

Vermont Superior Court
Orleans Criminal Division
217 Main Street
Newport, Vermont 05855
www.VermontJudiciary.org - (802) 334-3325

ENTRY REGARDING MOTION

Docket No: 816-12-11 Oscr State vs. Braithwaite, Chris
816-12-11 Oscr, count 1 UNLAWFUL TRESPASS-LAND

Title of Motion: Motion to Dismiss With Prejudice, No. 8
Date Motion Filed: December 6, 2012
Motion Filed By: White, Philip H., Attorney for:
 Defendant Chris Braithwaite

☐ Granted

☐ Denied

☐ Scheduled for hearing on: _____ at _____; Time Allotted _____

☒ Other

Please return with States response or
by 12/26 whichever is earlier. All materials
under seal not attached to the Deface Motion
to domains shall be returned to GMP by 12/26/12
and shall remain under seal. Those materials formerly
under seal as part of the motion to dismiss are in the public

Allen Benthuysen 12/10/12
Judge Date

Date copies sent to: 12/10/12 Clerk's Initials JH
Philip H. White, Attorney for Defendant, Chris Braithwaite
Sarah A. Baker, Attorney for Plaintiff, State

↳ domain already, rendering the request to unseal (the
materials attached to the motion to Dismiss) moot.

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

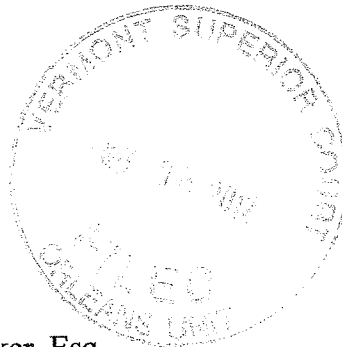
MOTION TO DISMISS WITH PREJUDICE

NOW COMES Defendant, Christopher Braithwaite, by and through his attorney, Philip H. White, pursuant to V.R.Cr.P.48(b)(2) and hereby moves that the Court DISMISS the unlawful trespass charge against him WITH PREJUDICE for the following reasons:

1. The Orleans County State's Attorney's Office has filed a Notice of Dismissal without prejudice.
2. This matter has been on the court docket for almost a year.
3. Defendant has incurred significant legal fees related to his defense
4. For reasons included in our Renewed Motion to Dismiss.
5. A jury of peers has been drawn and double jeopardy should apply.

WHEREFORE, Defendant prays that this Honorable Court shall dismiss this matter with prejudice.

DATED at Newport, Vermont this 6th day of December, 2012



Respectfully submitted,

Philip H. White, Esq.

cc: Sarah A. Baker, Esq.

ATTACHMENT A

From: Stephen Terry [sterry@worthmountainconsulting.com]
Sent: Sunday, December 11, 2011 9:29 AM
To: Dorothy Schnure
Cc: David Coriell; Robert Dostis; Charles Pughe; Stephen Terry
Subject: Re: KCW_FW: Another crane path protest planned Monday

I agree with Dotty

I think now we have to put an end to the notion we tried to stop the media, when we simply did not.
As Robert asks : did the leadership instruction not to arrest CB just not get relayed fast enough Monday morning?
Steve

Stephen C. Terry | Principal
t: 802.398.8106 | m: 802.310.3987
sterry@worthmountainconsulting.com

Worth Mountain Consulting
68 Court Street | P.O. Box 711
Middlebury, VT 05753

Sent from my iPhone

From: Coriell, David [David.Coriell@greenmountainpower.com]
Sent: Sunday, December 11, 2011 9:56 AM
To: Steve Terry Foward to worthmountainconsulting.com; Schnure, Dorothy
Cc: Dostis, Robert; Pughe, Charles; Terry, Steve
Subject: RE: KCW_FW: Another crane path protest planned Monday

It didn't get relayed to all the officers involved. That said, I know the Sheriff had no intention of arresting Chris. Chris actually arrested himself by physically walking him back to the middle of the crane path. I don't care who you are, if you call a police officer an expletive, your chances of getting arrested increase. He step over a professional line.

That said, we have no intention of arresting the press. If they come up with protesters and dont ask permission, I will ask them to stand off the crane path and cover the story from there. My concern with inviting them tomorrow is a practical concern. I just don't think we have resources to be bringing multiple people up and down the hill and deal with a protest in the middle of the crane path.

