

THE STATE OF NEW HAMPSHIRE

SUPERIOR COURT

ROCKINGHAM, SS.

JUNE 2025

STATE OF NEW HAMPSHIRE

v.

GENO MARCONI

Case No: 218-2024-CR-1426

MOTION TO DISMISS RE:

CHARGE ID #'s 2257801C, 2257804C, 2257805C & 2257806C

NOW COMES the defendant, Geno Marconi, by and through counsel, Richard E. Samdperil and Joseph E. Welsh, and hereby respectfully requests that this Court dismiss the pending indictments for Witness Tampering (Charge ID # 2257801C) and Obstructing Government Administration (Charge ID # 2257806C), and two misdemeanor indictments for Driver Privacy Act Violations (Charge ID #'s 2257804 and 2257806C).

Charge ID #'s 2257801C, 2257804C, 2257805C and 2257806C each allege that Mr. Marconi committed the offense “by providing confidential records pertaining to N.L. to another individual, B.C.” Because the documents allegedly provided to B.C. were initially received from N.L. and were not motor vehicle records in the possession of the Department of Safety, they were neither confidential nor protected records under the New Hampshire Driver Privacy Act, RSA 260:14. Thus, even if this information was “provided” to another person, it did not violate the Driver Privacy Act or any other law, and, as a matter of law, these charges should be dismissed.

As grounds in support of this motion the following is stated:

## BACKGROUND

1. The defendant, Geno Marconi, is the Director of the Division of Ports and Harbors ("DPH").<sup>1</sup> Mr. Marconi has been the Director of the DPH since 2002.
2. The Division of Ports and Harbor is a division within the Pease Development Authority ("PDA") as set forth in RSA 12-G:1 generally and as defined by RSA 12-G:43, I. The PDA is a public corporation that is overseen by an independent board of directors; it is not a state department or state agency. *See generally*, RSA Chapter 12-G.
3. Under RSA 12-G:43, Mr. Marconi's duties include the general and active supervision and direction over the day-to-day business and affairs of the DPH and its employees, subject to the control of the PDA and its Executive Director.
4. Following a lengthy investigation into the PDA and its operations, Mr. Marconi was charged by indictment with six offenses: Tampering with Witnesses and Informants (Charge ID # 2257801C); Falsifying Physical Evidence (Charge ID # 2257802C); Obstructing Government Administration (Charge ID # 2257803C); a Driver Privacy Act Violation (Charge ID # 2257804C); Obstructing Government Administration (Charge ID # 2257805C); and a second Driver Privacy Act Violation (Charge ID # 22578006C).

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<sup>1</sup> Mr. Marconi has been on paid administrative leave since April 18, 2024.

5. For the reasons set forth below, Mr. Marconi now moves to dismiss Charge ID #'s 2257801C, 2257804C, 2257805C, and 2257806C, each of which alleges that he committed the respective offense "by providing confidential motor vehicle records pertaining to N.L. to another individual, B.C."

6. Specifically, the indictments allege the following:  
Charge ID: 2257801C alleges Tampering with Witnesses and Informants contrary to RSA 641:5, II in that:

1. Geno Joseph Marconi
2. purposely committed any unlawful act
3. in retaliation for anything done by another in his capacity as witness or informant, to wit:
4. by providing confidential motor vehicle records pertaining to N.L. to another individual, B.C., in violation of the Driver Privacy Act (RSA 260:14, IX (a))

Charge ID: 2257804C alleges a Driver Privacy Act Violation contrary to RSA 260:14, IX (a) in that:

1. Geno Joseph Marconi
2. knowingly disclosed information from a department record
3. to a person known by Geno Joseph Marconi to be an unauthorized person, to wit:
4. by providing confidential motor vehicle records pertaining to N.L. to another individual, B.C.

Charge ID: 2257805C alleges Obstructing Government Administration contrary to RSA 642:1, I in 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 providing confidential motor vehicle records pertaining to N.L. to another individual, B.C.

7. Charge ID: 2257806C alleges a Driver Privacy Act Violation under RSA 260:14, IX (a) in that:

1. Geno Joseph Marconi
2. knowingly used information from a department record
3. for any use other than the use authorized by the Department of Safety, to wit:
4. by providing confidential motor vehicle records pertaining to N.L. to another individual, B.C.

