

# Nichols & Churchill

## Attorneys at Law

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December 15, 2016

Portland Superior Court  
Unified Criminal Docket  
Stephanie Tarantino, Clerk  
142 Federal Street  
Portland, Maine 04101

**Re: State of Maine v. Gregory Nisbet**  
**Docket Number: CR-15-4030**

Dear Stephanie:

I have enclosed for filing Defendant's Motion For A New Trial. Please refer this motion to Justice Warren and set a date and time for a pre-hearing conference prior to the date for hearing. AAG Ellis is recovering from major foot surgery and will be unable to prepare for and/or attend a pre-hearing conference until mid-February.

Thank you for your invaluable assistance and attention to this matter.

Very Truly Yours,



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MATTHEW B. NICHOLS, ESQ.

MBN/jd

Cc: John Alsop, AAG  
Robert Ellis, AAG  
Gregory Nisbet

STATE OF MAINE  
CUMBERLAND, SS.

SUPERIOR COURT  
DOCKET NO.: CR-15-4030

STATE OF MAINE ]  
 ]  
v. ]  
 ]  
GREGORY NISBET ]  
 ]

**DEFENDANT’S MOTION FOR A NEW TRIAL  
PURSUANT TO RULE 33 OF THE MAINE  
RULES OF CRIMINAL PROCEDURE OR  
DISMISSAL OF COUNT 11**

Now Comes Defendant, by and through counsel, and moves this Honorable Court, pursuant to Rule 33 of the Maine Rules of Criminal Procedure, to grant him a new trial or dismissal of Count 11 of the Indictment, based upon the following.

1. That Defendant has attached hereto a memorandum entitled “Re: Policy for Clarification of Existing Egress Windows”.
2. That said memorandum was not provided to Defendant prior to or during the trial of this case. Further, Defendant did not become aware of the existence of said memorandum until more than one week after his sentencing hearing which occurred on November 29, 2016.
3. That said memorandum constitutes exculpatory evidence, to wit: the minimum size and dimensions required for windows in structures built before 1976 was reduced to five square feet.
4. That the size and dimension of the windows in Defendant’s building were exactly five square feet and met the minimum dimensions as set forth in said memorandum.
5. That the Court found that the required *mens rea* for Count 11 was “knowingly”. The Court found, in its findings of facts and conclusions of law, that the “knowingly” *mens rea* element was satisfied by Waldo Trott’s comments to Defendant that the windows in question appeared to be too small to be legal.
6. That the State was required to provide Defendant with all exculpatory evidence as well as any evidence that tended to create a reasonable doubt regarding the Defendant’s guilt. See Rule 16 of the Maine Rules of Criminal Procedure (the Court, in its discretion may impose sanctions including dismissal); *Brady v. Maryland*, 373 U.S. 83(1963). Also see *Arizona v. Youngblood*, 488 U.S. 51(1988) (requiring dismissal if “bad faith” is shown).
7. That if said memorandum, had been provided in a timely fashion, it probably would have changed the verdict in this case; further if a new trial is granted allowing the admission of said memorandum, the verdict on Count 11 will probably change from guilty to not guilty. The memorandum was discovered by Defendant after the trial and sentencing in this case. Said memorandum could not have been discovered by Defendant before the trial through the exercise of due diligence. Said memorandum and the information contained therein is obviously material to the elements of Count 11; said memorandum is not merely cumulative or impeaching of the State’s evidence; in the event that the Court finds said memorandum to, in fact, be cumulative or impeaching, it is clear that such impeachment would have resulted in a different verdict. *State v. Cookson*, 2003 ME 136, paragraph 29 (citing *State v. Ardolino*, 1999 ME 14, paragraph 8).
8. That, in this case, a “*Brady* violation” occurred. Thus, this Honorable Court must grant Defendant a new trial on Count 11 of the Indictment because “there is a reasonable probability


that, had the evidence been disclosed to the defense, the result of the proceeding would have been different". *Strickler v. Greene*, 527 U.S. 263,280-81(1999). This Honorable Court must find that a "likelihood of a different result is great enough to undermine the confidence in the outcome of the trial." *Smith v. Cain*, 132 U.S. CT. 627,630 (2012).

WHEREFORE, based upon the foregoing, Defendant respectfully requests that this Honorable Court grant him a new trial on Count 11 of the Indictment, or that it dismiss Count 11.

Dated: December 19, 2016

**NICHOLS & CHURCHILL, P.A.**

By:

  
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MATTHEW B. NICHOLS, ESQ.  
ATTORNEY FOR DEFENDANT  
Maine Bar Reg. No. 3403

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Motion Granted \_\_\_\_\_ Motion Denied \_\_\_\_\_ Motion Withdrawn \_\_\_\_\_



STATE OF MAINE  
Department of Public Safety  
Office of State Fire Marshal  
52 State House Station  
Augusta, ME 04333-0052

PAUL R. LePAGE  
GOVERNOR

JOHN E. MORRIS  
COMMISSIONER

JOSEPH THOMAS  
STATE FIRE MARSHAL

October 17, 2013

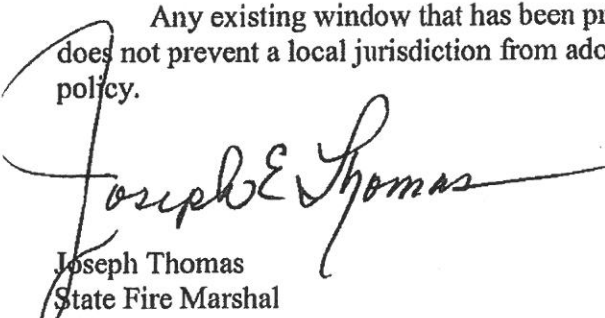
Re: Policy for clarification of existing egress windows

From: Joseph Thomas

Effective November 1, 2013, the following will be the policy for egress windows within existing buildings. Any building constructed after 1976 shall be required to comply with the requirement to provide 5.7 sq. ft. of net clear opening with a minimum width of 20" and minimum height of 24". The window shall also meet all other requirements for egress windows contained in the NFPA 101 Life Safety Code. Any replacement windows installed in a building constructed after 1976 shall be required to meet the net clear opening of 5.7 sq.ft. This shall be measured with the window in it's natural open position.

Any building constructed before 1976 will be allowed to meet the following specifications. The net clear opening would be allowed to meet the minimum 20" in width and 24" in height with a total net clear opening of 3.3 sq.ft; if the window is constructed of wood or vinyl and the overall window sash size meets a minimum of 5.0 sq. ft. The window shall meet all other requirements for an egress window as specified in the NFPA 101 Life safety Code as adopted by the Office of State Fire Marshal. Any replacement window installed in a building constructed prior to 1976 shall meet the same requirements as the existing windows and shall not reduce the existing net clear opening below the minimum requirements.

Any existing window that has been previously approved will be allowed to continue in use. This policy does not prevent a local jurisdiction from adopting a more restrictive policy under an ordinance or life safety policy.

  
Joseph Thomas  
State Fire Marshal

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