

THE STATE OF NEW HAMPSHIRE

SUPERIOR COURT

ROCKINGHAM, SS.

JUNE, 2025

STATE OF NEW HAMPSHIRE

v.

GENO MARCONI

**218-2024-CR-1426**

MOTION TO DIMISS/QUASH RE CHARGE ID'S 2257802C & 2257803C,  
OR IN THE ALTERNATIVE, FOR BILLS OF PARTICULARS

NOW COMES the defendant, Geno Marconi, by and through counsel, Richard E. Samdperil and Joseph E. Welsh, and moves this Court dismiss or quash the indictments in Charge ID's 2257802C and 2257803C. Those charges allege Mr. Marconi falsified physical evidence and obstructed government administration "by deleting a voicemail or voicemails from a phone." That language alone is insufficient to set forth the crime of Falsifying Physical Evidence because the indictment fails to allege that the "voicemail" was physical evidence of any crime. The indictment of Obstructing Government Administration similarly fails to allege how deleting voicemails is "unlawful conduct," as the statute requires.

As grounds for this Motion the following is stated:

## BACKGROUND

1. Since 2002, Geno Marconi has served as the Director of the Division of Ports and Harbors. The Division of Ports and Harbor is a division within the Pease Development Authority (“PDA”) as set forth in RSA 12-G:1.
2. In connection with this position, Mr. Marconi was issued a cell phone. The cell phone number associated with the PDA phone was [REDACTED]-[REDACTED]-0[REDACTED]3.
3. On April 18, 2024, Mr. Marconi was placed on administrative suspension, upon information and belief, at the specific request or suggestion of the Attorney General’s office. However, at the time of his suspension, Mr. Marconi was not provided any information about why he was being investigated or even the general nature of the investigation beyond that it was criminal in nature.
4. Immediately following his suspension, Mr. Marconi set up a personal account with Verizon and obtained a new phone number, [REDACTED]-[REDACTED]-8[REDACTED]4. Initially, the new phone number was set up on the PDA device, which also had personal information, such as personal contacts, apps with bank and home security information, and text messages from his wife.
5. On April 23, 2024, Mr. Marconi purchased a new phone and transferred the new [REDACTED]-[REDACTED]-8[REDACTED]4 number to the new phone. He subsequently returned the PDA phone to the PDA.
6. In the fall of 2024, Mr. Marconi was indicted on six offenses, including Falsifying Physical Evidence (Charge ID: 2257802C) contrary to RSA 641:6, I and

Obstructing Government Administration (Charge ID: 2257803C) contrary to RSA 642:1,

I.

7. The Falsifying Physical Evidence charge alleges that, on April 22, 2024:

1. Geno Joseph Marconi
2. believing [that] 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 veracity or availability in such proceedings or investigation, to wit:
5. by deleting a voicemail and/or voicemails from a phone;...

8. The Obstructing Government Administration charge alleges that on April 22, 2024:

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;...

9. The indictments do not otherwise contain information identifying the “phone” or phone number the voicemail or voicemails were deleted from.

10. According to a digital evidence report provided by the State, there were three voicemails from two different individuals that were deleted from the phone number ending in 4. The voicemails were 5, 12 and 17 seconds in length. The callers who left the voicemails are neither N.L. nor B.C, the only two individuals identified in Mr. Marconi’s other charges.

## ARGUMENT

11. Every person indicted with a criminal offense has the right “to be informed of the nature and cause of the accusation” in the indictment. *See* U.S. Const. amend. V & VI; *see also, Almendarez-Torres v. United States*, 523 U.S. 224, 228 (1998); *United States v. Stepanets*, 879 F.3d 367, 372 (1st Cir. 2018).

12. A person enjoys such protections under the New Hampshire Constitution as well: Part I, Article 15 of the State Constitution provides that “[n]o subject shall be held to answer for any crime, or offense, until the same is fully and plainly, substantially and formally, described to him....” N.H. Const. Pt. I, art. 15. To meet this constitutional requirement, an indictment must describe the offense “with sufficient specificity to ensure that the defendant can prepare for trial and avoid double jeopardy.” *State v. Woodard*, 146 N.H. 221, 227 (2001) (quotation omitted). An indictment “must contain the elements of the offense and enough facts to notify the defendant of the specific charges.” *State v. Sinbandith*, 143 N.H. 579, 584 (1999). Part I, Article 15 protects a defendant from being convicted of a crime not charged in an indictment. *State v. Glanville*, 145 N.H. 631, 633 (2000).

