THE STATE OF NEW HAMPSHIRE
SUPERIOR COURT

Rockingham, SS **SUPERIOR COURT**

STATE OF NEW HAMPSHIRE

v.

GENO JOSEPH MARCONI

Docket No. 218-2024-CR-01426

ORDER ON PENDING MOTIONS

In the above-captioned case, Defendant Geno Marconi stands charged with one count of witness tampering, one count of falsifying physical evidence, two counts of obstructing government administration, and two counts of disclosure/misuse of DMV records. Docs. 1–6. Defendant has filed several motions that are currently pending before the Court, including a motion to suppress, a motion for judicial notice, and two motions to dismiss. Doc. 26 (Mot. Suppress); Doc. 27 (Second Mot. to Dismiss); Doc. 28 (Mot. Judicial Notice); Doc. 29 (First Mot. to Dismiss). The State objects to each motion. See Doc. 31 (Obj. Doc. 28); Doc. 32 (Obj. Doc. 26); Doc. 33 (Obj. Doc. 27); Doc. 34 (Obj. Doc. 29). After review, the Court finds and rules as follows.

Background

The Court draws the following factual background from the relevant pleadings. Defendant has been employed as the Director of the Division of Ports and Harbors ("DPH") for the Pease Development Authority (the "PDA") since 2002. Doc. 26 ¶ 1. On April 18, 2024, Defendant was placed on administrative leave pending an investigation that was criminal in nature. Id. ¶ 3. He was not given additional details as to the investigation at that time, but was informed that he was "prohibited from performing PDA

and/or DPH related business" during his leave of absence to "safeguard the integrity of the investigation[.]" Id. ¶ 3; Doc. 32, Ex. 1.

At the time Defendant was placed on leave, he was in possession of a cell phone (the "PDA phone") that he had been provided as part of his employment. Doc. 32 ¶ 1; see Doc. 26 ¶ 4. The number associated with the cell phone ended in 0– –3 (the "PDA number"). Doc. 26 ¶ 4. Once placed on leave, the PDA sought to retrieve the PDA phone from Defendant and disconnected the service associated with the PDA number. Doc. 32 ¶ 1. Defendant initially objected to returning the PDA phone, under the belief that it was his personal property. Id. At some point prior to returning the PDA phone but after the PDA disconnected the PDA number, Defendant set up a private account on the PDA phone which utilized a phone number ending in 8– –4 (the "Marconi number"). Doc. 26 ¶ 4–6. Ultimately, the PDA phone was confirmed to be property of the PDA, and Defendant returned it. See id ¶ 7; Doc. 32, Ex. 2. Just prior to return, Defendant requested through counsel that the PDA assist him in removing personal items from the PDA phone before returning it. Doc. 32, Ex. 3. The request was refused. Id. Defendant subsequently purchased a new device and had the Marconi number transferred to that device. Doc. 26 ¶ 7.

On May 15, 2023, following the return of the PDA phone to the PDA, the executive director of the PDA provided consent to State investigators to seize and search the PDA phone. Doc. 32 ¶ 3. The consent form signed by the executive director included reference to the PDA number but not the Marconi number. Id., Ex. 4. A subsequent search of the PDA phone revealed calls made to and from the PDA number and calls made to and from the Marconi number. See Doc. 26 ¶ 9.

Defendant was thereafter indicted on six charges. Docs. 1–6. Two of those indictments pertain to a "voicemail and/or voicemails" deleted from the PDA phone, including falsifying physical evidence contrary to RSA 641:6, I, Doc. 2 (Indictment – Charge ID 2257802C), and obstructing government administration contrary to RSA 642:1, I, Doc 3 (Indictment – Charge ID 2257803C) (collectively, the "indictments related to voicemails[1]"). The remaining indictments include reference to an allegation that Defendant "provid[ed] confidential motor vehicle records pertaining to N.L to another individual, B.C." (collectively, the "indictments related to motor vehicle records"). The indictments related to motor vehicle records include the following charges: tampering with witnesses and informants contrary to 641:5, Doc. 1 (Indictment – Charge ID 2257801C); obstructing government administration contrary to RSA 642:1, I, Doc. 5 (Indictment – Charge ID 2257805C); and two counts of Driver Privacy Act violations pursuant to RSA 260:14, IX. Doc. 4 (Indictment – Charge ID 2257804C); Doc. 6 (Indictment – Charge ID 2257806C).

Although the indictments related to voicemails do not specify what phone the voicemails were left on, discovery provided by the State includes a digital evidence report identifying three deleted voicemails from the PDA phone left during the time the Marconi number was active. Doc. 26 ¶ 9; Docs. 2–3. Each of the voicemails were short and allegedly did not come from N.L or B.C. Doc. 26 ¶ 9. The discovery provided by the State further suggests that the motor vehicle records referenced in the remaining indictments pertain to boat and automobile registrations related to N.L. or a relative of N.L. Doc. 33 ¶ 1.

[1] Although the indictments each refer to "a voicemail and/or voicemails," the Court will refer to the allegedly deleted material in the plural for ease and clarity.

Analysis

As referenced above, there are currently four motions pending before the Court, including Defendant's motion to suppress, Defendant's motion to dismiss the indictments related to motor vehicle records, Defendant's motion to dismiss the indictments related to voicemails, and Defendant's motion for judicial notice and jury instruction. The Court will address each motion, in turn.

