

● Private Investigator.
● Experience
● Nature of
● More About us
● Our Philosophy
● Why Choose Us?
● Recognition
● Training
● Payment Options
● Professional Training
● Our Cases
● Domestic Investigations
● Locating Assets
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● Locate and Rescue
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● Private Investigator in
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● Become a PI
● Criminal Defense
● PI Regulatory Board

Brian Chevalier is an innocent man. Here is why.

On September 2, 2010 Brian passed a polygraph test on the exact issues (“victim’s” testimony) that were used to convict him.

1. “When you were at the Jaffrey Pizza Barn, did you have a gun with you?”
NO
2. "When you were at the Jaffrey Pizza Barn, did you push Eileen's face against the steering column or wheel?" NO
3. "When you were at the Jaffrey Pizza Barn, did you hit Eileen in the face?"
NO
4. "When you were at the Jaffrey Pizza Barn, did you do anything to prevent Eileen from driving away?" NO

It was her testimony about these “facts” that lead to his conviction.

Almost 300 convicted people have been freed based upon new evidence, DNA. 44 of them in one state. The polygraph is not good enough in the eyes of the Court. Neither is statement analysis yet both are used daily in law enforcement. In NH if a paroled sex offender fails a polygraph he can go back to prison. If the test is good enough to put someone back in: **WHY NOT GOOD ENOUGH TO GET SOMEONE A NEW TRIAL.**

The Prosecutor’s duty “in a criminal prosecution is not that it shall win a case, but that justice shall be done.”

"better that ten guilty persons escape than that one innocent suffer"

expressed by the English jurist [William Blackstone](#) .

Also worthy of note. From her written statement:

"My husband departed and left my daughter in my charge. Luckily she and Brian are fond of each other "

If anything unusual was going on would the husband have left the daughter?

MORE important if she was in danger or had been in danger would she have allowed him to leave the daughter with her and her assailant. No mother in the world would place her daughter in such "danger" if the rape/assaults/restraint were true. She would have found some excuse for the husband to take the daughter.

● Alimony Reduction
● Training

Would a good mom allow the daughter to be deposited in the custody of her rapist kidnapper? This just does not pass the smell test when we apply common sense.

We = John Healy Private Investigator, Retired State Police Lt.
 Dan Dumaine, former Keene Officer, Private Investigator and Former State Representative
 Justin Nadeau, Esq. Attorney

An analysis of the victim's written statement (Please see further down for details) showed that it was a highly deceptive statement.

HISTORY:

I teach Statement Analysis. I was given a copy of the statement of the victim while teaching a class. It was obvious, immediately, that it was a highly deceptive statement. It was due to my analysis of the statement that we contacted Brian. **HE DID NOT COME TO US, WE WENT TO HIM.**

These links will take you to the data I hope you will read.

VICTIM'S STATEMENT

ANALYSIS

Statement Analysis is used widely in Law Enforcement, the Military and Federal Law Enforcement and Intelligence Agencies. It is taught at the NH Police Academy, the FBI Academy and around the world. I have taught it for many years.

MY CLASS HAS BEEN PRESENTED AT:

The Vermont Criminal Justice Academy
 NH Police Academy (Advanced SCAN)
 Vermont Bureau of the ATF
 Warner, NH Police Dept.
 Weare, NH Police Dept.
 Vermont Attorney General
 Vermont Defender General
 Bennington, Vermont Police Department
 And many other venues

TESTIMONY OF THE VICTIM DURING THE TRIAL.

First Keene Sentinel Article

Next Sentinel Article

Third Article

The real story from Brian. Consensual meeting and sex
Changes in her story. There were MANY.

Brian's Letter to the paper

Brian's Letter to the paper
My letter to the media for Brian

Please take a look at two sentences written by the victim herself.

“Brian XXXXX surprised me from behind an other internal door of the basement “

Later, at the end of the statement she then tells us:

“My estranged husband was not pleased that I had violated his homestead by permitting Brian in. “

In her own words she slips and tells us she permitted him in. As you read her statement look at page 4 line 48 and the text that follows. Note how often you see the word “we”. This word forms a voluntary partnership with another person in everyday usage. There is no “we” after a rape or violent attack.

