

THE STATE OF NEW HAMPSHIRE

ROCKINGHAM, SS.

SUPERIOR COURT

STATE OF NEW HAMPSHIRE

v.

GENO JOSEPH MARCONI

Case No. 218-2024-CR-01426

**STATE'S OBJECTION TO DEFENDANT'S MOTION TO SUPPRESS**

NOW COMES the State of New Hampshire, by and through its attorneys, the Office of the Attorney General, and objects to Defendant's Motion to Suppress Warrantless Search of Voicemail Associated with Defendant's Personal Phone Number. In support thereof, the State represents as follows:

1. As part of his employment, Defendant was issued a cellular telephone owned by the Pease Development Authority ("PDA"). On April 18, 2024, Defendant was placed on administrative leave, and PDA disabled and demanded the return of this state-issued cell phone. *See Bates Stamp #0009120*, attached hereto as Exhibit #1. Defendant claimed that the state-issued cell phone was his personal property and refused to provide it to PDA. After confirming that the cell phone at issue was PDA property, PDA sent another demand for the return of the cell phone to Defendant. *See Bates Stamp #0009121*, attached hereto as Exhibit #2. Defendant, through counsel, then sought to remove personal items from the PDA cell phone before surrendering the item, and that request was refused by the PDA. *See Bates Stamp #0009122*, attached hereto as Exhibit #3.

2. PDA's IT policies, provided in discovery at Bates Stamp #0027696-0027698 and attached hereto as Exhibit #4, make clear that PDA technology provided to Defendant, including the cell phone at issue:

- a. Is governed by these policies;
- b. Is the property of PDA;
- c. May not be used unless PDA Staff reads, understands, and complies with these policies;
- d. Can be used only for PDA business purposes;
- e. Cannot be removed from PDA property without prior express consent of the PDA;
- f. Cannot be used to access personal accounts or personal sites unless for legitimate business purposes;
- g. Must be issued in a manner to “protect confidential and proprietary information entrusted to the PDA;” and
- h. Cannot be used to place PDA material on any publicly accessible Internet computer without prior permission.

3. On May 15, 2023, investigators for the State obtained consent from the PDA to seize and search the cell phone at issue. *See* Bates Stamp # 0009185, attached hereto as Exhibit #4. Defendant's arguments about the consent only covering the PDA phone number and not Defendant's personal phone number are misleading. *See* Motion at ¶¶ 15-19. As can be seen from the consent form, the consent is to search the “cell phone or mobile device” – not a specific number. The cell phone number is merely one of a series of identifiers of the physical device for which consent to search was obtained, along with the model and serial numbers, the

manufacturer, and the service provider. Further, the consent covers the contents of the physical device without reference to any particular number associated with the content – *i.e.*, it is the *device*, and not any particular account, for which consent was given to search.

4. “A preliminary inquiry which any court must take before it will consider a motion to suppress evidence based upon an unreasonable search or seizure is whether the individual filing the motion has standing.” *State v. Boyer*, 168 N.H. 553, 557 (2016) (quotation omitted). “The threshold question as to the determination of a party’s standing to challenge the introduction of evidence by means of a motion to suppress is whether any rights of the moving party were violated.” *Id.* (quotation omitted).

A defendant may have standing based upon: (1) being charged with a crime in which possession of an item or thing is an element, which confers automatic standing; or (2) having a legitimate expectation of privacy in the place searched or the item seized. To claim standing based upon a legitimate expectation of privacy, a defendant must establish both: (1) a subjective expectation of privacy in the place searched or the item seized; and (2) that his subjective expectation is legitimate because it is one that society is prepared to recognize as reasonable.

*Id.* (quotation and citation omitted).

5. Whether or not a Defendant has a possessory interest in an item seized, when a defendant places that item in an area in which he has no reasonable expectation of privacy, he loses any legitimate expectation of privacy. *United States v. Symonevich*, 688 F.3d 12, 21 (1st Cir. 2012) (citing *Rawlings v. Kentucky*, 448 U.S. 98, 105-06 (1980) (“[h]ad [the] petitioner placed his drugs in plain view, he would still have owned them, but he could not claim any legitimate expectation of privacy)). *See also United States v. Gemma*, 2014 U.S. Dist. LEXIS 57823 (D.Mass.) (April 25, 2014) at \*12, *aff’d* 818 F.2d 23 (1st Cir. 2016) (“The defendant having no possessory interest in [another]’s cell phone, he does not have standing to challenge that seizure and the subsequent search of the [other]’s phone.”) (citing *Symonevich, supra*).