I. Motion to Suppress (Doc. 26)

The Court first considers Defendant's motion to suppress any evidence related to the Marconi number obtained as a result of the search of the PDA phone search. See generally Doc. 26. Defendant argues that the search of the PDA phone, including information pertaining to the Marconi number and the PDA number, ran afoul of his rights under Part I, Article 19 of the New Hampshire Constitution and the Fourth Amendment of the Federal Constitution. Id. ¶¶ 11–14. More specifically, Defendant takes the position that any data obtained concerning the Marconi number was the product of a warrantless search that was either beyond the scope of the consent to search given by the PDA or otherwise was not a search to which the PDA had authority to consent. Id. ¶ 14. The State disagrees, arguing first that Defendant does not have standing to challenge the search of the PDA cell phone. Doc. 32 ¶ 4. Further, the State argues that it had appropriate consent to search the PDA phone, and that Defendant does not have a reasonable expectation of privacy in the content on that device. Id. ¶ 7.

Part I, Article 19 of the New Hampshire Constitution protects an individual from "all unreasonable searches and seizures of his person, his houses, his papers, and all his possessions." N.H. CONST. pt. I, art. 19. The State bears the burden to

demonstrate the legality of searches and seizures. See State v. Martin, 145 N.H. 362, 364 (2000) ("At hearings on motions to suppress evidence. . . it is basic that the burden of proof of the legality of the search rests with the State in all cases."). While Defendant brings his arguments under both the federal and state constitutions, because the federal constitution offers no greater protection than the state constitution in this context, the Court will address "the defendant's claims under the State Constitution and rely upon federal law only to aid in [the] analysis." State v. Letoile, 166 N.H. 269, 272 (2014).

As a preliminary matter, the Court assumes without deciding that Defendant has standing to challenge the scope of the search as it pertains to the Marconi number. Further, each of Defendant's arguments pertain to the consent provided by the PDA through its executive director to the State. Although Defendant passively suggests that there is no evidence supporting that the consent was freely, knowingly, or voluntarily given by the executive director, he does not put forth any factual basis for his implicit assertion that the consent was somehow invalid. See Doc. 26 ¶ 17. Indeed, the only evidence related to voluntariness is the language of the signed consent form, which states in relevant part that "[the executive director has] been advised by Investigator Stephen P. Johnson and . . . fully understand[s] that [he] has the right to refuse [his] consent," among recitation of other rights related to the consent to search. Doc. 32, Ex. 4. On the record presented, the Court concludes that the State has carried its burden with respect to the voluntariness of the above-described consent.

Defendant next argues that the search of the PDA phone unreasonably exceeded the bounds of the consent provided by the PDA. Under Part I, Article 19, "warrantless searches are *per se* unreasonable unless they fall within the narrow

confines of a judicially crafted exception." State v. LaBarre, 160 N.H. 1, 7 (2010) (quotation omitted). "One such exception exists where the officer has consent to ... search the [property]." State v. Coyman, 130 N.H. 815, 818, (1988) (quotation omitted).

Here, Defendant argues that the scope of the consent did not include the Marconi number because that number was private and there was no reference to the Marconi number on the consent form. Doc. 26 ¶¶ 15–19. As such, Defendant asserts that the search of information pertaining to the Marconi number amounted to an unlawful warrantless search. Id. For their part, the State argues that the consent form was inclusive of anything on the PDA phone and that the phone number listed at the top was merely an identifier of the device. Doc. 32 ¶ 3. The Court agrees with the State.

As correctly noted by Defendant, the scope of a search that relies on consent is limited to the bounds provided for by the consent. State v. Saunders, 164 N.H. 342, 354 (2012) ("When the police are relying upon consent as a basis for their warrantless search, they have no more authority than they have been given by the consent." (quotation omitted)). Accordingly, the Court turns to the consent form signed by the executive director. Doc. 32, Ex. 4 (Signed Consent Form). As Defendant points out, the top of the consent form references the PDA number. Id. Specifically, the PDA number is provided as a response to a fill-in-the-blank prompt requesting "Cell Phone #." That prompt is part of a longer list of fill-in-the-blank prompts, comprising of identifying features or administrative information related to the PDA phone such as the model number, serial number, password to enter the phone, manufacturer, and whether any cords were provided alongside the PDA phone. Id. The list of prompts sits under the heading: "Cell Phone / Mobile Device." Id. Just above the heading, there is a broad

statement of authorization for "the NH Attorney General's Office and/or any trained personnel designated to assist, to conduct a complete search of my cell phone or mobile device listed below." Id. (emphasis added). A plain reading of the header, followed by the list of prompts, indicates that the area where the PDA number was provided is for identification of the "cell phone or mobile device" to be searched rather than to designate what portions of the device fall within the consented search. Id.

This conclusion is further supported by the language contained in the subsequent paragraphs, which describe what parts of the device the consent to search covers in some detail. Id. Those paragraphs describe that consent is given to search "all areas of the cell phone and removable electronic storage media including, but not limited to incoming and outgoing calls, received and sent messages[.]" Id. Further, the form states that the consent authorizes the State to "download the contents of [the] cell phone/mobile device and all associated electronic storage media." Id. Reading the consent form as whole, the Court concludes that consent was given to search any information stored on the PDA phone, including incoming and outgoing calls and texts, without consideration to what number the device utilized to make those calls. See id. Accordingly, Defendant's argument that the search went beyond the scope of the consent provided by the PDA fails.