Her testimony from the trial transcript: She was asked a question about being held against her will and the phone messages.

“Two cordless handsets had caller ID on them and he had walked me out into the other room where the answering machine was SO he could listen to see what kind of message was coming through SO if it’s somebody looking for me or someone that I might be expecting to come over.”

She does not say there was a message **or that he listened to one.** She said he could have.....if there were one. If there were a message she would have told us he listened AND she would have told us the content. **Investigation revealed there were no incoming messages.**

She never states that there was a message or that he listened to one. She expressed possibilities. Wishful thinking.

In her written statement, which is long and extremely detailed, she makes no mention of this. All she says is:

“Prior to his 11:00 PM curfew he had phoned his parole officer”

Even though not admissible in Court the polygraph and Statement Analysis are used as a tool everyday in law enforcement. Neither tool was applied here. When they are applied things change.

DUTY OF THE POLICE AND PROSECUTOR.....and all of us.

Berger v. U.S., 295 U.S. 78, 88 (1935).

“..... **Attorney** is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, **in a criminal prosecution is not that it shall win a case, but that justice shall be done.** As such, he is in a peculiar and very definite sense the servant of the law, the twofold aim of which is that guilt shall not escape nor innocence suffer. He may prosecute with earnestness and vigor—indeed, he should do so. But, while he may strike hard blows, he is not at liberty to strike foul ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one.”

United States v. Wade, 388 U.S. 218, 256 (1967) (Justice White, concurring and dissenting).

“ **Law enforcement officers** have the obligation to convict the guilty **and to make sure they do not convict the innocent.** They must be dedicated to making the criminal trial a procedure for the ascertainment of the true facts surrounding the commission of the crime. To this extent, our so-called adversary system is not adversary at all; nor should it be. But defense counsel has no comparable obligation to ascertain and present the truth. Our system assigns him a different mission. He must be and is interested in preventing the conviction of the innocent, but, absent a voluntary plea of guilty, we must also insist that he defend his client whether he is innocent or guilty. The state has the obligation to present the evidence. He need not present any witnesses to the police, or reveal any confidences of his client, or furnish any other information to help the prosecutor’s case. If he can confuse a witness, even a truthful one, or make him appear at a disadvantage, unsure or indecisive, that will be his normal course. Our interest in not convicting the innocent permits counsel to put the State to its proof, to put the State’s case in the worst possible light, regardless of what he thinks or knows to be the truth”.

<http://phillipbantz.wordpress.com/2010/03/18/judge-no-retrial-for-chevalier/>

Phillip Bantz's Blog

Crime Stories & More

Judge: No Retrial For Chevalier

March 18, 2010 by [phillipbantz](#)

By PHILLIP BANTZ

Sentinel Staff

The Keene Sentinel: March 18, 2010

The effort to free a man serving 10 to 30 years in prison for kidnapping a Jaffrey woman has hit a legal roadblock. A Superior Court judge rejected a request to give Brian R. Chevalier a new trial.

In 2004, Chevalier, 43, was acquitted in Cheshire County Superior Court of 10 other criminal charges — including aggravated sexual assault, criminal threatening and burglary — but a jury found him guilty of the kidnapping charge.

His ex-girlfriend testified during the trial that Chevalier held her against her will and repeatedly raped her at her Jaffrey home. The Sentinel does not identify alleged victims of sexual abuse.

Chevalier's attorney, Justin P. Nadeau of Portsmouth, who has volunteered his legal services, and two retired police officials — one is a state representative — believe the ex-girlfriend concocted the rape and kidnapping story.

They base their belief on her phone records from the night of the incident and a linguistic polygraph test of the statement she gave to police. The linguistic polygraph test, known as Scientific Content Analysis, or SCAN, is used by law enforcement officials to gauge the reliability of a person's retelling of an incident.

