Paquette and Natoli to Frisbie, and Boyle to Wentworth-Douglass. T. 54, 173. All three were treated and released from the hospital several hours after the accident. T. 50, 134, 174, 434.

The State elicited testimony from Jamey Balint, a police officer trained in accident reconstruction. Balint testified at length about complicated calculations involving gouge marks in the road, a spin analysis necessitated by the movement of the cars after the collision, the weight of the cars, their final locations, the road grade, a crush measurement relating to the damage to the cars, a conservation of linear momentum calculation, braking efficiency, and the length of Boyle's car's skid mark, among other factors. T. 238-95. Based on such information and using a variety of formulas and calculations, Balint testified to his conclusion that Boyle was driving between eighty-one and eighty-five miles per hour on the road before she braked, and struck Paquette's car eighty-five feet after braking, while traveling at a speed of seventy to seventy-four miles per hour. T. 230, 284-85. The posted speed limit for that stretch of road was thirty miles per hour. T. 230.

The defense noted a variety of problems with Balint's

opinion, aside from the sheer complexity of, and multiple variables in, the relevant calculations. For example, Balint did not visit the scene until two days after the collision. T. 245. His initial calculations had produced a negative speed for Paquette's car, indicating that it was driving in reverse at the moment of impact. T. 278. After conducting his investigation and making his calculations in this case, Balint learned through subsequent training that he had, in a certain respect, improperly understood and used the "total station," a device with which Balint measured angles and distances used in the speed calculation. T. 278-80, 334-38. Balint testified that he later recalculated to correct for his prior error. T. 281.

Boyle testified that she was traveling no faster than fifty miles per hour before she braked. T. 432. She tried to stop upon seeing Paquette's car seemingly stopped in the road in front of her. T. 433. The defense contended further that it was unlikely that Boyle could or would have reached the speed estimated by Balint in the short distance between the spot she began to drive and the collision. T. 439-40.

Because of the diverging accounts both of the circumstances of the collision and of the nature of the driving interaction between the cars preceding it, issues of credibility became important. In an effort to undermine Natoli's and Paquette's credibility, the defense noted that they had a pending civil

action against Boyle. T. 63-64, 75-77, 117, 140. Moreover, the defense sought to establish that each had embellished aspects of their injuries or other relevant circumstances. T. 60-62, 84-85, 119-23, 138, 314.

For its part, the State noted inconsistencies between a taped statement Boyle gave to Balint eight days after the accident, and her trial testimony. T. 252, 436-39. In addition, over defense objection, the State introduced evidence that, at the hospital after the accident, Boyle had refused to give a written or recorded statement to a police officer or answer questions about the accident. T. 200-04, 209-10, 214. In that regard, as the State noted, she followed a different course than had Natoli, Paquette, and Machado, all of whom gave taped statements to the police at the hospitals that night. T. 183-85, 190-91, 197-98, 200.

SUMMARY OF THE ARGUMENT

In State v. Remick, 149 N.H. 745, 747 (2003), this Court held that "while use of pre-arrest silence to impeach a defendant's credibility is not unconstitutional, use of pre-arrest silence in the case-in-chief, in which the defendant does not testify, is unconstitutional." Here, in its case-in-chief, the State introduced Boyle's refusal to answer certain questions and to participate in a recorded interview. Because the State offered, and the court admitted, that evidence as substantive proof of Boyle's guilt, its introduction violated Boyle's privilege against self-incrimination, protected by the Fifth Amendment to the United States Constitution and Part I, Article 15 of the New Hampshire Constitution. Because that evidence unfairly prejudiced the defense, this Court must reverse Boyle's convictions.

I. THE TRIAL COURT ERRED IN ADMITTING EVIDENCE THAT BOYLE REFUSED TO ANSWER CERTAIN QUESTIONS AND REFUSED TO GIVE A RECORDED STATEMENT TO THE POLICE.

During the State's case-in-chief, the prosecution questioned Officer Aaron Garneau about his efforts, at Frisbie and Wentworth-Douglass hospitals on the night of the accident, to get statements from Paquette, Natoli, Machado, and Boyle. Garneau testified that he went first to Frisbie and took recorded statements from Paquette and Natoli. T. 183-85, 190-91, 197-98. After obtaining those statements, Garneau went to Wentworth-Douglass where Machado also gave a recorded statement. T. 200. The prosecutor then elicited the following testimony:

Q. And after you spoke with [Machado], who did you speak with then?

A. I spoke with Shannon.

Q. Okay. And did she provide a statement to you that night?

A. She - when I requested for [an] audio statement or a written statement she declined. When I questioned her further about the ...