In the alternative, Defendant argues that the PDA did not have the authority to consent to a search of information pertaining to the Marconi number. Doc. 26 ¶¶ 20–29. He states that he had a reasonable expectation of privacy in the Marconi number, which he obtained and accessed through a personal account after he was put on leave and the PDA number had been disconnected. The State argues that Defendant could not

have a reasonable expectation of privacy in information concerning the Marconi number while it was setup and utilized on a device owned by the PDA. Doc. 32 ¶¶ 5–7. In other words, the State contends that Defendant relinquished any reasonable expectation of privacy related to use of that device irrespective of which number was in active use. Id.

Under both the federal constitution and the New Hampshire Constitution, this issue is governed by the two-part test articulated by Justice Harlan in Katz v. United States, 389 U.S. 347, 361 (1967). See State v. Goss, 150 N.H. 46, 48–49 (2003) (adopting the test articulated in Katz for the purposes of Part I, Article 19). More specifically, to determine whether a reasonable expectation of privacy exists, the Katz test requires "first that a person have exhibited an actual (subjective) expectation of privacy and, second, that the expectation be one that society is prepared to recognize as 'reasonable.'" Id.

In applying the Katz test here, the Court's analysis will focus on the PDA phone, inclusive of data it contained related to the Marconi number.[2] Starting with the second prong, the Court considers whether Defendant's expectation of privacy was "one that society is prepared to recognize as 'reasonable.'" See Goss 150 N.H. at 49 (quoting Katz, 389 U.S. at 361). The Court conducts this inquiry "on a case-by-case basis, considering the unique facts of each particular situation." State v. Gates, 173 N.H. 765, 774 (2020). In Goss, the New Hampshire Supreme Court determined that under Part I, Article 19, the defendant in that case had a reasonable expectation of privacy in trash

[2] Importantly, the Court is not considering whether the Defendant has a privacy interest in the private account associated with the Marconi number beyond what data or information was collected from the State's search of the PDA phone. Based on the parties' pleadings, this motion to suppress pertains to content obtained only through the search of the PDA phone and does not implicate a generalized search of the Marconi number and associated account. See generally Docs. 26, 32.

he placed outside in opaque plastic bags for disposal—despite a contrary finding by the Supreme Court of the United States under the Fourth Amendment in California v. Greenwood, 486 U.S. 35 (1988). See 150 N.H. at 49. In making this ruling, the New Hampshire Supreme Court indicated that Part I, Article 19 could be construed as more protective than the federal constitution for searches and seizures, implying that society in New Hampshire was more inclined to recognize a reasonable expectation of privacy in contexts that perhaps would not be recognized by society on a national scale. See id.

In this case, the inquiry before the Court is not whether Defendant had a reasonable expectation of privacy in a private account (and, by extension, the Marconi number associated with that private account), but rather whether Defendant had a reasonable expectation of privacy in data related to a private account that was stored on a work-issued device he neither owned nor possessed at the time of the search. In other words, the relevant inquiry is not whether Defendant had a privacy interest in his Marconi number account, but rather whether he had a reasonable expectation of privacy in information stored on the PDA phone. For the following reasons, the Court concludes that he did not.

In considering the privacy interests of government employees in employer-provided devices, the United States Supreme Court has noted that "[r]apid changes in the dynamics of communication and information transmission are evident not just in the technology itself but in what society accepts as proper behavior." City of Ontario, Cal. v. Quon, 560 U.S. 746, 759 (2010). The Court is sensitive to constantly evolving norms regarding technology and privacy, particularly as it pertains to cell phones which may

contain "the privacies of life." See Riley v. California, 573 U.S. 373, 403 (2014). Nonetheless, "the fourth amendment recognizes no claims of privacy in what a person 'knowingly exposes to the public, even in his own home or office.'" State v. Valenzuela, 130 N.H. 175, 182 (quoting Katz, 389 U.S. at 351 affirmatively in support of its ultimate conclusion that Article 19 does not provide additional protections when a person exposes private information to the public); see also State v. Mello, 162 N.H. 115, 122 (holding that New Hampshire law "regarding information voluntarily exposed to third parties is in line with the protection afforded under the Fourth Amendment").

Against this backdrop, the Court concludes that Defendant did not have a reasonable expectation of privacy in information stored on the PDA device based on the facts. It is undisputed that Defendant did not own or possess the PDA phone at the time it was searched. Moreover, prior to using the Marconi number on the PDA phone, Defendant was informed that he was being placed on "indefinite leave of absence" and that the PDA phone had been "disabled and must be returned to PDA headquarters." Doc. 32, Ex. 1. Despite this information, Defendant elected to use the Marconi number on the PDA phone even though the PDA maintained a policy prohibiting the use of "personal accounts or personal sites unless for legitimate business purposes," on its technology and requiring the device to only be used for "PDA business purposes." Doc. 32 ¶ 2. For these reasons, the Court concludes that Defendant did not have an objectively reasonable expectation of privacy in information concerning the Marconi number that was stored on the PDA phone. See Quon, 560 U.S. at 762–63 (holding that employer policies shape reasonable expectations of employees).

