

THE STATE OF NEW HAMPSHIRE

CHESHIRE, SS.

SUPERIOR COURT
No.: 2011-CR-0216

State of New Hampshire

v.

Jason Talley

ORDER

Jason Talley ("defendant" or "Talley") is charged with disorderly conduct and resisting arrest, stemming from an incident which occurred on September 23, 2011 at the Cheshire County Courthouse. Charges for contempt have been *not proessed*. Trial is scheduled for April 16, 2012. Pending before the Court are two motions: State's Motion in Limine (Rules 402, 403, and 602/702) And Request to Strike Witness and State's Motion in Limine Re: Defendant's "Modification of Planned Criminal Defense." A hearing on the motions took place on April 9, 2012.

In its Motion in Limine (Rules 402, 403, and 602/702) And Request to Strike Witness, the State moves to strike as irrelevant, prejudicial, and unqualified the testimony of defense witness Adam Mueller ("Mueller"). Defendant disclosed that Mueller's testimony will focus on Mueller's arrest on June 28, 2011 at the 8th Circuit Court, District Division, in Keene. Mueller intends to testify about the unlawfulness of that arrest and certain court orders. According to Talley, Mueller's testimony will be vital to his attempt at jury nullification. Def. Witness Summary.

The State's motion to strike Mueller's testimony is GRANTED. The events about which Mueller intends to testify occurred on a different date and at a different court than the matters underpinning the present charges. Talley does not assert that the charges pending against him are in any way related to Mueller's arrest. At the hearing, defendant argued that his own charges stem from an arrest for violating an unconstitutional administrative order which banned him from bringing an unauthorized camera into the courthouse. He states that, by way of defense, he intends to challenge the constitutionality of that order and also to assert ignorance or mistake. Mueller's

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cc: J. Webb / Def. / B. Jardis

testimony, however, concerns his own arrest elsewhere and on a different date and is irrelevant to either of Talley's defenses.

Mueller's testimony is not relevant because "[s]uch testimony would not make any fact of consequence more or less likely." Phillips v. Pascal, No. 07-C-060, 2009 N.H. Super. LEXIS 61 at *30 (Coos Super. Ct., May 11, 2009) (Vaughan, J.). "Evidence which is not relevant is not admissible." N.H. Evid. R. 402. Accordingly, Mueller's testimony shall be excluded and he is stricken from the witness list.

The State's Motion in Limine Re: Defendant's "Modification of Planned Criminal Defense" relates to Talley's pleading, titled "Modification of Planned Criminal Defense." In that pleading, Talley asserts that the bailiffs who arrested him for bringing unauthorized video equipment in the courthouse violated of his constitutional rights, as established in Glik v. Cunniffe, 655 F.3d 78 (1st Cir. Mass. 2011). Talley relies on and wishes to introduce a memorandum prepared by Attorney General Michael Delaney, explaining the Glik decision. Defendant calls the memorandum a "warning letter" and argues that it affirms his constitutional right to bring cameras into the courthouse. "[H]ad the Cheshire County bailiffs received the warning letter from the Attorney General back before his arrest in September of 2001, his arrest never would have occurred as the bailiffs who arrested him would have limited their use of executive enforcement power, due to the warning from the Attorney General." Modif. Defense ¶ 6.

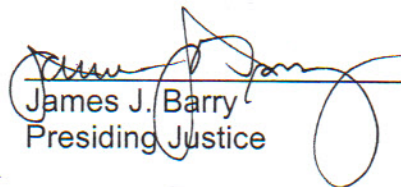
Talley's argument suffers from several defects. First, he concedes that the Attorney General's memorandum was issued months after his arrest. Second, he misapprehends the scope of an "ignorance or mistake" defense. "A person is not relieved of criminal liability because *he* acts under a mistaken belief that *his* conduct does not, as a matter of law, constitute an offense unless his belief is founded upon a statement of the law contained in ... a judicial decision of a state or federal court[.]" RSA 626:3, II (emphasis added). Talley does not assert that *he* acted under a mistaken belief about the lawfulness of his conduct: instead, he argues that the bailiffs were ignorant of Glik, a decision which involved the videotaping of an arrest on a public street, and which defendant interprets as supporting his right to bring cameras into the courthouse. Alternatively, he argues that the judiciary was ignorant of the law when it issued an administrative order banning cameras in the courthouse.

The Attorney General's memorandum, which was issued months after Talley's arrest, could hardly have affected Talley's understanding of his rights during the relevant time period. The Attorney General's memorandum concerning Glik is therefore excluded.

For the foregoing reasons, State's Motion in Limine (Rules 402, 403, and 602/702) And Request to Strike Witness and State's Motion in Limine Re: Defendant's "Modification of Planned Criminal Defense" are GRANTED.

Lastly, at the hearing, defendant proffered a video recording of Mueller giving the bailiffs at the Cheshire County courthouse a copy of the Glik decision. For the reasons set forth above, the video is irrelevant both to the charged offenses and to Talley's proposed defenses. Furthermore, even if relevant, the video is confusing and misleading as to the issues properly before the jury. "Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury[.]" N.H. Evid. R. 403. The video shall therefore be excluded.

Date: 9 APRIL 2012


James J. Barry
Presiding Justice