

STATE OF VERMONT
ORLEANS COUNTY, SS

STATE OF VERMONT	*	DISTRICT COURT OF VERMONT
	*	UNIT #3 ORLEANS CIRCUIT
v.	*	DOCKET NO. 816-12-11 OCSD
	*	
	*	
CHRISTOPHER BRAITHWAITE	*	
	*	

STATE'S MEMORANDUM IN OPPOSITION TO MOTION TO DISMISS

NOW COMES Sarah A. Baker, Orleans County Deputy State's Attorney, and in opposition to the Defendant's Motion to Dismiss says as follows:

Statement of Facts

1. Defendant, Chris Braithwaite, was on the property of Green Mountain Power in Lowell, Vermont on December 5, 2011.
2. Defendant did not have permission to be on the property on December 5, 2011.
3. At approximately 8:45 a.m. David Coriell, a representative for Green Mountain Power asked the group of people to leave.
4. None of the individuals left, including the Defendant.
5. At approximately 11:50 a.m. law enforcement arrived and gave the people an opportunity to leave the property.

6. Defendant did not leave the property and was arrested.

Memorandum of Law

Dismissal of this Unlawful Trespass charge would not "serve the ends of justice and the effective administration of the court's business." V.R.Cr.P. 48(B)(2). The state can prove that Defendant violated Section 3705(a) of Title 13 by entering and remaining on private property with no legal authority or consent when notice of trespass was given by both an agent of the entity in possession of the property and by law enforcement.

Defendant concedes that courts have generally found that the press has no more right than the public to trespass on private property. Defendant's Motion to Dismiss at page 2. Without a privilege to be on the property, Defendant has no defense to the charge of Unlawful Trespass.

In a case involving a reporter being required to testify before a grand jury, the Supreme Court stated "[i]t is clear that the First Amendment does not invalidate every incidental burdening of the press that may result from the enforcement of civil or criminal statutes of general applicability. Under prior cases, otherwise valid laws serving substantial public interests may be enforced against the press as against others, despite the possible burden that may be imposed. The court has emphasized that '(t)he publisher of a newspaper has no special immunity from the application of general laws. He has no special privilege to invade the rights and liberties of others.' *Branzburg v. Hayes*, 408 U.S. 665, 682-683 (1972)(quoting *Associated Press v. NLRB*, 301 U.S. 103, 132-133 (1937)).

The Vermont Constitution does not confer a privilege to the press to be on private property for the purpose of reporting on government actions. See VT Const., Ch 1, Art. 13. There is also no case law in Vermont supporting the position that private property owners invite the press onto their private

property by inviting law enforcement. Property owners still have the right of privacy even though the public may have an interest in the government's response.

To allow the press on private property without permission to report on a governmental response as in this matter, would also allow the press to enter a private dwelling anytime law enforcement is called for assistance.

In no way is the Defendant restricted from reporting on the matter by reporting what he can observe from public property or private property that he has permission to be on. All public records of the account would be available for Defendant to review and report on. Defendant simply cannot be present on private property without permission and not be subject to criminal liability when he refuses to leave.

The Defendant used the example of the reporter reporting on the acts of civil disobedience during the sit-ins during the civil rights movement to support the Defendant's defense. That example is distinguished from this in that the reporter at the sit-ins was not violating the law by being present without permission, and the lunch counters were open to the public, although they would not serve African-Americans.

Defendant did not have permission on December 5, 2011 to be on Green Mountain Power's property. A subsequent invitation by the property owner did not give the Defendant permission to be on the property on the day he was arrested. The representative with Green Mountain Power did not indicate that to law enforcement that Defendant had permission to be present.

REQUEST FOR RELIEF

Defendant's motion to dismiss must be denied. The State can show that Defendants was on the Green Mountain Power property without permission and refused to leave when asked by a

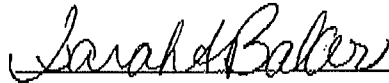
representative of Green Mountain Power and by law enforcement. Defendant has no privilege as a member of the press to be on private property without permission.

See attached affidavits of Deputy Sheriff Daniel Locke and David Coriell.

WHEREFORE, for the reasons as set forth above the State moves this Court to deny the Defendants' instant motion.

DATED at Newport, Vermont this 29th day of December, 2011

Respectfully submitted,

A handwritten signature in cursive script that reads "Sarah A. Baker". The signature is written in black ink and is positioned above the printed name.

Sarah A. Baker

cc. Philip H. White, Esq.