

THE STATE OF NEW HAMPSHIRE
Keene District Court

Cheshire, SS

January term 2009

State of New Hampshire
v.
Ian Bernard

Motion #1 to Quash Motion to Show Cause

NOW COMES Ian Bernard to ask the Honorable Court to quash the motion filed by Eliezer Rivera, Police Prosecutor, claiming to represent the State of New Hampshire. Defendant responds to numbered claims as follows:

1. Deny
2. Deny
3. Deny
4. Deny
5. Without Knowledge
6. Deny
7. Deny
8. Without Knowledge
9. Without Knowledge
10. Deny
11. Without Knowledge
12. Deny
13. Without Knowledge

Defendant responds with the following supporting arguments to grant this motion to quash:

1. The behavior this court was made aware of by Eliezer Rivera is protected by the right of the people to peaceably assemble as Mr. Bernard was doing on the day in question.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances. "The Constitution of the United States," Amendment 1.

Gitlow v. New York, 268 U.S. 652 (1925) clearly establishes New Hampshire's requirement to protect freedom of speech, and Freedom of the Press is ensured for Mr. Bernard by Near v. Minnesota, 283 U.S. 697

(1931). Eliezer Rivera affirms Mr. Bernard's affiliation with the free press in #6 of his motion submitted to the court. Abridging the freedom of speech, or the press is expressly forbidden.

2. Mr. Bernard's actions are further supported by the NH Constitution, **[Art.] 7. [State Sovereignty.]** The people of this state have the sole and exclusive right of governing themselves as a free, sovereign, and independent state; and do, and forever hereafter shall, exercise and enjoy every power, jurisdiction, and right, pertaining thereto, which is not, or may not hereafter be, by them expressly delegated to the United States of America in congress assembled.
3. The New Hampshire Constitution takes it a step further with Article 22. **[Free Speech; Liberty of the Press.]** Free speech and liberty of the press are essential to the security of freedom in a state: They ought, therefore, to be inviolably preserved.

In reversing a defendant's conviction for false report to law enforcement under RSA 641:4, I for insufficient evidence, the supreme court stated that since freedom of speech under N.H. Const. pt. I, Art.22 was implicated and its protection was broader than the First Amendment's, special scrutiny was necessary in evaluating the purpose requirement of RSA 641:4 when a defendant alleged police misconduct, and that, in such a case, the State was to offer evidence that the defendant's purpose in issuing a false report was to instigate a criminal investigation of a police officer's conduct, and that the State was to prove that it was the defendant's "conscious object" to cause such an investigation, pursuant to RSA 626:2, II(a); this interpretation effectively balanced the right of the individual to criticize police conduct with the State's interest in preventing the misdirection of police resources for the investigation of crime. *State v. Allard*, 148 N.H. 702, 813 A.2d 506, 2002 N.H. LEXIS 181 (2002).

In attending this event, Mr. Bernard as a member of the press exercising free speech and other inalienable rights; his conduct is expressly protected in both US and NH law. The high courts have provided additional protections specifically for citizens who challenge police procedures.

State resources in New Hampshire for non-violent cannabis possession account for over 10% of New Hampshire prison populations. These are peaceful offenders whose crimes lack a corpus delicti, which constitutes a gross misdirection of police and state resources. Mr. Bernard along with countless other media outlets have interviewed guests similar to Mr. Carroll and the issue of cannabis possession. Mr. Bernard has attended multiple hearings on cannabis related bills in Concord, he has spoken at one such hearing, and plans to continue exercising basic human rights, which state officials swear an oath to protect.

4. Should this court determine that Mr. Bernard did violate the law as Eliezer Rivera alleges, Mr. Bernard asserts

a. **626:3 Effect of Ignorance or Mistake.**

II. A person is not relieved of criminal liability . . . unless his belief is founded upon a statement of the law contained in a statute or other enactment, or an administrative order or grant of permission, or a judicial decision of a state or federal court. . .

b. Mistake as to law is a defense only when the mistaken belief is founded in such reliable sources as legal enactments, administrative orders, judicial decisions or official written interpretations of the law. *State v. Stratton*, 132 N.H. 451, 567 A.2d 986, 1989 N.H. LEXIS 124 (1989).

c. The affirmative defense provided in paragraph II of this section is in essence a question of fact: whether the defendant believed that the law in question did not apply to him because of his knowledge of a statute or administrative or judicial decision. *State v. Sheedy*, 125 N.H. 108, 480 A.2d 887, 1984 N.H. LEXIS 285 (1984).