In reaching this conclusion, the Court acknowledges that Defendant took some steps to try and protect his privacy by disconnecting the Marconi number from the PDA phone prior to return. The fact remains, however, that Defendant voluntarily set up and used the Marconi number on a device that he was aware had—at minimum—a dispute in ownership. Doc. 32, Ex. 1. If Defendant truly wished to safeguard his privacy interests in the Marconi number account, he could have set up the account on a device that was undisputedly his own and would bear no risk of being possessed by a third-party. Instead, he opted to take the risk and set up a private account on an employer-owned device at a time when the employer was seeking to regain possession of it.

For these reasons, the Court finds the facts at hand distinguishable from those in Goss. The Goss defendant took certain steps to protect his expectation of privacy— for example, by placing his refuse in sealed, black plastic bags and leaving them on the curb for anticipated collection and disposal by an authorized person. Goss, 150 N.H. at 49. Importantly, the Goss court determined that the defendant did not "voluntarily expose such information to the public" because it is "reasonable to expect that those who are authorized to remove trash will do so in the manner provided by ordinance or private contract" and that usually the expectation would be that the garbage would be "intermingled with other refuse in the well of the truck, and ultimately dumped into a central collection place where the forces of nature would destroy them." Id. at 49–50. Here, by contrast, Defendant had no basis to expect that data stored on the PDA phone would be destroyed or otherwise be only temporarily exposed to the public. Instead, Defendant knew that by using the Marconi number on the PDA phone, he was causing data to be stored on an electronic device the PDA was demanding that he return. On

these facts, the Court concludes that Defendant did not have a reasonable expectation of privacy in connection with data stored on the PDA phone, including information related to the Marconi number account. Accordingly, Defendant's motion to suppress is **DENIED**. See Doc. 26.

II. Motion to Dismiss Indictments Involving DMV Records (Doc. 29)

In relevant part, the grand jury issued four indictments charging Defendant with tampering with witnesses, obstructing government administration, and two counts for violation of the Driver Privacy Act in the Fall of 2024. Docs. 1, 4–6. The indictments related to motor vehicle records each contain, in relevant part, an allegation that Defendant improperly provided "confidential motor vehicle records pertaining to N.L. to another individual, B.C." See id.

Defendant now moves to dismiss these indictments on the basis that the discovery provided by the State does not indicate that the "motor vehicle documents" referenced would constitute "department records" under RSA 260:14, XI(a). See Doc. 29 ¶¶ 14–26. In other words, Defendant argues that the State cannot prove its case because the motor vehicle documents that underlie each of the four indictments do not meet the statutory definition. Id. ¶¶ 26, 29. In support of his claim, Defendant points to Bourgeois v. TJX Companies, Inc., 129 F.4th 28 (1st Cir. 2025), in which the First Circuit interpreted the term "department records" under RSA 260:14, IX(a) to not include driver's licenses because they were within the plaintiffs' possession, and argues this Court should reach the same conclusion. Id. ¶¶ 16–26; 30–32. The State disagrees, arguing that Bourgeois was wrongly decided and is otherwise distinguishable from the case at hand. See generally Doc. 34.

As a preliminary matter, the Court notes that neither party has supplied the Court with the alleged motor vehicle records underlying the relevant indictments. However, the parties both represent that the documents include boat and vehicle registrations issued to N.L. Id. ¶ 10; Doc. 34 ¶ 1.

In order to address the parties' arguments, the Court must engage in statutory interpretation. "In matters of statutory interpretation, [the Court is] the final arbiter of the intent of the legislature as expressed in the words of a statute considered as a whole." State v. Proctor, 171 N.H. 800, 805 (2019). When interpreting statutory language, the Court first "looks to the language of the statute itself" and construes that language according to its plain and ordinary meaning. Polonsky v. Town of Bedford, 173 N.H. 226, 230 (2020) (citation omitted). The Court interprets "legislative intent from the statute as written and will not consider what the legislature might have said or add language that the legislature did not see fit to include." Id. Nor does the Court "consider words or phrases in isolation, but rather within the context of the statute as a whole." Id. All parts of a statute are to be construed together "to effectuate its overall purpose and avoid an absurd or unjust result." Id. Considering the context of the statute as a whole allows the Court "to better discern the legislature's intent and to interpret statutory language in light of the policy or purpose sought to be advanced by the statutory scheme." State v. Hill, 172 N.H. 711, 714 (2019). When a statute is ambiguous, however, the Court will use the legislative history to aid its analysis. Petition of Carrier, 165 N.H. 719, 721 (2013).

The Driver Privacy Act ("DPA") is laid out in RSA 260:14. As relevant here, RSA 260:14, IX(a), holds that:

> [a] person is guilty of a misdemeanor if such person knowingly discloses information from a department record to a person known by such person to be an unauthorized person; knowingly makes a false representation to obtain information from a department record; or knowingly uses such information for any use other than the use authorized by the department.

(emphasis added).

"Department record" is not a term utilized or defined elsewhere in the DPA. See RSA 260:14. However, the parties agree and the law supports that "department" means the New Hampshire Department of Safety under the DPA. See RSA 260:1 (establishing the division of motor vehicles "within the department of safety as provided in RSA 21-P:8"). Further, "motor vehicle records" are defined as "all applications, reports required by law, registrations, histories, certificates, and licenses issued or revoked by the department relative to motor vehicles and the information, including personal information, contained in them." RSA 260:14, I(a).

Notably, it does not appear that the New Hampshire Supreme Court has had occasion to interpret the term "department records" in context of the DPA. Defendant urges the Court to adopt the Bourgeois Court's interpretation that the prohibitions regarding "department records" under RSA 260:14, IX(a), does not include driver's licenses held in a person's possession and similarly conclude that registrations are also not "department records." See Bourgeois, 129 F.4th at 35.