6. Here, Defendant acknowledges that he “obtained a new personal phone number” that “was initially set up on the PDA device.” Motion at ¶ 6. This phone was the property of the PDA. The fact that Defendant chose to place personal items on PDA’s property, contrary to PDA’s policies, does not give him a reasonable expectation of privacy in the phone. Whatever expectation of privacy Defendant may have in the contents associated with his personal phone number, when he placed those contents on the PDA’s physical device, he lost any reasonable expectation of privacy in the contents – the same as if he put his drugs in plain view (*Rawlings, supra*) or his personal belonging under the seat in someone else’s car (*Symonevich, supra*).

7. Accordingly, Defendant does not have standing to challenge the search of PDA’s phone. Even if Defendant did have standing, his placement of the materials at issue on a device in which he has no reasonable expectation of privacy defeats his claim of a right to privacy.

WHEREFORE, the State of New Hampshire respectfully requests that this Honorable Court:

- (A) Dismiss Defendant’s motion; and
- (B) Grant such further relief as may be deemed just and proper.

Respectfully submitted,

THE STATE OF NEW HAMPSHIRE

JOHN M. FORMELLA  
ATTORNEY GENERAL

Date: June 17, 2025

/s/ Joe M. Fincham II  
Joe M. Fincham II, Bar #273596  
Assistant Attorney General  
Criminal Justice Bureau  
New Hampshire Department of Justice  
1 Granite Place South

Concord, NH 03301  
(603) 271-3671  
joe.m.finchamii@doj.nh.gov

/s/ Dan A. Jiménez  
Dan A. Jiménez, Bar #273604  
Senior Assistant Attorney General  
Criminal Justice Bureau  
New Hampshire Department of Justice  
1 Granite Place South  
Concord, NH 03301  
(603) 271-3671  
dan.a.jimenez@doj.nh.gov

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was sent via the Court's e-filing system to counsel of record.

/s/ Joe M. Fincham II  
Joe M. Fincham II

# **EXHIBIT #1**

**April 18, 2024, Letter to Defendant**

April 18, 2024

Mr. Geno Marconi  
27 Parkman Brook Lane  
Stratham, NH 03885

Dear Mr. Marconi:

This letter is to inform you that effective 4/18/2024, you have been placed on an indefinite leave of absence with pay from your position as Director, Division of Ports and Harbors (DPH) with the Pease Development Authority (PDA), Division of Ports and Harbors. This suspension begins on 4/18/2024, and is indefinite, pending the results of an investigation being conducted by the New Hampshire Attorney General's Office.

You will continue to receive your current salary and benefits, minus federal and state taxes and your usual benefit payroll deductions, for the period of your leave of absence.

To safeguard the integrity of the investigation, you are prohibited from performing PDA and/or DPH-related business, interacting with coworkers regarding PDA and/or DPH business, or entering any PDA and/or DPH facilities for the purposes of discussing PDA/DPH business for the duration of your leave of absence.

You will be unable to access your PDA technology including applications, Outlook, email, network drives, etc. for the duration of the investigation. The PDA cell phone assigned to you has been disabled and must be returned to PDA headquarters at:

PDA  
55 International Drive  
Portsmouth, NH 03801

We will provide you with further details regarding the duration of the suspension, investigation, and any other relevant details when they become available. The outcome of this investigation will determine the next steps regarding your employment.

Sincerely,



Tanya Coppeta  
Employee Relations Manager

# **EXHIBIT #2**

**April 25, 2024, Letter to Defendant**

April 25, 2024

Mr. Geno Marconi  
27 Parkman Brook Lane  
Stratham, NH 03885

Re: Cell phone Device ID: 356606641567353  
SIM ID: 8914800009055922084

Dear Mr. Marconi:

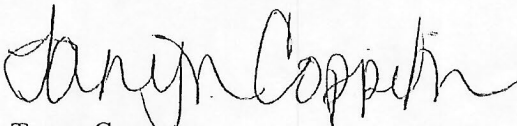
On 4/18/24, you were informed in a meeting with Paul Brean, Executive Director, and myself that you have been placed on an indefinite, paid leave of absence as of 4/18/24, pending the results of an investigation being conducted by the New Hampshire Attorney General's office.

