

THE STATE OF NEW HAMPSHIRE

BELKNAP, SS
DOCKET NO. 2010-CR-02343

LACONIA DISTRICT COURT
SEPTEMBER TERM 2010

STATE OF NEW HAMPSHIRE

v.

ROBERT MILLS

STATE'S NOTICE OF NOLLE PROSEQUI

NOW COMES the State of New Hampshire, by and through its attorneys, the Office of the Attorney General, with this Notice of *Nolle Prosequi* on this private criminal complaint, and in a voluntary explanation for the well settled principles of law, practice, and sound legal discretion underlying this decision, the State proclaims as follows:

Relevant Facts

1. On or about August 5, 2010, Joseph S. Haas, Jr., a citizen of the State of New Hampshire, filed this pending criminal complaint against the defendant in Laconia District Court for a reported violation of Criminal Trespassing, pursuant to New Hampshire RSA 635:2, III(b)(2). The defendant, Robert Mills, is an employee of the United States Census Bureau, a federal agency under the jurisdiction of the United States Department of Commerce.

2. According to the complaint and accompanying materials filed by Mr. Haas with the Court, Mr. Haas hand-delivered a written "No Trespassing" notice to the defendant on April 19, 2010, at the United States Census Bureau office in Concord, New Hampshire. That notice, included in Mr. Haas's pleading, appears to state that he wished

the defendant to stay away from his property listed simply as “G.I.W.”, without identifying any discernible street address.

3. According to the complaint, Ms. Lyssa Nielson drove her car onto some of his property in Gilmanton, New Hampshire, on May 7, 2010. Ms. Nielson was a census employee working out of the Portsmouth office for the Bureau, and not the Concord office. Again, the precise location of his property is unspecified in Mr. Haass filings. Mr. Haas alleges that after she entered his driveway, Mr. Haas invited her onto his porch. In response to Mr. Haas’s subsequent questioning, Ms. Nielson allegedly told him she never received any instructions from to stay away from that property.

4. According to the complaint and other materials Mr. Haas filed with the Court, a copy of the summons and complaint were served on the defendant on August 2, 2010.

5. Private prosecutions are subject to the authority of the Attorney General or the appropriate county attorney, who may elect to either assume the prosecution of the offense or abate the offense by entering *nolle prosequi*, provided that the prosecutor has not filed an appearance to represent the defendant. State [Haas] v. Rollins, 129 N.H. 684, 685 (1987). The Office of the Attorney General has not entered any appearance to represent the defendant in this matter.

6. This private criminal complaint, read in conjunction with the accompanying materials submitted by Mr. Haas, on their face lack probable cause to show that a Criminal Trespass occurred. Without this demonstrable probable cause, this prosecution cannot proceed against the defendant. The complaint fails for a myriad of reasons, a non-exhaustive list of said reasons include the following:

a. The complaint does not sufficiently provide notice to the defendant of the geographic location of the property he allegedly trespassed upon;

b. The alleged facts do not demonstrate how any individual served with the “no contact” order stating the property was “G.I.W.” would know the initials referred to the specific street address Ms. Nielson visited in Gilmanton, New Hampshire;

c. The defendant is not alleged to have committed the crime of Criminal Trespass himself, as he is not alleged to have physically entered onto Mr. Haas’s property;

d. According to the facts alleged in the complaint and the accompanying materials Mr. Haas filed with the Court, the defendant cannot be held criminally liable for the actions of Ms. Nielson under the law defining the Criminal Liability for Another¹, as the defendant did not commit any act or omission to act in violation of an obligation enforced upon him by law, with the kind of culpability sufficient for the commission of a criminal trespass and thereby caused an innocent or irresponsible person to engage in a Criminal Trespass. See RSA 626:8, II(a). The defendant is also not made expressly accountable for Ms. Nielson’s actions by the law defining Criminal Trespass. See RSA 626:8, II(b); see also RSA 635:2.

e. According to the facts alleged in the complaint and the accompanying materials Mr. Haas filed with the Court, the defendant cannot be found to be an accomplice to Ms. Nielson’s actions, as defined under New Hampshire RSA 626:8, II(c), as the complaint fails to allege or establish that the defendant had the

¹. New Hampshire RSA 626:8, II(a) and II(b)

purpose of promoting or facilitating the commission of a criminal trespass, and then solicited Ms. Nielson to commit a criminal trespass, or aided or agreed or attempted to aid Ms. Nielson in planning or committing a criminal trespass. See RSA 626:8, II(c); see also RSA 626, III(a).

