

STATE OF NEW HAMPSHIRE

CHESHIRE, SS

SUPERIOR COURT

Case No. 213-2011-CR-00216

*State v.  
Jason Talley*

**MOTION TO AUTHORIZE CRIMINAL DEPOSITIONS**

Jason Talley moves this honorable Court to authorize criminal depositions in this case pursuant to RSA 517:13 II. (a) and (b). In support of this motion, Jason states as follows:

1. The New Hampshire Constitution in Part I, Article 22 reads as follows:

*Free speech and liberty of the press are essential to the security of freedom in a state:*

*They ought, therefore, to be ***inviolably*** preserved.* (emphasis added)

2. The Marriam-Webster Dictionary defines “inviolable” as:

secure from violation or profanation <an *inviolable* law>

or

secure from assault or trespass : [unassailable](#)

3. On June 28th 2011, independent journalist Adam Mueller of CopBlock.org attempted to interview Keene Circuit Court Presiding Judge Edward Burke about his decision to use taxpayer funds to imprison a peaceful individual who chose to protest a ban on wearing some kinds of hats while sitting in his courtroom. The conversation about public policy and its enforcement by a public official (the video of which is viewable in its entirety at [www.CopBlock.org/ImproperInfluence](http://www.CopBlock.org/ImproperInfluence)) is as follows:

**Adam Mueller: "Judge Burke, can I ask you a few questions about a hat, and how that constitutes contempt?"**

**Adam Mueller: "You think people want to pay for someone to be in jail for five days for wearing a hat?"**

**Adam Mueller: "It's kind of ridiculous to waste taxpayer money on something like that, isn't it?"**

**Adam Mueller: "Sir, I just want to have a conversation."**

**Judge Burke: "Bailiff! Bailiff! This person is threatening me about a decision I just made."**

**Adam Mueller: "I'm not threatening you. I'm asking questions."**

**Judge Burke: "He's threatening." \*points to Adam\* "That's a criminal offense."**

**Bailiff: "Come on, sir, you're in custody."**

4. Mr. Mueller, a member of the free press who was acting as such, was imprisoned for two days on the aforementioned false allegations made by Judge Burke for two days prior to the Cheshire County Attorney dropping the charges.

5. New Hampshire law makes it a criminal offense to falsely report that another has committed a crime to law enforcement authorities. The law, False Reports to Law Enforcement, is codified at RSA 641:4 and reads:

*A person is guilty of a misdemeanor if he:*

*I. Knowingly gives or causes to be given false information to any law enforcement officer with the purpose of inducing such officer to believe that another has committed an offense; or*

6. As a result of Judge Burke being seen publicly on the Internet telling a lie which resulted in an innocent man and member of the media being imprisoned for two days (and his resulting criminal investigation which has still yet to be concluded by the Sullivan County Attorney), Circuit Court Chief Judge Edwin Kelley abused his authority granted by the New Hampshire Supreme Court pursuant to Supreme Court Rule 54 (which was granted to the Supreme Court originally by the people of the State of New Hampshire through Part II, Article 73-a of the New Hampshire Constitution) by enacting Circuit Court Order 2011-03 on July 1st 2011, not more than one day after Mr. Mueller was released from state custody. By doing so, Chief Judge Kelley stripped citizens of this state of their federal and state constitutional rights to hold government officials accountable for not only public acts, but **criminal** acts, committed in public areas of a public building.

7. Circuit Court Order 2011-03 itself was so bold as to state that members of the public had “accosted the presiding justice(,)” a reference undoubtedly to Judge Burke’s false statements three days prior about Mr. Mueller’s constitutionally protected conduct which ended with him falsely imprisoned for two days.

8. As a result of the embarrassment Judge Burke faced by being seen publicly on video telling a lie (and his resulting criminal investigation which has still yet to be concluded by the Sullivan County Attorney), Superior Court Chief Judge Tina Nadeau abused her authority granted by the New Hampshire Supreme Court pursuant to Supreme Court Rule 54 (which was granted to the Supreme Court originally by the people of the State of New Hampshire through Part II, Article 73-a of the New Hampshire Constitution) by enacting an order on July

1st 2011 that enforced the provisions of Circuit Court Chief Judge Kelley's order upon the Superior Court system. By doing so, Chief Judge Nadeau stripped citizens of this state of their federal and state constitutional rights to hold government officials accountable for not only public acts, but **criminal** acts, committed in public areas of a public building.

9. Presiding Justice John Arnold of the Cheshire Superior Court further expanded the order adopted by Superior Court Chief Judge Nadeau by enacting "Order In Reference To Administrative Order 2011-3" on July 15th 2011. This order outright banned the possession of any device commonly used by the media to hold government officials who wield tremendous power accountable to the people from whom they derive their power.

10. The first court order adopted by Chief Judge Kelley served as the root of a now poisonous tree which restricts constitutional rights through a total of three court orders specifically and immediately issued following a criminal act committed by a judge being caught on camera.

11. Were Cheshire County Superior Court Presiding Judge Arnold's order not in effect on the date of Mr. Talley's arrest, Mr. Talley never would have been arrested as the bailiffs would never have taken issue with the innocuous possession of a recording device.

