

STATE OF NEW HAMPSHIRE

CHESHIRE, SS

SUPERIOR COURT

Case No. 213-2011-CR-00216

State v.
Jason Talley

MODIFICATION OF PLANNED CRIMINAL DEFENSE

Pursuant to Superior Court Rule 101, Jason Talley notifies this Honorable Court of a modification to his statutory criminal defense: “*Effect of Ignorance or Mistake*” (see RSA 626:3). The additional information is as follows:

1. On the day of his arrest in September of 2011, Mr. Talley was aware that on August 26th 2011 the 1st Federal Circuit Court of Appeals ruled that filming public officials in public spaces was *already* a clearly established First Amendment right. (See *Glik v. Cunniffie, Savalis, Hall-Brewster, and City of Boston, MA - No 10-1764*) In its order, the federal appeals court wrote:

“We conclude, based on the facts alleged, that Glik was exercising clearly established First Amendment rights in filming the officers in a public space, and that his clearly-established Fourth Amendment rights were violated by his arrest without probable cause.”

2. Sheriff’s Department bailiffs at the security checkpoint of the Cheshire County Superior Court are law enforcement “officers” who, absent a court order, *only* possess executive enforcement authority and ultimately fall under the vast supervision of the New

Hampshire Attorney General (see RSA 7:6 and Part II, Article 46 of the New Hampshire Constitution). Mr. Talley believes the public entrance of a public building, where even firearm possession is allowed (see RSA 159:19 III. (a)), is a "public space."

3. Sheriff department "bailiffs" in the State of New Hampshire do not have statutory, constitutional, or common law authority to arrest for indirect criminal contempt on their own initiative. In the instance of Mr. Talley's case, the bailiffs exercised their legislative grant of executive authority by arresting Mr. Talley for first the crime of "*Disorderly Conduct*," and "*Resisting Arrest or Detention*."

4. On 03/22/12 New Hampshire Attorney General Michael Delaney issued a memorandum/warning letter to all New Hampshire law enforcement agencies that operate under his control. In the letter, the Attorney General cautioned that the 1st Circuit Court of Appeals had made it clear that if law enforcement officers arrest people for filming them in public areas, they could be subjected to liability. (See attached)

5. 1st Circuit Court of Appeals opinions and orders are binding on the New Hampshire Judicial Branch and its employees through the Supremacy Clause of the United States Constitution.

6. Mr. Talley intends on presenting the letter from the Attorney General as evidence in his trial of what he believes the jury will find to be an example of improper "*ex post facto* law enforcement." He believes that had the Cheshire County bailiffs received the warning letter from the Attorney General back before his arrest in September of 2011, 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.

Respectfully submitted,
Jason Talley

04/03/12

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 Associate Attorney General Richard Head and Assistant Cheshire County Attorney John Webb.

Bradley Jardis