

**THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
NH CIRCUIT COURT**

Hillsborough County

9th Circuit – District Division – Merrimack

State v. Benjamin Sargent

457-2023-CR-00036

VERDICT

The state charged the defendant with violation of RSA 643:1, official oppression, for violating the Litchfield Police Department's ("LPD's") and the Town of Litchfield's official workplace sexual harassment policies. This is a class B misdemeanor where the maximum penalty is a \$1,200 fine plus a 24% penalty assessment. Attorneys Joe Fincham and Audriana Mekula represented the state and Attorney Eric Wilson represented the defendant.

The court heard testimony on March 23, 2023 and April 21, 2023 and took the matter under advisement. State's Exhibits 1, 2, 5, 6 and 7 were entered as full exhibits. Defendant's April 18, 2023 motion to seal the notice of potential sequestration order violation was granted from the bench on April 21, 2023 and the sound recording of the proceedings on that notice in Courtroom 1 are sealed. The court heard testimony from Attorney Talesha Saint-Marc, Litchfield Police Sergeant Dennis Tessier, the victim, T.D., Litchfield Police Captain Thomas Scotti, and the defendant, who is the Litchfield Police Chief currently on administrative leave.

RSA 643:1 states that "[a] public servant, as defined in RSA 640:2, II, is guilty of a misdemeanor if, with a purpose to benefit himself or another or to harm another, he knowingly commits an unauthorized act which purports to be an act of his office; or knowingly refrains from performing a duty imposed on him by law or clearly inherent in the nature of his office."

The state alleges that workplace sexual harassment is an "unauthorized act" because it is prohibited by the LPD's sexual harassment policy (Exhibit 5). The policy, as applicable to the facts adduced at trial, prohibits "[u]nwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when . . . [t]he conduct has the purpose or effect of unreasonably interfering with an employee's work performance or creating an intimidating, hostile or offensive working environment."

The court finds the following facts from the credible testimony from the witnesses at trial:

1. At the relevant times, the defendant was the Chief of LPD.
2. The victim started in or about October 2021 as a full-time probationary LPD police officer.
3. Between October and December of 2021, the victim was the only female officer at the LPD.
4. The victim described the LPD as “overall very welcoming” and “much more of the type of department [she] wanted to be a part of” with “a nice, more relaxed environment”.
5. The defendant regularly texted and/or called officers while he was off duty and while the officers were on duty, “to check in with officers, to get to know officers, to discuss what’s going on with work, to discuss cases, discuss their family life, share my family stories. Officers who are working late night shifts I have always enjoyed calling . . . I know what it’s like at 3:30-4:00 in the morning when you have no one to talk to, and someone calls and checks in. It’s nice to have a conversation and I always enjoy talking to the people that I work with.”
6. The defendant had personal friendships with some LPD officers.
7. The defendant took the week off between Christmas and New Year’s.
8. The defendant started or re-started drinking around the holidays.
9. Or about Thursday, December 30, 2021, the defendant’s wife took the children and left him alone at the family home.
10. The defendant started drinking on the morning of December 31, 2021. His wife was not coming back that day.
11. The defendant spoke with a person on the Alcoholics Anonymous (“AA”) help line. The person on the line likely believed that the defendant might be suicidal and notified the authorities.
12. The alert from the AA help line reached the local first responders. Through miscommunication, a real-life game of “telephone” or otherwise, the call with the AA help line turned into a rumor or narrative that the defendant was driving around drunk with a gun in his mouth.
13. The state presented no evidence at trial to suggest that the defendant was doing anything of the sort on December 31, 2021.
14. Retired LPD Captain David Donnelly, Captain Scotti and Sergeant Tessier went to the defendant’s home to check in on him. They stayed with the defendant throughout the day and helped him sober up. At or around 4:00 or 5:00 PM, Captain Scotti and Sergeant Tessier were the last to leave the defendant’s home.