From: Dorothy Schnure
Sent: Sunday, December 11, 2011 1:33 PM
To: Charles Pughe
Cc: Robert Dostis; David Coriell; Stephen Terry; Dorothy Schnure
Subject: Re: Message to media regarding access to kcw

Robert and I had a long conversation about this. Our gut was against calling more attention to the issue. We have in the weekly construction updates told of procedure to access, essentially what is included here. Unless there is a reporter who wants to prove special reporter rights then it is likely only to be Braithwaite or Dunbar tomorrow hiking up early morning. We had some concerns that the email could be read as we dare you to come up without contacting us.

Here's what we think needs to happen:

Dave confirm that sheriff will be there early if at all possible. Ensure sheriff knows media has permission to be there. Tell sheriff we really don't want any reporters arrested. Dave will have hard hats and vests for any media. We will insist that someone be with media at all times to ensure safety. We should video any interaction. Do we still have a camera?

Based on what happens tomorrow we will decide about sending the email to media.

What do you all think? I am heading to a rehearsal now and then concert at 4:30. I can check cell up to 4:30 but will have hard time sending mass emails out until 6:30 if we change our minds and want to put this out.

Dotty

Sent from my iPad

Sounds like the right list to me.. and a good way to pre-empt another journalism arrest which was never our intent or purpose here.
steve

11/8/2012

--
Stephen C. Terry | Principal
t: [802.398.8106](tel:802.398.8106) | m: [802.310.3987](tel:802.310.3987)
sterry@worthmountainconsulting.com
www.Worthmountainconsulting.com
Worth Mountain Consulting
68 Court Street | P.O. Box 711
Middlebury, VT 05753

From: Robert Dostis
Sent: Sunday, December 11, 2011 9:22 AM
To: Dorothy Schnure; Stephen Terry; David Coriell; Charles Pughe
Subject: RE: OR - pro-Braithwaite editorial (& anti GMP)

Reading the OR editorial - I don't understand why it says that GMP said arrest anyone trespassing including reporters given we gave the explicit instruction that Chris was not be arrested. Does anyone know what happened?

-----Original Message-----

From: Trip Wileman [mailto:trip@wileman.org]
Sent: Saturday, December 10, 2011 2:26 AM
To: Robert Dostis; Dorothy Schnure; Stephen Terry; David Coriell; Gert Tetreault
Subject: OR - pro-Braithwaite editorial (& anti GMP)

See files attached to this message (sent from GoodReader)

From: David Coriell
Sent: Monday, December 05, 2011 2:03 PM
To: Dorothy Schnure; Robert Dostis; Charles Pughe; Stephen Terry; Donald Rendall; Patrick Daley; John Stamatov; jbehm@sheeheyvt.com
Subject: Arrests Today

At about 8:40 this morning a group of 9 opponents came out on the site near T6 and stood across the crane path to block traffic. I arrived at 8:45 and asked the opponents to leave, which they did not. Traffic between T7 and T6 was stopped between 8:40 and 9:40. At about 9:40, JA McDonald bulldozed the crane path about 10 feet wider around the protesters. At that point trucks were able to get around the protesters. Although they could have moved over a few feet, the protesters stayed where they were and didn't disrupt traffic. JA McDonald didn't drive haul trucks with stone around the protesters for safety reasons.

We did have two Lamoille Deputies scheduled to stop by the site this morning. However, due to another issue they were unable to make it to the site in the morning. At 11:40 two Orleans deputies and one state police arrived at the top of the mountain. They gave the protesters the opportunity to return to the Nelson property. Three individuals (in addition to Chris Braithwaite) started to walk off the property. Six individuals remained to be arrested. Braithwaite and another woman stopped at the edge of the construction and started taking pictures. Phil Brooks, the Orleans Co. Chief Deputy, asked Braithwaite and the women to get back another 50 feet to the Nelson property. The women complied. Braithwaite chose to stay. Brooks approached Braithwaite and after a short conversation he asked him to leave or come back and stand with those willing to be arrested. Braithwaite walked back and stood with those being arrested. The police brought the arrestees down in three trips. The whole procedure took about 40 minutes. Nobody was handcuffed.

In total, 7 people were arrested. We will (hopefully) have 2 deputies stop by tomorrow morning to check in and see if there is another protest.

