

STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS

6th CIRCUIT – DISTRICT DIVISION
HILLSBOROUGH

The State of New Hampshire

Case No. 444-2024-CR-00109

v.

Joseph Hart

MOTION TO DISMISS #1

Mr. Hart moves this Honorable Court to dismiss the complaint for Disorderly Conduct (**RSA 644:2 III(a)**) pending in the matter that is presently before the Court. In support of this Motion he states the following:

1. The State of New Hampshire has charged Mr. Hart with a violation of RSA 644:2 III(a) in that it alleges he created a breach of the peace by yelling profanities in public, outside the Hillsborough Circuit Court-District Division court facility.
2. In his arrest report, Officer Tyler Davy alleges that two individuals outside the court facility walking towards Bar Harbor Bank stopped and looked due to Mr. Hart's verbalization of his displeasure of being arrested. Officer Davy did not record the names of these individuals or take statements from them so that Mr. Hart could challenge or cross-examine them.
3. A law enforcement officer cannot be a victim of disorderly conduct within the meaning of RSA 644:2, III(a). (*State v. Murray, 135 N.H. 369, 372, 605 A.2d 676 (1992)*). In *Murray* the New Hampshire Supreme Court held: “We find the above sources of legislative history persuasive, and hold that *someone other than the arresting officer must be disturbed* for there to be a public disturbance within the meaning of RSA 644:2, III(a).”

(Emphasis added)

4. The General Court has specifically authorized law enforcement officers to utilize their judgment to determine a specific violation of the Disorderly Conduct statute. (See **RSA 644:2 III-a.**) The fact that the legislature has authorized this “judgment call” on the part of the police officer in one situation, but not any others, reinforces the argument for the requirement that an individual other than a law enforcement officer need be disturbed to violate other sections of the statute.
5. As there is no witness of record to confirm that the peace was actually breached other than the perception of law enforcement officers, which has been held to be legally insufficient to

constitute a violation of RSA 644:2 III(a), the complaint should be dismissed.

Prayer for Relief

WHEREFORE, Joseph Hart requests this Honorable Court to order the following relief:

- A. Dismiss the complaint for Disorderly Conduct pending in this matter, or
- B. Schedule a hearing if the Court is inclined to deny this Motion in which Mr. Hart respectfully requests five minutes for oral argument; and
- C. Grant any other relief this Honorable Court deems just and proper.

Respectfully submitted,

Joseph Hart
PO Box 833
Keene, NH

By Bradley Jardis

03/25/24

PURSUANT TO CIRCUIT COURT-DISTRICT DIVISION RULE 1.8 (B), THIS MOTION BEING GROUNDED IN BOTH FACT AND NOTICE PLEADING, COUNSEL ACKNOWLEDGES THAT MAKING FALSE STATEMENTS COULD SUBJECT HIM TO CRIMINAL PENALTIES.

I hereby certify that on the above date, a copy of this Motion was e-mailed to Attorney George Wattendorf.

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