During this conversation, we requested the return of all Pease Development Authority technology items including your PDA cell phone (see device and SIM numbers above). You stated that the cell phone was your personal property, through an agreement made between yourself and a PDA official many years ago. There is no record of this conversation, and our IT Department has confirmed that the phone in question was purchased by the PDA, issued through PDA's Corporate Verizon account, and is the property of the PDA.

On 4/19/24, a letter outlining the terms of your leave was sent to you. This letter again asked for the return of your PDA issued cell phone.

As of 4/25/24, there is no record of the cell phone being returned or arrangements made to secure its return. Please return the cell phone to PDA Corporate Headquarters or contact me or the PDA IT Department (contact information is below) to make arrangements for the return of the cell phone by 5/1/24. If we do not receive the phone or hear from you to make arrangements for its return by 5/1/24, we may consider legal action.

Sincerely,



Tanya Coppeta  
Employee Relations Manager

# **EXHIBIT #3**

**May 6, 2024, Letter to Counsel for  
Defendant**

May 6, 2024

Atty. Richard Samdperil  
100 High St.  
Exeter NH 03833

Dear Attorney Samdperil:

I write in response to your email of 5/3/24 in which you requested that I contact you regarding the PDA-issued cell phone still in Mr. Marconi's possession. You stated that Mr. Marconi is willing to return the phone after he removes some personal items from the phone. You asked that I contact you to assist in the removal of these personal items.

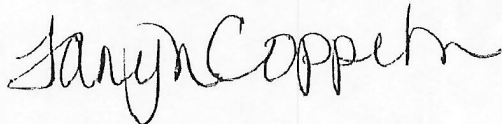
Please be advised that the cell phone is the property of the PDA, and I am unable to authorize the removal of any items from the phone at this juncture. Consistent with my prior communications, the cell phone must be returned to the PDA immediately with nothing removed from it. Once returned, the PDA will, under guidance from its legal counsel, attempt to provide you with copies of any requested personal items from the phone.

**Please return the cell phone to my attention, at:**

**Pease Development Authority  
55 International Drive  
Portsmouth, NH 03801**

Thank you for your anticipated cooperation.

Sincerely,



Tanya Coppeta  
Employee Relations Manager

# **EXHIBIT #4**

## **Consent to Search Phone**



New Hampshire Attorney General's Office  
 1 Granite Place South  
 Concord, NH 03301

CONSENT TO SEIZE AND SEARCH CELL PHONE(S)

I Paul Brien, Executive Director <sup>FOIA</sup> hereby authorize 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.

Cell Phone / Mobile Device

Service Provider:  Verizon  AT&T  Sprint  T-Mobile  Other: \_\_\_\_\_  
 Phone Manufacturer: Apple  
 Cell Phone #: [REDACTED] - 0 23  
 PIN/Password: [REDACTED]  
 Model #: 12 64 GB BLACK  
 Serial #: 356606641567353  
 Home Phone Number: ( ) \_\_\_\_\_  
 Power Cord collected: Y or N Data Cable collected: Y or N

I also authorize the NH Attorney General's Office to search any removable electronic storage media, such as SIM and memory cards, associated with my cell phone/mobile device, and permit them to download the contents of my cell phone/mobile device and all associated electronic storage media for purposes of further analysis of any and all information obtained.

This search is to include all areas of the cell phone and removable electronic storage media including, but not limited to incoming and outgoing calls, received and sent messages such as text, images, videos, email, contact list information, drafts of messages, internet history and cables. I also affirmatively represent that I am the lawful owner of the above-described property and/or I have lawful possession and control over it for purposes of this consent to search.

I have been advised by <sup>INVESTIGATOR</sup> Stephen P. Johnson, and I fully understand that I have the right to refuse my consent. I also understand that I have the right to be present at the time of any searches which are conducted, and I expressly waive any rights I may have to be physically present during any searches which are conducted pursuant to this consent to search. I further authorize the above member or his/her designee to remove, take with them, retain custody over and search my cell phone/ mobile device at a remote location.

I have been further advised that I may withdraw my consent at anytime; however, the withdrawal of my consent shall not be effective until received by STEPHEN P. JOHNSON of the NH Attorney General's Office and shall not be effective as to that content which has already been viewed, seized, analyzed or copied.

Date: May 15, 2023 Time: 09:52 (A.M/P.M. (please circle))

Signature of Person Providing Consent: Paul Brien

Witness: Steph Coppin Witness: [Signature]