

**IN THE HINGHAM (SECOND) DISTRICT COURT OF THE COUNTY OF  
PLYMOUTH IN THE COMMONWEALTH OF MASSACHUSETTS**

<b>Commonwealth of Massachusetts,</b>	)	<b>No. 0558CR000954</b>
<b>Plaintiff,</b>	)	
	)	
v.	)	<b>MOTION</b>
	)	<b>FOR INJUNCTIVE RELIEF</b>
<b>Jeffrey L. Clemens,</b>	)	<b>re Jury Trial on September 18, 2008</b>
<b>Defendant.</b>	)	<b>(for Disorderly Conduct)</b>
	)	<b>ON GROUNDS OF PROSECUTION</b>
<hr/>	)	<b>WITNESS MISCONDUCT</b>

The Defendant hereby motions the court for injunctive relief in furtherance of justice and specifically requests that the verdict in the September 18, 2008 be reversed and that the Defendant be immediately ordered released from a 6 month sentence in the Plymouth County House of Corrections, based on the following grounds:

- 1) Sole Prosecution Witness Misconduct
- 2) Lack of Probable Cause in Criminal Charge of Disorderly Conduct  
(as a result of sole prosecution witness misconduct)

**Statement of the Case**

Upon a traffic stop on May 12, 2005, Scituate Police Sergeant Michael O’Hara arrested the Defendant Jeffrey Clemens and booked him for Disorderly Conduct. The Defendant made his first appearance on May 13, 2005, wherein the very same officer who made the arrest acted as a police prosecutor. The Police Officer’s Formal Report (POFR) served as the Probable Cause for the arrest and charge that was prompted by a 911 call from a Scituate, Massachusetts resident Shelly Laveroni.

A September 18, 2008 jury trial commenced with the Defendant not having counsel (as the counsel was fired at the start of the trial), though the Defendant had requested counsel. The trial resulted in a guilty verdict after less than 14 minutes of jury deliberation, whereby the Defendant was immediately sentenced to 6 months in jail, to commence immediately. A September 24, 2008 Defendant Motion For Mistrial was denied on or about October 23, 2008.

### **Facts Relied Upon**

POLICE OFFICER'S FORMAL REPORT, dated May 12, 2005

TRANSCRIPTS OF 911 PHONE CALL of May 12, 2005

POLICE RADIO LOGS of May 12, 2005

DEPOSITION OF OFFICER MICHAEL O'HARA, occurring on July 23, 2008

This Motion is not relying on the trial proceedings of September 18, 2008. This Motion relies only on pre-trial documentary evidence.

**The trial was manifestly unjust**, due to not only the acts and omissions outlined in the previous Motion for Mistrial – the trial of which proceeded despite Defendant protestations of a lack of challenge by his fired court-appointed counsel of the probable cause in the case, but **due to the provably false Police Officer's Formal Report serving as the probable cause for the Disorderly Conduct charge.**

The proof of the false Police Officer's Formal Report does not rely in any way on the testimony of the Defendant, nor testimony of Officer Goyette (present when Officer O'Hara arrested Defendant Clemens), the 911 caller, or neighbors to the 911 caller.

The lack of necessity for new testimony for challenging the probable cause, beyond the testimony by the arresting officer prior to trial, calls into question the necessity of a trial.

## **Issues for Injunctive Relief**

CONTESTABLE FACTS (not allowed challenge by the Defendant)

DELIBERATE OMISSIONS (of ostensibly collaborative or potentially countering evidence)

INCONSISTENCIES & DISCREPANCIES (existing prior to trial)

HEARSAY EVIDENCE (used extensively by the reporting police officer)

COMPARATIVE ANALYSIS (revealing questionable, missing, or prejudicial information)

REASONABLE INFERENCES (that differ from false impressions constructed by police)

### CONTESTABLE FACTS

The lack of production of the Police Log (containing the incoming and outgoing calls and dispatcher notes in this case) and a Bill of Particulars (outlining just what, in the Police Officer's Formal Report, constituted Disorderly Conduct) is of little consequence. Sworn testimony by Officer O'Hara at a July 23, 2008 Deposition in a related civil case [*See Exhibit D*] revealed the existence of numerous phone calls and fax communications with federal authorities (US Secret Service Agent Ralph Sozio, Former DEA Agent Jerry Laveroni – father of the 911 caller and occupant of the same facility where Agent Sozio maintains an office, and FBI Agent David Kice), whose associates in the federal courts, as the record shows, arrested and detained the Defendant herein and denied travel by the Defendant to Massachusetts to defend against this Disorderly Conduct charge brought by the Scituate Police Department.