The ex-girlfriend testified during Chevalier's trial that Chevalier became angry while he was kidnapping her because she was receiving calls from an unidentified caller during a three and a half hour period, but her phone records show no calls during that time, according to Nadeau.

Her statement to police about the incident is inconsistent and she uses language that indicates she was not a victim, according to John M. Healy, a retired N.H. State Police lieutenant who teaches the SCAN technique.

One of Healy's students, state Rep. Dudley "Dan" Dumaine, R-Auburn, who is a former Keene police officer, also believes Chevalier is innocent.

Healy, Dumaine and Nadeau believe the ex-girlfriend concocted the story after her estranged husband walked in on her and Chevalier the morning after they spent the night together. They say she feared she'd lose custody of her daughter if her husband brought up her infidelity during divorce proceedings.

In an e-mail to The Sentinel, the woman said her now-ex-husband was engaged to another woman before the attack.

"I have never had a reason to lie. I did not lie," she wrote. "My divorce was final long before things went to trial. I could have refused to testify."

She declined requests for a phone or in-person interview.

Meanwhile, Nadeau filed a motion with Coos County Superior Court requesting that Chevalier be given a retrial based on the phone records and SCAN of the ex-girlfriend's statement. The case is playing out in Coos because Chevalier is imprisoned there.

Nadeau believes jurors will overturn the kidnapping conviction after they hear about the SCAN of Chevalier's ex-girlfriend's statement.

He also believes that Chevalier's original attorney, now-retired public defender Hampton W. Howard, was ineffective because he did not introduce the ex-girlfriend's phone records during the first trial. Howard could not be reached for comment.

Judge Peter H. Bornstein recently rejected Nadeau's request for a retrial. He concluded that Nadeau failed to prove that introducing the phone records or SCAN results would lead to a different outcome during a retrial.

Also, Howard cross-examined the ex-girlfriend during the first trial and convinced jurors that Chevalier was not guilty of 10 of the 11 charges he faced, which led Bornstein to determine that Howard handled the case effectively.

"For all of those charges, the victim was the only witness. ... It is apparent, given the outcome of the case, that the jury did not believe much of the victim's testimony," Bornstein wrote in his decision.

"The petitioner has not shown a reasonable probability that SCAN evidence, which would have served only to further impeach the victim, would have yielded a different result."

As for the phone records, another Superior Court judge, Timothy Vaughan, rejected a previous argument from Chevalier that introducing that evidence would have resulted in a

different verdict. Because Chevalier did not appeal Vaughan's decision, he waived further litigation on the argument, Bornstein ruled.

Calling Bornstein's decision "disappointing," Nadeau said he will appeal to the N.H. Supreme Court for a retrial. If that fails, he'll take his request to federal court.

Nadeau said Chevalier's case has been one of the most expensive cases he's ever handled for free, or pro bono, in his career.

"When you take on a case pro bono, you do it because you want to, because you believe in the cause," he said. "I believe in Brian Chevalier. I believe that at the end of the day he will have a fair hearing."

February 21, 2010



The ~~SUNDAY~~ Sentinel

Lawyer joins effort to free man

By PHILLIP BANTZ
Sentinel Staff

Advocates say new evidence backs convicted kidnapper

A Portsmouth lawyer has joined the effort to overturn a kidnapping conviction against Brian R. Chevalier, a Merrimack man who has been in prison since the conclusion of his 2004 trial in Cheshire County.

Justin Nadeau, who last year won a landmark state case that paved the way for grandparents seeking visitation rights with their grandchildren, has taken Chevalier's case pro bono.

Nadeau wants a judge to set aside Chevalier's kidnapping conviction and hold another trial on the charge.

He argued during a hearing Thursday at

Coos County Superior Court — the case is being heard in Coos because Chevalier is imprisoned there — that he has evidence that will prove Chevalier's innocence.

If Judge Peter Bornstein declines to give Chevalier a second trial, Nadeau could take his argument to the federal level at U.S. District Court in Concord.