12. Mr. Talley believes the judicial orders issued by New Hampshire's two chief trial court judges and the Cheshire County Superior Court Presiding Judge John P. Arnold represent an abuse of the public trust as they constitute an effort on the part of the Judicial Branch of the State of New Hampshire to ensure that any future criminal acts committed by judicial officers that result in the wrongful deprivation of liberty to a citizen of this state will never be caught on

camera again.

13. The statute which legislatively authorizes depositions in a criminal case, RSA 517:13, reads in part::

*I. Except as otherwise provided in this section or by order of the court, depositions shall be taken in the manner provided in civil actions.*

*II. The court in its discretion may permit either party to take the deposition of any witness, except the defendant, in any criminal case, upon a finding by a preponderance of the evidence that such deposition is necessary:*

*(a) To preserve the testimony of any witness who is unlikely to be available for trial due to illness, absence from the jurisdiction ; or*

*(b) , avoid surprise or for other good cause shown. In determining the necessity, the court shall consider the complexity of the issues involved, other opportunities or information available to discover the information sought by the deposition,*

(Emphasis added)

14. Mr. Talley believes that the four judicial officers he intends to call as witnesses in his trial will most likely be reluctant to cooperate as they stand to be implicated in providing cover for a fellow judge who committed a crime on camera. He also believes the nature of the case presents an exceptional circumstance which require the depositions to ensure that he receives a fair trial and that the public be apprised of the impunity which high ranking judicial officials are able to break the law and cover for each other.

15. Mr. Talley intends on requesting that the trial court give a jury nullification instruction at the conclusion of his trial. *“We have recognized jury nullification as the undisputed*

*power of the jury to acquit, even if its verdict is contrary to the law as given by the judge and contrary to the evidence.” State v. Bonacorsi, 139 N.H. 28, 31, 648 A.2d 469, 470-71 (1994). "While the trial court ordinarily gives the Wentworth instruction, see State v. Wentworth, 118 N.H. 832, 838-39, 395 A.2d 858, 862-63 (1978), which provides the equivalent of a jury nullification instruction, see Bonacorsi, 139 N.H. at 30-31, 648 A.2d at 470, the decision to give a more specific instruction on nullification lies within the sound discretion of the trial court." State v. Hokanson, 140 N.H. 719, 672 A.2d 714 (1996)*

16. Judicial Canon 1 is as follows: *A judge shall uphold and promote the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.*

17. Judicial Canon 1, Rule 1.1 is as follows: *A judge shall comply with the law, including the Code of Judicial Conduct.*

18. To the best of Mr. Talley’s and his counsel’s knowledge, all judicial officers involved in this matter remain active on the bench and completely unaccountable for the misconduct alleged.

19. Mr. Talley reiterates that his charges, originating from court orders which were enacted following an illegal act committed by a judicial officer on camera, are what he believes to be an abuse of the public trust and that as a result, the people of the State of New Hampshire, through their representation on the jury, should be apprised of their right to nullify the charges being brought in this matter to hold the judiciary accountable.

20. In order to paint a proper picture for the jury, should a nullification instruction be authorized by the trial court at a later time when requested, Mr. Talley believes depositions are absolutely necessary at this time.

21. Should depositions not be authorized at this time and a nullification instruction be given by the trial court at a later time, Mr. Talley believes he will be irreparably harmed as the jury may not have been able to evaluate the totality of the circumstances which he believes would persuade a jury to nullify his charges.

22. New Hampshire Superior Court Rule 79 states as follows: *“Whenever any question of law is to be transferred by interlocutory appeal from a ruling or by interlocutory transfer without ruling, counsel shall seasonably prepare and file with the Clerk the interlocutory appeal statement or interlocutory transfer statement pursuant to Supreme Court Rule 8 and Supreme Court Rule 9, and after the Court has signed the statement, counsel shall mail the number of copies provided for by the rules of the Supreme Court to the Clerk thereof.”*

23. Mr. Talley, acting through counsel, filed a “Motion To Extend Filing Deadline” on 02/04/12 in response to the continuance of the trial which occurred because the state tainted the jury pool. Although counsel has not received a response from the court regarding the motion as of the date of this motion, the state has responded that they do not oppose the extension of the filing deadline. Additionally, the court has issued a new notice on 02/08/12 indicating that the new final pre-trial date will be 03/27/12.

#### **Prayer for Relief**

WHEREFORE, Jason Talley, requests this honorable Court to order the following relief:

- A. Authorize criminal depositions of Judge Edward Burke, Chief Judge Tina

Nadeau, Administrative Judge Edwin Kelley, and Presiding Judge John Arnold  
at a location agreeable by Cheshire ACA John Webb without a hearing, or

- B. Schedule a hearing regarding this motion if the court is inclined to deny this request, or
- C. Authorize the transfer of the question of whether or not judicial officers can be deposed by a criminal defendant for a potential jury nullification defense when an abuse of the public trust is alleged by those same officers, to the New Hampshire Supreme Court pursuant to New Hampshire Superior Court Rule 79; and
- D. Grant any other relief this honorable Court deems just and proper.

Respectfully submitted,  
Jason Talley

**02/16/12**

By  
Bradley Jardis  
42 Main Street #27  
Dover, NH 03820

I hereby certify that on the above date, a copy of this motion was mailed to Assistant Cheshire County Attorney John Webb.

Bradley Jardis