5. Petitioner believes Eliezer Rivera is engaged in a personal vendetta against multiple Keene area members of the free press who speak critically of government services and functions. On October 25th, 2008, Rivera acted with out cause or reasonable suspicion in summoning Ina Bernard from Free Talk Live and Toby Iselin from Free Minds TV to appear before this court on charges without investigation based upon a lack of sufficient evidence in a clear attempt to chill free speech and the free press.
6. A group of private citizens are still investigating recent actions to determine whether Rivera, any of his associates, or supervisors may have engaged in criminal activity including but no limited to 641:2 False Swearing, 641:7 Tampering With Public Records or Information, and 643:1 Official Oppression.
7. In his motion, Eliezer Rivera attempts to mislead this court by presenting an incomplete picture of the statutes he alleges were violated. RSA 636:8 IV clearly demonstrates Mr. Bernard does not meet the requirements. In the motion presented Eliezer Rivera offers no evidence of a connection between Andrew Carroll's alleged Cannabis Possession and Bernard's free speech that meets the requirements for criminal liability defined by:

626:8 Criminal Liability for Conduct of Another.

IV. Notwithstanding the requirement of a purpose as set forth in paragraph III(a), **when causing a particular result is an element of an offense, an accomplice in the conduct causing such result** is an accomplice in the commission of that offense, if he acts with the kind of culpability, if any, with respect to that result that is sufficient for the commission of the

Mr. Bernard denies the criminality of his alleged acts in the motion for cause. Mr. Carroll's acts would have occurred regardless of Mr. Bernard's involvement. Mr. Bernard's role, if any, in the criminal act of possession was facilitating that as many people in the Keene area knew about that protest, in that Mr. Bernard agreed to forward Mr. Carroll's press release that Mr. Carroll prepared to people in the Keene-area media to which Mr. Bernard is acquainted with for the purpose of alerting a large population of the Keene area.

8. Further, RSA 636:8 IV requires the conduct be "inevitably incident to its commission". Mr. Bernard's free speech related to the event and his attempts to warn Law Enforcement before the event by publicly discussing it as part of Free Talk Live, Free Keene, and other press related organizations Mr. Bernard participates in, clearly meets the requirements outlined in RSA 636:8 IV(b) or RSA 636:8 IV(c):

VI. Unless otherwise provided, a person is not an accomplice in an offense committed by another person if:

(a) He is the victim of that offense; or

(b) **The offense is so defined that his conduct is inevitably incident to its commission;**

or

(c) He terminates his complicity prior to the commission of the offense and wholly deprives it of effectiveness in the commission of the offense or **gives timely warning to the law enforcement authorities or otherwise makes proper effort to prevent the commission of the offense.** (*emphasis added*)

Assuming for argument that Mr. Bernard was a accomplice, RSA 636:8 IV(c) "gives timely warning to the law enforcement authorities" does not require any direct communication with the police, rather that the police be "warned" by the "accomplice" in a "timely" fashion. Keene PD was in fact notified of the action from the press releases and related media coverage, according to Lt. Maxfield. (Video Available)

Mr. Bernard's public talking about the future crime, was really a method for the police to take Mr. Carroll into custody for breaking the drug laws. Mr. Bernard has no knowledge of when Mr. Carroll's alleged possession occurred.

9. An accomplice's liability ought not to extend beyond the criminal purposes that he or she shares. *State v. Etzweiler*, 125 N.H. 57, 480 A.2d 870, 1984 N.H. LEXIS 369 (1984). Mr. Bernard shared no criminal purpose with Mr Carroll's alleged offense. The defendant requests the court remind Eliezer Rivera that full due process rights have not been afforded Mr. Carroll, and he has not been found guilty as his motion suggests.
10. Mere presence at the scene of a crime is insufficient to make a person criminally responsible. *State v. Goodwin*, 118 N.H. 862, 395 A.2d 1234, 1978 N.H. LEXIS 307 (1978).
11. The crime of accomplice liability under subparagraph III(a) of this section requires some active participation by the accomplice. *State v. Arillo*, 131 N.H. 295, 553 A.2d 281, 1988 N.H. LEXIS 124 (1988). Eliezer Rivera fails to demonstrate or allege any active participation or assistance with the alleged crime of possessing Cannabis.
12. The crime of accomplice liability under subparagraph III(a) of this section necessitates some active participation by the accomplice. *State v. Vaillancourt*, 122 N.H. 1153, 453 A.2d 1327, 1982 N.H. LEXIS 530 (1982). Eliezer Rivera fails to demonstrate or allege any active participation or assistance with the alleged crime of possessing Cannabis.
13. Knowledge and mere presence at the scene of a crime cannot support a conviction for accomplice liability because they do not constitute sufficient affirmative acts to satisfy the actus reus requirement of subparagraph III(a) of this section. *State v. Vaillancourt*, 122 N.H. 1153, 453 A.2d 1327, 1982 N.H. LEXIS 530 (1982). Eliezer Rivera fails to demonstrate or allege any intention or assistance with Mr. Carroll's intention to possess Cannabis.
14. Under accomplice liability statute, State must establish that accomplice acted with purpose of promoting or facilitating commission of the substantive offense; this requires State to prove that accomplice's acts were designed to aid primary actor in committing offense, and that accomplice had purpose to make crime succeed. *State v. Locke*, 144 N.H. 348, 761 A.2d 376, 1999 N.H. LEXIS 123 (1999). Eliezer Rivera fails to demonstrate or allege any intention or assistance to ensure the alleged crime would succeed. Mr. Bernard's actions alerted the public at large, including the Keene Police Department, to Andrew's alleged criminal act.
15. Under paragraph III of this section, the state has the burden of establishing that the accomplice acted with the purpose of promoting or facilitating the commission of the substantive offense, and this encompasses the requirement that the accomplice's acts were designed to aid the primary actor in committing the offense and that the accomplice had the purpose to make the crime succeed. *State v. Etzweiler*, 125 N.H. 57, 480 A.2d