"This can definitely end right here in state court," he said. "We're hoping."

A former Keene police officer, state Rep.

Dudley "Dan" Dumaine, R-Auburn, and Justin M. Healy, a retired N.H. State Police lieutenant, also believe Chevalier is innocent. They say the statement that Chevalier's accuser, an ex-girlfriend, gave to police doesn't add up.

She wrote that Chevalier ambushed her inside her Jaffrey home, then held her hostage for 21 hours while he threatened and sexually assaulted her.

Her name is being withheld because The Sentinel does not identify alleged victims of sexual abuse. Attempts to contact her have been unsuccessful.

Chevalier was tried on 11 charges ranging

See **LAWYER** on Page A-6



ASSOCIATED PRESS

CURL, CURL, CURL — Canada's Carolyn Darbyshire delivers a rock at the Vancouver Olympic Centre in Vancouver Friday.

Games

WHO NEEDS A SILVER

from aggravated sexual assault to criminal threatening, burglary and kidnapping.

After deliberating for two days, a jury acquitted Chevalier of every charge but kidnapping. Because Chevalier had prior convictions for property crimes, he qualified for an enhanced prison sentence and received 10 to 30 years.

Chevalier's lead public defender, Hampton W. Howard, had argued at trial that Chevalier's ex-girlfriend concocted the rape and kidnapping story. He said the woman panicked when her estranged husband and young daughter walked in on her and Chevalier the morning after they spent the night together.

The woman feared she'd lose custody of her daughter if her husband brought up her infidelity during divorce proceedings, so she lied about her relationship with Chevalier to protect her own interests, Howard said in court.

Dumaine and Healy also concluded that she concocted the rape and kidnapping story after analyzing the written statement she gave to police after the incident. They used a linguistic polygraph test known as Scientific Content Analysis, or SCAN, to study the statement.

Healy trains local, state and federal law enforcement officials to use the technique. He was teaching a seminar in Boston when a police officer brought Chevalier's ex-girlfriend's written statement to class.

Healy used the document, which did not identify Chevalier or his ex-girlfriend, as an example of a blatantly deceptive statement. Healy found that the writer was inconsistent in her retelling of the incident and she used language that indicated she was not a victim.

Dumaine, a former long-time Keene police officer, enrolled in one of Healy's seminars and, after seeing the statement, convinced Healy to track down Chevalier.

Nadeau said he trusts the SCAN technique and hopes a judge will allow Dumaine and Healy to testify about their findings if Chevalier gets a new trial.

Nadeau also wants to introduce the ex-girlfriend's phone records — evidence that, like the statement analysis, was first presented during the first trial.

Nadeau said Chevalier's

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— JUSTIN NADEAU

answering the home phone and ordered her to play back any messages that were left on her answering machine.

She said she received several calls between 5:30 and 9 p.m., and each call made Chevalier more agitated because the caller kept hanging up without leaving a message, according to Nadeau.

She said Chevalier threatened to kill her if she didn't tell him who was calling, and he dialed *69 in an attempt to identify the caller, Nadeau said.

But phone records show no calls were made to the ex-girlfriend's house during the 3½-hour timeframe she testified about, Nadeau said.

He said Howard, Chevalier's former public defender, should have presented the phone records during trial to contradict the ex-girlfriend's statements and "impeach her credibility."

"This newly discovered evidence, the SCAN analysis and the phone records, would have had a profound effect on the jury and would have resulted in acquittal at trial," Nadeau said.

Howard has retired from the public defender office. He did not return a message left at his residence.

In a March 2009 interview with The Sentinel, Chevalier proclaimed his innocence and said he was desperate to find a lawyer to fight for him.

"I'm not claiming to be an angel. I've done a lot of things. I've been in prison before," he said. "But I did not do this. I did not rape or kidnap anyone. I'm just hoping that somebody will take another look at this case."

PHILIP BARRON can be reached



**UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW HAMPSHIRE**

Brian R. Chevalier

v.

