

STRAFFORD, SS

SUPERIOR COURT
DOCKET NO. **219-2022-CR-64**

THE STATE OF NEW HAMPSHIRE

v.

MAURICIO GUERRERO

OBJECTION TO MOTION TO RECONSIDER

NOW COMES, the Defendant, Mauricio Guerrero, by and through his Attorney, Harry N. Starbranch, who respectfully objects to the State's motion to reconsider this Court's ruling dismissing the invasion of privacy complaint. The Defendant makes his objection based upon Part 1, Article 16 of the New Hampshire State Constitution and the Fifth and Fourteenth Amendments to the United States Constitution.

As grounds for this Motion, your Defendant sets forth the following:

1. Your Defendant was charged with 5 counts of Burglary. Trial in this matter went forward on May 8, 2023.
2. At the close of evidence, but before the case went to the jury, this Honorable Court dismissed a misdemeanor count of invasion of privacy. The rationale being that there was a burglary count (a class A burglary of a dwelling in the nighttime) which alleged that the crime to be committed therein as part of the burglary was invasion of privacy, (a misdemeanor). The Trial Court correctly ruled pursuant to RSA 635:1,IV that the jury could not convict the defendant of the underlying misdemeanor and dismissed the complaint.

3. Thus, the invasion of privacy complaint did not go to the jury. As the jury had been sworn and heard all charged cases, the dismissal of the invasion of privacy count at the close of evidence must be with prejudice or it would violate the double jeopardy prohibitions against putting the defendant in jeopardy twice for the same offence.
4. The State now moves to the Court to change its order, post-verdict, to a dismissal without prejudice. This would essentially give the State another bite at the apple should he be successful on appeal.
5. New Hampshire's Double Jeopardy Clause, the Federal double jeopardy clause, prevents the State from making repeated attempts to convict an individual for an alleged offense, thereby subjecting him to embarrassment, expense, and ordeal and compelling him to live in a continuing state of anxiety and insecurity" State v. McLellan, 149 N.H. 237, 243 (2003)
6. In the case at bar, the Defendant had the right to have his jury decide the verdict relative to the invasion of privacy case. Because the State chose to indict the burglary with the allegation of the invasion of privacy complaint as an element of the Burglary, the Court had to dismiss either the Burglary or the invasion of privacy. Thus, removing the case from the jury, after the jury had been sworn and heard the matter in its entirety. This was entirely the result of the State's charging decision.

WHEREFORE, your Defendant moves that this Honorable Court Grant the following relief:

- A) That this Honorable Court Deny the State's Motion to reconsider, and;
- B) Any such other and further relief as may be deemed just and proper.

Respectfully submitted,
Mauricio Guerrero,
By and Through his Attorney,
Harry N. Starbranch

Dated: July 31, 2023

/s/ Harry Starbranch
Harry N. Starbranch
NH Bar No. 6991
171 Middle Street
Portsmouth, NH 03801
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CERTIFICATE OF SERVICE

I, Harry N. Starbranch, Jr., Esq., hereby certify that a true copy of the foregoing **objection to motion to reconsider** has this date been served upon the Petition through ECF: Emily Garod, Esq., Strafford County Attorney's Office.

Dated: July 31, 2023

By: /s/ Harry Starbranch
Harry N. Starbranch, Jr., Esq.