T. 200. At that point, defense counsel approached and moved for a mistrial. Counsel noted that the State had elicited that "every one else [gave] either a written or a recorded statement and she declines. Now they're going to draw a certain inference from that." T. 201. Specifically, counsel expressed the concern that the jury would infer from Boyle's refusal her consciousness of guilt. Id.

In reply, the prosecutor noted that Boyle was not in custody when she declined to give a statement. Id. Thus, according to the prosecutor, "she didn't have a right to remain silent. I mean there was no invocation or there is no circumstances under which Miranda was to be read that night." T. 202. The court agreed with the State, and overruled defense counsel's objection to the admission of the evidence. T. 201-02. Having won the point, the prosecutor then elicited the same testimony again:

Q. ... So Shannon Boyle did not provide a statement that night?

A. No.

Q. Is that correct?

A. Not at first.

T. 202. Although Garneau's response to the last of the above-quoted questions hinted that Boyle had, at the hospital, given some information to Garneau, the prosecutor elicited nothing further on direct from Garneau about any such information. In pursuing the line of questions, thus, the prosecutor's evident purpose was to support an inference of guilt from Boyle's refusal to give a recorded statement to the police.

On cross-examination of Garneau, in an effort to diminish the incriminating significance of that testimony, defense counsel elicited the fact that, while Boyle refused to give a written or recorded statement that night, she did answer some of Garneau's questions. T. 202-03. That effort had only very limited

success, as Garneau made clear that, in addition to refusing to provide a written or recorded statement, Boyle declined to answer some questions about the accident itself. T. 203-04, 208-10, 213-14.

On re-direct, in an effort to enhance the incriminating significance of Boyle's refusal to give a written or recorded statement, the prosecutor questioned Garneau about the value of recorded statements. T. 215-16. The prosecutor elicited that Garneau would have asked more detailed questions, had Boyle agreed to give a recorded statement, and that he explained to Boyle why he wanted to take a recorded statement. T. 216. Finally, the prosecutor elicited Garneau's characterization of Boyle as giving only a "very broad [description of the events]. Parts and details were left out. When asked, she said she didn't remember." Id. The State introduced no evidence detailing anything Boyle did tell the officer at the hospital.

The defense on re-cross again sought to diminish the incriminating significance of Boyle's refusal, by attributing her refusal to cooperate to the fact that she had suffered injuries and was receiving treatment. T. 216-20. On further re-direct, however, the State attacked that explanation, by eliciting testimony that Paquette and Natoli also were in the process of receiving medical treatment at the time they agreed to give recorded statements. T. 220. The prosecutor further minimized

the extent of Boyle's treatment, through Garneau's testimony that he saw no IV drip when he asked her to give a recorded statement. Id.

In allowing the State to open the area of inquiry by introducing evidence that Boyle, unlike the other three witnesses, refused to provide a written or recorded statement, the court erred. In State v. Remick, 149 N.H. 745 (2003), this Court identified the "three basic principles [that] guide the application of the Fifth Amendment privilege against self-incrimination." Id. at 746. Those principles are:

(1) invocation of the right is construed liberally; (2) invocation of the right does not require any magic words; and (3) the privilege applies to suspects questioned during investigations - it is not limited to persons in custody or charged with a crime.

Id. at 746-47. Thus, although not in custody at the hospital, Boyle still had the right to refuse to answer questions or participate in a recorded interview.

As this Court noted in Remick, jurisdictions divide over whether the State can introduce, as substantive evidence of guilt, a defendant's pre-arrest, pre-Miranda refusal to answer police questions. 149 N.H. at 747 (citing jurisdictions). In that regard, nothing has changed since Remick. See, e.g., State v. Kulzer, 979 A.2d 1031, 1035-37 (Vt. 2009) (noting continuing split on issue). In Remick, this Court treated as decisive the First Circuit's view that the State may not, consistent with the

Constitution, introduce such evidence in its case-in-chief. 149 N.H. at 747 (citing Coppola v. Powell, 878 F.2d 1562, 1568 (1st Cir. 1989)).

In Coppola, the First Circuit began its analysis by describing the three above-quoted principles as essential to a proper interpretation of the Fifth Amendment's privilege against self-incrimination. 878 F.2d at 1564-65. Holding that the State may not introduce, in its case-in-chief, evidence of the kind at issue here, the court noted that

[a]ny refusal to speak, no matter how couched, in the face of police interrogation, raises an inference that the person being questioned probably has something to hide. Under the reasoning of the New Hampshire court any prearrest invocation of the privilege, no matter how worded, could be used by the prosecutor in his case in chief because it raises an inference of guilt. Such logic ignores the teaching that the protection of the fifth amendment is not limited to those in custody or charged with a crime.

Id. at 1566.