Civil No. 07-cv-236-SM

State of New Hampshire¹

O R D E R

Pro se petitioner Brian R. Chevalier has filed a petition for a writ of habeas corpus, pursuant to 28 U.S.C. § 2254, challenging his New Hampshire state court conviction (document no. 1). The petition is before me for preliminary review. See Rule 4 of the Rules Governing § 2254 Proceedings (“Habeas Rules”) (requiring initial review to determine whether the petition is facially valid); see also United States District Court for the District of New Hampshire Local Rule (“LR”) 4.3(d)(2) (authorizing the magistrate judge to preliminarily review pro se pleadings).

¹As petitioner is in custody at the Northern New Hampshire Correctional Facility (“NCF”), I construe the respondent to be the Warden of the NCF. See Habeas Rule 2 (where petitioner is in custody pursuant to a state judgment, the state officer having custody of the petitioner shall be named as respondent).

For the reasons stated below, I find that the petition does not at this time make a facially sufficient showing that Chevalier is entitled to relief. I therefore order him to amend the petition to demonstrate exhaustion of each claim before I will direct that the petition be answered.

Background

Convicted in October 2004 by the New Hampshire Superior Court (Cheshire County) of class B kidnapping, N.H. Rev. Stat. Ann. § 633:1, Chevalier was sentenced to a term of imprisonment. He is currently incarcerated at the NCF. Following his conviction, he filed a direct appeal with the New Hampshire Supreme Court ("NHSC"). The issues raised in that appeal allegedly are not relevant to this action. The NHSC affirmed his conviction on March 23, 2006.

Chevalier filed a motion for new trial with the superior court in which he raised the following issues and broadly cited to federal and constitutional law, including the Fifth, Sixth and Fourteenth Amendments to the United States Constitution:

1. prosecutorial misconduct whereby the prosecution knowingly and maliciously used false and/or perjured testimony to obtain Chevalier's

conviction;² and

2. denial of the Sixth Amendment right to effective assistance of counsel at trial when counsel failed cross-examine the complainant with regard to her false and/or perjured testimony.

The superior court denied his motion for new trial on May 8, 2006 and also denied his motion for reconsideration on June 8, 2006.

Subsequently, Chevalier filed a notice of discretionary appeal with the NHSC. While he has provided this court with a copy of that appeal, the precise issues raised are not clearly identified. Chevalier maintains, however, that his appeal raised issues identical to those presented in his motion for new trial. The NHSC declined his appeal on August 18, 2006.

Chevalier now brings the instant petition in which he alleges the following two grounds for federal habeas corpus relief:

1. prosecutorial misconduct whereby the prosecution knowingly used false and/or perjured testimony to obtain Chevalier's conviction, in violation of his Fifth and Fourteenth Amendment rights (Ground 1); and
2. denial of effective assistance of counsel at trial when counsel failed to cross-examine the complainant with regard to her false and/or perjured testimony, in violation of Chevalier's

²Chevalier raised this claim in his reply to the state's objection to his motion for new trial.

Sixth Amendment rights (Ground 2).

Standard of Review

In reviewing a pro se petition, this Court must construe the pleadings liberally, see Ayala Serrano v. Gonzalez, 909 F.2d 8, 15 (1st Cir. 1990) (following Estelle v. Gamble, 429 U.S. 97, 106 (1976)), treating all well-pleaded factual allegations as true and drawing all reasonable inferences in the litigant's favor, see Aulson v. Blanchard, 83 F.3d 1, 3 (1st Cir. 1996) (explaining that all "well-pleaded factual averments," not bald assertions, must be accepted as true). This review ensures that pro se pleadings are given fair and meaningful consideration. See Eveland v. Director of CIA, 843 F.2d 46, 49 (1st Cir. 1988).