In reaching its conclusion, the Bourgeois Court found that a reading of RSA 260:14, IX, that included driver's licenses was incongruous with the statute. See id. More specifically, the Bourgeois Court made two key determinations: first, that driver's licenses did not constitute "motor vehicle records" for the purposes of the DPA; and second, that driver's licenses did not constitute "department records." Id. at 35, 37. In

making each determination, the Bourgeois Court concluded that "motor vehicle records" and "department records" only meant those documents kept by the Department of Safety within its office and not any documents that are "freely provided" by the persons to whom they pertain. Id. Defendant argues that this logic, as applied to registrations provided to him by N.L.[3], should result in dismissal because 260:14, XI(a), does not prohibit disclosure or use pertaining to registrations that were in N.L.'s possession. Doc. 29 ¶¶ 25–26. However, the Court reaches a different conclusion.

Upon review, the Court notes that the Bourgeois Court looked to sections of the DPA related to the storage and accessibility of motor vehicle records and concluded that records not held at the Department of Safety offices were not "motor vehicle records." See Bourgeois, 129 F.4th at 35. Reaching a similar conclusion, the Bourgeois Court (and the district court underlying Bourgeois) relied on federal interpretations of the word "record" to determine that "department records" were only "authentic copies of documents deposited and kept with the New Hampshire department of safety." Id. at 37; Smith v. Home Depot U.S.A., Inc., 707 F. Supp.3d 145, 151 (D.N.H. 2023), aff'd sub nom. Bourgeois, 129 F.4th 28 (including footnote 2 which indicates reliance on how the term "record" is interpreted in the context of the federal Driver's Privacy Protection Act).

Although the courts in Bourgeois and Smith were not unjustified in their consideration of federal interpretations to define "department record" in 260:14, IX(a), this Court finds the conventions of statutory interpretation lead to a different result without needing to consider the interpretations of other jurisdictions. Looking first "to the language of the statute itself," the Court does not agree that "records" necessarily must

[3] For purposes of this Order, the Court assumes this assertion is true.

be held in a certain, official location. See Polonsky, 173 N.H. 226 at 230. Indeed, as defined in the Oxford English Dictionary, "record" means "[a]nything preserving information and constituting a piece of evidence about past events; *esp.* an account kept in writing or some other permanent form; (also) a document, monument, etc., on which such an account is inscribed." Oxford English Dictionary, last accessed Sept. 24, 2025.[4] Nothing in that definition pertains to a place of storage that is unique to records—only a requirement that records be in "writing or some other permanent form." See id.[5]

Registrations related to motor vehicles and boats are issued by the Department of Safety. RSA 21-P:8. Such registrations are generally in the form of a document that includes information about the relevant vehicle and its owner. Accordingly, the Court concludes that motor vehicle and boat registrations issued by the Department of Safety plainly fall within the definition of a "department record."

In addition, the Court is dubious that there is a significant difference between "department records" and "motor vehicle records" under the DPA. Doc. 34, Ex. 2 at 2–3 (Amicus Brief) (explaining that both the New Hampshire Department of Justice and Department of Safety believe that there is no difference between "department records" and "motor vehicle records" under the DPA). If anything, a plain meaning of the terms indicates that "department records" might be a broader term inclusive of "motor vehicle records" because the Department of Safety maintains records both including and beyond those pertaining to motor vehicles. See RSA 260:1 (establishing the division of motor vehicles "within the department of safety as provided in RSA 21-P:8"); RSA 21-

[4] https://doi.org/10.1093/OED/4680764015
[5] https://doi.org/10.1093/OED/4680764015

P:8 (establishing that the division of motor vehicles is responsible for vehicle registrations); RSA 21-P (establishing several divisions not related to motor vehicles under the Department of Safety).

Nonetheless, given the language used in the indictments, the Court also finds that registrations would constitute "motor vehicle records" under the DPA. See RSA 260:14. Contrary to Bourgeois, the Court finds that not requiring records—of the "department" or "motor vehicle" variety—to exclusively mean those documents held in the Department of Safety office prevents a contradiction within the remaining sections of the DPA. But see Bourgeois, 129 F.4th at 35. Indeed, the legislature defined "motor vehicle records" to specifically include "all applications, reports required by law, registrations, histories, certificates, and licenses issued or revoked by the department relative to motor vehicles." RSA 260:14, I(a) (emphasis added). Given the legislature's inclusion of the word "all" at the start of the list, a determination that some registrations—namely those in the possession of an individual—would be excluded from "motor vehicle records" is in direct conflict with RSA 260:14, I(a). Polonsky, 173 N.H. at 230 (holding that the Court is to consider the statute as written and avoid interpretations that lead to absurd results).

