

Attachment 30, Page 1

ROCKINGHAM, SS

The State of New Hampshire

SUPERIOR COURT

INDICTMENT

At the Superior Court, holden at Brentwood, in the County of Rockingham on the second day of September, in the year of our Lord two thousand and eight, the Grand Jurors for the State of New Hampshire, upon their oath, present that

ARNOLD GRODMAN
of

L/K/A 36 Beatrice Street, Danville, New Hampshire 03819

committed the crime of
INTERFERENCE WITH CUSTODY

between December 2007 and July 2008
in the County of Rockingham

In that:

1. Arnold Grodman knowingly,
2. caused E.G. (DOB: 6/1/91), a child under the age of 18,
3. to be taken from the State of New Hampshire,
4. with the intent to detain or conceal E.G. from the New Hampshire Division of Children, Youth and Families, after said Division had been given legal custody of E.G. by the Rockingham County Superior Court;

contrary to the form of the Statute in such case made and provided, and against the peace and dignity of the State.

James M. Rice

James M. Rice

Rockingham County Atto

FORMAL ARRAIGNMENT WAIVED AND

PLEAS OF NOT GUILTY ENTERED 9/15/08

This is a true bill.

[Signature]
Grand Jury Foreman

[Signature]

CLERK

INDICTMENT # 08-5-2388

A30, P2

ROCKINGHAM, SS

The State of New Hampshire

SUPERIOR COURT

INDICTMENT

At the Superior Court, holden at Brentwood, in the County of Rockingham on the first day of September, in the year of our Lord two thousand and nine, the Grand Jurors for the State of New Hampshire, upon their oath, present that

ARNOLD GRODMAN
of

L/K/A 36 Beatrice Street, Danville, New Hampshire 03819

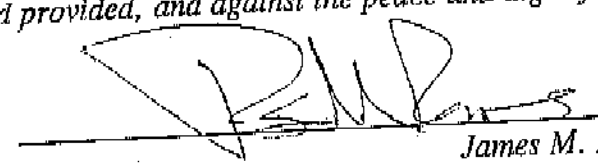
committed the crime of
INTERFERENCE WITH CUSTODY

between December 2007 and July 2008
in the County of Rockingham

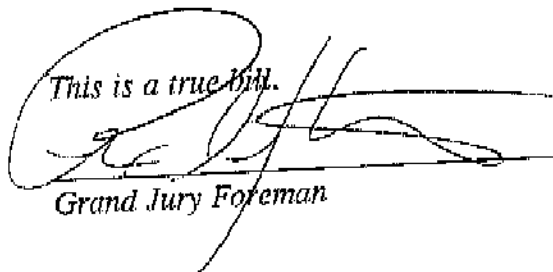
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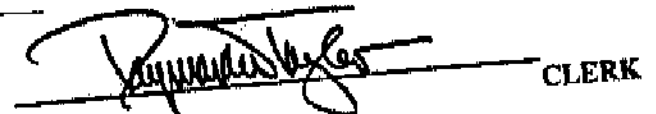
1. Arnold Grodman knowingly,
2. caused E.G. (DOB: 6/1/91), a child under the age of 18,
3. to be taken from the State of New Hampshire,
4. with the intent to detain or conceal E.G. from the New Hampshire Division of Children, Youth and Families, after said Division had been given lawful parental rights and responsibilities as described in RSA 461-A by the Rockingham County Superior Court;

contrary to the form of the Statute in such case made and provided, and against the peace and dignity the State.


James M.
Rockingham County A

FORMAL ARRAIGNMENT WAIVED AND
PLEAS OF NOT GUILTY ENTERED. 9/25/09

This is a true bill.

Grand Jury Foreman


CLERK

INDICTMENT # 09-S-2253



A30 P3

ROCKINGHAM, SS

The State of New Hampshire

SUPERIOR COURT

INDICTMENT

At the Superior Court, holden at Brentwood, in the County of Rockingham on the first day of September, in the year of our Lord two thousand and nine, the Grand Jurors for the State of New Hampshire, upon their oath, present that

ARNOLD GRODMAN

of

L/K/A 36 Beatrice Street, Danville, New Hampshire 03819

committed the crime of

INTERFERENCE WITH CUSTODY

between December 2007 and July 2008
in the County of Rockingham

In that:

1. Arnold Grodman knowingly,
2. caused E.G. (DOB: 6/1/91), a child under the age of 18,
3. to be taken from the State of New Hampshire,
4. with the intent to detain or conceal E.G. from the New Hampshire Division of Children, Youth and Families, after said Division had been given legal custody of E.G. by the Rockingham County Superior Court;

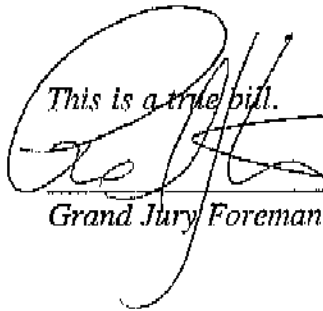
contrary to the form of the Statute in such case made and provided, and against the peace and dignity of the State.