8. None of these four charges specify what particular records Mr. Marconi allegedly provided to B.C.

9. Additionally, none of the charges allege, and none of the discovery provided by the State suggests, that Mr. Marconi ever directly accessed or obtained internal records from the New Hampshire Department of Safety, Division of Motor Vehicles (hereinafter NH DMV). *See* RSA 260:1 (establishing the Division of Motor Vehicles within the Department of Safety).

10. Rather, the discovery material suggests that N.L., or someone acting on his behalf, voluntarily submitted copies of his boat and automobile registrations to the DPH in support of either a pier use permit or a boat mooring application.

11. Discovery material suggests that N.L. never relinquished his actual certificates of registration to the DPH. The DPH merely maintained in its records a copy of the application or applications, which included copies of the boat and automobile registrations that N.L. voluntarily provided to the DPH.

12. Although Charge ID #'s 2257801C, 2257804C, and 2257806C each allege that Mr. Marconi violated RSA 260:14 IX(a), "by providing confidential motor vehicle records pertaining to N.L. to another individual, B.C.," each charge also employs different language in the body of the indictment. Charge ID # 2257804C alleges Mr. Marconi "knowingly *disclosed* information from a department record." Charge ID # 2257806C alleges that Mr. Marconi "knowingly *used* information from a department record." And Charge ID # 2257801C does not reference "department record" at all, but instead alleges that Mr. Marconi disclosed "confidential motor vehicle records" to B.C. thereby committing a "violation of the Driver Privacy Act (RSA 260:14, IX(a))."<sup>2</sup>

13. Charge ID # 2257805C does not make any statutory reference to RSA 260:14, IX(a). Rather, it merely alleges Mr. Marconi "engaged in unlawful conduct" by providing "confidential motor vehicle records pertaining to N.L. to another individual, B.C." This charge fails to allege a specific legal or statutory basis for why the records in question were "confidential motor vehicle records," such that the act of providing them to B.C. was unlawful conduct or a violation of a specific state criminal law.

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<sup>2</sup> By doing this the State assumes that the terms "department record" under RSA 260:14 IX(a) and "motor vehicle records" as defined in RSA 260:14 I(a) mean the same thing.

LAW

- A. Charge ID #'s 2257801C, 2257804C, and 2257806C must be dismissed because Mr. Marconi never provided B.C. a "department record" within the meaning of the RSA 260:14 IX(a)

14. The DPA was enacted in 1996 and sets forth a general rule that "motor vehicle records shall not be public records or open to the inspection of any person." *State v. DeVere*, 146 N.H. 762, 765 (2001); *see also*, RSA 260:14 II(a).

15. RSA 260:14 IX (a), under which Mr. Marconi is charged, states in relevant part 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.

RSA 260:14, IX(a) (emphasis added).

16. Charge ID #'s 2257804C and 2257806C each allege that Mr. Marconi violated RSA 260:14 IX (a) of the DPA by providing B.C. with a "department record" pertaining to N.L. As previously noted, the charges also contain other, different language, tracking the statutory language above: Charge ID # 2257804C alleges Mr. Marconi "knowingly *disclosed* information from a department record." And Charge ID # 2257806C alleges that Mr. Marconi "knowingly *used* information from a department record." Again, Charge ID # 2257801C does not specifically mention "department record" in the indictment, but it specifically references section IX(a) and alleges that Mr. Marconi committed witness tampering "by providing confidential motor vehicle records

pertaining to N.L. to another individual, B.C., in violation of the Driver Privacy Act (RSA 260:14, IX (a)).” Thus, a common element the State must prove in each of these three indictments is that Mr. Marconi provided a “department record” pertaining to N.L. to B.C.

17. “Department record” is not a defined term within the DPA. *See* RSA 260:14, I. Additionally, the New Hampshire Supreme Court has not had the opportunity to define the meaning of “department record” as used in RSA 260:14 IX (a).

18. The DPA’s implementing regulations state “Department” means the New Hampshire Department of Safety. *See* Saf-C 5601:04. “Department record,” therefore, means a Department of Safety record. RSA 260:14 II(a) provides that: “Proper motor vehicle records shall be kept by the department at its office. Notwithstanding RSA 91-A or any other provision of law to the contrary, except as otherwise provided in this section, such records shall not be public records or open to the inspection of any person.” Thus, a document kept in one’s own possession and voluntarily given to another or with permission is not a “department record” under the Driver Privacy Act.