13. Here, the indictment for Falsifying Physical Evidence alleges that the defendant “altered, destroyed, concealed, or removed any thing.” As the title to the statute suggests, to be an offense “any thing” means something that is “physical evidence.” *See State v. Gunnip*, 174 N.H. 778, 779 (2022). To this end, New Hampshire juries have long been provided with this definition of the crime and instructed that the State must prove beyond a reasonable doubt that the defendant altered, destroyed,

concealed or removed something that was “physical evidence.” *See Draft Criminal Jury Instructions* (2010) at 201.

14. By including the language “by deleting a voicemail and/or voicemails from a phone,” without more, the indictment fails to allege any crime or meet the specificity requirements of either the federal or State constitutions.

15. Surely not all voicemails are evidence of a crime. Rather, it is the known evidentiary value of the voicemails relevant to some official proceeding or investigation that makes the voicemail “physical evidence.” The “to wit” portion of the indictment must provide additional information regarding who the voicemail was from and at least a minimal factual allegation that makes clear how the caller is related to a known official proceeding or investigation. Without such information, the defendant has no basis from which he may infer why the act of deleting the voicemail is a criminal act, i.e., why it is acting with a purpose to impair such proceeding or investigation, which RSA 641:6, I requires.

16. Relying upon the defendant to divine how the “thing” is physical evidence is an unconstitutionally vague application of the Witness Tampering statute. A statute can be impermissibly vague for either of two independent reasons. First, if it fails to provide people of ordinary intelligence a reasonable opportunity to understand what conduct it prohibits. Second, if it authorizes or even encourages arbitrary and discriminatory enforcement.” *State v. Porelle*, 149 N.H. 420, 423 (2003); *see also, United States v. Williams*, 553 U.S. 285, 304 (2008); U.S. Const. amends. V & XIV; N.H. Const. Pt. I, art. 15. “An overly vague statute ‘violates the first essential of due process of law,’

because citizens ‘must necessarily guess at its meaning and differ as to its application’.”  
*Connally v. Gen. Constr. Co.*, 269 U.S. 385, 391 (1926).

17. In most cases, the materiality of the concealed or altered item is obvious from the indictment and any accompanying charges. *See e.g.*, *State v. Woodbury*, 172 N.H. 358 (2019) (defendant charged with two counts of assault by a prisoner was also charged with falsifying physical evidence for mopping up the victim’s blood from the floor and tables immediately after the altercation to impair the verity or availability of blood in the assault investigation); *State v. Dodds*, 159 N.H. 239 (2009) (defendant was charged with false public alarms and leaving the scene of an accident was also charged with falsifying physical evidence where, after being involved in an automobile accident, the defendant altered the appearance of his feet to make them appear consistent with his statement of events, including his false claim that he crossed a river and remained outside overnight exposed to elements); *State v. Daoud*, 158 N.H. 334 (2009) (defendant was charged with driving after being certified as a habitual offender and also disobeying a police officer and falsifying physical evidence when, after being involved in a car accident, the defendant told police investigating the accident that he had not been driving the vehicle and hid the car key in his shoe).

18. Here, the absence of detail in the “to wit” portion of the forces Mr. Marconi to guess how deleting the voicemail or voicemails was done with a purpose to impair its availability in an official proceeding or investigation. Indeed, unlike the examples above, the two indictments alleging that he deleted a voicemail or voicemails appear completely unrelated to the other four indictments. Moreover, the absence of

sufficient detail in the indictment as to why the deleted voicemails mattered to any investigation invites the arbitrary and discriminatory enforcement of RSA 641:6, I.

19. Similarly, the indictment for Obstructing Government Administration fails to specify what “unlawful conduct” the defendant engaged in beyond “deleting a voicemail and/or voicemails from a phone.” Again, the acting of deleting a voicemail is not *malum in se*. The act only becomes criminal in relation to an actor’s specific intent to hinder or interfere with a person performing an official function. *See* RSA 642:1, I; *Draft Criminal Jury Instructions* (2010) at 207 (“Under the laws of this State, it is unlawful to [insert description of alleged *actus reus*]. So if a person engages in this conduct, he has committed an “unlawful act” within the meaning of this definition.”) (underline added).