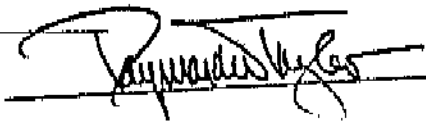


James M. Reams,

FORMAL ARRAIGNMENT WAIVED AND Rockingham County Attorney

PLEAS OF NOT GUILTY ENTERED. 9/25/09

This is a true bill.

Grand Jury Foreman


CLERK

INDICTMENT # 09-S-2254

A30, P4

THE STATE OF NEW HAMPSHIRE

ROCKINGHAM, SS.

SUPERIOR COURT

The State of New Hampshire.

v.

Arnold Grodman

Docket No.: 08-S-2388; 09-S-2253-54

ORDER ON MOTION TO DISMISS

The defendant, Arnold Grodman, is currently charged with five counts of interference with custody, contrary to RSA 633:4 (2007). Specifically, it is alleged that the defendant caused E.G. to be taken from the State of New Hampshire with the intent to detain or conceal E.G. from the New Hampshire Division of Children, Youth and Families ("DCYF"), after DCYF had been given legal custody of E.G. by the Rockingham County Superior Court. On December 2, 2009, the defendant moved to dismiss docket numbers 08-S-2388, 09-S-2253, and 09-S-2254. The defendant argues that, because DCYF is not a "person" under the New Hampshire criminal code, his alleged conduct did not violate RSA 633:4. Because the Court agrees that DCYF is not a "person," as defined by the criminal code, the defendant's Motion to Dismiss is **GRANTED**.

RSA 633:4 provides, in pertinent part,

A person is guilty of a class B felony if such person . . . causes any [child under the age of 18] to be taken from this state or enticed away from this state, with the intent to detain or conceal such child from a **parent, guardian, or other person** having lawful parental rights and responsibilities as described in RSA 461-A.

(Emphasis added); see also RSA 461-A:1, IV (2008) (defining "parental rights

A30 P5

and responsibilities" as "all rights and responsibilities parents have concerning their child"). RSA 461-A:1 does not define the term "person." However, RSA 625:11 (2007) contains general definitions applicable to the entire criminal code, and defines "person" as "any natural person and, a corporation or unincorporated association." RSA 625:11, II. Thus, the defendant's alleged conduct is only chargeable under RSA 633:4 if DCYF is a parent, guardian, natural person, corporation, or unincorporated association. See RSA 625:11, II; RSA 633:4.

The State does not argue that DCYF is a parent or guardian. Compare RSA 169-C:3, XIV (2008) (defining "Guardian" as "a parent or person appointed by a court . . .") with RSA 169-C:3, X (defining "custodian" as "an agency or person, other than a parent or guardian . . ."). Rather, the State argues that DCYF is a "person" under applicable law, and that this is an issue of fact.¹ However, the interpretation of a statute is a question of law. See State v. Barnett, 147 N.H. 334, 339 (2001) ("It is not for the jury to decide whether 'clothing,' as used in RSA 632-A:1, IV, may also include blankets."). Accordingly, the Court will determine whether DCYF is a "person" under the RSA 625:11 definition applicable to RSA 633:4.

As previously noted, RSA 625:11, II defines "person" as "any natural person and, a corporation or unincorporated association." Because DCYF is neither a natural person nor a corporation, DCYF can only qualify as a "person"

¹ The State also argues that RSA 633:4 applies because DCYF is administered by people, and DCYF assigns specific people to manage the cases of individual children for whom DCYF has legal custody. However, the "parental rights and responsibilities" in this case were conferred upon DCYF, not upon any individual within DCYF. Further, the indictments do not allege that any individual person had such "parental rights and responsibilities" with regard to E.G. Accordingly, the Court is not persuaded by this argument.