Further, the inclusion of registrations, irrespective of whether an individual possesses them, is not in conflict with other sections of the DPA. See id. (finding the Court should consider the statute as a whole to effectuate its overall purpose); RSA 260:14. For example, if Defendant's interpretation were true, RSA 260:14, II(a), which states in relevant part that "[p]roper motor vehicle records shall be kept by the department at its office," would have to mean that any motor vehicle record would cease

to be a motor vehicle record upon leaving the Department of Safety office. Notably, the legislature did not include any language indicating that a "motor vehicle record" was predicated upon its location. See Polonsky, 173 N.H. at 230 (holding the Court should only consider what is written and not consider language the legislature did not see fit to add). In addition to requiring the Court to read into the statute language the legislature did not see fit to include, such a finding would undermine the general purpose of the DPA to protect private information contained in motor vehicle records from improper use. See id. However, the same section could be read to mean the Department of Safety must store genuine copies or originals of motor vehicle records within their offices. See RSA 260:14, II(a); Oxford English Dictionary, last accessed Sept. 26, 2025[6] (defining "proper" as "strictly or accurately so called; in the strict use of the word; genuine, real"). Similarly, RSA 260:14, VII, which provides that "[a] person shall have access to motor vehicle records relating to such person upon proof of identity," does not necessarily mean that those documents cease to be "motor vehicle records" upon receipt by that individual. Rather, RSA 260:14, VII, provides a process by which a person may access any such records that are not in their possession, such as those stored at the Department of Safety offices.

As noted above, the definition of "motor vehicle records" is inclusive not only of all licenses and registrations (which typically a person does maintain in their possession), but also all some subsection of "proper" motor vehicle records which are kept at the Department of Safety office. See Hill, 172 N.H. at 714 (supporting interpretation of statutory language "in light of the policy or purpose sought to be

[6] https://doi.org/10.1093/OED/8694775869

advanced by the statutory scheme"). Requiring identification to access one's own motor vehicle records, does not exclude the possibility that a person may separately possess those records. Accordingly, the Court finds that an interpretation that "motor vehicle records" under the DPA includes registrations cleanly aligns with the statute as a whole. See id.; Polonsky, 173 N.H. at 230.

In sum, the Court finds that motor vehicle registrations constitute both "department records" and "motor vehicle records" under the DPA. See RSA 260:14. Therefore, to the extent that the indictments related to motor vehicle records allege that Defendant improperly provided "confidential motor vehicle records pertaining to N.L. to another individual, B.C." in reference to motor vehicle registrations, the Court concludes the indictments are adequately plead. See Docs. 1, 4–6. Because this determination is dispositive, the Court need not address Defendant's additional arguments. See Antosz v. Allain, 163 N.H. 298, 302 (2012) (declining to address parties' other arguments where the court's holding on one issue was dispositive). Accordingly, Defendant's motion to dismiss is **DENIED**.

III. Motion to Dismiss Indictments Related to Voicemails (Doc. 27)

In relevant part, the grand jury issued two indictments charging Defendant with falsifying physical evidence and obstructing government administration in the Fall of 2024. Docs 2–3. The indictments related to voicemails read as follows:

Falsifying Physical Evidence:

> [O]n or about April 22, 2024, at or around Stratham, that:
>
> 1. Geno Joseph Marconi, 2. believing than [sic] an official proceeding or investigation was pending or about to be instituted, 3. altered, destroyed, concealed, or removed any thing, 4. with a purpose to impair its verity or

> availability in such a proceeding or investigation, to wit; 5. by deleting a voicemail and/or voicemails from a phone[.]

Doc. 2.

Obstructing Government Administration:

> [O]n or about April 22, 2024, in or around Stratham, that:
>
> 1. Geno Joseph Marconi, 2. engaged in any unlawful conduct, 3. with a purpose to hinder or interfere with a public servant performing or purporting to perform an official function and/or to retaliate for the performance of such a function, to wit; 4. by deleting a voicemail and/or voicemails from a phone[.]

Doc. 3. Defendant now moves to dismiss the indictments related to voicemails for being legally insufficient. See generally Doc. 27. In support, Defendant argues that the indictment for falsifying evidence is insufficient because it fails to identify that the voicemail or voicemails are evidence of any crime, whereas the second indictment for obstruction fails because it does not state how deleting voicemails is unlawful conduct. Id. ¶¶ 13–15, 19–20. In the alternative, Defendant requests a bill of particulars. Id. ¶¶ 22–25. The State objects, arguing that its indictments are factually sufficient because they allege all the elements of the offenses and enough detail to make Defendant aware of the charges and avoid double-jeopardy. See generally Doc. 33.

"Part I, Article 15 of the State Constitution requires that an indictment describe the offense with sufficient specificity to ensure that the defendant can prepare for trial and avoid double jeopardy." State v. Carr, 167 N.H. 264, 269 (2015). "To be constitutional, the indictment must contain the elements of the offense and enough facts to notify the defendant of the specific charges." Id. (quotation omitted). "An indictment generally is sufficient if it recites the language of the relevant statute; it need not specify

the means by which the crime was accomplished or other facts that are not essential to the elements of the crime." Id. (quotation omitted).

The crime of falsifying physical evidence is described by RSA 641:6. In relevant part, RSA 641:6 provides that "[a] person commits a class B felony if, believing that an official proceeding . . . or investigation is pending or about to be instituted, he . . . [a]lters, destroys, conceals or removes any thing with a purpose to impair its verity or availability in such proceeding or investigation[.]" The crime of obstructing government administration as laid out in 642:1, I, states that "[a] person is guilty of a misdemeanor if that person uses intimidation, . . . or engages in any other unlawful conduct with a purpose to hinder or interfere with a public servant, as defined in RSA 640:2, II, performing or purporting to perform an official function or to retaliate for the performance or purported performance of such a function."

