

THE STATE OF NEW HAMPSHIRE

CHESHIRE, SS.

SUPERIOR COURT
No.: 2011-CR-0216

State of New Hampshire

v.

Jason Talley

ORDER

Defendant requests the Court to order depositions of four New Hampshire state court judges. Apparently he argues that these judges have made illegal orders which resulted in his arrest. He states that his case "presents an exceptional circumstance which require (sic) 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." He also states that he needs the depositions to bolster his argument that he will be entitled to a jury nullification instruction.

Defendant's motion is DENIED. Defendant has not only failed to show that the depositions are necessary to ensure a fair trial (RSA 517:13), he has not shown that the testimony he seeks to elicit is relevant and admissible. The legality of any judge's order will not be an issue for the jury to determine because a court order may not be disobeyed unless and until it is reversed.

"An injunction duly issuing out of a court of general jurisdiction with equity powers upon pleadings properly invoking its action, and served upon persons made parties therein and within the jurisdiction, must be obeyed by them however erroneous the action of the court may be, even if the error be in the assumption of the validity of a seeming but void law going to the merits of the case. *It is for the court of first instance to determine the question of the validity of the law, and until its decision is reversed for error by orderly review, either by itself or by a higher court, its orders based on its decision are to be respected, and disobedience of them is contempt of its lawful authority, to be punished.*"

Violations of an order are punishable as criminal contempt even though the order is set aside on appeal, or though the basic action has become moot.

United States v. United Mine Workers, 330 U.S. 258, 293-294 (1947) (internal citations omitted; emphasis added).

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2/29/12
CC: J. Webb / Def. / B. Jardis

Based on the same rationale, an individual is not free to resist an arrest he deems unlawful. An individual may be charged with and found guilty of resisting arrest whether or not there is legal basis for the arrest. RSA 594:5 ("If a person has reasonable ground to believe that he is being arrested and that the arrest is being made by a peace officer, it is his duty to submit to arrest and refrain from using force or any weapon in resisting it, *regardless of whether there is a legal basis for the arrest.*" Emphasis added.); RSA 642:2 ("A person is guilty of a misdemeanor when the person knowingly or purposely physically interferes with a person recognized to be a law enforcement official, ... seeking to effect an arrest or detention of the person or another *regardless of whether there is a legal basis for the arrest.*" Emphasis added.); see also Greelish v. Wood, 154 N.H. 521, 526-527 (2006); State v. Haas, 134 N.H. 480, 484 (1991) ("A society which seemingly becomes more complex with each passing day is enlightened when its laws reflect a high purpose to have apparent differences between those who wield the authority of government, and those who do not, resolved in the courts or by some other orderly process, rather than by physical confrontation on the street or in the gutter.")

Moreover, the Court is not required to give a jury nullification instruction beyond the Wentworth charge. State v. Prudent, 161 N.H. 320, 326 (2010).

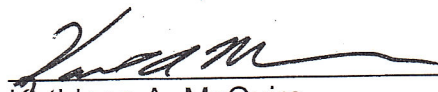
Defendant's Motion to Change Venue is DENIED. Any issue with defendant's ability to get a fair trial in Cheshire County will be addressed during jury voir dire.

It is sufficient if the juror can lay aside his impression or opinion and render a verdict based on the evidence presented in court.

Whether or not a prospective juror is indifferent, for whatever reason his impartiality is questioned, is a determination to be made in the first instance by the trial court on voir dire.

State v. Laaman, 114 N.H. 794, 800 (1974) (internal citations omitted).

Date: 2/29/12


Kathleen A. McGuire
Presiding Justice