Following the result and reasoning of Coppola, the Remick Court articulated the following rule, applicable where the State seeks to introduce a defendant's pre-arrest silence. "While use of pre-arrest silence to impeach a defendant's credibility is not unconstitutional, use of pre-arrest silence in the case-in-chief, in which the defendant does not testify, is unconstitutional." 149 N.H. at 747 (citing Coppola, 878 F.2d at 1568). Here, in its

case-in-chief, the State introduced Boyle's refusal to answer certain questions and to participate in a taped interview. T. 200-02. The introduction of that evidence thus violated Boyle's privilege against self-incrimination, protected by the Fifth Amendment to the United States Constitution and Part I, Article 15 of the New Hampshire Constitution.

Boyle did testify during the defense case. That fact, however, cannot save the conviction. Because the State introduced the evidence in its case-in-chief, and thus well before Boyle testified, the evidence was not admitted for the limited purpose of impeaching Boyle's testimonial credibility. In light of the timing of the admission of the evidence, no instruction limiting the jury's use of the evidence to impeachment was, or could have been, given. Rather, the evidence was offered and admitted substantively, as tending to prove Boyle's guilt by inference from the fact that she, unlike the other three witnesses, refused to answer questions and refused to cooperate in a recorded interview. See State v. Duff, 129 N.H. 731, 735 (1987) ("impeachment is attack upon credibility of the witness, but impeachment is not a process whereby substantive evidence is admitted") (citation omitted).

In a variety of contexts, this Court has acknowledged the significance of that distinction between substantive and impeachment uses of evidence. See, e.g., State v. White,

___ N.H. ___, 977 A.2d 501, 504 (2009) (distinguishing between substantive and impeachment uses of witness's prior consistent statements); State v. Hebert, 158 N.H. 306, 316 (2009) (same, in regard to defendant's prior convictions); State v. Soldi, 145 N.H. 571, 574 (2000) (same, in regard to witness's prior inconsistent statement). Moreover, this Court has recognized the risk that juries, unless properly instructed, will use such evidence both substantively and as bearing on credibility. In a case involving the introduction of a prior consistent statement, this Court emphasized that the "distinction between rehabilitation of a witness's credibility as to particular testimony and the truth of the testimony is difficult and requires a careful explanation in the limiting instruction." State v. Huard, 138 N.H. 256, 261 (1994). Here, although Boyle's decision to testify during the defense case would have allowed the State to introduce the evidence to impeach her credibility, the State did not in fact introduce the evidence for that purpose, and the jury accordingly received no instruction limiting its consideration of the evidence only to its impeachment implications.

In State v. Burke, 181 P.3d 1 (Wash. 2008), the Washington Supreme Court confronted a similar situation. There, as here, the State introduced evidence of the defendant's pre-arrest silence during its case-in-chief, and there, as here, the

defendant subsequently testified during the defense case. Id. at 4-5. Referring to a holding in a prior Washington Supreme Court case, the Burke Court noted that it had "rejected the [argument] that a defendant's testimony always transforms commentary on a defendant's pre-arrest silence into impeachment." Id. at 8 (citing State v. Lewis, 927 P.2d 235, 237 n.2 (Wash. 1996)). Other courts similarly regard the admission of such evidence during the State's case-in-chief as serious error, even when the defendant later testifies at trial. See, e.g., Clancy v. State, 829 N.E.2d 203, 211-12 (Ind. App. 2005) (affirming conviction in such circumstance, but only because trial court recognized the introduction of such evidence in case-in-chief as error and instructed jury to disregard it); Ouska v. Cahill-Masching, 246 F.3d 1036, 1048-49 (7th Cir. 2001) (finding substantial claim that "State used [defendant's] pre-arrest, pre-Miranda silence as an improper inference of her guilt, in violation of her constitutional rights"); United States v. Hernandez, 948 F.2d 316, 323-24 (7th Cir. 1991) ("the fact that [defendant] later took the stand does not allow the prosecutor to introduce impeaching evidence in its case-in-chief").

In so ruling, the Burke court noted that "[i]f evidence of silence comes in to show guilt in the State's case-in-chief, then a defendant may be forced to testify to rebut such an inference." 181 P.3d at 8 (quoting Lewis, 927 P.2d at 237 n. 2); see also

State v. Leach, 807 N.E.2d 335, 341 (Ohio 2004) (to same effect); People v. Welsh, 58 P.3d 1065, 1071 (Colo.App. 2002) (to same effect). That reasoning applies here; Boyle's decision to testify may have reflected the need to respond to the State's use of her pre-trial silence to prove her guilt. Certainly, Boyle attempted in her trial testimony, by referring to her medical circumstances at the time of the pre-arrest interview, to give a non-incriminating explanation for that silence. T. 435.