The Defendant had made written requests for all such information in Discovery Requests submitted in May 2005, including the Logs and 911 tapes [*See Docket*]. Only the 911 tape was eventually turned over, in June 2008. The transcripts of the 911 call made by Shelly Laveroni are inconsistent with the statements made by Officer O'Hara in his initial report, so the years-long withholding of the 911 tapes and failure of the fired court-appointed counsel to subpoena the 911 caller for the September 18, 2008 trial are more than disturbing.

## DELIBERATE OMISSIONS

Documents and other means to substantiate criminal charges (there were eventually three) against the Defendant that were not pursued, which undermines the veracity and credibility of the reporting officer. **Written or Sworn Witness Statements were not obtained from:**

Scituate Police Officer **Timothy Goyette** (who witnessed the Disorderly Conduct)  
911 Caller **Shelly Laveroni** (who cited involvement of neighbors as witnesses)  
**Neighbors** to the 911 Caller (who had called Laveroni BEFORE the Defendant arrived)

Goyette, Laveroni, and the neighbors were all cited in the reporting officer report of May 12, 2005 [*See Exhibit A*], yet no direct statements were obtained from these witnesses.

Officer O'Hara's own testimony at a July 23, 2008 Deposition [*See Exhibit D*] cites the fact of the Defendant approaching a house, asking questions, per supposed (hearsay) statements by Laveroni, as rationale for believing the Defendant was "unstable", an opinion included in the very report that substantiates the Disorderly Conduct charge. The reporting officer report of May 12, 2005 [*See Exhibit A*] also cites an alleged (hearsay) statement by 911 Caller Shelly Laveroni saying that the Defendant had claimed to be a Private Investigator.

So, to say that the Probable Cause of the Unlicensed Private Investigator charge, currently subject to a pending dismissal motion (submitted months BEFORE the trial), is not related to the Probable Cause of the Disorderly Conduct charge (which was oddly not challenged in a dismissal motion before the trial by the fired counsel) is disingenuous.

Said another way, to say that the Probable Cause of the Disorderly Conduct charge is not related to that of the Unlicensed Private Investigator charge, is disingenuous.

## INCONSISTENCIES & DISCREPANCIES

Upon simple and direct inspection of documents existing before the September 18, 2008 trial, a significant amount of inconsistencies and discrepancies becomes obvious:

I-1) 911 Tapes include the statement by the 911 Caller (Shelly Laveroni): “I have a strange man here at my door and I don’t know what he’s doing here.” [*See Exhibit B*] BUT, the reporting officer report states that the 911 Caller said to the officer that the Suspect (Defendant) claimed to be a Private Investigator. [*See Exhibit A*] Further, nowhere during the 911 Call did the Caller mention a Private Investigator.

I-2) According to the reporting officer report, prior to the tag-up with Goyette at the traffic stop point, the reporting officer had asked the Defendant if he had any mental health issues, because he appeared “unstable. The report gave no facts or physical descriptions as to what substantiated unstable. [*See Exhibit A*] BUT, the reporting officer had testified at the July 23, 2008 Deposition that his “unstable” opinion was based on how the Defendant carried himself, specifically, going to a doorstep and asking questions. Only, Goyette had not yet informed the reporting officer (O’Hara) of the 911 Caller’s supposed statement that the Defendant was asking questions, nor that he had gone to a doorstep. [*See Exhibit D*] That is, the reporting officer in truth had no basis for calling the Defendant “unstable”, but the comment sure helps to imply a disorderly person.

I-3) Per the reporting officer report, Goyette had supposedly briefed O’Hara on statements from the 911 Caller, who supposedly reported that her father is a retired DEA agent and that she thought the Suspect (Defendant) was stalking her father. [*See Exhibit A*] BUT, at the July 23, 2008 Deposition, the reporting officer (O’Hara) did not mention that Goyette had briefed him on the DEA information, but instead stated that it was he (O’Hara) who had obtained the DEA information from his subsequent visit to the 911 Caller. [*See Exhibit D*]

I-4) The reporting officer stated, in his report, that the Defendant had “lunged” at him at the traffic stop point. [See Exhibit A] BUT, the reporting officer stated at the July 23, 2008 Deposition that the Defendant “stepped” toward him, further stating that lunging was the same as stepping. [See Exhibit D]

I-5) Per the reporting officer report, the Defendant was accused of “impersonating” a private investigator. [See Exhibit A] BUT, the eventual charge on June 10, 2005 [See Hingham District Court records] was for an “unlicensed” private investigator.