15. The victim was scheduled to work a 3:00-11:00 PM shift that evening. She had a “quick turnaround” before her next shift on January 1, 2022 starting at 7:00 AM.
16. When the victim arrived at the LPD on the afternoon of December 31, 2021 to start her shift, she saw that some officers’ personal vehicles were still at the LPD and their cruisers were not in the parking lot. Officer George Ivas said something to the effect of she didn’t want to know or would find out later, and she got a similar response from an inquiry to Sergeant Tessier.
17. Sometime after the last LPD officer left his home on the afternoon of December 31, 2021, the defendant started calling LPD officers to set the record straight about the rumors.
18. The defendant called the victim and others to give his account of the day’s events.
19. The defendant and victim communicated by text and phone up until the end of her shift at 11:00 PM.
20. The communications with the defendant re-started when the victim went on duty on the morning of January 1, 2022.
21. Exhibit 1 suggests that the defendant initially forgot that the victim was on duty on the morning of January 1, 2022.
22. The defendant made directly and indirectly suggestive comments to the victim. These comments included, but were not limited to, comments in which he: (1) referred to having a “[T.D.] problem” but was coy about explaining to the victim what he meant by that¹; (2) expressed a romantic interest in her; (3) indirectly suggested that he would want a romantic relationship with the victim because his marriage was in trouble and if the victim’s marriage was also in trouble; (4) expressed disappointment when the victim confirmed that she and her spouse were “good”; (5) stated that he was “pulling rank” and the victim had to answer his questions; and (6) asked her to run an errand, which the victim declined, to deliver gifts from a member of the public, which would have brought her to his home.
23. Interspersed throughout these “disorganized” and “scattered” comments, the defendant said encouraging things about what the victim could accomplish at LPD if she “stuck with him”, such as getting a canine, going back to school and maybe becoming chief someday.

¹ The court did not find particularly credible the defendant’s testimony about what he really meant by the phrase “[T.D.] problem”, i.e., the victim had problematic complaints about the upcoming schedule. The text messages about scheduling (Exhibit 1) that ran parallel to the phone calls were light-hearted and jovial. They were too light-hearted and jovial to be labeled a “problem” in the way that Captain Scotti credibly described the defendant’s everyday shorthand use of the term “a problem” as it relates to a “circumstance” at work, such as a “budget problem”. The court finds the victim’s testimony credible on this point, and that the back-and-forth about having a “[T.D.] problem” was ultimately sexual in nature.

24. In light of the substantial power imbalance between a police chief and a probationary officer on the job less than three months, the fact that the victim promptly reported the comments, and the victim's credible testimony, the defendant's comments were both "unwelcome" and created an intimidating and/or offensive work environment. The defendant knew or should have known that any failure by the victim to immediately protest and shut down the comments had to be to some degree related to the power that the defendant held over the victim's career.

The state has proven beyond a reasonable doubt that: (1) at the time of the charged conduct, the defendant was a public servant as defined by RSA 640:2, II; (2) texting and having frequent, extended telephone calls with officers while the officers were on duty² are acts of his office, i.e., "to check in with officers, to get to know officers, to discuss what's going on with work, to discuss cases, discuss their family life, share my family stories . . ."; (3) even accounting for the "relaxed" atmosphere of a small police department, the defendant's verbal conduct was of a sexual nature and it created an intimidating or offensive work environment for the victim; and (4) this conduct was prohibited by written policies derived from statutes that prohibit workplace sexual harassment.³

The remaining issue is whether the state has proven beyond a reasonable doubt that the defendant had "a purpose to benefit himself or another or to harm another" when he violated his department's sexual harassment policies. The state has not proven beyond a reasonable doubt that the defendant had a purpose or a specific intent to harm the victim, even though that was the result. The issue is whether the phrase "to benefit himself" in RSA 643:1 is broad enough to include the momentary personal, emotional or psychological benefit, if any, that the defendant sought to achieve. "Benefit" in RSA 643:1 is not limited to pecuniary benefit as it is in the bribery statute, RSA 640:2, II. This suggests the legislature intended a broader reading of "benefit".

To the defendant going through a personal crisis, the benefit he sought was that of a sympathetic listener available during her shift to provide him with company, emotional support, reassurance, validation and other intangible support one would expect from a close personal friend. The defendant said that he was in love with the victim and suggested that he viewed her as a potential replacement romantic partner following what he believed to be the impending end of his marriage. This is enough of a "benefit" under RSA 643:1. See, e.g., *State v. Parker*, 592 A.2d 228, 235 (N.J. 1991) (holding that

² The calls yielded to police business, such as calls for service, traffic stops, etc.