The Burke court also took into account, in deciding whether to reverse, the extent to which the prosecutor, in introducing the evidence, intended to make a comment on silence, and thus to prove the defendant's guilt through the evidence of silence. 181 P.3d at 8; see also Hernandez, 948 F.2d at 323-24 (noting as significant whether prosecutor intended to elicit evidence of pre-Miranda silence). The Burke court thus drew a distinction between a "comment" on silence, and a "mere reference" to silence. 181 P.3d at 8.

Here, in the use made of the evidence during the State's case-in-chief, the prosecutor intended a comment on silence. The prosecutor's juxtaposition of Boyle's refusal to cooperate in a recorded interview with the cooperation shown by the other witnesses itself called incriminating attention to Boyle's silence. See State v. Angel T., 939 A.2d 611, 615 (Conn. App. 2008) (reversing, noting similar juxtaposition), aff'd, 973 A.2d

1207 (Conn. 2009). Moreover, the prosecutor's determined resistance to the defense effort, on cross-examination of Garneau, to give a non-incriminating explanation for Boyle's silence, proves the prosecutor's intention to use Boyle's silence as affirmative evidence of guilt.

In similar contexts, this Court also has looked to the prosecutor's purpose. See, e.g., Hebert, 158 N.H. at 318; State v. Ellsworth, 151 N.H. 152, 155 (2004) (addressing claim of prosecutorial misconduct in closing argument, court assesses whether misconduct was "isolated and/or deliberate"). In Hebert, for example, the Court specifically noted that the prosecutor did not encourage the jury to make impermissible, substantive use of the information. 158 N.H. at 318. Moreover, the Court observed that the "State asked only one question about [the evidence] and did not mention it during closing argument." Id. The same cannot be said of the circumstances here.

In support of the admission of the evidence in its case-in-chief, the State noted that, because Boyle was not in custody at the time, "she didn't have a right to remain silent. I mean there was no invocation or there is no circumstances under which Miranda was to be read that night." T. 202. In effect, the State acknowledged no limit to the substantive use of a defendant's pre-arrest assertion of the right to silence. As this Court held in Remick, however, a defendant does have a pre-

arrest right to silence, and the State may not introduce evidence of such silence, except to impeach a testifying defendant. 149 N.H. at 747.

Finally, the State cannot justify the admission of the challenged evidence here by virtue of the fact that Boyle answered some of Garneau's questions at the hospital. Some courts permit the prosecution to introduce a defendant's pre-arrest invocation of the right to silence, where the defendant invoked the right as to some questions while answering others. See, e.g., Ouska, 246 F.3d at 1048. For several reasons, that principle cannot support the admission of the evidence at issue here.

First, good reason exists to reject such a rule, and to doubt that the First Circuit would endorse it. In Coppola, the defendant initially answered police questions during a first interview and then, just three days later at the beginning of a second interview, he invoked his right to silence. 878 F.2d at 1563. If an initial or partial willingness to answer questions permitted the State to introduce a subsequent invocation of silence as substantive evidence of guilt, such a rule would have applied in Coppola's case. Because it did not, the First Circuit seems not to recognize any such rule.

Moreover, in United States v. Andujar-Basco, 488 F.3d 549, 557 (1st Cir. 2007), the First Circuit rejected the analogous

post-Miranda rule. Under Andujar-Basco, the fact that a defendant, after hearing the Miranda warnings, initially waives the privilege and answers some questions does not thereby permit the State to introduce the defendant's later invocation of the right to silence. In so holding, the court cited and relied on Coppola. Id. at 555-57. The privilege against self-incrimination protects people before as well as after the recitation of the Miranda warnings, and before as well as after arrest. Coppola, 878 F.2d at 746-47.

There is no reason to adopt a different rule about the substantive admissibility of an invocation of silence after a defendant answers some questions, depending only on whether the questioning and invocation took place before or after the Miranda warnings. An invocation even after the defendant answers some questions, thus, should not be admitted as substantive evidence of guilt.

At most, the State can introduce an invocation only if, and to the extent, necessary to put in context a defendant's pre-invocation statement to the police. In Commonwealth v. O'Laughlin, 843 N.E.2d 617 (Mass. 2006), the Supreme Judicial Court expressed the proper rule in the following terms:

ordinarily, any evidence of such [pre-arrest] silence is not admissible because it is impermissible to comment on the defendant's invocation of the right to silence. Nevertheless, we permit such evidence when it is necessary in the context of the entire

conversation for the limited purpose of clarifying why a police interview ended abruptly.

Id. at 631-32 (citations omitted).

