

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
NH CIRCUIT COURT

ROCKINGHAM COUNTY

10th CIRCUIT – DISTRICT DIVISION – HAMPTON

State of New Hampshire v. Forrest Carter
Case No. 441-2024-CR-1780

ORDER ON STATE'S MEMORANDUM OF LAW AND DEFENSE'S OBJECTION TO STATE'S
MOTION TO AMEND – July 10, 2025

On June 26, 2025, the scheduled trial date for the above captioned matter, the Court received a Motion to Dismiss by counsel for both Defendants Forrest Carter and Ralph Welch on the grounds of improper venue. The Court denied the Motion as to both defendants after argument from both parties. Defense counsels then moved to dismiss on the grounds that the one-year statute of limitations for the offenses had expired. Defendants argued that they both relied on the dates of offense listed in the complaints and the State's discovery. The complaints for both Defendants listed the date of the offense as February 20, 2024. The State and Defense agree that there is no evidence to indicate the offenses alleged occurred on this date. The State indicated on the record and in its pleading filed after the June 26, 2025, hearing, that the actual date of the conduct intended to be charged was before 2023. The Court does not have a Gerstein Affidavit or sworn complaint in either file, but records indicate the Defendants were both arrested on October 4, 2024, when the two Defendants were arraigned.¹ The parties appeared to agree that the complaints were initiated on or about October 4, 2024.

The State, after the verbal motions to dismiss, verbally moved to amend the complaints to reflect the correct alleged date(s) of the offenses, as well as its intent to include a course of conduct in the charges. Defense counsels objected, arguing that the nature of such amendments would unfairly prejudice the defendants and materially alter

¹ NH RSA 592-A:7(I) and NH Rules of Criminal Procedure, Rule 3(a) (Class A complaints must be signed under oath).

the factual basis for the complaints. The defense lawyers also argued that all of the alleged behavior, even if a course of conduct amendment was allowed, would still be beyond the Statute of Limitations for a Class A Misdemeanor.

After argument the Court ordered the parties to submit Memorandums of Law in support of their positions to the Court within seven (7) days. All parties filed timely Memorandums with the Court on July 2, 2025. The Court now rules on the respective pleadings.

FACTS

It is undisputed that Ralph Welch and Forrest Carter were both charged with fraudulent use of a credit card and theft by deception on October 4, 2024. Specifically, defendant Mr. Welch was charged with two (2) counts of Theft by Deception \$1501+, pursuant to NH RSA 637:4 and two (2) counts of Credit Card Fraud, \$1501+ or 2 priors, pursuant to NH RSA 638:5, III(a). Defendant Mr. Carter was charged with a single count of Theft by Deception \$0-\$1000, pursuant to NH RSA 637:4 and one count of Credit Card Fraud, \$0-\$1000, pursuant to NH RSA 638:5, III(a)(3). All charges now pending against the defendants are misdemeanors.² Considering the similar charges and facts of the cases, both dockets were set to be tried together.

For the purposes of this pleading the Court accepts that both Defendants were employees for the town of Seabrook. The complaints allege that the offenses were committed when the Defendants made unauthorized purchases at the Kittery Trading Post on credit cards belonging to the town of Seabrook. Mr. Carter was alleged to have acted in concert with Mr. Welch. Mr. Welch was alleged to have acted alone. The language of the respective complaints is otherwise nearly identical for each Defendant, apart from the value of the property allegedly obtained.

The State asserted application of the Discovery Rule³ to extend the Statute of Limitation, but the Court lacks specific information on when the conduct was actually discovered. The Court finds the specific language in the complaints relevant for the purpose of this analysis. The charges of Theft by Deception for each Defendant indicate that

² Initially there was a felony level complaint in each case, but the State later reduced the felony charge to a misdemeanor offense.