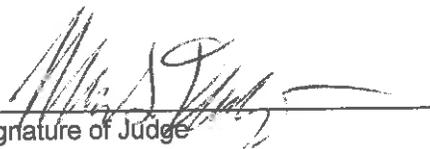
³ Statutes such as RSA 354-A:7 and 42 U.S.C. § 2000e-2 and the related regulations and case law provide a substantial available body of knowledge by which the defendant had a chance to regulate his conduct. See *State v. Grimes*, 561 A.2d 647, 654 (N.J. Super. Ct. App. Div. 1989).

teacher's personal gratification from exposing her students to sexually explicit magazines and discussing her sexual proclivities and those of others is a benefit under the New Jersey official misconduct statute); *People of the Territory of Guam v. Camacho*, 103 F.3d 863, 867 (9th Cir. 1996) (holding that a "momentary sexual gratification" from a "crude gesture" is a benefit under official misconduct statute); *State v. Quezada*, 953 A.2d 1206, 1208 (N.J. Super. Ct. App. Div. 2008) (holding that the "joy or gratification" of participating in a response to a false alarm was a benefit under the New Jersey official misconduct statute); *People v. Feerick*, 241 A.D.2d 126, 671 N.Y.S.2d 13, 21-22 (N.Y. App. Div. 1998) (holding that ending the embarrassment and jeopardy from criminals taunting officers using a lost police radio, was a benefit under the New York official misconduct statute).

The state has met all elements of the offense beyond a reasonable doubt, and the court issues a verdict of guilty. The parties waived a sentencing hearing, so a sentencing order is issued herewith.

April 26, 2023

Date


Signature of Judge

Mark S. Derby

Printed Name of Judge

**THE STATE OF NEW HAMPSHIRE
COMPLAINT**

RECEIVED
JAN 12 2023
9th CIRCUIT - MERRIMACK

Case Number: _____

Charge ID: _____

<input type="checkbox"/> VIOLATION	MISDEMEANOR	<input type="checkbox"/> CLASS A	<input checked="" type="checkbox"/> CLASS B	<input type="checkbox"/> UNCLASSIFIED (non-person)	
	FELONY	<input type="checkbox"/> CLASS A	<input type="checkbox"/> CLASS B	<input type="checkbox"/> SPECIAL	<input type="checkbox"/> UNCLASSIFIED (non-person)

You are to appear at the: **9th Circuit Court – District Division – Merrimack**
 address: **4 Baboosic Lake Road, Merrimack, NH**
 in: **Hillsborough County**
 on:

Under penalty of law to answer to a complaint charging you with the following offense:

THE UNDERSIGNED COMPLAINS THAT:

<u>SARGENT</u>	<u>BENJAMIN</u>	<u>ERIC</u>
Last Name	First Name	Middle
<u>16 Adam Dr</u>	<u>Hudson</u>	<u>03051</u>
Address	City	State
<u>MALE</u>	<u>WHITE</u>	<u>BRO</u>
Sex	Race	Eye Color
<u>11/06/1979</u>	<u>NHL12556912</u>	<u>BRO</u>
DOB	License #:	Hair Color
<input type="checkbox"/> COMM. VEH.	<input type="checkbox"/> COMM. DR. LIC.	<input type="checkbox"/> HAZ. MAT.
		<input type="checkbox"/> 16+PASSENGER

AT: Litchfield, New Hampshire

On or about December 31, 2021, to January 1, 2021, in the above county and state, did commit the offense of:

RSA Name: **OFFICIAL OPPRESSION**
 Contrary to RSA: **643:1**
 Inchoate:
 (Sentence Enhancer):

And the laws of New Hampshire for which the defendant should be held to answer, in that:

1. **Benjamin Sargent;**
2. **A public servant, as defined in RSA 640:2, II;**
3. **Knowingly committed an unauthorized act which purported to be an act of his office;**
4. **With a purpose to benefit himself or another or to harm another;**
5. **By sexually harassing a subordinate, T.D., in violation of official policy.**

Additional allegations are attached

against the peace and dignity of the State.

