

State of New Hampshire v. Garret Ean
456-2011-CR-03888(499803C-4C)

9 December 2011

Disorderly Conduct 644:2d - Interfering
Disorderly Conduct 644:2e - Refuse to Move

Judge Lyons,

I submit this memorandum in satisfaction of your request that I present you with a written argument regarding the in-progress trial that I am a party to. Although you are already aware that I assert my innocence in this matter, I welcome the opportunity to delve further into the specific reasons why I believe that I cannot be found guilty of the criminal charges filed by the state.

The facts and circumstances regarding my position are as follows:

Regarding the charge of interfering, the State made no attempt to prove its case. The State's only witness, John Patti, testified that he did not recall if I was among "the group" while said group was in the area that was considered a crime scene. He testified that he did not recall specifically issuing to myself an order to leave the crime scene, while asserting that I was, at some point, present among a group when an initial lawful order was issued. He did not recall where I was at the time that I was supposedly present for the initial lawful order. As I was at a further than reasonable distance from the area considered to be a crime scene at the time of my arrest, there can be no claim that I refused to leave the crime scene area. John Patti affirmed that he did not arrest me for interfering with the crime scene. He did not recall whether an order was issued to continue moving once the alleged group was beyond the crime scene. When asked about the origin of the interfering charge, the State's witness responded, "At the time you were arrested for disorderly conduct for refusing to move."

In regards to the refusal to move charge, the State alleges that I disobeyed a lawful order to move from a public area on the sidewalk. RSA 644:2 defines a lawful order.

"(a) "Lawful order" means:

(1) A command issued to any person for the purpose of preventing said person from committing any offense set forth in this section, or in any section of Title LXII or Title XXI,

when the officer has reasonable grounds to believe that said person is about to commit any such offense, or when said person is engaged in a course of conduct which makes his commission of such an offense imminent;

(2) A command issued to any person to stop him from continuing to commit any offense set forth in this section, or in any section of Title LXII or Title XXI, when the officer has reasonable grounds to believe that said person is presently engaged in conduct which constitutes any such offense; or

(3) A command not to enter or a command to leave an area closed pursuant to paragraph IV, provided that a person may not lawfully be ordered to leave his or her own home or business..."


As the State's witness was being shown video of the moments leading up to the arrest, he stated, when asked if I was moving, "No, not consistent with the ordinance." In citing the ordinance, the State's witness implies that he was under the assumption that RSA 644:2 authorized him to make arrests for city ordinance violations, which the statute does not. The authorization for city councils to pass bylaws and ordinances is located in Title III, Chapter 47:17, which is neither the criminal code nor the motor vehicle code. Additionally, neither the ordinance nor the statute explain what constitutes movement to be "consistent with the ordinance".

RSA 644:2 (e) states that a person is guilty if he, "knowingly refuses to comply with a lawful order..." The state did not establish what actions I took to constitute knowingly refusing to comply with an order, or establish that I had any *mens rea*.

Of the issues to be addressed by memo was whether or not there is precedent in disorderly conduct cases regarding the time of response to verbal orders. John Patti testified that members of the group seemed to not respond to orders to move until approached by police. As to the issue of whether or not the delay constitutes a refusal, it is my position that these actions were attributed to the group and not specifically to myself. At no time in the minutes leading up to the arrest did I intentionally refuse any orders from police to move.

Given the state's failure to prove either of its charges in this case, the only appropriate verdict is not guilty on both counts.

Respectfully Submitted,


Garret Ean
Defendant

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MANCHESTER DISTRICT COURT