That version of the rule, though, cannot support the admission of Boyle's invocation here. On direct examination, the State elicited no evidence about the substance of any statements Boyle made to Garneau at the hospital. Rather, about their conversation at the hospital, the State elicited only the fact that Boyle refused to cooperate in giving a recorded statement. To use the terms of the O'Laughlin court, because the State did not introduce the substance of the rest of Garneau's conversation with Boyle, evidence of Boyle's silence was not "necessary" to put that "entire conversation," or the manner of its ending, in context. Id. The O'Laughlin rule that such evidence may serve only the "limited purpose" of explaining the abrupt ending of a pre-Miranda conversation proves the inapplicability of that rule here. Id. Boyle's silence, her refusal to cooperate in a recorded interview, was the State's sole point and focus. As the prosecutor made clear in response to the defense objection, the State took the position that Boyle had no right to remain silent in the pre-Miranda setting. T. 201-02.

The admission of the evidence substantially prejudiced Boyle. "The implication is that suspects who invoke their right to silence do so because they know they have done something

wrong." Burke, 181 P.3d at 12. Here, the State vigorously resisted every effort by the defense, during the State's case-in-chief, to minimize the incriminating significance of Boyle's refusal to give a statement. Moreover, the State emphasized the impermissible inference of guilt by its juxtaposition of the evidence of Boyle's refusal to cooperate with the cooperation of the other persons involved in the collision. As a result of that juxtaposition and of the State's prompt and thorough rebuttal of every defense attempt to minimize the evidence, the evidence took on great importance. In closing argument, the prosecutor did not fail to mention "that night at the hospital when [Boyle] refuses to give a statement because she doesn't want to go on record."

T. 481-82.

By introducing Boyle's refusal to answer certain questions and refusal to give a recorded statement in its case-in-chief, the State violated Boyle's constitutional rights. This Court must accordingly reverse her convictions.

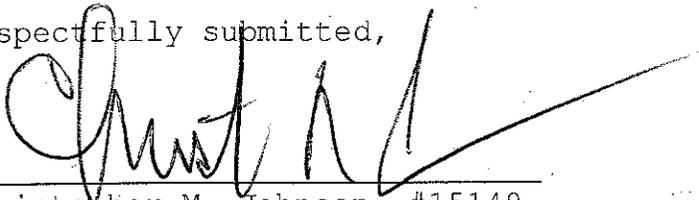
CONCLUSION

WHEREFORE, Ms. Boyle respectfully requests that this Court vacate her convictions.

Undersigned counsel requests 15 minutes oral argument before a full panel.

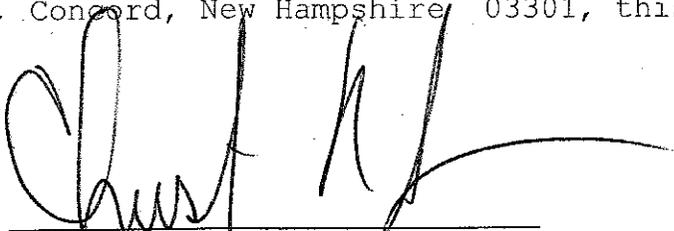
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Concord, NH 03301

CERTIFICATE OF SERVICE

I hereby certify that two copies of the foregoing Brief have been mailed, postage prepaid, to the Office of the Attorney General, 33 Capitol Street, Concord, New Hampshire 03301, this 3rd day of November, 2009.


Christopher M. Johnson

DATED: November 3, 2009

APPENDIX

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The State Of New Hampshire

Strafford, SS.

Superior Court

Indictment

At the Superior Court, holden at Dover, within and for the County of Strafford aforesaid on the EIGHTEENTH day of APRIL in the year of our Lord two thousand EIGHT,

The Grand Jurors for the State of New Hampshire, upon their oath, present that:

SHANNON L. BOYLE

of SAWYER MILL APTS #346, DOVER, New Hampshire, in the County of Strafford, on or about the TWENTIETH day of SEPTEMBER in the year of our Lord two thousand SEVEN at ROCHESTER in the County of Strafford aforesaid with force and arms,

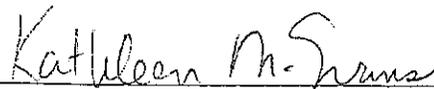
DID RECKLESSLY CAUSE BODILY INJURY TO ANOTHER BY MEANS OF A DEADLY WEAPON IN THAT SHANNON BOYLE DID CAUSE BRIAN PAQUETTE TO SUFFER A LACERATION TO HIS SCALP AND/OR ABRASIONS TO HIS SHOULDER AND BACK WHEN THE MOTOR VEHICLE SHE WAS DRIVING CRASHED INTO THE MOTOR VEHICLE BRIAN PAQUETTE WAS DRIVING, SHANNON BOYLE'S MOTOR VEHICLE BEING A DEADLY WEAPON, AS DEFINED IN RSA 625:11, V, IN THE MANNER IN WHICH IT WAS USED

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

This is a true bill.



