

THE STATE OF NEW HAMPSHIRE

SUPERIOR COURT

ROCKINGHAM, SS.

JUNE, 2025

STATE OF NEW HAMPSHIRE

v.

GENO MARCONI

218-2024-CR-1426

MOTION FOR JUDICIAL NOTICE AND JURY INSTRUCTION

NOW COMES the defendant, Geno Marconi, by and through counsel, Richard E. Samdperil and Joseph E. Welsh, and moves this Court take judicial notice of RSA 12-G:44, III and instruct the jury as to the same at the defendant's trial.

As grounds for this Motion the following is stated:

1. Since 2002, Geno Marconi has served as the Director of the Division of Ports and Harbors. *See* RSA 12-G:43.

2. RSA 12-G:43 provides, in relevant part, that:

I. There is established within the [Pease Development] authority a division of ports and harbors that is subject to the direction and control of the board, the executive director, and the division director. The division of ports and harbors shall:

(a) Plan for the maintenance and development of the ports and state tidal waters from the head of navigation to the seaward limits within the jurisdiction of the state, in order to foster and stimulate commerce and the shipment of freight through the state's ports and, as an agency of the state, to assist shipping,

and commercial and industrial interests that may depend on the sea for transport of products, including such interests as may be desirous of locating in tidewater areas of the state; as well as **to encourage the establishment of accommodations for the boat traveler, the area boat owners, the pleasure fishermen, and others who pass up and down our coast line or in its tributaries.**

(b) Aid in the development of salt water fisheries and associated industries.

(c) Cooperate with any agencies or departments of the federal government in planning the maintenance, development, and use of the state ports and state tidal waters.

(d) Plan, develop, maintain, use, and operate a heliport facility on property owned or controlled by the division. The division shall cooperate with departments, agencies, authorities, or commissions of the federal, state, or local governments and accept grants, aid, or services from such agencies in the carrying out of this purpose. Such authorization relating to heliport facilities shall include and be governed by all other provisions of this chapter.

(e) Maintain at all times a complete inventory of division property and port projects.

(f) Perform such other duties and functions relating to the administration, management, and operation of division property and division projects as are assigned to division by the authority.

II. The board shall appoint a director of the division of ports and harbors who shall be qualified by education and experience and who shall hold office for an indefinite term at the pleasure of the board. **The director of the division shall be the administrative officer of the division and shall have general and active supervision and direction over the day-to-day business and affairs of the division and its employees,** subject, however, to the direction and control of the board and the executive director. The division director shall perform all such other duties as from time to time may be assigned by the board or the executive director. **The division director shall also be the secretary of the division of**

ports and harbors advisory council, shall keep a record of the proceedings of the council, and shall be the custodian of all books, documents, and papers filed with the division or the ports and harbors advisory council. The division director shall have the power to cause copies to be made of all minutes and other records and documents of the council and to give certificates under the seal of the authority to the effect that such copies are true copies, and all persons dealing with the division or authority may rely upon such certificates. In addition to the classified employees of the division, the division director, with the concurrence of the executive director, may employ such assistants and clerical and administrative staff as are within the limits of funds available for that purpose. The salary of the division director shall be established by the board.

RSA 12-G:43 (emphasis added).

3. Charge ID numbers 2257801C, 2257804C, 2257805C and 2257806C each allege that Mr. Marconi committed an offense “by providing records pertaining to N.L. to another individual, B.C.” Charge ID number 2257801C also alleges that doing so was a violation of RSA 260:14, IX(a), which is also referred to as the Driver Privacy Act (DPA).

4. Specifically, the indictments allege as follows:

Charge ID: 2257801C alleges Tampering with Witnesses and Informants 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 under 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 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.

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.

5. N.L. is believed to be a person who applied for a pier use permit or a boat mooring, or submitted a similar permit or application, and who voluntarily provided himself or through another certain motor vehicle records in his personal possession along with any such application.

6. B.C. is believed to be Bradley Cook, the former Chair of the Division of Ports and Harbors Advisory Council.

7. The Division of Ports and Harbors Advisory Council is established by statute and consists of eight members, six of whom are appointed by the Governor. *See* RSA 12-G:44.

8. RSA 12-G:44, provides in relevant part, that:

The council shall consult with and advise the division director with respect to the policy, programs, and goals of the division, the operation of the port, the selection of harbor masters and assistant harbor masters, and the procurement of services of a port terminal operating firm.

RSA 12-G:44, III.

9. In other pleadings filed with this Court, the defense has moved to dismiss the above-referenced indictments because any boat and automobile registrations voluntarily provided by N.L as part of a pier use permit or a boat mooring application are not “confidential motor vehicle records” under the Driver Privacy Act or any other law. (See Defendant’s Motion to Dismiss re Charge ID numbers 2257801C, 2257804C, 2257805C and 2257806C.)

10. Should the Court deny this motion, the defense asserts that with respect to Charge Id number 2257804C, the State must prove beyond a reasonable doubt that Cook was “a person known by [Mr. Marconi] to be an unauthorized person.”

11. Similarly, with respect to Charge ID number 2257806C, the State must prove beyond a reasonable doubt that Mr. Marconi “knowingly used information from a department record for any use other than the use authorized by the Department of Safety.”

12. The defendant requests the Court take judicial notice of RSA 12-G:43 and RSA 12-G:44, and provide copies of these statutes to the jury in this case.

13. Further, the defendant requests the Court specifically instruct the jury that to find Mr. Marconi guilty of Charge ID numbers 2257801C, 2257804C, 2257805C and 2257806C, the jury must find that 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.

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

- a) Take judicial notice of RSA 12-G:43 (Division of Ports and Harbors); and;
- b) Take judicial notice of RSA 12-G:44 (Division of Ports and Harbors Advisory Council); and
- c) Provided copies of such statutes to any jury empaneled in this matter; and
- d) Instruct any such jury that to find the defendant guilty in this matter, jurors 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; and/or
- e) Schedule a hearing in this matter.

Respectfully submitted,

/s/ Richard E. Samdperil

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

/s/ Joseph E. Welsh

Joseph E. Welsh, N.H. Bar no. 10079

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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