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STATE OF NEW HAMPSHIRE

CHESHIRE, SS.
DOCKET NUMBER: 11-CR-216

SUPERIOR COURT
FEBRUARY TERM, 2012

STATE OF NEW HAMPSHIRE

v.

JASON TALLEY

**OBJECTION TO DEFENDANT'S "MOTION TO REFRAIN FROM
AUTHORIZING PHYSICAL FORCE TO DEMAND RESPECT"**

NOW COMES the State of New Hampshire, by and through the Office of the Cheshire County Attorney, and **OBJECTS** to the Defendant's Motion. In support of its objection the State offers the following:

1. The defendant is charged with Contempt, Disorderly Conduct, and Resisting Arrest or Detention. Trial is scheduled for April, 2012.
2. The defendant, through acting counsel, asks the Court not to enforce the custom of requiring all persons to stand when the Judge enters or exits the courtroom. The defendant seeks the same relief when the jury enters or exits the courtroom. (Although not clear from his motion, the defendant presumably would also seek relief from the obligation to stand when addressing the Court.) The defendant argues that "many individuals find the practice of standing for a state official to be shocking to their conscience[.]" The defendant argues that the Right of Conscience is among his Constitutional rights, inferring that he should therefore not be punished for obeying his conscience. The defendant cites the Constitution of the State of New Hampshire, Part First, Article 4 (which states that "Among the natural rights, some are, in their

very nature unalienable, because no equivalent can be given or received for them. Of this kind are the Rights of Conscience.”)

3. The State objects.
4. First, as a preliminary matter, the defendant has no standing to dictate custom in the Court as applied to “many individuals” other than himself. Thus, the State argues that any ruling regarding defendant’s motion should apply only to the defendant, and not to those seated in the gallery, whose consciences are not at issue in the pending case. The State would also note that the defendant never asserts in his motion that he is among those “many individuals” whose consciences are shocked by the practice of standing. For purposes of this objection, however, the State assumes that defendant is among the shocked.
5. Second, the State notes that the practice of standing when addressing the Court or examining a witness is mandated by Court rule. See Superior Court Rule 16.
6. The State further asserts that, as a practical matter, allowing individuals to be excused from the application of customs, rules, or laws merely because they claim it violates their conscience would lead to endless inquiries into the subjective mental state of the individual conscientious objector. Moreover, it is impossible to govern a society of persons if all persons therein are given free reign to follow their individual conscience without restriction or consequence. See Constitution of the State of New Hampshire, Part First, Article 3 (stating that “When men enter into a state of society, they surrender up some of their natural rights to that society, in order to ensure the protection of others; and, without such an equivalent, the surrender is void.”) As an example of the impracticality of allowing absolute free exercise of individual conscience, it merely needs asking: what if it were the conscientious belief of one of the bailiffs that he should force those

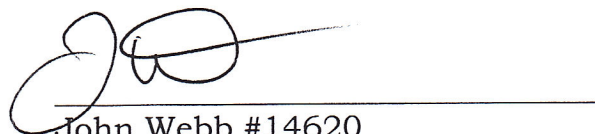
unwilling to stand for Judge or Jury, to stand? Whose individual conscience should prevail in such a conflict of conscience?

7. The custom of standing, at certain times, in the courtroom, is not onerous. It is not difficult. It fosters respect for the dignity of the proceedings. It constitutes the recognition that certain behavior, which might otherwise be acceptable in a barroom or in the street, “has no place in the courtroom which, in a free society, is a forum for the courteous and reasoned pursuit of truth and justice.” See Taylor v. Hayes, 418 U.S. 488, 503 (1974). The custom of standing up in response to the bailiff’s instruction “all rise” hurts no one. It hurts nothing, except perhaps the pride of those who resist any compelled gestures of respect.
8. The Constitution makes allowance for conscientious objectors in the context of forced conscription. See Constitution of the State of New Hampshire, Part First, Article 13 (stating that “No person, who is conscientiously scrupulous about the lawfulness of bearing arms, shall be compelled thereto”). No such provision exists for those who claim to be conscientiously scrupulous about the lawfulness of standing up in the courtroom.

WHEREFORE, the State respectfully requests that this Court:

- a) Deny the defendant’s motion without a hearing; or
- b) Hold a hearing on the matter, but only if deemed necessary;
and
- c) Grant such other and further relief as this Court deems equitable and just.

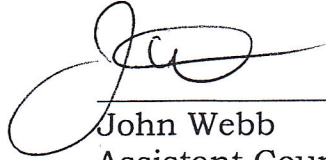
Respectfully Submitted,
STATE OF NEW HAMPSHIRE



John Webb #14620
Assistant County Attorney

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing objection will be forwarded on or about this 10th day of February, 2012, to Bradley Jardis, acting as counsel for the defendant.



John Webb
Assistant County Attorney
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Keene, NH 03431