Defendant does not appear to be challenging that either indictment contains the elements of the offense as set forth in the statute. See generally Doc. 27. Rather, he argues that the falsifying physical evidence indictment does not contain adequate facts to make clear that the voicemails had evidentiary value and thus were "physical evidence" of a crime. Accordingly, he argues that the indictment for falsifying evidence is improperly and an unconstitutionally vague such that it "invites arbitrary and discriminatory enforcement of RSA 641:6, I." Doc. 27 at 6–7. He further argues that deleting voicemails is generally not unlawful conduct and suggests that both the indictments fail to allege crimes as written. Id. ¶ 21. For its part, the State disagrees that the two indictments are factually insufficient. Further, the State takes the position that admissibility of physical evidence is not an element of the crime and thus the

evidentiary value of the voicemails is irrelevant to the charge. Doc. 33 ¶¶ 5–7. The State suggests that New Hampshire Supreme Court has rejected analogous arguments regarding the Witness Tampering statute and that this Court should similarly reject Defendant's argument. Id. ¶ 8.

Although the indictments could certainly have included additional facts, the lack thereof is not enough to render the indictments insufficient in this case. Both the indictments pertaining to voicemails allege the elements of the associated offense as well as facts sufficient to allow Defendant to prepare a defense and avoid double-jeopardy. Cf. Carr, 167 N.H. at 269 (laying out standard of sufficiency of indictments). More specifically, both indictments provide an estimated date and location of the conduct being "on or about April 22, 2024, at or around Stratham." Docs. 2–3. See State v. Ericson, 159 N.H. 379, 384–85 (2009) (holding that where an indictment listed the essential elements, as well as the timeframe and location of the conduct, the indictment was sufficient). The indictments also specify the conduct which Defendant is required to defend: namely, the alteration, destruction, concealment or removal of voicemails from a phone under the belief that an investigation was pending or about to be instituted against him with the purpose of impairing their verity or availability for such investigation, see Doc. 2, and engagement in unlawful conduct with a purpose of hindering or interfering with a public servant performing or purporting to perform an official function or/to retaliate for the performance of that function by deleting voicemails from a phone, see Doc. 3.

To the extent that Defendant argues that there is no clarity that the voicemails deleted would be evidence of a crime and thus neither indictment can be sustained, the

Court is unpersuaded. In enacting RSA 641:6, the legislature "was concerned with preserving physical evidence for investigatory purposes or for use in subsequent litigation." State v. Gunnip, 174 N.H 778, 782 (2022) (citation omitted). "[A]dmissibility of the evidence is not an element of the offense" pursuant to RSA 641:6. State v. McGuirk, 157 N.H 765, 770 (2008); see id. at 782–83. In order to put forth adequate evidence to support a conviction under RSA 641:6, the State will need to prove that the voicemails were at least relevant for investigatory purposes. See Gunnip, 174 N.H. at 783. Nonetheless, such details need not be laid out in the charging documents. Carr, 167 N.H. at 269 (holding that an indictment generally only needs to include the language of the relevant statute and any facts essential to the elements but need not include "the means by which the crime was accomplished or other facts").

Although the Court cannot speak to whether the alleged voicemails will ultimately meet the relevancy requirement such that the State can prove its charge, that is an issue of sufficiency of evidence rather than sufficiency of indictment. See Gunnip, 174 N.H. at 780–785 (evaluating whether the evidence put on by the state at trial supported a conviction under RSA 641:6); see also id. at 270 (indicating that the "means by which the crime was accomplished or other facts that are not essential to the elements of the crime" need not be included in an indictment). Here, both indictments allege the essential elements of the relevant offenses as well as facts pertaining to time frame, location, and the nature of the relevant conduct. Cf. Carr, 167 N.H. at 269–70. Accordingly, the Court concludes that the indictments are constitutionally adequate because they contain the elements of the offenses and enough facts to notify Defendant of the charges against him such that he can prepare for trial and defend against double-

jeopardy. See Carr, 167 N.H. at 269; cf. State v. French, 146 N.H. 97, 103–04 (2001) ("The question is not whether the indictment could have been more certain and comprehensive, but whether it contains the elements of the offense and enough facts to warn the defendant of the specific charges against him.") Accordingly, Defendant's motion to dismiss these indictments is **DENIED**.

The Court next considers Defendant's alternative request for a bill of particulars. A "bill of particulars is, in this State, a tool for clarifying an inadequate indictment or complaint." State v. Kuchman, 168 N.H. 779, 784 (2010) (quoting State v. Sanborn, 168 N.H. 400, 415 (2015)). "The purpose of a bill of particulars is to protect a defendant against a second prosecution for an inadequately described offense and to enable him to prepare an intelligent defense." Id. (quoting Sanborn, 168 N.H. at 415). "The decision whether to grant a motion for a bill of particulars is committed to the trial court's sound discretion." State v. Sweeney, 151 N.H. 666, 678 (2005). "The State is not required to provide a bill of particulars except when necessary for the preparation of a defense or to preclude a later unconstitutional prosecution." State v. Chick, 141 N.H. 503, 507 (1996) (quotation omitted).

It appears that Defendant specifically seeks a date of the alleged offense, on the basis that the date may be relevant to any defenses he seeks to raise related to his intent if the voicemails deleted were from the time the Marconi number was set in use on the PDA phone. See Doc. 27 ¶ 25. Upon review, however, the indictments provide an approximate date of the conduct as April 22, 2024. See Docs. 2–3. As the New Hampshire Supreme Court has explained, "a bill of particulars is meant to clarify an inadequate indictment and enable the defendant to prepare an intelligent defense."