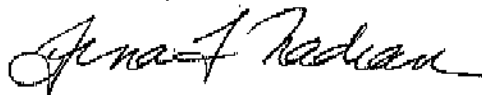
A30, PG

under applicable law if it is an "unincorporated association." See id. "An unincorporated association is generally created and formed by the voluntary action of a number of individuals in associating themselves together under a common name for the accomplishment of some lawful purpose." Exeter Hosp. Medical Staff v. Board of Trustees of Exeter Health Resources, Inc., 148 N.H. 492, 495-96 (2002) (brackets, quotations and citation omitted). "[A]n unincorporated association, unlike a corporation, is generally without legal existence or significance apart from its members." Knox Leasing v. Turner, 132 N.H. 68, 72 (1989). DCYF, a division of the Department of Health and Human Services, was created by statute. See RSA 170-G:2 (2002). DCYF was not formed "by the voluntary action of a number of individuals," see Exeter Hosp. Medical Staff, 148 N.H. at 495-96, and it has legal "significance apart from its members." See Knox Leasing, 132 N.H. at 72. Accordingly, the Court finds that DCYF is not an unincorporated association.

Because DCYF is not a natural person, corporation, or unincorporated association, it is not a "person," as defined in RSA 625:11, II. Since RSA 633:4 does not define "person," the RSA 625:11, II definition applies. Accordingly, the defendant's alleged conduct did not violate RSA 633:4, and his Motion to Dismiss docket numbers 08-S-2388, 09-S-2253, and 09-S-2254 is **GRANTED**.

So Ordered.

DATE: 11/6/10



Tina L. Nadeau
PRESIDING JUSTICE

A30, P7

Rockingham County

Superior Court

No. 08-S-2388, 09-S-2253, 2254

RETURN FROM SUPERIOR COURT

Name: Arnold Grodman

DOB: 11/15/41

Indictment Waiver Information Complaint

Offense: Interference with Custody (x3) RSA: 633:4

Date: betw 12/2007 & 7/2008

Disposition: Not Guilty Nol Pros Remand
 Annulled Quashed/Dismissed

Date: 1/6/10

T/N:

By: Judge Jury Prosecutor Defendant

Name of Judge : Hon. Tina L. Nadeau

By: State Police
 Office of Cost Cont.

Dept. of Corr.
 Patrick Fleming, Esq.

Pros. Attorney
 Plaistow Dist. CT

DISPOSITION/MITTIMUS

2

A30, P8

JRB

INTERFERENCE WITH CUSTODY

DOB: 11/15/41 ELC: ALL RSA 633:4

Penalty: B

Entries Above This Line Are Not Part of Indictment

ROCKINGHAM, SS

The State of New Hampshire

SUPERIOR COURT

INDICTMENT

At the Superior Court, holden at Brentwood, in the County of Rockingham on the sixth day of October, in the year of our Lord two thousand and nine, the Grand Jurors for the State of New Hampshire, upon their oath, present that

ARNOLD GRODMAN

of

L/K/A 36 Beatrice Street, Danville, New Hampshire 03819

committed the crime of

INTERFERENCE WITH CUSTODY

on or between December 4, 2007 and January 3, 2008 in the County of Rockingham

In that:

1. Arnold Grodman knowingly,
2. caused E.G. (DOB: 6/1/91), a child under the age of 18,
3. to be taken from the State of New Hampshire,
4. with the intent to detain or conceal E.G. from the New Hampshire Division of Children, Youth and Families, after said Division had been given guardianship of E.G.;

contrary to the form of the Statute in such case made and provided, and against the peace and dignity of the State.

James M. Reams, Rockingham County Attorney

This is a true bill.

Grand Jury Foreman

FORMAL ARRAIGNMENT WAIVED AND

PLEAS OF NOT GUILTY ENTERED. 11/5/09

CLERK

A30, P9

The State of New Hampshire.
Judicial Branch - Family Division at Brentwood

*certified
in docket
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or paid.*

Certificate of Appointment

Temporary Guardianship over the Person

Case Number: 2007-G-0060

Trusting in your care and fidelity, I appoint NH DCYP as Temporary Guardians over the minor person of:

Eleonora Grodman
DOB 06/01/1991


YOUR RIGHTS, DUTIES, AND POWERS AS TEMPORARY GUARDIANS OVER THE PERSON ARE RECITED IN RSA 463:12, AND ARE LIMITED OR RESTRICTED AS MAY BE ORDERED BY THE COURT.

No restrictions are ordered.

This document, when signed by the Judge of Family Division under seal, certifies that you have been appointed temporary guardians.

This temporary decree shall remain in effect until January 03, 2008.