20. Here, the indictment does not sufficiently allege what voicemails were deleted, what the official function was, or how deleting the voicemails interfered with the public servant performing that function. To further contribute to the confusion and lack of specificity in the allegation, the intent element of the indictment also alleges “and/or” that the purpose was to retaliate for the public servant performing an official function, again without any factual reference for what the official function was.

21. Because these indictments fail to allege crimes as presently worded, this Court should dismiss or quash the two indictments for Falsifying Physical Evidence and Obstructing Government Administration. *See State v. Prevost*, 141 N.H. 559, 560 (1997) (“It is well-settled that a trial judge cannot freely amend indictments brought on the oath of a grand jury.”).

22. However, even if this Court were to find that the indictments do not require dismissal, the Court should nevertheless find that both indictments are inadequate and order the State provide a bill of particulars setting forth the additional information necessary for Mr. Marconi to prepare a defense and preclude future prosecutions. *See United States v. Gasana*, 719 F. Supp. 3d 175, 177 (D.N.H. 2024) (“The function of a bill of particulars is to provide the defendant with necessary details of the charges against him to enable him to prepare his defense, to avoid surprise [at] trial, and to protect against double jeopardy.”); *State v. Steer*, 128 N.H. 490, 494 (1986) (State may be required to provide a bill of particulars when “necessary for the preparation of a defense or to preclude a later unconstitutional prosecution.”). The current indictments simply lack sufficient detail and information to enable Mr. Marconi and his lawyers to prepare his defense and decipher the State’s theory of criminal culpability.

23. Indeed, where the charges of Falsifying Physical Evidence and Obstructing Government Administration have no apparent connection to the other indicted offenses or the identified parties in those charges (N.L. and B.C.), the defense is left to speculate not only about the materiality of the acts alleged (deleting voicemails) but to the motivation in charging them.

24. Furthermore, in its current form, the indictment does not sufficiently protect the defendant against double jeopardy. If the indictments are not dismissed, the Court should require the State to provide a bill of particulars identifying the phone number the voicemail or voicemails were allegedly deleted from. Deleting voicemail messages from a private number not associated with the PDA may be relevant and

material to any defense that Mr. Marconi was not acting with a purpose to impair an investigation. The State should not be permitted to proceed to trial without first identifying in the indictment or a bill of particulars the phone number the voicemail or voicemails were allegedly deleted from.

25. Additionally, if the indictments are not dismissed, the Court should require the State to provide a bill of particulars as to the date of the alleged offense. Specifically, Mr. Marconi submits that a voicemail message or voicemail messages received after he was placed on administrative leave, on a new private phone number, and that were subsequently removed from a PDA device before the property was returned to the PDA may be relevant and material to any defense that Mr. Marconi was not acting with a purpose to impair an investigation.

26. For all of these reasons, this court should dismiss the charges of Falsifying Physical Evidence (Charge ID: 2257802C) and Obstructing Government Administration (Charge ID: 2257803C). If the Court does not dismiss the indictments, it should require the State to provide additional factual information as indicated above.

WHEREFORE, the defendant, Geno Marconi, respectfully requests this Court to grant this Motion; and

- a) Quash or Dismiss Charge ID: 2257804C and Charge ID: 2257806C; or, in the alternative,
- b) Order the State to provide a bill of particulars identifying how the voicemails are physical evidence in this case, and how their deletion is unlawful conduct; and

- c) Order the State to provide a bill of particulars identifying the phone number the voicemail or voicemails were allegedly deleted from; and
- d) Order the State to provide a bill of particulars incorporating into the elements of the offense the alleged date of offense; and/or
- e) Grant a hearing on this matter.

Respectfully submitted,

/s/ Richard E. Samdperil  
Richard E. Samdperil, N.H. Bar no. 11036

/s/ Joseph E. Welsh  
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### **CERTIFICATION OF SERVICE**

I hereby certify that a copy of the foregoing Motion for Discovery 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/ Richard E. Samdperil  
Richard E. Samdperil