19. Indeed, this is the conclusion the First Circuit Court of Appeals recently reached when it interpreted the DPA and applied the New Hampshire Supreme Court’s rules of statutory construction.<sup>3</sup> *Bourgeois v. TJX Companies, Inc.*, 129 F. 4th 28, 35-38

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<sup>3</sup> In applying the New Hampshire Supreme Court’s rules of statutory construction, the *Bourgeois* Court stated the following:

Our interpretation of New Hampshire law must first look to the language of the statute itself, and, if possible, construe the language according to its plain and ordinary meaning. The New Hampshire Supreme Court has explained that, in

(2025). In so doing, the First Circuit affirmed the decision of the United States District Court, which concluded that “a driver’s license in the possession of the person to whom it pertains” is not a motor vehicle record” under the NH DPA. *Id.* at 34. Rather, the First Circuit held that the term “department record” as that phrase is used in RSA 260:14 IX(a), means “authentic copies of documents deposited and kept with the New Hampshire department of safety.” *Id.* at 37-38.

20. *Bourgeois* was a consolidated appeal involving three cases, *Bourgeois v. The TJX Companies, Inc.*, *Smith v. Home Depot U.S.A., Inc.*, and *Bourgeois v. The Gap, Inc.* *Id.* at 31. In each case, the plaintiff-appellants (“plaintiffs”) had sought to return items to the defendant-retailers (“defendants”), but they did not have receipts for the purchases of the items. *Id.* at 32. Because the plaintiffs did not present receipts related to their purchases, the defendants required the plaintiffs to present their driver’s licenses in order to effectuate the return. *Id.* The defendants then provided the plaintiffs’ driver’s license information to a third party, The Retail Equation, an entity that works with retailers “by providing software to analyze customers’ shopping habits in order to determine whether a particular transaction may be fraudulent.” *Id.* The plaintiffs filed

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construing a statute, it looks to the statute as a whole, rather than merely look[ing] at isolated words and phrases. Courts construe all parts of a statute together to effectuate its overall purpose and avoid an absurd result or unjust result. This enables [courts] 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.”

*Bourgeois*, 129 F. 4th at 32 (citations omitted).

legal actions against the defendants alleging that they violated the DPA by providing the information from their driver's licenses to The Retail Equation.

21. In affirming the District Court's decision to grant the defendants' motions to dismiss, the *Bourgeois* court had to determine whether driver's licenses that the plaintiffs personally possessed and presented to the defendants when returning items to the store were "department records" within the meaning of RSA 260:14 IX(a). The *Bourgeois* court noted that the New Hampshire Supreme Court had yet to decide the issue of what a "department record" meant under RSA 260:14 IX(a) and that it would apply "the rules of statutory construction that the state's highest court would follow...to ascertain the rule the state court would most likely follow under the circumstances..." *Id.* at 33.

22. In reaching its holding, the First Circuit stated the following:

As mentioned, the NH DPA does not directly define "department record." See RSA 260:14. But, and as the district court correctly noted, "department" is defined in the statute's implementing regulations as 'the New Hampshire department of safety.'" Smith, 707 F. Supp. 3d at 151 (quoting N.H. Code Admin. R. Ann Saf-C 5601.04 (2024)). The district court added that while "record" is not explicitly defined, the plain meaning of 'record' in this context is 'an authentic official copy of a document entered in a book or deposited in the keeping of some officer designated by law.'" Id. (quoting Webster's Third New Int'l Dictionary 1898 (Philip Babcock Gove et al. eds., 1993)). The district court then held that, taken together, the term "'department record' as that phrase is used in RSA 260:14 IX(a) means authentic copies of documents deposited and kept with the New Hampshire department of safety.'" Id. So, the district court held, the information disclosed to the Retailers "was not within a document obtained from the department of safety." See id. at 152.

The district court's reading best comports with New Hampshire's rules of statutory interpretation. We thus affirm the district court's holding in favor of the Retailers on this claim.

*Id.* at 37-38.

23. Although the *Bourgeois* decision addresses situations in which individuals provided their driver's licenses to another entity, the same analysis is applicable to the circumstances of this case, in which a N.L. voluntarily provided copies of a boat or motor vehicle registration as part of a permit or application process.

24. The logic of *Bourgeois* dictates the same result in Mr. Marconi's case because the principle is the same: when an individual provides a document in their possession to another entity, that document is not a "department record" for purposes of RSA 260:14 IX(a), regardless of whether the document was a driver's license or a boat or vehicle registration.

25. This court should adopt the First Circuit's statutory interpretation and similarly hold that the term "department record" under RSA 260:14 IX(a) does not apply to registration documents provided by N.L. to the DPH. Such a finding is consistent with the overall statutory scheme and best comports with rules of statutory construction under New Hampshire law.