³ See NH RSA 625:8 (III).

they “purposely obtained control over . . . the property of the Town of Seabrook, by deception and with the purpose to deprive the Town of Seabrook thereof, *by creating a false impression* that the purchase at the Kittery Trading post using a Town of Seabrook credit card were for legitimate work purposes, *a fact that [the defendants] did not believe [knew not] to be true*, then returning the items for gift cards to use for personal purchases.” (emphasis added). The charges of Fraudulent use of a Credit Card for each defendant state “purposely used a credit card belonging to the Town of Seabrook, for the purpose of obtaining merchandise . . . with knowledge that the use of the credit card to make what appeared to be work related purchases with the intent to then return said items for credit, *was not authorized by the Town of Seabrook.*” (emphasis added).

The issues now before the Court address both Defendant’s motions to dismiss, the State’s request to amend the complaints to indicate a separate date or period for the offense date, and the defendants’ assertion of a statute of limitations violation if an amendment is granted.

RELEVANT LEGAL FRAMEWORK

Under N.H. R. Crim. Proc. Rule 3, “Unless otherwise prohibited by law, the court may permit a complaint to be amended if no additional or different offense is charged and if substantial rights of the defendant are not prejudiced.” Under the Crockett analysis, “the critical issue” when considering the State’s amendment of a complaint is whether it “deprive[s] the defendant of a fair opportunity to prepare his defense and to meet the case against him.” State v. Crockett, 116 N.H. 324, 325 (1976). Further, “the test for determining whether [an amendment is impermissible] is whether the change prejudices the defendant in either his ability to understand properly the charges against him or in his ability to prepare his defense.” State v. Elliot, 133 N.H. 759, 764 (1990). As the State pointed out in its Memorandum of Law, the Crockett Court noted in its decision that “the defendant did not request a continuance,” nor did she show evidence that the amendment was prejudicial to her defense. Crockett, 116 N.H. at 325.

Under N.H. RSA 625:8(I)(c), New Hampshire’s statute of limitations for a misdemeanor is one year. However, an exception exists pursuant to N.H. RSA 625:8 (III), which states “If the period prescribed in paragraph I has expired, a prosecution may

nevertheless be commenced: (a) Within one year after its discover by an aggrieved party . . . for a theft where the possession of the property was lawfully obtained and subsequently misappropriated . . .” The discovery rule provides for an exception to the strict, one-year statute of limitations for misdemeanors if the theft offense began with a lawful obtainment of property and subsequent misappropriation. The discovery rule does not extend the period of time for the State to prosecute someone beyond when the offense is discovered.

ANALYSIS

As to the prejudice argument, the State’s Memorandum of Law primarily argues that the amendments to the complaints will not prejudice either defendant because they were requested prior to trial, and even if the State requested to amend during trial, the State would be permitted to do so pursuant to N.H. R. Crim. Proc. Rule 3. The State notes that it only wishes to amend the dates in the complaint, which themselves are not elements of the charges, and therefore do not add any additional or different offenses which would prejudice the defense. Further, the State argues that even if the Court finds prejudice to the defendants, the proper remedy is a continuance, rather than a dismissal, under the Crockett analysis.

Alternatively, the defenses argue that amending the complaints would substantially prejudice their rights because an amendment of this nature would impact the statute of limitations and effectively charge the defendants with a different offense. Under the Elliot analysis and N.H. Const. pt. 1, art. 15, the defenses argue that such an amendment would inhibit their ability to prepare their cases, as they “significantly and appropriately rel[y] on the date of the alleged offense . . . due to the timing nature of a purchase and subsequent return.” Further, the defenses argue that adding criminal behavior to the complaint in order to satisfy the statute of limitations would change the substance of the charges and prejudice both defendant’s ability to understand the charges against them.

To the statute of limitations and discovery rule argument, the State contends that N.H. RSA 625:8 (III) applies because the “fraudulent nature of the alleged transactions were not discovered . . . until the end of 2023.” There was no evidence or proffer specifically as to when discovery occurred by the employer. The State argues that even though the amended

dates would be outside the one-year period under N.H. RSA 625:8(I)(c), "they would still be within the statute of limitations because the crime was not discovered until later in time."

In contrast, the defendants argue that the discovery rule exception does not apply and bars the charges from being brought under the one-year statute of limitations. Specifically, "the Defendant's original act of purchasing items with the Town credit card was unlawful in and of itself," as outlined in the language of the complaints, rather than a lawful obtainment and subsequent misappropriation.