Date: December 21, 2022


 Prosecutor's Signature

273596 Joe M. Fincham II
 NH Bar ID# Printed Name

NH Attorney General
 Prosecuting Attorney's Office

457-2023-CR-36

205 W 18c

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
<https://www.courts.nh.gov>

Court Name: 9th Circuit - District Division - Merrimack

Case Name: State v. Benjamin Sargent

Case Number: 457-2023-CR-00036 Charge ID Number: 2051178C

(if known)

DISPOSITION AND SENTENCING FORM

PLEA: Guilty Not Guilty No Contest No Plea

Change Plea To: No Contest Guilty

FINDING: Guilty See findings in narrative issued herewith Not Guilty Dismissed

Complaint placed on file With finding Without finding

and not to be brought forward after _____ on the below conditions of this order.

PROBABLE CAUSE: Found Not Found Hearing Waived _____ (date)

Bail \$ _____ Committed See attached bail order

SENTENCE:

FINE

Notice of Fine to issue. Payment due in 30 days.

The defendant is fined \$ 1,200, plus statutory penalty assessment of \$ 288

\$ _____ of the fine is: suspended deferred for _____ months years

\$ _____ of the statutory penalty assessment is:

suspended deferred for _____ months years

The defendant shall perform _____ hours of community service to satisfy the fine.

This is a domestic violence conviction under RSA 631:3 reckless conduct, or RSA 633:3-a interference with freedom – stalking, requiring the mandatory imposition of a **\$50.00 fine** which may not be reduced, suspended or discharged by imprisonment.

COMMITMENT

The defendant is sentenced to the House of Corrections for a period of _____ days months

Pretrial confinement credit: _____ days.

This sentence is to be served as follows:

Stand committed Commencing _____

_____ days months of the sentence are suspended deferred to _____ (date) on the below conditions.

The commitment is consecutive to _____

RESTITUTION

The defendant is ordered to make restitution to _____

in the amount of \$ _____

Payable through the Department of Corrections as directed by the probation/parole officer plus the statutory administrative fee.

Other: _____

Case Name: State v. Benjamin Sargent

Case Number: 457-2023-CR-00036

Charge ID Number: 2051178C

DISPOSITION AND SENTENCING FORM

PROBATION

The defendant is placed on probation for a period of ____ months year(s), upon the usual terms of probation and any special terms of probation determined by the probation/parole officer.

Effective: Immediately Upon Release

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

OTHER CONDITIONS OF SUSPENDED OR DEFERRED SENTENCE

The defendant is ordered to be of good behavior and comply with all the terms of this sentence for a period of ____ days months years. Good behavior is defined as not committing any act(s) that would constitute a felony, misdemeanor or major motor vehicle violation as defined in RSA 259:39 (I).

The defendant's license privilege to operate in New Hampshire is
 Suspended Revoked for a period of ____ days months years
effective _____

The loss of license is consecutive to _____

The defendant shall meaningfully participate in LADC/mental health/_____
evaluation and follow all recommendations including, but not limited to, counseling, treatment and education programs. Written proof of the evaluation shall be provided to the prosecutor and the court by _____ (date) and written proof of compliance with the recommendations shall be provided by _____ (date).

The defendant shall perform ____ hours of community service and provide proof to the State by _____ (date).

The defendant is ordered to have no contact with _____ either directly or indirectly, or through third parties, including but not limited to contact in-person, by mail, phone, e-mail, text message, social networking sites and/or electronic communications for a period of ____ days months years

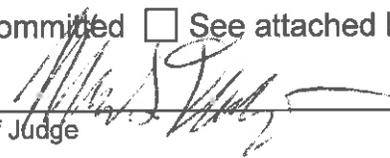
The defendant is not allowed to enter _____ (location) for a period of ____ years.

Other:

APPEAL _____ (date) Bail \$ _____ Committed See attached bail order

4/26/2023

Date


Signature of Judge

Mark S. Derby
Printed Name of Judge