Discussion

I. Custody and Exhaustion

To be eligible for habeas relief, Chevalier must show that he is in custody and has exhausted all state court remedies (or that he falls within a narrow category of cases in which exhaustion is not required, such as the absence of an available or effective state corrective process). See 28 U.S.C. § 2254(a) & (b); see also Duncan v. Henry, 513 U.S. 364, 365 (1995). He satisfies the first requirement as he is currently incarcerated

at the NCF and thus is in custody. However, Chevalier fails to satisfy the second requirement because the petition does not demonstrate that he has fully exhausted his state remedies with regard to each claim. Nor has he alleged any facts to suggest that effective state court remedies are unavailable to him.

A petitioner's remedies in New Hampshire are exhausted when the State's highest court has had an opportunity to rule on the petitioner's federal constitutional claims. See Lanigan v. Maloney, 853 F.2d 40, 42 (1st Cir. 1988), cert. denied, 488 U.S. 1007 (1989) ("habeas corpus petitioner must have presented the substance of his federal constitutional claim to the state appellate courts so that the state had the first chance to correct the claimed constitutional error"); see also Baldwin v. Reese, 541 U.S. 27, 29 (2004) (citing Duncan, 513 U.S. at 365-66 (requiring petitioner to "fairly present" his claim in the appropriate state courts, including a state supreme court with powers of discretionary review, thereby alerting that court to the federal nature of the claim)). "[T]he exhaustion principle holds, in general, that a federal court will not entertain an application for habeas relief unless the petitioner first has fully exhausted his state remedies in respect to each and every

claim contained within the application.” Adelson v. DiPaola, 131 F.3d 259, 261 (1st Cir. 1997).

In the instant petition, Chevalier raises two grounds for federal habeas corpus relief. He has not adequately demonstrated that he presented each claim and the federal nature of each claim to the NHSC for review. Accordingly, he has failed to demonstrate exhaustion of state remedies as to the two claims raised in his federal petition. To demonstrate exhaustion of his claims, Chevalier must provide this court with copies of any motions, petitions, notices of appeal, briefs and orders and/or final judgments pertaining to his state court proceedings. See Smith v. Digmon, 434 U.S. 332, 333 (1978) (discussing documents which would enable a federal court to determine whether the grounds supporting the habeas petition had been presented for review in the state courts).

The notice of discretionary appeal provided by Chevalier does not appear to be complete. Accordingly, he should provide this court with a complete copy of that appeal filed with the NHSC in 2006, including the precise issues raised and any additional documents filed in support of that appeal. For example, if Chevalier attached a copy of his motion for new trial

as an exhibit to his appeal, he should indicate this in his amended federal petition. He may need to return to the state courts to fully present his unexhausted claims and the federal nature of each claim before he can make the required amendment to his federal petition.

II. Stay

The Supreme Court has held that a district court should stay a habeas corpus petition if the petitioner has good cause for his failure to exhaust, his unexhausted claims are potentially meritorious, and there is no indication that he engaged in intentionally dilatory litigation tactics. See Rhines v. Weber, 544 U.S. 269, 278-79 (2005) (permitting a federal district court to stay a federal habeas action and hold the petition in abeyance while the petitioner exhausts claims in state court). See also Duncan v. Walker, 533 U.S. 167, 182-83 (2001) (Stevens, J., concurring) (district court may retain jurisdiction over a meritorious claim and stay further proceedings pending the complete exhaustion of state remedies). Staying unexhausted claims may be the only appropriate course in cases in which an outright dismissal threatens to imperil the timeliness of a collateral attack. Neverson v. Bissonnette, 261 F.3d 120, 126

n.3 (1st Cir. 2001); see also Delaney v. Matesanz, 264 F.3d 7, 15 n.5 (1st Cir. 2001) (recommending staying exhausted claims where “there is a realistic danger that a second petition, filed after exhaustion has occurred, will be untimely”). Accordingly, to the extent Chevalier elects to exhaust his unexhausted claims, I will order the proceedings stayed and the petition held in abeyance, pending complete exhaustion of state remedies.