26. In conclusion, when N.L. voluntarily provided registrations that were in his possession to the DPH, he was not providing "department records" under RSA 260:14 IX(a). Because the Mr. Marconi did not provide "department records" to B.C., Charge ID #'s: 2257801C, 2257804C, and 2257806C must be dismissed.

B. Charge ID: 2257805C must be dismissed because Mr. Marconi never provided B.C. with "confidential motor vehicle records" under RSA 260:14

27. In relevant part, Charge ID # 2257805C alleges that Mr. Marconi committed the crime of Obstructing Government Administration in that he "engaged in any unlawful conduct...by providing confidential motor vehicle records pertaining to N.L. to another individual, B.C."

28. The charge does not specifically state what records Mr. Marconi allegedly provided N.L. The charge does not state how, or on what legal basis, such unspecified records are "confidential motor vehicle records," or how Mr. Marconi's conduct in allegedly providing such records to B.C. violated specific New Hampshire law.

29. Assuming that the confidential motor vehicle records as used in this indictment are the same "department records" governed by RSA 260:14 IX(a), this Court should reach the same conclusion and dismiss this indictment also.

30. Further, N.L.'s act of voluntarily submitting copies of his boat and automobile registrations to the DPH in support of his applications for either a pier use permit or a boat mooring application also weighs against viewing those records as "confidential." Indeed, the New Hampshire Supreme Court has made clear that there are many circumstances in which a person may grant permission making their motor vehicle record available to third parties. *See Wolfgram v. New Hampshire Dep't of Safety*, 169 N.H. 32, 38 (2016) ("In New Hampshire, a person's motor vehicle record is available,

upon request and with permission of the individual whose record is requested, to members of the public, including potential employers and insurance agencies”).

31. Here, the records N.L. provided to the DPH and which Mr. Marconi allegedly later provided to B.C. were not records maintained at the department of safety. Because they were not maintained at the department of safety, they are not “motor vehicle records” within the meaning of RSA 260:14. As a result, by definition no “motor vehicle records” were ever provided to B.C.

32. As the First Circuit held in *Bourgeois*,

[T]he NH DPA provide that proper motor vehicle records shall be kept by the department of safety at its office. RSA 260:14 II(a) further provides that such records shall not be public records or open to the inspection of any person. This section cannot plausibly be read to include one's own driver's license in one's own possession. Perhaps even more telling, the statute, at section VII, describes when an individual may have access to his or her own motor vehicle records: “A person shall have access to motor vehicle records relating to such person upon proof of identity.” RSA 260:14, VII.

Further, RSA section 260:14, III-V provide exceptions to the general rule that the records “shall not be public records or open to the inspection of any person.”

*Id.* at 32-33 (citations and quotations omitted).

33. For all of these reasons, Charge ID # 2257805C must be dismissed.

- C. If the Court declines to dismiss the charges, the State should be required to prove beyond a reasonable doubt that the motor vehicle records were "confidential" records.

34. Even if this Court were to decline the defendant's request to dismiss the four charges above, the Court should incorporate as an element to each indictment the requirement that the State prove beyond a reasonable doubt that any information Mr. Marconi allegedly provided B.C. pertaining to N.L. was a department record as defined in RSA 260:14. Specifically, jurors should be instructed that "confidential motor vehicle records" as used in the indictments applies only to those records enumerated in RSA 260:14, I(a) that are kept by the department of safety at its office, and that information provided by N.L. with his pier permit or mooring applications are not "confidential motor vehicle records" under this definition.

WHEREFORE, the defendant, Geno Marconi, respectfully requests this Court:

- a. grant this Motion; and
- b. find that "confidential motor vehicle records" and "department records" means records enumerated in RSA 260:14, I(a) that are kept by the Department of Safety at its office; and
- c. dismiss Charge ID #'s 2257801C, 2257804C, 2257805C and 2257806C; and/or
- d. Grant a hearing upon objection by the State.

Respectfully submitted,

/s/ Richard Samdperil

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/s/ Joseph Welsh

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**CERTIFICATION OF SERVICE**

I hereby certify that a copy of the foregoing Motion to Dismiss has been filed this 6th day of June 2025, via the New Hampshire Judicial Branch electronic case filing system (e-file) with service to registered parties, Attorneys Dan Alan Jimenez and Joe Michael Finchman of the New Hampshire Attorney General's office.

/s/ Joseph E. Welsh

Joseph E. Welsh