Kuchman, 168 N.H. at 786. Here, for the reasons outlined above, the indictments are not inadequate. Moreover, Defendant has articulated a potential defense he could raise based on the indictments and subsequent discovery. This undercuts his claim that a bill of particulars is necessary here. See id. For these reasons, Defendant's alternative request for a bill of particulars is also **DENIED**.

IV. Motion for Judicial Notice/Jury Instruction (Doc. 28)

Defendant's next motion requests that the Court take judicial notice of RSA 12-G:43 and RSA 12-G:44. Doc. 28 ¶ 12. He further asks that the Court provide copies of RSA 12-G:43 and RSA 12-G:44 to the jury. Id. Additionally, he requests that the Court instruct the jury that to find him guilty of the indictments pertaining to motor vehicle records, it must "must find beyond a reasonable doubt that 'providing records pertaining to N.L. to another individual, B.C.' was not authorized by either RSA 12-G:43 or RSA 12-G:44." Id. ¶ 13. In objecting to Defendant's motion, the State argues that the requested relief is improper absent Defendant's filing a notice of relevant defense, such as mistake pursuant to RSA 626:3. See Doc. 31 ¶¶ 2–4.

As noted above, the indictments pertaining to motor vehicle records are each premised at least in part on RSA 260:14, IX(a), which holds that:

> [a] person is guilty of a misdemeanor if such person knowingly discloses information from a department record to a person known by such person to be an unauthorized person; knowingly makes a false representation to obtain information from a department record; or knowingly uses such information for any use other than the use authorized by the department.

For their part, RSA 12-G:43 and RSA 12-G:44 both pertain to the specific duties of the DPH, including the division director, and the role of the DPH advisory council, respectively. See RSA 12-G:43; RSA 12-G:44. Defendant held the title of division

director of DPH and he suggests that the "B.C." referred to in the indictment was chairman of the DPH advisory council. Doc. 28 ¶¶1, 6. Accordingly, Defendant requests that the Court provide copies of RSA 12-G:43 and RSA 12-G:44 to the jury, as well as his requested jury instruction regarding whether either statute authorized disclosure of the records to B.C. See id. ¶¶ 10–13.

"Although the scope and wording of jury instructions is generally within the sound discretion of the trial court, the court must grant a defendant's requested jury instruction on a specific defense if there is some evidence to support a rational finding in favor of that defense." State v. Ayer, 154 N.H. 500, 514 (2006) (quotation omitted). "Where, however, there is simply no evidentiary basis to support the theory of the requested jury instruction, the party is not entitled to such an instruction, and the trial court may properly deny the party's request." Id. (quotation omitted).

Here, the State argues that Defendant has not filed notice of a specific defense that would permit his requested jury instruction. See Doc. 31 ¶ 2. The State asserts that unless Defendant raises a theory of defense and substantially admits to the conduct alleged in the relevant indictments, it would be improper to grant Defendant's motion because his requested relief would not arise out of a defense but rather a mere theory of the case. Id. ¶ 6.

It is well established New Hampshire law that there is a distinction between a criminal defendant's theory of defense and theory of the case. State v. Allore, 2025 N.H. 33, ¶15 (citation omitted). "A theory of the case is simply the defendant's position on how the evidence should be evaluated and interpreted."

Id. "By contrast, a theory of defense is akin to a civil plea of confession and avoidance, by which the defendant admits the substance of the allegation but points to facts that excuse, exonerate, or justify his actions such that he thereby escapes liability." Id. "In other words, the defendant had to present evidence showing a different legal significance for the facts alleged against him, in order to use consent as his theory of defense." Ramos, 149 N.H. 272, 274 (2003).

At this time, the Court is not aware of any specific theory of defense asserted by Defendant, nor is it abundantly clear from the pleadings that Defendant seeks to admit to the substance of the allegation—i.e. that he did provide motor vehicle records related to N.L. to B.C.—and raise a theory of defense in his motion. See generally Doc. 28. Absent that information, the Court assumes without deciding that the request is made pursuant to a theory of the case, which requires no degree of admission as to any portion of the allegations against Defendant. See Allore, 2025 N.H. 33, ¶ 15 (contrasting the differences between a theory of defense and a theory of the case). If Defendant does seek to assert a specific theory of defense, he may reraise this motion and the Court will consider it accordingly. Until that time, the Court **DENIES without prejudice** his motion for jury instruction and judicial notice.

Conclusion

Consistent with the foregoing, the Court rules on Defendant's pending motions as follows:

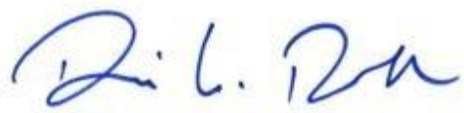
(1) the Court **DENIES** Defendant's motion to suppress (Doc. 26);

(2) the Court **DENIES** Defendant's motion to dismiss indictments related to motor vehicle records (Doc. 29);

(3) the Court **DENIES** Defendant's motion to dismiss indictments related to voicemails (Doc. 27); and

(4) the Court **DENIES without prejudice** Defendant's motion or judicial notice and jury instruction (Doc. 28).

SO ORDERED.



Date: October 1, 2025

Hon. David W. Ruoff
Presiding Justice

Clerk's Notice of Decision
Document Sent to Parties
on 10/02/2025