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December 4, 2012

Tina de la Bruere, Clerk
Vermont Superior Court
Orleans Unit, Criminal Division
247 Main St.
Newport, VT 05855

Re: State v. Braithwaite, Docket No. 816-12-11 Oscr

Dear Tina:


Enclosed for filing is Defendant's Renewed Motion to Dismiss Under V.R.Cr.P.48(b)(2) and For Lack of Prima Facie Case. This motion is based on newly discovered evidence obtained in response to our Subpoena Duces Tecum to Green Mountain Power some of which is subject to a Protective Order.

As a result, we are filing a redacted version publicly and the full motion under seal. We have asked for an evidentiary hearing. We have also asked that the Court unseal this motion in its entirety and the Attachment A.

I would also ask to be allowed until tomorrow to respond to the State's Motion in Limine. We do have a substantive objection. However, yesterday and today I have been focused on the present motion and need additional time to finalize our response. That motion was filed last Thursday.

Thank you for your consideration.

Sincerely,



Phil White

Encl.

Cc: Orleans County State's Attorney's Office
R. Jeffrey Behm, Esq.

STATE OF VERMONT
ORLEANS COUNTY, SS

STATE OF VERMONT

v.

VERMONT SUPERIOR COURT
ORLEANS UNIT, CRIMINAL DIVISION
DOCKET NO. 816-12-11 Oscr

CHRISTOPHER BRAITHWAITE

Renewed Motion to Dismiss Under V.R.Cr.P. 48(b)(2)
- and -
For Lack of Prima Facie Case

NOW COMES Chris Braithwaite by and through his attorney, Philip H. White, Esq., and, based on newly discovered evidence, hereby moves to dismiss the Unlawful Trespass charge filed against him by the State of Vermont pursuant to V.R.Cr.P. 48(b)(2) and V.R.Cr.P.12(d) because dismissal of this charge will serve the ends of justice and the effective administration of the court's business and because the State will be unable to establish beyond a reasonable doubt that the corporate entity GMP had not given Braithwaite permission to be on the property as a working journalist for the purpose of covering the protests and any arrests made by law enforcement officers.

A corporation can only act through its designated agents. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

David Coriell, who was the GMP employee at the site and on top of the mountain with Deputy Sheriff, Phil Brooks during the arrests, [REDACTED]

[REDACTED]

[REDACTED] Under oath, however, Coriell stated that he was the one directly dealing with Phil Brooks and he told the deputy sheriff, "no exceptions." Deposition of David Coriell, at 34-35 (5/22/2012)(Attachment B). [REDACTED]

[REDACTED]

[REDACTED] In fact, the Sheriff told Braithwaite to leave the property altogether (from his position on the stump and out of the way) or return to the crane path so that an arrest could be made.

These e-mails have been obtained on Thursday, November 29, 2012 at 4:01 pm, pursuant to a Subpoena Duces Tecum issued to Green Mountain Power. Pursuant to the Protective Order executed that date, these e-mails and a discussion of their significance are being submitted to the Court under seal. A number of them are included under seal as Attachment A

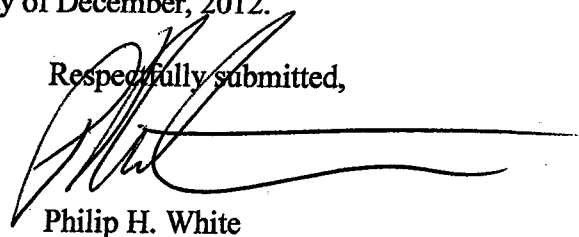
Based upon their obvious relevancy and the lack of any corporate interest to keep them sealed, we would respectfully request that they be unsealed by order of the court. We would also request an evidentiary hearing prior to trial with David Coriell, Charles Pughe, Robert Dostis, and Steven Terry be required to be present to give testimony.

Based on this recently discovered information, Defendant Christopher Braithwaite prays that this Honorable Court shall dismiss this matter for lack of prima facie case without his having to incur the expense of trial.

In renewing our Motion to Dismiss in the interests of justice, we respectfully submit that this newly discovered evidence only enhances Defendant's argument that justice is well served by a dismissal. Regardless of whether the arguments – outlined in our initial motion and reasserted by reference in this motion – find resonance with the Court under constitutional grounds, they should resonate to support a motion to dismiss under the interests of justice on the facts of the present case.

DATED at Newport, Vermont this 4th day of December, 2012.

Respectfully submitted,



Philip H. White

cc: Orleans County State's Attorney

R. Jeffrey Behm, Esq.

1 was expressing opinions in opposition to this project?

2 A. I read his editorials opposed to the project.

3 Q. And as opposed to some other editorials by other
4 folks in other parts of the state maybe that were
5 supportive of the wind project?

6 A. Yes. There's certainly a debate in Vermont and
7 back and forth. That said, you know, we always talked
8 to Chris. We never didn't give him access to the site
9 because of his opinions. We sent him the regular
10 updates, and we invited him to the site.

11 Q. And so are you saying that had he been wearing a
12 safety hat and a vest that he would have been allowed to
13 cover this protest?

14 A. I guess the, I wasn't the one to make the
15 determination whether he was abiding by what the
16 sheriff's deputy was asking of him. At that point my
17 responsibility was to let the sheriff's deputies do
18 their job. I wasn't going to interfere with that, with
19 that action.

20 Q. Well if the deputy sheriff told him that Green
21 Mountain Power had said no exceptions to arrest, is that
22 fair to say?

23 A. That's fair to say.

24 Q. Did you give that directive, no exceptions?

25 A. I said, you know, I told the deputy sheriff who

1 we had on site and that we couldn't have people who were
2 unauthorized on our site, on the site, so in that
3 context, yeah, there was no exceptions.

4 Q. Okay. And didn't you say that to the sheriff,
5 there are no exceptions?

6 A. Yes.

7 Q. And when you said that you knew that Chris
8 Braithwaite was there as a working member of the press?

9 A. I did, yes.

10 Q. And he wasn't standing in the crane path at the
11 time, right?

12 A. So when --

13 Q. If you could just answer that yes or no?

14 A. Yes, but he wasn't, he was given the opportunity
15 by Deputy Brooks. Deputy Brooks, and I heard this, asked
16 him to get back to the Nelson property line or he could
17 walk over into the middle of the crane path and be
18 arrested, and at that time Chris chose to walk back to
19 the crane path.

20 Q. And those were the two, the two choices?

21 A. Yes.

22 Q. It's either get back into the crane path or walk
23 through the woods?

24 A. Or view it through the woods at the property
25 boundary.