ORDER

After review of the parties Memorandums, the Court declines to reach the issue of prejudice to the defendants and instead decides the issue on the statute of limitations argument. The State's argument in each case is in part that "the defense in these cases was on notice of the transactions the State intended to rely on, as they were specifically listed in the affidavit in support of the arrest warrant." It is not the defense's responsibility to put the State on notice of defects in the State's complaints, which in this case if charged as intended would have raised the statute of limitations issue prior to the trial date. The State has a responsibility to provide complaints that meet statutory and constitutional due process requirements, which allow for the efficient resolution of criminal complaints. Defendants also maintain due process rights to resolution of such cases in a speedy and public manner.

NH RSA 625:8 (III) states that the discovery rule applies to crimes of theft "where possession of the property was *lawfully obtained* and *subsequently misappropriated*." (emphasis added). The State's Memorandum made clear that it only seeks to amend the dates in the complaint, not the language of the charges. Here, the charges against the defendants for Theft by Deception include language such as "by creating a *false impression* . . . that the purchase at the Kittery Trading post using a Town of Seabrook credit card were for legitimate work purposes, a *fact that [the defendants] did not believe*" or "*knew not to be true*." (emphasis added). Further, the charges for Credit Card Fraud include language such as "*used a credit card belonging to the Town of Seabrook, for the purpose of obtaining*

merchandise . . . *to make what appeared to be work related purchases* with the intent to then return said items for credit, *was not authorized by the Town of Seabrook.*" (emphasis added).

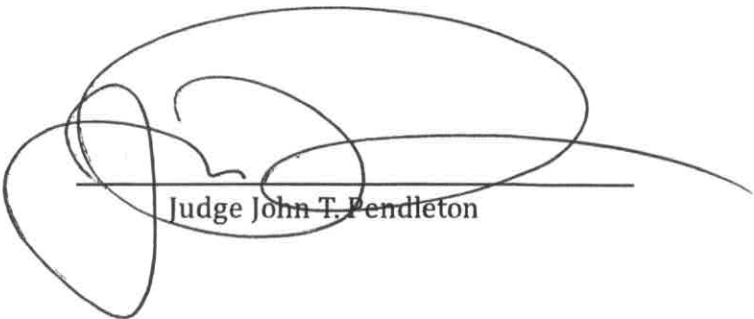
Under the plain language of the charges, there is nothing to indicate that the defendants had lawfully obtained property and subsequently misappropriated it. Rather, the language states that the acts of purchasing items at the Kittery Trading Post with the Town of Seabrook's credit card were unlawful to begin with. Because the State did not charge the defendants with an initial lawful possession of property, the Court finds that N.H. RSA 625:8 (III) does not apply. Even if the Court were to grant the State's amendment to reflect accurate dates in the complaint, the one-year statute of limitations for misdemeanors would nevertheless bar the State from bringing these charges against the defendants.

The Court separately notes that the pending charges are misdemeanors in the Circuit Court. Circuit Court dockets are busy, and the Courts have limited ability to reschedule long criminal trials. While the common law in New Hampshire recognizes it may be appropriate to allow liberal amendments to charging documents, so long as there is not prejudicial impact to the Defendant, it does not absolve the State from its obligation to draft reasonably accurate charging documents. The Court scheduled the trial on the above date and was ready and able to hear the case. Only when the issue of amending a material part of the complaint was raised did the State acknowledge a need to amend the complaint to a substantially earlier offense date, which gave rise to new issues implicating the Statute of Limitations. The Court determined above that it is appropriate to dismiss the case on the Statute of Limitations issue but also notes that the Court has the companion obligation to protect speedy trial rights, and to efficiently oversee its docket. The Court has broad discretion to manage the docket and the proceedings before it. State v. Furlong, 2018 WL 5840154 (non-precedential order) (October 17, 2018) (citing IMO Conner, 156 N.H. 250, 252 (2007)). There are, as such, other reasonable factors that a Court may consider in similar circumstances.

The Court dismisses the cases against both defendants, Ralph Welch and Forrest Carter, with prejudice.

SO ORDERED.

7/17/25
Date



Judge John T. Pendleton