I-6) Reviewing the reporting officer report, the only quotes or references to statements mentioned of witnesses were those of the 911 Caller alleging a Private Investigator claim. No other quotes or references to statements were provided in the report, most importantly none of those of the Suspect (Defendant). [See Exhibit A] The officer saw fit not to document the Defendant’s reason for stopping at the residence, despite the radio dispatcher imploring the 911 Caller to keep the man at her house until the police arrived, so he could tell the police why he was there at the house. [See Exhibit C]

I-7) The Radio Logs include a radioed statement by the reporting officer (O’Hara) mentioning “Robert Conrad”, though neither the 911 Call nor Police Officer’s Formal Report contain any reference to a Robert Conrad. [See Exhibits C, B, and A]

There are many more inconsistencies and discrepancies, important not so much to substantiate a reason to go to trial (where differences in facts on the part of the prosecution and defense can be hashed out), but indications that probable cause for Disorderly Conduct is in serious question.

The extensive inconsistencies and discrepancies listed above go to the issue of Probable Cause, as there is already insufficient probable cause on the face of the report. If anyone can point to a law that says lunging is a crime, please speak up. The courts should not be in the business of going to trial to substantiate probable cause, as for one, the Defendant

would be prejudiced in not knowing why he is being charged and thus not knowing how to prepare a defense.

## HEARSAY EVIDENCE

On the face, the reporting officer report contains references to what other witnesses may have said. One may argue, for the sake of probable cause, that the hearsay comments are assumed true (and can be countered at trial), but, existing records (i.e., the 911 Call) are already in conflict with such hearsay evidence. Thus, probable cause is not merely a matter of assuming everything in the reporting officer report is true, because we know that some of the report is not true.

What to do with the several references, in the reporting officer report, to what neighbors, the 911 Caller, and Officer Goyette may have said? If in fact the officer had reported or referenced existing written statements, then what the witnesses supposedly said, as documented in the report used for determining probable cause, could be taken (assumed) to be true.

Just what is the protection for defendants against false reporting by police officers? If everything they say or write in their report is assumed true, and it is provably not true, then how can a trial be justified when defense counsel has failed to subpoena witnesses and failed to challenge the veracity of the probable cause before the trial? Such a scenario indeed played out up to and on September 18, 2008, as the Defendant was left to undergo a trial – by himself and without witnesses to counter the sole prosecution witness. That is text book disingenuity!

## COMPARATIVE ANALYSIS

It is worthy to simply observe or inspect the records that existed prior to the September 18, 2008 trial, because questionable, missing, and prejudicial information is rampant throughout the four records specified above.

A-1) The Dispatcher on May 12, 2005 instructed the 911 Caller to keep the Suspect at her house, since the caller had stated that the Suspect had not left her property, YET, the Suspect was Pulled Over by a police officer called to the caller's house, indicating that the Suspect had in fact left. The caller goes so far as to even talk out to the Suspect, telling him he could stay. It is questionable whether or not the Suspect was even there when supposedly addressed by the Caller. [*See Exhibit B and Exhibit A*]

A-2) Per the Radio Logs, the reporting officer had reported the Suspect was in "Custody", but did not mention Disorderly Conduct whatsoever. Did the reporting officer not think to inform the police station that he had a "disorderly" suspect coming to the station for booking? [*See Exhibit C*]

A-3) The Probable Cause for Pulling Over the Suspect is NOT stated in the reporting officer report. [*See Exhibit A*] According to the officer at the July 23, 2008 Deposition, there are two elements to the probable cause...1) a suspicion that the driver or occupant is involved, and 2) an identified crime or law supposedly committed or broken. [*See Exhibit D*] Just what law was the driver suspected of violating or breaking on May 12, 2005 when he was pulled over (and subsequently charged with Disorderly Conduct)? The reporting officer does not state such a probable cause in his report, as he failed to state a violation known at the time of pull over. In deed, the officer testified at the July 23 Deposition that it could have been Trespassing or Stalking, yet he further testified that he could and would not have arrested or charged the driver for trespassing. And stalking? When pulling over the Suspect, the officer had not yet visited with the 911 Caller, so he had not yet learned of the Caller's suspicion that the Suspect was stalking her father.

Without probable cause for pulling over the suspect, just how much weight do we give an allegation by a police officer that a pulled over driver was disorderly, an allegation without substantiating physical descriptions, an allegation without an accompanying witness statement to collaborate? None.

A-4) Per the Radio Logs, the reporting officer knew the entire Criminal History of the Defendant before arresting him for Disorderly Conduct. What the officer did not know was the fact that the Defendant had never been on trial nor found guilty by any court anywhere. [*See Exhibit C; also Exhibit D – statements by Clemens*]

A-5) The reporting officer testified at the July 23, 2008 Deposition that he has never listened to the 911 Tape. [*See Exhibit D*] The 911 call, under Massachusetts General Law, is presumed to be public information. If the officer is involved in an investigation of the Suspect for up to three crimes, then why would he not investigate the relevant 911 phone call? Is it because he did not want to be wildly inconsistent with the 911 call contents if he had actually listened to it? [Yes, of course!]

