

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
NH CIRCUIT COURT

Hillsborough County

9th Circuit – District Division - Manchester

The State of New Hampshire and Ean Garret
456-2011-CR-3888 (499803C and 499804C)

ORDER

On November 18, 2011, the Court held a trial in the above captioned matter. At the conclusion of all the testimony, the Court took the matter under advisement and provided the parties with the opportunity to submit memoranda on the legal issues that arose during the trial.

The parties did not raise any issues of constitutional dimension during the trial itself. Therefore, the Court will apply the law to the facts that were proven at trial. In this matter, the prosecution filed two criminal complaints, each alleging a class B misdemeanor of disorderly conduct.

The first complaint alleges that the defendant knowingly refused to comply with the lawful order of Sgt. John Patti to move from a public place. To wit: Ean Garret, while among a group, refused to comply with repeated orders to move and not block the sidewalk area in front of 351 Chestnut Street, the Manchester Police Department, a building open to the public.

The second complaint alleges that the defendant while in a public place, did knowingly engage in conduct that substantially interfered with the criminal investigation. To wit: Ean Garret, while among a group, refused to comply with the lawful order of Sgt. Patti to move from the front of 351 Chestnut Street, which was a crime scene in which police detectives were conducting an investigation. He continued to interfere with the investigators by refusing to move.

While the testimony of Sgt. Patti indicates that the defendant was arrested for a violation of a Manchester city ordinance, no complaint alleging such a violation was filed with the Court.

Each of the disorderly conduct offenses is based upon a violation of RSA 644:2 II (d), which involves a lawful order issued by a police officer. A lawful order is defined as:

(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 an such offense, or when said person is engaged in a course of conduct which makes his commission of such and 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.

See RSA 644:2(V). It is noteworthy that the New Hampshire Legislature chose not to include the violation of a town or municipal ordinance as a basis for a police officer to issue a lawful order to move. While there is clear and compelling evidence that the defendant was, at the moment of his arrest, violating the Manchester city ordinance, it is immaterial as to whether a valid lawful order was issued in this case unless the conduct constituted a violation of RSA 644:2 (V).

In the present case, the first disorderly conduct complaint was based upon the defendant's presence on the sidewalk obstructing pedestrian traffic. Sgt. Patti testified that a person he knows from his professional contacts was walking north on the eastern sidewalk of Chestnut Street, and that after this person walked past his position, this person walked across the street to reach a group of people gathered on the sidewalk. Thereafter, Sgt. Patti testified the defendant continued to walk in a northerly direction on the western sidewalk. This is certainly some evidence of obstructing pedestrian traffic.

Sgt. Patti testified that he gave the defendant a number of orders to move. Further, he testified that the process of "herding" the group of individuals took a significant period of time. The significant separation in terms of time and space between the sole identified pedestrian and the orders that ultimately caused the arrest of the defendant, is so attenuated as to render the prosecution's proof below that necessary for proof beyond a reasonable doubt. In consequence, the failure to prove every element beyond a reasonable doubt, see RSA 625:10, the Court finds the defendant not guilty of this charge. (499803C).

The second disorderly conduct complaint was based upon the fact that the defendant failed to follow an order to move from a crime scene. It is not open to dispute that a properly documented crime scene is essential when it comes to a search for truth at trial. The unauthorized presence of persons within a crime scene can compromise the value of undocumented evidence. Hence, the order issued by Sgt. Patti is clearly within the definition of RSA 644:2 (V).

In the context of this case, there are two issues: the first issue is whether the failure to move until the police advance constitutes a violation under the law. This issue was resolved in the matter of State v. Peter Eyre, and the Court incorporates that opinion by reference.

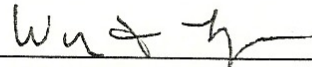
The second issue is a factual, not a legal question. Sgt. Patti candidly acknowledges that he had difficulties in accounting for because of the presence of the defendant among other individuals on the sidewalk at the time the order was issued. To his credit, Sgt. Patti candidly testified that there were other individuals between his position and the defendant which hampered his view. Moreover, Sgt. Patti was forthright in explaining that in the dynamic situation in which he was engaged in conversation with others, that he could not recall with specificity if these defendants were present when a particular order was issued. Sgt. Patti acknowledged that a video image showed the defendant behind him when he was issuing his initial order to move. Further, another video image showed the defendant was not in front of Sgt. Patti but to the side of Sgt. Patti as he issued another order. Finally, Sgt. Patti could not testify with any certainty as to how long the defendant had been with the group prior to being placed under arrest.

Under this set of circumstances, the Court cannot find that the defendant heard the lawful order to move that was directed at him and as a result, failed to follow that order. The Court therefore, based upon the candid and unembellished testimony of Sgt. Patti, finds the defendant not guilty. (499803C).

So Ordered.

12/27/11

Date



Judge William H. Lyons

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