Date: December 4, 2007


Peter G. Hurd, Presiding Justice

09-5-25-11

*→ document #175
in my file
TT3*

A30, P10

INTERFERENCE WITH CUSTODY

Penalty: B

DOB: 11/15/41 ELC: ALL RSA 633:4

Entries Above This Line Are Not Part of Indictment

ROCKINGHAM, SS

The State of New Hampshire

SUPERIOR COURT

INDICTMENT

At the Superior Court, holden at Brentwood, in the County of Rockingham on the sixth day of October, in the year of our Lord two thousand and nine, the Grand Jurors for the State of New Hampshire, upon their oath, present that

ARNOLD GRODMAN
of
L/K/A 36 Beatrice Street, Danville, New Hampshire 03819

committed the crime of
INTERFERENCE WITH CUSTODY

on or between June 4, 2008 and July 7, 2008
in the County of Rockingham

Wade Payne
5-17-10
proceed on other charges

In that:

1. Arnold Grodman knowingly,
2. caused E.G. (DOB: 6/1/91), a child under the age of 18,
3. to be taken from the State of New Hampshire,
4. with the intent to detain or conceal E.G. from the New Hampshire Division of Children, Youth and Families, after said Division had been given guardianship of E.G.;

contrary to the form of the Statute in such case made and provided, and against the peace and dignity of the State.

[Signature]
James M. Reams,
Rockingham County Attorney

FORMAL ARRAIGNMENT WAIVED AND
PLEAS OF NOT GUILTY ENTERED. 11/5/09

This is a true bill.
[Signature]
Grand Jury Foreman

[Signature]
CLERK

A30, P11

Kingham County

Superior Court

No. 09-S-2512

RETURN FROM SUPERIOR COURT

Name: Arnold Grodman

DOB: 11/15/41

Indictment Waiver Information Complaint

Offense: Interference with Custody RSA: 633:4

Date: 6/4/08-7/7/08

Disposition: Not Guilty Not Pros Remand
 Annulled Quashed/Dismissed

T/N:

Date: 5/17/10

Judge Jury Prosecutor Defendant

Name of Prosecutor : Brian Lee

State Police Dept. of Corr. Pros. Attorney
 Patrick Fleming

A30, P12

JRB

CRIMINAL CONTEMPT

6 months, \$2,000

DOB: 11/15/41

ROCKINGHAM, SS.

SUPERIOR COURT

The State of New Hampshire

INFORMATION

At the SUPERIOR COURT holden at Brentwood, within and for the County of Rockingham, on the twenty first day of January in the year of our Lord two thousand and ten, James M. Reams, County Attorney for said County of Rockingham, in behalf of said State, being here in Court, gives the said Court to understand and be informed that,

ARNOLD GRODMAN

of

L/K/A 36 Beatrice Street, Danville, New Hampshire 03819

committed the crime of

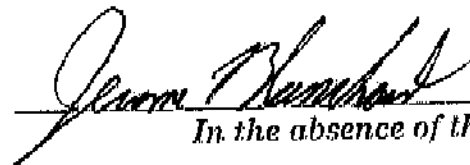
CRIMINAL CONTEMPT

between April 27 and the month of July
in the year of our Lord two thousand and eight
in the County of Rockingham

In that:

1. **Arnold Grodman purposely,**
2. **and with the knowledge that a valid order existed out of the Rockingham Superior Court instructing him to surrender his daughter, E.G., to the Division of Children, Youth and Families,**
3. **violated said order by not surrendering her;**

contrary to the form of the Statute, in such case made and provided, and against the peace and dignity of the State. Whereupon the said County Attorney prays advice of the Court in the premises, and that due process of law may issue against the said Arnold Grodman. In this behalf, to answer to the State in the premises, and to do therein what to law and justice may appertain.


County Attorney
In the absence of the Attorney General



A30, P13
ROCKINGHAM COUNTY ATTORNEY
STATE OF NEW HAMPSHIRE

JAMES M. REAMS
COUNTY ATTORNEY

THOMAS F. REID
DEPUTY COUNTY ATTORNEY

September 27, 2011

Arnold Grodman
P.O. Box 1135
E. Hampstead, NH 03826

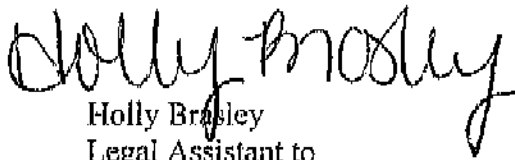
RE: State of New Hampshire v. Arnold Grodman

Dear Mr. Grodman:

Enclosed please find a copy of the State's Objection to Defendant's Pending Motions to Dismiss in regards to the above-referenced matter.