Assistant County Attorney



Foreperson

SHANNON L. BOYLE DOB: SEPTEMBER 16, 1980 POB: UNKNOWN SSN: 001-74-5665

OFFENSE: SECOND DEGREE ASSAULT CLASS: B RSA: 631:2, I(b)

MAX PENALTY: 3½ -7 Years NHSP; \$4,000.00 Fine

DJL

AI

6.
178-5-369

Strafford County

Superior Court

No. 08-S-369

RETURN FROM SUPERIOR COURT

Name: Shannon L. Boyle, Sawyer Mill Apts #346, Dover, NH

DOB: 9/16/80

Indictment Waiver Information Complaint

Offense: Second Degree Assault RSA: 631:2,1(b)

Date: 9/20/07

Disposition: Guilty By Plea Jury Court

T/N: N/A

Conviction: Felony Misdemeanor

Sentence: A finding of GUILTY is entered. The defendant is sentenced to the House of Corrections for a period of 12 months. This sentence is to be served as follows: All of the sentence is suspended during good behavior and compliance with all terms and conditions of this order. Any suspended sentence may be imposed after a hearing at the request of the State brought within 2 year(s). The defendant is placed on probation for a period of 2 year(s), upon the usual terms of probation and any special terms of probation determined by the Probation/Parole Officer. Effective: Forthwith. The defendant is ordered to report immediately to the nearest Probation/Parole Field Office. **Violation of probation, conditional discharge or any terms of this sentence may result in revocation of probation or discharge and imposition of any sentence within the legal limits for the underlying offense.** Other conditions of this sentence are: The defendant is ordered to make restitution of TBD within 60 days plus statutory 17% administrative fee. The defendant is ordered to be of good behavior and comply with all the terms of this sentence. Complete Safe Driver Course; Complete Anger Management counseling; Continue mental health counseling and take all prescribed mental health medications, comply with all orders concerning the civil case.

2/27/09

Date

Hon. Kenneth C. Brown

Presiding Justice

Julie W. Howard

Clerk

MITTIMUS

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

Attest: _____
Clerk

Date

SHERIFF'S RETURN

I delivered the defendant to the **County House of Correction** and gave a copy of this order to the Superintendent.

Date

Sheriff

cc: State Police
 Stephen Jeffco, Esq.

Dept. of Corr.

Pros. Attorney

A2

The State Of New Hampshire

Strafford, SS.

Superior Court

Indictment

At the Superior Court, holden at Dover, within and for the County of Strafford aforesaid on the EIGHTEENTH day of APRIL in the year of our Lord two thousand EIGHT,

The Grand Jurors for the State of New Hampshire, upon their oath, present that:

SHANNON L. BOYLE

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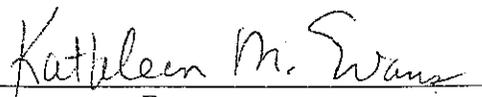
DID RECKLESSLY CAUSE BODILY INJURY TO ANOTHER BY MEANS OF A DEADLY WEAPON IN THAT SHANNON BOYLE DID CAUSE SANDRA NATOLI TO SUFFER ABRASIONS TO HER LEGS AND/OR CONTUSION TO HER CHEST AND/OR A CHIPPED TOOTH WHEN THE MOTOR VEHICLE SHE WAS DRIVING CRASHED INTO THE MOTOR VEHICLE IN WHICH SANDRA NATOLI WAS A PASSENGER, SHANNON BOYLE'S MOTOR VEHICLE BEING A DEADLY WEAPON, AS DEFINED IN RSA 625:11, V, IN THE MANNER IN WHICH IT WAS USED

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

This is a true bill.



Assistant County Attorney



Foreperson

SHANNON L. BOYLE **DOB:** SEPTEMBER 16, 1980 **POB:** UNKNOWN **SSN:** 001-74-5665

OFFENSE: SECOND DEGREE ASSAULT **CLASS:** B **RSA:** 631:2. I(b)

MAX PENALTY: 3½ -7 Years NHSP; \$4,000.00 Fine

DJL

A3

8.