Dave

On Dec 10, 2011, at 8:09 AM, "Robert Dostis" <dostis@greenmountainpower.com> wrote:

> Charlie I don't know if you saw the press this week, but a lot of buzz and discussion around reporters arrest. If Chris was not been arrested the other arrests would likely have been a non event. Frankly I don't understand why Chris was arrested since you gave exact instruction that he not be. This week the Communication team have spent a lot of time and energy dealing with this. The last thing we want is more especially since all of Vermont press are now engaged in the discussion about first amendment rights. Unfortunately I wish I could say it is over but there is more to come. Another arrest will only serve to heighten it. I get your frustration but we have to minimize the public and political fallout of decisions made on the mountain. Arresting reporters will do more harm than good. We also have to be careful with the other trespasses, if we arrest without first giving warning,

1

we look like the bad guys and we give the protesters just what they want. They are doing this because they want to annoy us in hopes we become aggressive and they can show everyone what a mean and arrogant foreign owned company they say we are. We must continue to take the high road. My recommendation is that we not arrest reporters and make that very clear to the Sheriff and they ask people to leave before any arrests are made. Others please add you thoughts. Thanks

>

> Sent from my iPhone

>

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 --

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15 by Deputy Brooks. Deputy Brooks, and I heard this, asked
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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.

LAW OFFICES OF
WILSON & WHITE
PROFESSIONAL CORPORATION

DAVID M. WILSON (1945-2001)
PHILIP H. WHITE

P.O. BOX 310
100 MAIN STREET
NEWPORT, VERMONT 05855

TELEPHONE: 802-334-2421
FACSIMILE: 802-334-2218

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.

Court

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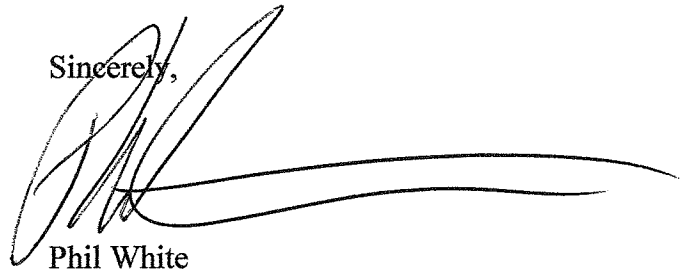
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STATE OF VERMONT
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STATE OF VERMONT

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]

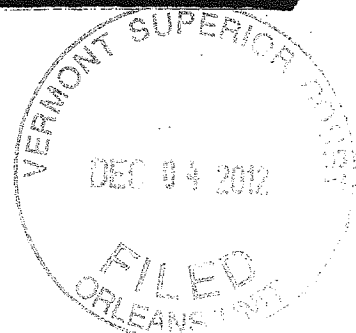
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



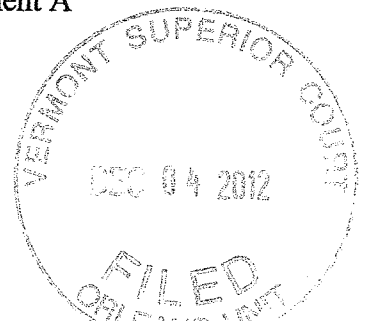
[REDACTED]

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] 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] 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



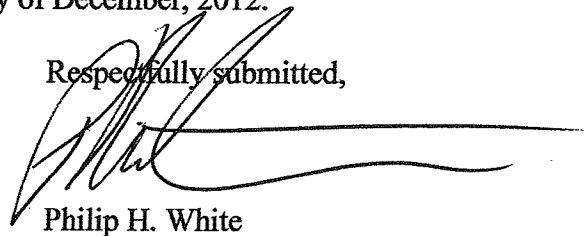
Based upon their obvious relevancy and the lack of any corporate interest to keep them sealed, we would respectfully request that they be unsealed by order of the court. We would also request an evidentiary hearing prior to trial with David Coriell, Charles Pughe, Robert Dostis, and Steven Terry be required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



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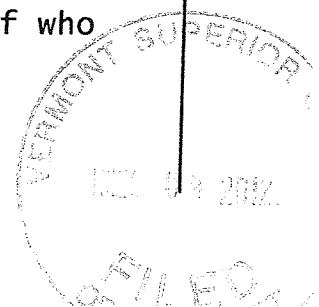
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