

12/2/2013

**STATE OF NEW HAMPSHIRE**

**8<sup>th</sup> Circuit – District Division - Keene**

**State**

**v**

**Graham Colson**

**Docket No. 12-CR-953**

**DEFENDANT’S OBJECTION TO  
STATE’S MOTION FOR RECONSIDERATION**

NOW COMES the Defendant, by and through his attorneys, Backus, Meyer and Branch, LLP and objects as follows:

1. The sole basis for the State’s Motion is the claim that Defendant waived his right to challenge the no trespass letter by failing to contest it even though there is no mechanism for doing so.
2. The State has waived its argument by failing to present it at the hearing on Defendant’s Motion to Dismiss, or its Memorandum submitted after the hearing.
3. Absent extraordinary circumstances, the State should not be permitted to use a motion to reconsider for the purpose of raising new arguments.
4. Even if the State has not waived its right to raise this argument, that argument lacks merit.

5. The State argues that Defendant should have appealed the no trespass order notwithstanding the fact that that order provided no notice to the Defendant that he had a right to appeal.

6. Even more fundamentally, there is nothing within the criminal trespass notice mechanism utilized by the City which permits an appeal.

7. To the contrary, a principal reason for this Court's order granting Defendant's Motion To Dismiss is that there is no avenue for appeal.

8. The State's argument that the Defendant "could have taken the initiative to speak to the City officials . . . ." even though the no trespass notice was on its face absolute, is without any conceivable basis in fact or law.

9. The State's cites the decision of State v. Small, 150 N.H. 457 (2004), in support of its position.

10. However in the Small case, the defendant himself agreed to and signed the amended domestic violence order that he was accused of violating.

11. In concluding that defendant in that case waived his right to challenge the order that he had agreed to, the court stated that:

*The general underlying premise is that a person subject to an injunctive order issued by a tribunal with requisite personal and subject matter jurisdiction should be bound to pursue any objection to the order through the constituted judicial process available for that purpose. Such an individual has the means to press any meritorious claim or right without first acting in violation of a presumptively valid ruling that ostensibly binds him. Id. at 461, citing State v. Grondin, 132 N.H. 194, 200 (1989).*

12. In contrast to the situation in Small, the no trespass order in this case was not issued by a tribunal with requisite personal and subject matter jurisdiction, it was not

judicially authorized, and there was no "constituted judicial process" for Defendant to pursue his appeal through.

13. The State's alternative argument that the Defendant is precluded from challenging the no trespass letter because he did not do so in another (pro se) criminal trespass proceeding is equally lacking in merit.

14. The law does not require the Defendant to raise the same defenses in different proceedings even if they involve the same criminal statute, and no finding was made in the first proceeding contrary to the defense raised herein.

**WHEREFORE**, Defendant respectfully requests that

- A. The State's Motion to Reconsider be denied; and
- B. For such other and further relief that as the court deems just and proper.

Respectfully Submitted,  
Graham Colson  
By His Attorneys,  
BACKUS, MEYER & BRANCH, LLP

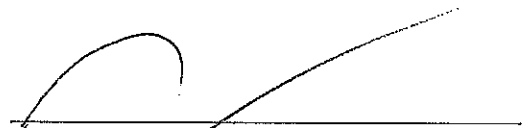
Dated: December 2, 2013

By: 

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Respectfully Submitted,  
Nashua Eye Associates

**CERTIFICATE OF SERVICE**

I hereby certify that on the 2<sup>nd</sup> day of December 2013, a copy of the above DEFENDANT'S OBJECTION TO STATE'S MOTION FOR RECONSIDERATION was forwarded by U.S. Postal Service first class mail to Jean M. Kilham, Esquire, attorney for the State.



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Jon Meyer, Esquire