If you have any questions, please do not hesitate to contact this office.

Sincerely,



Holly Brasley
Legal Assistant to

Brian T. Lee
Assistant County Attorney

A30, P14

THE STATE OF NEW HAMPSHIRE

ROCKINGHAM, SS.

SUPERIOR COURT

STATE OF NEW HAMPSHIRE

v.

ARNOLD GRODMAN
218-2010-CR-2388

TRUE
COPY

2011 SEP 2 A 4 14 PM

ROCKINGHAM COUNTY
ATTORNEYS OFFICE

STATE'S OBJECTION TO DEFENDANT'S PENDING MOTIONS TO DISMISS

NOW COMES the State of New Hampshire, by and through the Office of the Rockingham County Attorney, and objects to the defendant's "Motion for Immediate Dismissal for Prosecutorial Misconduct" dated on June 8, 2011, "Motion to Dismiss" dated March 14, 2011, "Motion to Dismiss" dated March 14, 2011, "Motion to Dismiss Because Further Proceedings for Criminal Contempt are Barred by Res Judicata" dated March 7, 2011, Motion to Dismiss Because Further Proceedings for Criminal Contempt are Barred by Collateral Estoppel" dated March 7, 2011, "Motion to Dismiss" dated March 7, 2011, "Motion to Dismiss" dated March 7, 2011, "Motion to Dismiss" dated March 7, 2011 and "Motion to Dismiss" dated March 7, 2011 and in objection thereto states as follows:

1. By order of this Court dated November 5, 2010, Attorney Louis Piccone appeared *pro hac vice* on behalf of the defendant. Attorney Piccone was provided notice that this matter was scheduled for trial the week of March 28, 2011, with a final pretrial conference scheduled on March 16, 2011.
2. On March 10, 2011, undersigned counsel received an e-mail from Attorney Piccone stating that he was going to file "a flurry of paperwork" with the court.
3. On March 11, 2011, undersigned counsel received, via e-mail, a number of motions to dismiss. On Sunday, March 13, 2011, undersigned counsel received via e-mail additional motions to dismiss.

A30, P15

4. It should be noted that each such motion was untimely filed pursuant to Superior Court Rule 98 (f).
5. Following the pretrial conference, this Court issued a detailed Procedural Order concerning the discovery obligations of the defendant, the admissibility of certain records and the availability of certain individuals to testify at trial.
6. Subsequently, the defendant filed a "Motion for Immediate Dismissal for Prosecutorial Misconduct" dated June 17, 2011.
7. The State filed an objection, which addressed what the State believed to be the larger issue – specifically, the concern that Attorney Piccone had failed to comply with the Superior Court Rules and the very clear Procedural Order which this Court had issued in March.
8. A hearing was scheduled for August 24, 2011. A notice of this hearing and its time -- 9:00 a.m. was issued to the parties on July 21, 2011. Undersigned counsel had no communication with Attorney Piccone between July 21, 2011 and August 24, 2011. Neither the defendant nor Attorney Piccone appeared for the August 24th hearing.
9. This Court has issued an order removing Attorney Piccone from representing the defendant in this matter. This Court has also required that the State file detailed objections to the pending motions to dismiss.
10. The State hereby objects to each of the pending motions, addressing them below in reverse chronological order.

11. The "Motion to Dismiss" dated March 7, 2011, is based on the premise that "all charges" should be dismissed because the "order which the defendant is charged with disobeying was illegal, unconstitutional and unenforceable on its face."

12. The defendant is charged with two counts of "Interference with Custody" pursuant to RSA 633:4, specifically, the defendant is charged with knowingly causing a child under the age of 18 (his daughter E.G.) to be taken from the State of New Hampshire, with the intent to detain or conceal her from the New Hampshire Division of Children, Youth and Families, after said division had been given guardianship of E.G.

NO evidence as to the level produced

13. At the center of this matter is a Dispositional Order dated November 30, 2007, issued by the Rockingham County Superior Court (Nadeau, J) granting DCYF "full legal custody" of E.G.; the order also stated that the parents "shall sign all necessary releases." The State alleges that when DCYF attempted to effectuate the order, the parents refused to produce their daughter or sign necessary releases. DCYF made the decision to petition the Family Court for guardianship of E.G., which, upon information and belief, DCYF felt it must do to provide the Crotched Mountain School (were E.G. was to attend) with necessary medical releases.

no doubt about parent's state of mind

Ex parte
Ex parte
by one of the parties

DCYF obtained guardianship via a Certificate of Appointment dated December 4, 2007. This appointment was temporary and DCYF sought and obtained a second Certificate of Appointment on June 4, 2008.