Conclusion

For the reasons stated above and because the claims raised in the petition have not been exhausted, I will allow Chevalier an opportunity to amend his petition to demonstrate exhaustion of state remedies with regard to his claims and the federal nature of those claims. To make this showing, he is instructed to provide the court with a copy of his notice(s) of appeal to the NHSC and any other relevant state court pleadings, orders or decisions within thirty (30) days. If the claims have not been exhausted, he is ordered to notify the court either (1) that he is withdrawing the unexhausted claims or (2) that he is proceeding in state court to exhaust them.

In the event he chooses to exhaust in state court, Chevalier must commence the state court proceedings within thirty (30) days

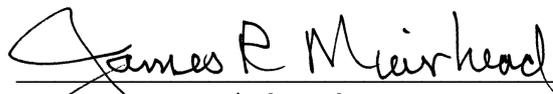
of the date of this order. I will order the proceedings stayed and the petition held in abeyance, pending complete exhaustion of state remedies. The stay will be issued under the following two conditions:

1. Chevalier is ordered to contact this Court every 90 days, beginning from the date of entry of this order, and inform the court of the status and pendency of his state court proceedings, if any, and the disposition of any appeal or related matter.

2. Within 30 days following any ruling and/or notification by the New Hampshire Supreme Court on the claims at issue, and the exhaustion of such claims, Chevalier must notify this Court of the ruling and submit all briefs or other pleadings filed in the state court proceedings; he must also file a request with this Court, stating that his state court matter has been disposed of and that he wishes to terminate the stay and have this Court further consider his petition.

Failure to comply with either condition may result in dismissal of the petition without prejudice.

SO ORDERED.



James R. Muirhead
United States Magistrate Judge

Date: August 24, 2007

cc: Brian R. Chevalier, pro se

<http://www.nashuatelegraph.com/news/651937-196/new-trial-sought-for-kidnap-convict.html>

New trial sought for kidnap convict

By PHILIP BANTZ The Keene Sentinel

Renewed efforts are being made to overturn a kidnapping conviction against a Merrimack man imprisoned for six years.

Brian R. Chevalier has been behind bars since the conclusion of his 2004 trial in Cheshire County. Now, Justin Nadeau, a Portsmouth lawyer who last year won a landmark state case that paved the way for grandparents seeking visitation rights with their grandchildren, has taken Chevalier's case pro bono.

Nadeau wants a judge to set aside Chevalier's kidnapping conviction and hold another trial on the charge. He argued during a recent hearing at Coos County Superior Court that he has evidence that will prove Chevalier's innocence. The case is being heard in Coos County because Chevalier is imprisoned there.

If Judge Peter Bornstein declines to give Chevalier a second trial, Nadeau could take his argument to the federal level at U.S. District Court in Concord.

"This can definitely end right here in state court," he said. "We're hoping."

A former Keene police officer, state Rep. Dudley "Dan" Dumaine, R-Auburn, and Justin M. Healy, a retired N.H. State Police lieutenant, also believe Chevalier is innocent. They say the statement that Chevalier's accuser, an ex-girlfriend, gave to police doesn't add up.

She wrote that Chevalier ambushed her inside her Jaffrey home, then held her hostage for 21 hours while he threatened and sexually assaulted her.

Her name is being withheld because The Sentinel and The Telegraph do not identify alleged victims of sexual abuse. The Sentinel's attempts to contact her have been unsuccessful.

Chevalier was tried on 11 charges ranging from aggravated sexual assault to criminal threatening, burglary and kidnapping.

After deliberating for two days, a jury acquitted Chevalier of every charge but kidnapping. Because Chevalier had prior convictions for property crimes, he qualified for an enhanced prison sentence and received 10 to 30 years.

Chevalier's lead public defender, Hampton W. Howard, had argued at trial that Chevalier's ex-girlfriend concocted the rape and kidnapping story. He said the woman panicked when her estranged husband and young daughter walked in on her and Chevalier the morning after they spent the night together.

The woman feared she'd lose custody of her daughter if her husband brought up her infidelity during divorce proceedings, so she lied about her relationship with Chevalier to protect her own interests, Howard said in court.

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Phillip Bantz can be reached at 352-1234, ext. 1409, or pbantz@keenesentinel.com.