

COPY

THE STATE OF NEW HAMPSHIRE
Keene District Court

Cheshire, SS

January term 2009

State of New Hampshire

v.

Ian Bernard

Motion to Show Cause

NOW COMES the State of New Hampshire by and through Eliezer Rivera, Police Prosecutor to ask the Honorable Court to have Ian Bernard appear before the Keene District Court to Show Cause to the Honorable Court.

1. That, as an Officer of the Court the States feels compel to advised the Court of Ian Bernard's recent behavior, which could be looked upon as a criminal act, to wit:
 - a. **626:8 Criminal Liability for Conduct of Another.** –
 - III. A person is an accomplice of another person in the commission of an offense if:
 - (a) With the purpose of promoting ... the commission of the offense, he ... aids ... in planning and committing it.
2. That, on January 10, 2009, James A. Carroll was arrested by the Keene Police Department for Possession of a Controlled Drug (marijuana). That, James A. Carroll's arrest was a staged civil disobedience for which he purposely appeared at Railroad Square and held in his hand a quantity of marijuana in public and awaited his arrest by the Keene Police Department.
3. That, in research, it was discovered that Ian Bernard was an active participant in said staged civil disobedience. That, Ian Bernard engaged in the promoting of said civil disobedience by assisting James A. Carroll with submitting press releases, blogging, promoting attendance at the civil disobedience on his website FreeKeene.com and by personally appearing at Railroad Square on January 10, 2009 to show support and video tape James A. Carroll's civil disobedience.

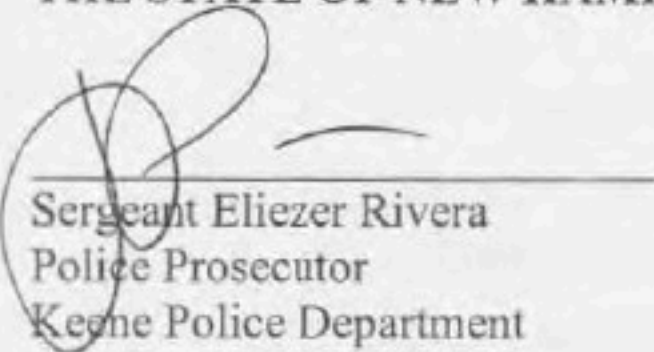
4. That, Ian Bernard appeared at the Keene Police Department while James. A. Carroll was transported to the Keene Police Department and continued his support of James A. Carroll and remained in the lobby during the booking and processing of James A. Carroll.
5. That, the Keene Police Department is investigating the staged civil disobedience and reviewing videos to determine whether other participants may have engaged in criminal activity.
6. That, this affiant, has personally viewed some of the video tapes on FreeKeene.com and observed Ian Bernard in the background of several videos. That, Ian Bernard, continued his support and promotion of James A. Carroll's conduct by having him on his Internet Radio Talk show "FreeTalkLive.com" the evening of January 10, 2009. (Copy of Radio Broadcast available).
7. That, as an Officer of the Court, the State believes that Ian Bernard has not remained of Good Behavior. State v. Budgett, 146 N.H. 135 (2001) defines the term "Good Behavior", as conduct conforming to the law.
8. There is an implied condition of good behavior in suspended sentences and this condition does not offend due process, State v. Budgett, 146 N.H. 135 (2001)
9. State v. Budgett, the NH Supreme Court cited that it would be illogical and unreasonable to conclude that a defendant, who has been granted conditional liberty, needs to be given an express warning that if he commits a crime, he will lose the privilege of that liberty. "[A] condition of a suspended sentence that a person may not commit a [crime], is so basic and fundamental that any reasonable person would be aware of such condition." Brooks v. State, 1971 OK CR 199. Accordingly, we hold that there is an implied condition of good behavior in suspended sentences and that this condition does not offend due process.
10. The defendant, **Ian Bernard**, has defied the terms of his suspended sentence by not remaining of good behavior and engaging in conduct contrary to RSA 626:8 Criminal Liability for Conduct of Another.
11. The New Hampshire Supreme Court has specifically stated that "... proof of breach of the implied condition of good behavior need not be beyond a reasonable doubt, but is sufficient if

established by a preponderance of the evidence. *Final conviction of the most recent offense [is] not a prerequisite to revocation of prior suspensions.*" (Emphasis added) Stone v. Shea, 113 NH 174, 176 (1973) (citations omitted).

12. That, the Defendant has a 90 day suspended sentence issued by the Keene District for Direct Contempt, said suspension being on the condition of good behavior. That as an Officer of the Court, this affiant presents to the court this motion to support a finding by the Honorable Judge of "Misplaced Trust" and the Defendant's suspended sentence be imposed.
13. That, this affiant will be able to provide videos, blog transcripts and actual radio broadcast to show the Defendant's promotion and aiding of James A. Carroll civil disobedience by openly possessing marijuana.

Respectfully submitted,

THE STATE OF NEW HAMPSHIRE



Sergeant Eliezer Rivera
Police Prosecutor
Keene Police Department