178-5-370

The State of New Hampshire

Strafford County

Superior Court

No. 08-S-370

RETURN FROM SUPERIOR COURT

Name: Shannon L. Boyle, Sawyer Mill Apts #346, Dover, NH

DOB: 9/16/80

Indictment Waiver Information Complaint

Offense: Second Degree Assault RSA: 631:2,1(b)

Date: 9/20/07

Disposition: Guilty By Plea Jury Court

T/N: N/A

Conviction: Felony Misdemeanor

Sentence: A finding of GUILTY is entered. The defendant is sentenced to the House of Corrections for a period of 12 months. This sentence is to be served as follows: All of the sentence is suspended during good behavior and compliance with all terms and conditions of this order. Any suspended sentence may be imposed after a hearing at the request of the State brought within 2 year(s). The defendant is placed on probation for a period of 2 year(s), upon the usual terms of probation and any special terms of probation determined by the Probation/Parole Officer. Effective: Forthwith. The defendant is ordered to report immediately to the nearest Probation/Parole Field Office. **Violation of probation, conditional discharge or any terms of this sentence may result in revocation of probation or discharge and imposition of any sentence within the legal limits for the underlying offense.** Other conditions of this sentence are: The defendant is ordered to make restitution of TBD within 60 days plus statutory 17% administrative fee. The defendant is ordered to be of good behavior and comply with all the terms of this sentence. Complete Safe Driver Course; Complete Anger Management Counseling; Continue mental health counseling and take all prescribed mental health medications, comply with all orders concerning the civil case.

2/27/09

Date

Hon. Kenneth C. Brown

Presiding Justice

Julie W. Howard

Clerk

MITTIMUS

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

Attest: _____

Clerk

SHERIFF'S RETURN

I delivered the defendant to the **County House of Correction** and gave a copy of this order to the Superintendent.

_____ Date

_____ Date

Sheriff

cc: State Police
 Stephen Jeffco, Esq.

Dept. of Corr.

Pros. Attorney

A4

9.

The State Of New Hampshire

Strafford, SS.

Superior Court

Indictment

At the Superior Court, holden at Dover, within and for the County of Strafford aforesaid on the EIGHTEENTH day of APRIL in the year of our Lord two thousand EIGHT,

The Grand Jurors for the State of New Hampshire, upon their oath, present that:

SHANNON L. BOYLE

of SAWYER MILL APTS #346, DOVER, New Hampshire, in the County of Strafford, on or about the TWENTIETH day of SEPTEMBER in the year of our Lord two thousand SEVEN at ROCHESTER in the County of Strafford aforesaid with force and arms,

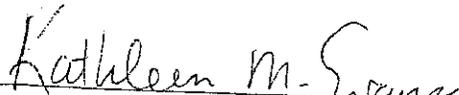
DID RECKLESSLY ENGAGE IN CONDUCT WHICH PLACED OR MAY HAVE PLACED ANOTHER IN DANGER OF SERIOUS BODILY INJURY IN THAT SHANNON BOYLE DID DRIVE A MOTOR VEHICLE AT AN EXCESSIVE RATE OF SPEED WHICH PLACED OR MAY HAVE PLACED SANDRA NATOLI, A PASSENGER IN A MOTOR VEHICLE ON THE SAME ROADWAY ON WHICH SHANNON BOYLE WAS DRIVING, IN DANGER OF SERIOUS BODILY INJURY, SHANNON BOYLE'S VEHICLE BEING A DEADLY WEAPON, AS DEFINED IN RSA 625:11, V, IN THE MANNER WHICH IT WAS USED

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

This is a true bill.



Assistant County Attorney



Foreperson

SHANNON L. BOYLE DOB: SEPTEMBER 16, 1980 POB: UNKNOWN SSN: 001-74-5665

OFFENSE: RECKLESS CONDUCT CLASS: B RSA: 631:3, I & II

MAX PENALTY: 3½ -7 Years NHSP; \$4,000.00 Fine

DJL

A5

10.

08 0 21

The State of New Hampshire

Strafford County

Superior Court

No. 08-S-371

RETURN FROM SUPERIOR COURT

Name: Shannon L. Boyle, Sawyer Mill Apts #346, Dover, NH

DOB: 9/16/80

Indictment Waiver Information Complaint

Offense: Reckless Conduct RSA: 631:3, I & II

Date: 9/20/07

Disposition: Guilty By Plea Jury Court

T/N: N/A

Conviction: Felony Misdemeanor

Sentence: A finding of GUILTY is entered. The defendant is sentenced to the New Hampshire State Prison for not more than 3 year(s), nor less than 1 1/2 year(s). There is added to the minimum sentence a disciplinary period equal to 150 days for each year of the minimum term of the defendant's sentence, to be prorated for any part of the year. This sentence is to be served as follows: All year(s) of the minimum sentence is suspended; All year(s) of the maximum sentence is suspended. Suspensions are conditioned upon good behavior and compliance with all of the terms of this order. Any suspended sentence may be imposed after a hearing brought by the State within 10 year(s) of today's date. The sentence is consecutive to 08-S-369; 370. The following conditions of this sentence are applicable whether incarceration is suspended, deferred or imposed or whether there is no incarceration ordered at all. Failure to comply with these conditions may result in the imposition of any suspended or deferred sentence. The defendant is ordered to be of good behavior and comply with all the terms of this sentence.

