

State of New Hampshire
Supreme Court

NO. 06-_____

STATE OF NEW HAMPSHIRE

v.

STEVE GUBITOSI

NOTICE OF MANDATORY APPEAL OF STEVE GUBITOSI
Pursuant to Supreme Court Rule 7(1)(A)

By: Joshua L. Gordon, Esq.
Law Office of Joshua Gordon
26 S. Main St., #175
Concord, N.H. 03301
(603) 226-4225
www.AppealsLawyer.net

State of New Hampshire Supreme Court

NOTICE OF MANDATORY APPEAL

This form should be used for an appeal from a final decision on the merits issued by a superior court, district court, probate court or family division court except for a decision from: (1) a post-conviction review proceeding; (2) a proceeding involving the collateral challenge to a conviction or sentence; (3) a sentence modification or suspension proceeding; (4) an imposition of sentence proceeding; (5) a parole revocation proceeding; (6) a probation revocation proceeding; or (7) a landlord/tenant action or a possessory action filed under RSA chapter 540.

1. COMPLETE CASE TITLE AND DOCKET NUMBERS IN TRIAL COURT

State of New Hampshire v. Steve Gubitosi
No. 2003-S-0405, 407, 408, 411

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

Merrimack County Superior Court (*McGuire, J., Fitzgerald, J.*)

3A. NAME & ADDRESS OF APPEALING PARTY

Steve Gubitosi
5 Howard St.
Pembroke, NH 03275

3B. NAME, FIRM, ADDRESS & TELEPHONE
NUMBER OF APPELLANT'S COUNSEL

Joshua L. Gordon
Law Office of Joshua Gordon
26 S. Main St., #175
Concord, N.H. 03301
(603) 226-4225
www.AppealsLawyer.net

4A. NAME & ADDRESS OF OPPOSING PARTY

Wayne Coull2
Belknap County Attorney
64 Court St.
Laconia, NH 03246

4B. NAME, FIRM, ADDRESS, & TELEPHONE
NUMBER OF OPPOSING COUNSEL

Office of the Attorney General
33 Capitol St.
Concord, NH 03301
(603) 271-3658

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

Bill Egge, Esq.
Chris Soufert Law Office
59 Central St.
Franklin, NH 03235

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

Clerk's Notice of Final Order:
November 22, 2005

DATE OF CLERK'S NOTICE OF DECISION
ON POST-TRIAL MOTION

March 17, 2006

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

12 months committed consecutive to
sentence on similar charge in Belknap county,
counseling as directed by probation, no
contact with certain persons. On companion
charges, 12 months committed, consecutive,
suspended for 5 years.

8. APPELLATE DEFENDER REQUESTED?

No.

9. IS ANY PART OF CASE CONFIDENTIAL? IDENTIFY WHICH PART AND CITE AUTHORITY

There is no known basis for confidentiality.

10. IF ANY PARTY IS A CORPORATION, NAMES OF PARENTS, SUBSIDIARIES & AFFILIATES

n/a

11. DO YOU KNOW ANY REASON WHY ONE OR MORE SUPREME COURT JUSTICE WOULD BE DISQUALIFIED FROM THIS CASE?

There is no known basis for recusal.

IF YES, FILE MOTION FOR RECUSAL, SUPREME COURT RULE 21A

12. IS A TRANSCRIPT OF TRIAL COURT PROCEEDINGS NECESSARY?

Yes.

IF YES, COMPLETE TRANSCRIPT ORDER FORM

13. LIST SPECIFIC QUESTIONS TO BE RAISED ON APPEAL, EXPRESSED IN TERMS AND CIRCUMSTANCES OF THE CASE, BUT WITHOUT UNNECESSARY DETAIL. STATE EACH QUESTION IN A SEPARATELY NUMBERED PARAGRAPH.
- I. Did the Merrimack County Superior Court lack jurisdiction over crimes which were alleged to have occurred in Merrimack County, when they were prosecuted by the Belknap County Attorney without special appointment by the court pursuant to RSA 7:33 and RSA 661:9, III, in accord with the New Hampshire Constitution, pt. I, art. 17 and pt. II, art. 71?
 - II. Did the court err in not dismissing a charge of harassment, as it is unconstitutional on its face and as applied given this Court's holdings in *State v. Brobst*, 151 N.H. 420 (2004) and *State v. Pierce*, ___ N.H. ___ (decided Dec. 2, 2005)?
 - III. Is the harassment statute unconstitutionally vague and over-broad on its face and as applied in that it criminalizes "communications" and calls made at "inconvenient hours," when the alleged victim in this case was awake and making calls at those hours, the calls never reached the alleged victim but were left in voice-mail for retrieval at other hours, the calls did not result in a communication, and the purpose of the calls was to patch a faltering relationship?
 - IV. Should the court have quashed a warrant regarding phone records, and not allowed the records into evidence, as the warrant on which they were based requested an entire telephone history rather than the dates and times relevant to the allegations?
 - V. Should the court have quashed the warrant regarding telephone records, and not allowed the records into evidence, as the warrant sought out-of-state records, and the court thus had no jurisdiction?
 - VI. Did the court err in allowing into evidence telephone records through an employee of the phone company when the employee was not a keeper of the records and had no knowledge of their making, but was only capable of reading what appeared on the company's computer?
 - VII. Was there insufficient evidence for a conviction of stalking when it was based on the defendant being at public places when both he and the alleged victim had a long history of frequenting those public places, when there was no testimony that the alleged victim was placed in fear, and when the circumstances of the case would not place a reasonable person in fear?
 - VIII. Did the stalking complaint lack sufficient specificity when its allegations covered a broad swath of time
 - IX. Was the sentence imposed by the court illegal in that one sentence is contingent on another, and when the first case was dismissed, the contingent sentence no longer exists?

14. CERTIFICATIONS

I hereby certify that, upon information and belief, every issue specifically raised has been presented to the court below and has been properly preserved for appellate review by a contemporaneous objection or, where appropriate, by a properly filed pleading.

Joshua L. Gordon, Esq.

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

April 13, 2006

Joshua L. Gordon, Esq.

ATTACHMENTS

(1)	MITTIMUS, No. 03-S-405 & 407 (Nov. 22, 2005)	7
(2)	MITTIMUS, No. 03-S-408 & 411 (Nov. 22, 2005)	8
(2)	CLERK’S NOTICE , Order on Pending Motions (Mar. 17, 2006)	9
(2)	ORDER (Mar. 17, 2006)	10