f. The defendant cannot be an accomplice of Ms. Nielson's actions as defined under New Hampshire RSA 626:8, III(c), as there is no law expressly establishing his complicity as an accomplice to Ms. Nielson's actions. See RSA 626:8, III(c);

g. According to the complaint and accompanying materials Mr. Haas filed with the Court, Ms. Nielson herself did not commit the crime of criminal trespass, pursuant to New Hampshire RSA 635:2, III(b)(2), as Mr. Haas did not personally communicate to her an order not to enter on to his property prior to her entry. On its face, RSA 635:2 requires the defendant to have entered a place "in defiance of an order to leave or not to enter which was personally communicated to him by the owner or other authorized person." See New Hampshire RSA 635:2, III(b)(2) (emphasis added). Since Ms. Nielson could not be convicted of trespassing, neither could the defendant through any theory of criminal liability. Even if some criminal liability for the conduct of another were established, the complaint fails to alleged that Ms. Nielson was aware that such a request had been given to another employee of the United States Census Bureau.

h. Regardless of all the foregoing, the defendant could not be held criminally liable for actions lawfully taken during in the course of his employment while carrying out their federal duties and responsibilities as

employees of the United States Department of Commerce's agency, the United States Census Bureau. The federal government's authority and obligation to conduct the census is expressly enumerated in the United States Constitution. U.S. Const. Art. I, §2, cl. 3. Pursuant to this constitutional mandate, Congress established the United States Census Bureau under the jurisdiction of the Department of Commerce within the Executive Branch of the United States Government. 13 U.S.C. §2. As part of its duties, this Bureau is tasked with carrying out the decennial United States population census. 13 U.S.C. §141. The actions alleged in the complaint and in the accompanying materials Mr. Haas has filed with the Court are those of federal employees acting in the furtherance of their duties; namely, to conduct the census as mandated by United States Constitution. The Supremacy Clause of the United States Constitution bars enforcement of state law that impairs, impedes, burdens, or controls the execution of a federal function. U.S. Const. Art. VI, §1, cl. 2; see also M'Culloch v. Maryland, 17 U.S. 316, 436 (1819) (holding that a state has no power to impede, burden, or "in any manner control, the operations of the constitutional laws enacted by congress to carry into execution the powers vested in the general government"; see also Cunningham v. Neagle, 135 U.S. 1, 75-76 (1890) (holding that a deputy marshal could not be prosecuted for murder by the State of California for killing a man who was trying to assault a Justice of the United States Supreme Court when the deputy's acts were reasonably necessary for the execution of his federal function to protect the Justice). Because it can be assumed that the United States Census Bureau authorizes, expects, and relies

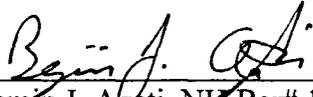
upon census employees to personally contact citizens to calculate an accurate count of the country's population, enforcement of New Hampshire RSA 635:2 on individual census workers, specifically, those who travel up driveways to private residences to conduct the census, who do not have knowledge of an order not to enter a particular property and whom were not personally communicated to them by the owner to stay off the property, significantly and unduly impairs, impedes, and burdens the efficient operation of the census workers' duties. Therefore, even if he had trespassed upon Mr. Haas' land in the course of his duties himself, the defendant is immune from prosecution of the charged offense of Criminal Trespass under New Hampshire RSA 635:2, III(b)(2), due to the operation of the Supremacy Clause.

7. Finally, even if the foregoing deficiencies in the complaint did not exist, the defendant cannot be held criminally liable on behalf of the United States Census Bureau when, according to the complaint and the accompanying materials Mr. Haas has filed with the Court, the defendant and Ms. Nielson's alleged actions are those of federal employees acting in the furtherance of their duties with no alleged intent of the defendant to violate a no contact order or to commit a Criminal Trespass. In addition, the State cannot hold the United States government accountable as a corporation for a state criminal offense in the manner suggested by Mr. Haas's pleadings, as to do so would violate the very idea of the sovereignty between the federal government and the states.

THEREFORE, upon these reasons well-settled in the principles of law, practice, and sound legal discretion, and after regarding the rights of the complainant, the respondent, and the rights of the public, the State enters *Nolle Prosequi* on this matter and terminates any further prosecution.

DATED: September 7, 2010

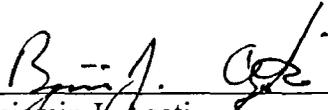
Respectfully submitted



Benjamin J. Agati, NH Bar# 16161
Assistant Attorney General
Office of the Attorney General
Criminal Justice Bureau
33 Capitol Street
Concord, NH 03301-6397

CERTIFICATE OF SERVICE

I hereby certify that a copy of this Motion has been forwarded to the defendant Robert Mills, at 166 Loudon Road, Concord, NH 03301, as well as courtesy copies sent to Joseph S. Haas, P.O. Box 3842, Concord, NH 03302, and Assistant United States Attorney T. David Plourde, United States Department of Justice – District of New Hampshire, 53 Pleasant Street, Concord, NH 03301, all sent via U.S. Mail, on September 7, 2010.



Benjamin J. Agati
Assistant Attorney General