2/27/09

Date

Hon. Kenneth C. Brown

Presiding Justice

Julie W. Howard

Clerk

MITTIMUS

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

Attest: _____
Clerk

_____ Date

SHERIFF'S RETURN

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

_____ Date

_____ Sheriff

cc: State Police
 SRB

Dept. of Corr.
 Stephen Jeffco, Esq

Pros. Attorney

AG

11.

The State Of New Hampshire

Strafford, SS.

Superior Court

Indictment

At the Superior Court, holden at Dover, within and for the County of Strafford aforesaid on the EIGHTEENTH day of APRIL in the year of our Lord two thousand EIGHT,

The Grand Jurors for the State of New Hampshire, upon their oath, present that:

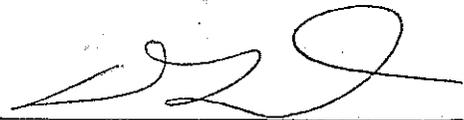
SHANNON L. BOYLE

of SAWYER MILL APTS #346, DOVER, New Hampshire, in the County of Strafford, on or about the TWENTIETH day of SEPTEMBER in the year of our Lord two thousand SEVEN at ROCHESTER in the County of Strafford aforesaid with force and arms,

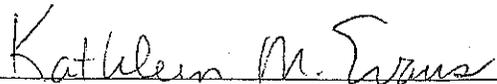
DID RECKLESSLY ENGAGE IN CONDUCT WHICH PLACED OR MAY HAVE PLACED ANOTHER IN DANGER OF SERIOUS BODILY INJURY IN THAT SHANNON BOYLE DID DRIVE A MOTOR VEHICLE AT AN EXCESSIVE RATE OF SPEED WHICH PLACED OR MAY HAVE PLACED BRIAN PAQUETTE, ANOTHER MOTORIST ON THE SAME ROADWAY ON WHICH SHANNON BOYLE WAS DRIVING, IN DANGER OF SERIOUS BODILY INJURY, SHANNON BOYLE'S VEHICLE BEING A DEADLY WEAPON, AS DEFINED IN RSA 625:11, V, IN THE MANNER WHICH IT WAS USED

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Assistant County Attorney



Foreperson

SHANNON L. BOYLE DOB: SEPTEMBER 16, 1980 POB: UNKNOWN SSN: 001-74-5665

OFFENSE: RECKLESS CONDUCT CLASS: B RSA: 631:3, I & II

MAX PENALTY: 3½ -7 Years NHSP; \$4,000.00 Fine

DJL

A7

12.

08-5-772

The State of New Hampshire

Strafford County

Superior Court

No. 08-S-372

RETURN FROM SUPERIOR COURT

Name: Shannon L. Boyle, Sawyer Mill Apts #346, Dover, NH

DOB: 9/16/80

Indictment Waiver Information Complaint

Offense: Reckless Conduct RSA: 631:3, I & II

Date: 9/20/07

Disposition: Guilty By Plea Jury Court

T/N: N/A

Conviction: Felony Misdemeanor

Sentence: A finding of GUILTY is entered. The defendant is sentenced to the New Hampshire State Prison for not more than 3 year(s), nor less than 1 1/2 year(s). There is added to the minimum sentence a disciplinary period equal to 150 days for each year of the minimum term of the defendant's sentence, to be prorated for any part of the year. This sentence is to be served as follows: All year(s) of the minimum sentence is suspended; All year(s) of the maximum sentence is suspended. Suspensions are conditioned upon good behavior and compliance with all of the terms of this order. Any suspended sentence may be imposed after a hearing brought by the State within 10 year(s) of today's date. The sentence is consecutive to 08-S-369; 370. The following conditions of this sentence are applicable whether incarceration is suspended, deferred or imposed or whether there is no incarceration ordered at all. Failure to comply with these conditions may result in the imposition of any suspended or deferred sentence. The defendant is ordered to be of good behavior and comply with all the terms of this sentence.

2/27/09

Date

Hon. Kenneth C. Brown

Presiding Justice

Julie W. Howard

Clerk

MITTIMUS

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

Attest: _____

_____ Date

_____ Clerk

SHERIFF'S RETURN

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

_____ Date

_____ Sheriff

cc: State Police
 SRB

Dept. of Corr.
 Stephen Jeffco, Esq.

Pros. Attorney

AG

13.