- nolo prosequere
Nov 2003

14. The language of the indictments tracks the language of the statute, RSA 633:4 reading: "A person is guilty of a class B felony if such person knowingly takes from this state or entices away from this state any child under the age of 18, or

causes any such child to be taken from this state, with the intent to detain or conceal such child from a parent, guardian, or other person having lawful parental rights and responsibilities as described in RSA 461-A."

15. The defendant has two pending charges because there were two orders which granted "guardianship" of E.G. to DCYF. The two indictments cover the two time periods during which "guardianship" was granted to DCYF.

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16. The defendant also stands charged with one misdemeanor charge of Criminal Contempt, with an offense date of "between April 27 and the month of July" in 2008. The basis of this charge is an order that was issued on March 26, 2008, ordering that "(T)he parents (the defendant and his wife) shall surrender their child to the custody of the Division within thirty days of the date on the clerk's notice of decision on this order. Because the defendant did not surrender his daughter within thirty days of said order, the State avers that he committed indirect criminal contempt during the time period listed on the misdemeanor information.

17. The Motion to Dismiss, which is addressed here first, essentially argues that the Dispositional Order dated November 30, 2007 (which the defendant refers to as the December 3, 2007 order) was "ineffectual", and that the defendant cannot be held in contempt for refusing to waive his "constitutional rights."

18. As is set forth above, the contempt charge is based on a failure to comply with a court order. The remainder of the motion is nothing more than a misplaced, collateral attack on the Dispositional Order - which clearly sets forth the court's intention that DCYF be granted "full legal custody" of E.G..

no, it does a

19. The felony criminal charges at issue deal with the allegations that the defendant knowingly removed E.G. from the state to detain or conceal her from her guardian, DCYF. An attack on the order (or orders) which made DCYF the guardian is immaterial to the issue of whether the defendant took his daughter out of this state to conceal her from DCYF. As is the theme throughout the defendant's motions, the defendant is focused on the family court orders which granted custody to DCYF; defense counsel persists in a collateral attack on the merits of those orders rather than going after the sufficiency of the charges on their face.

Ex back

20. An indictment, information or complaint is sufficient if it sets forth the offense fully, plainly, substantially and formally. RSA 601:4; see also N.H. Const. pt. 1 Art. 15.

21. This Court, in deciding motions to dismiss in this matter filed by prior defense counsel, has stated that a guardian is specifically defined as an agency – the State

can proceed against the defendant under RSA 633:4 because DCYF was the guardian of E.G. See Order dated March 30, 2010 (Nadeau, J), see also Order dated January 6, 2010.¹ In the Motion to Dismiss, the defendant argues that he was never formally served with the guardianship order. In the first instance, a pre-trial motion to dismiss is not the appropriate avenue for this argument.

no Ex back

22. There is no such thing as a motion for summary judgment in criminal motion for summary judgment cases. See, e.g., *United States v. Pope*, 613 F.3d 1255, 1259

¹ Some of the defendant's recent motions repeat the argument that has already been decided by this Court, specifically, that RSA 633:4 applies only to parents or guardians that are "persons." This Court did dismiss some of the indictments but refused to dismiss the indictments that remain, which specifically allege that the defendant intended to detain or conceal his daughter from her guardian, DCYF.



(10th Cir. 2010); *United States v. Young*, 694 F.Supp. 2d 25, 28 & n.4 (D.Me. 2010); *United States v. Solomonyan*, 452 F. Supp. 2d 334, 348 n.3 (S.D.N.Y. 2006); *State v. Taylor*, 371 Md. 617, 810 A.2d 964, 980-81 (Md. 2002); *State v. Palmer*, 2010 WL 2171662, *3-4 (Ohio App.). See generally *Costello v. United States*, 350 U.S. 359, 363, 76 S. Ct. 406, 100 L. Ed. 397, 1956-1 C.B. 639 (1956) ("An indictment returned by a legally constituted and unbiased grand jury, like an information drawn by the prosecutor, if valid on its face is enough to call for trial of the charge on the merits."). Therefore, determining the legal sufficiency of the evidence to meet the State's burden of proof is a matter that cannot be determined prior to the close of the State's case at trial.