16. Trial court erred in upholding defendant's indictment for accomplice liability where the state alleged the requisite mens rea but further alleged only that the defendant aided another "by accompanying him to the location of the crime and watching", since accompaniment and observation are not sufficient acts to constitute "aid" under subparagraph III(a) of this section. *State v. Vaillancourt*, 122 N.H. 1153, 453 A.2d 1327, 1982 N.H. LEXIS 530 (1982).

17. Because accomplice liability holds an individual criminally liable for actions done by another, it is important that the prosecution fall squarely within this section. *State v. Etzweiler*, 125 N.H. 57, 480 A.2d 870, 1984 N.H. LEXIS 369 (1984). The higher court's opinion has clearly not been satisfied in this case.

Defendant affirms compliance and agrees with the court's order on November 18th, 2008 related to this case, that "The Court finds the Defendant's apology to be sincere." If Mr. Bernard did not have a suspended sentence, would he be criminally liable for merely facilitating the communication between a person and more media members regarding such person's desire to be taken into custody for possession of Cannabis?

Should the Court not quash the motion to show cause, or otherwise decide to render a decision adverse to the accused, I request the Court hold a hearing pursuant to rule 1.8 D of the District Court. The purpose of said hearing would be to resolve the allegations that the court's order of November 17th, 2008 was violated

Mr. Bernard moves the court to enter an order requiring Keene Police Department to provide open access to all documents, internal and submitted, to the department connected with this case, included but not limited to those subject to disclosure under *State v. Laurie* 139 NH 325 (1995)

Further, Mr. Bernard moves the court to schedule a hearing at the earliest time for the Court and pursuant to RSA Chapter 516 or any other official power of the Court, summons the attendance of agents of the State involved in this matter, to include the Police Prosecutor, the police officer who arrested Mr. Carroll, any supervisors who made any decision related to this case, and any other agent of the State in which the Court wishes.

Mr. Bernard does not wish to delay the Court's other business, but that because his physical freedom may be limited and given the pattern of repeated attacks by the Keene Police Department against members of the free press, he requests that the Court allow him to be heard and to fully argue and question those officials of the State which seek to deny him liberty by claiming that he has violated the law and by extension the courts order.

Further, should the court not quash the motion, that Mr. Bernard moves the court to enter an order permitting him to prepare "written interrogatories" pursuant to the Court's permission in District Court Rule 1.10 B, in that Mr. Bernard wishes to learn prior to the hearing, if any, how the officers learned of the protest on that day, whether any members of Keene law enforcement were knowledgeable about the protest prior to its occurrence, whether any members of the Keene Police were aware from reading public postings or radio communications regarding the protest, and whether Keene Police Department intends to charge Mr. Bernard with criminal liability for conduct of another or any other charge.

That by forming interrogatories, Mr. Bernard is free to ask a limited number of questions ahead of time and submit those to the Court in the hopes that the matter may be disposed of in Mr. Bernard's favor without the need of a hearing which will take up the Court's time.

Ian Bernard reserves all rights in perpetuity.

Submitted this 16th day of January, 2009

Ian Bernard

CERTIFICATE OF SERVICE

I hereby certify that I have forwarded a true copy of said motion to Eliezer Rivera, 400 Marlboro St, Keene, NH 03431 on January 16th, 2009.

Ian Bernard