23. In any event, the State does not have to prove formal service of the guardianship appointment(s) in order to prove the elements of the indictments; however, the State will have to prove that the defendant removed his daughter from the state with the intent to detain or conceal her from her guardian.

24. The next Motion to Dismiss, also dated March 7, 2011, the defendant argues that the defendant cannot be charged with contempt because he has already been "purged" of contempt and that DCYF's motion for contempt was for "civil" contempt. What this Motion fails to address is that the defendant was found to be in contempt as of the March 26, 2008 hearing on DCYF's motion for contempt for his failure to comply with the November 30, 2007 Dispositional Order; the pending criminal contempt charge (as is set forth above) if for the defendant's failure to comply with the March 26, 2008 order, which required him to surrender his daughter within 30 days.

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25. The next Motion to Dismiss, also dated March 7, 2011, again argues that the Dispositional Order was unenforceable because it was illegal and unconstitutional. This motion does not challenge the constitutionality of the criminal statute at issue, RSA 633:4, but rather suggests that the Dispositional Order was found to be not enforceable against the defendant because the New Hampshire Supreme Court held (apparently) that the finding of neglect was vacated as to the defendant because he did not have court-appointed counsel during certain proceedings.²

not the only one

26. Whether the finding of neglect was vacated as to the defendant is immaterial to the question as to whether he violated RSA 633:4. The issue is whether the defendant removed his daughter from the state to detain or conceal her from her guardian.

[

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27. The next Motion, also dated March 7, 2011, reiterates the argument that the defendant cannot be held in criminal contempt because there was a "purging" of civil contempt and the State should be barred by collateral estoppel from pursuing a criminal contempt charge. As is set forth above, the criminal contempt charge is based on a different order than the one which the defendant was previously held in contempt of.³

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28. The next motion is entitled "Motion to Dismiss Because Further Proceedings For Criminal Contempt Are Barred by Collateral Estoppel", dated March 7, 2011.

letter by
REP - BOY
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cont.

² This being an example of the defendant having access to and referencing documents that were not available to the County Attorney's Office -- as the family court proceedings and any Supreme Court appellate proceedings were confidential. Undersigned counsel raised this at the pretrial hearing in March as an example of not being able to respond to the defendant's allegations in his various motions, hence the Procedural Order requiring the defendant to produce all such documents, which he failed to do.

³ Also, the defendant did not produce the alleged order of Judge Smukler "purging" the defendant of contempt.

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This argument fails because the parties were not the same and the issue of the defendant's failure to comply with the March 26, 2011 order had not been litigated.

29. The next motion is entitled "Motion To Dismiss Because Further Proceedings for Criminal Contempt Are Barred by Res Judicata" also dated March 7, 2011. The case law cited by the defendant shows the distinction between civil and criminal contempt proceedings. The issue as to whether the defendant knew about the order of March 26, 2008 and refused to comply with it has not been previously litigated, and, there were no prior criminal proceedings that would raise an issue of double jeopardy. There was apparently a civil proceeding, not involving the State in its capacity as a criminal prosecuting authority, concerning the defendant's civil contempt prior to the Order of March 26, 2008. This is not dispositive of the issue as to whether the defendant committed criminal contempt subsequent to that date, as is alleged in the pending criminal contempt charge.

30. The next Motion to Dismiss is dated March 14, 2011. This motion makes the argument that RSA 633:4 should not apply because DCYF is not a "person." This same argument failed in a motion by prior defense counsel; this motion is actually an untimely motion for reconsideration of the Order of March 30, 2010. This issue has already been decided by the trial court.

31. The next Motion to Dismiss is dated March 14, 2011; it has a reference to "NO_CRIME_COMMITTED" at the top. It raises the same argument concerning DCYF not being a "person." See above.

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32. It would appear that the final motion to be addressed is the "Motion for Immediate Dismissal For Prosecutorial Misconduct" dated June 8, 2011.

33. This motion takes issue with what it refers to as "Bogus Indictments." Although the chronology recited in the defendant's motion is confusing, this motion essentially complains that the State is being allowed to proceed on the indictments which allege that DCYF was the guardian (and this Court having previously held that DCYF was a guardian for the purposes of RSA 633:4). The motion correctly states that certain of the indictments – those alleging that the child had been taken from the state after DCYF had been given "lawful parental rights and responsibilities" had been dismissed by this Court because DCYF was not a person for the purposes of that portion of RSA 633:4. The State was well within its rights and authority to present alternate theories of violations of RSA 633:4. This Court has already ruled that DCYF can be a guardian for the purposes of RSA 633:4 and the indictments which allege DCYF was the guardian from whom the defendant detained or concealed his daughter are the ones which remain for determination at trial.

34. The State incorporates herein by reference its Objection dated July 7, 2011.

Additionally, the motion complains that the State has failed to provide exculpatory materials – pointing out that the discovery provided to Attorney Piccone in March 2011 (as a courtesy in that discovery had been provided numerous times to prior counsel for the defendant) was the same as was provided earlier to prior counsel. It is unclear as to why Attorney Piccone believes there should be additional exculpatory material that would have come into existence

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between the time the defendant was indicted and the time of this motion.

Furthermore, many of the documents referred to by Attorney Piccone as being requested by him are the DCYF files (confidential files which are not available to the State) and educational and medical files pertaining to E.G. which this Court has unambiguously ruled in its March 17, 2011, Procedural Order are not relevant or admissible.

35. Finally, the defendant complains that the State has failed to respond to the "Notice of Alibi Defense" filed on May 2, 2011. The Notice is untimely under Superior Court Rule 98, and it does not comply with Superior Court Rule 100 (for example, it is not signed by the defendant nor does it state the specific place at which he claims to have been at the time of the alleged offense) – nor does an alibi defense seem to apply to a charge alleging that a defendant took a child out of this state. Accordingly, there can be no finding of "prosecutorial misconduct" for the State having not responded to this Notice.

WHEREFORE, the State respectfully requests that this Honorable Court:

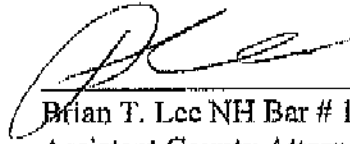
- A. Deny the Pending Motions to Dismiss; or,
- B. Schedule a hearing; and
- C. Grant such further relief as is deemed just.

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Respectfully submitted,

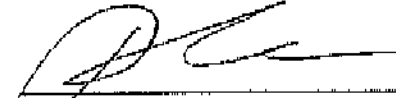


Brian T. Lee NH Bar # 13883
Assistant County Attorney
Rockingham County Attorney's Office
P.O. Box 1209
Kingston, NH 03848
(603) 642-4249

CERTIFICATION

Date: September 16, 2011

I hereby certify that a copy of this Objection has this day been forwarded to Louis A. Piccone, Esq., former counsel for the defendant, and to the defendant, *pro se*.


Brian T. Lee

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DOCKET # 08-S-2388

State

vs.

ARNOLD GRODMAN

BITN () IN FILE () IN FILE

EXHIBIT DOCUMENT DATE

- ST'S OBJ. DFT'S. MO/BLASH (9-3-09)
- DFT'S. OBJ. MO/RECONSIDER (9-14-09)
- ST'S Witness List (9/23/09)
- DFT'S MO/DISMISS (12-2-09) GRANTED
- DFT'S. MO/REUSE (12-2-09)
- ST'S (suspended) MO/continue (12/2/09) GRANTED
- Trial Notice
- ST'S OBJ. DFT'S. MO/DISMISS (12-11-09)
- DFT'S. MO/ENLARGE RECORD FOR MO/DISMISS (12-16-09) (ST)
- ST'S OBJ. DFT'S. MO/ENLARGE RECORD (12-16-09)
- COURT ORDER ON MO/DISMISS (1-6-10)
- DISPOSITION/DISMISSED (1-6-10)

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DOCKET # 08-S-2388

A30, P26

State

vs.

ARNOLD GRODMAN

BITES () IN RIN () IN FILE

# DOCUMENT	DATE
1 ST'S OBJ. DFT'S. MO/QUASH (9-3-09)	
2 DFT'S. OBJ. MO/RECONSIDER (9-14-09)	
3 St's Witness Suit (9/23/09)	
4 DFT'S. MO/DISMISS (12-2-09) GRANTED.	
5 DFT'S. MO/REUSE (12-2-09)	
6 St's amended mo/continue (12/2/09) GRANTED	
7 Final Notice.	
8 STS OBJ. DFT'S. MO/DISMISS (12-11-09)	
9 DFT'S. MO/ENLARGE RECORD FOR MO/DISMISS (12-16-09) (ST)	
10 STS OBJ. DFT'S. MO/ENLARGE RECORD (12-16-09)	
11 COURT ORDER ON MO/DISMISS (1-6-10)	
12 DISPOSITION/DISMISSED (1-6-10) ↖	