A-6) The reporting officer testified at the July 23, 2008 Deposition to the 911 Caller's use of the words "creeped me out" when referring to the visit by the Suspect (Defendant). [*See Exhibit D*] BUT, the reporting officer had not mentioned such words in his May 12, 2005 report. [*See Exhibit A*] It is commendable to remember such minute detail three years later, but how commendable is it to fail to mention the words at the time they were spoken?

A-7) Per testimony at the July 23, 2008 Deposition, Scituate Police Officer (Lieutenant) John Rooney is the Police Prosecutor Monday through Friday. [*See Exhibit D*] SO, why was the sole prosecution witness acting as the police prosecutor against the Defendant Clemens on May 12, 2005? It is more than a wonder, but an obvious conflict of interest.

Any further analysis and one would think we are making this stuff up. We are not making this up. The record speaks for itself, while the Defendant sits, unable to speak, in a jail in Plymouth County, Massachusetts. When the pilgrims landed hundreds of years ago nearby, do you think they ever thought that the new world, to which they wished to escape the tyranny of the old world, would ever devolve to such a degree that public servants would go out of their way to appear tyrannical?

## REASONABLE INFERENCES

You decide.

Even without the July 23, 2008 Deposition of the sole prosecution witness (Officer O'Hara), there is a lack of probable cause, both on the face (in his report) and in fact (especially when compared to the existing 911 Call recording and Police Radio Logs) [*See Exhibits B and C*] and there are still extensive inconsistencies and discrepancies, a reliance on disputable hearsay, and analysis producing more questions than answers.

The inferences read by the undersigned – a reasonable person, though otherwise pursued relentlessly since the May 12, 2005 incident in Scituate as if he had mental problems, was a dangerous criminal, etc., etc. [thanks to the seeds – i.e., report contents shown to federal authorities for detention purposes - sown by a Scituate Police Officer]- are that the reporting officer had no cause to charge the Suspect with any crime, so he made one up – or failed miserably to report one properly, a crime (Disorderly Conduct) involving only the police officer as a witness, NOT the other witnesses – 911 Caller, Officer Goyette, or the neighbors, who just might have been inclined to tell the truth! How will we ever know what they had to say, because the Scituate Police Department made a decision over three years to not directly document what the witnesses had to say. Is that prejudicial, or what?

### **Summary**

The long standing legal doctrine that the prosecution has the burden to first show probable cause for arresting and/or charging someone with a crime, *and allowing the defending party to challenge the as-of-yet-unchallenged-unilaterally-brought-forward probable cause, before the expense and burden of trial*, is actually the Due Process right guaranteed in the U.S. Constitution.

Does this court understand the necessity to respect our rights? It is not a rhetorical question, so the answer should be provided by the undersigned. This is an injunctive motion because that answer is an unfortunate “no”, and an innocent man is currently jailed, and could still be jailed until March 2009, because of the court’s failure to respect a Defendant’s rights. That failure extends to the court’s repeated assignment of insufficient counsel to the Defendant and to the allowance of a police witness to serve as a police prosecutor, and not just the failure to properly assess the propriety of and probable cause in criminal complaints.

The criminal complaint in this case is insufficient. The complaint (Report) is insufficient on the face – a crime is not even identified. “Lunging”, even if true, is not a crime, and the reporting officer had provided no facts or descriptions to substantiate the implied notion that the lunging, and supposed use of the F word, is somehow grounds to arrest someone for Disorderly Conduct. Why did the officer wait until a trial to describe what the Defendant was physically doing when he supposedly “lunged” at the officer? The answer exists in the July 23, 2008 Deposition of the officer [*See Exhibit D*], who is documented to have offered the Defendant a Plea Bargain (plead guilty, admit to certain facts, pay \$100, and after 3 months it will all go away) on May 13, 2005, the day of the initial appearance. The Defendant rightly refused the Plea Bargain, but apparently underestimated his chances of having his due process rights preserved. His current detention is testament to a lack of due process in this court.

### **Relief Sought**

The Defendant kindly asks the court to recognize that the trial proceeded, with the Defendant objecting to proceeding *Pro Se*, without a respect for the due process rights of the Defendant. The lack of challenge by court-appointed counsel (one quit and one was fired) to the Probable Cause of the Disorderly Conduct charge, in light of the existing conflicting and/or countering evidence at the time, is a legal nightmare for a Defendant thrust into a trial unprepared, unfairly treated, and not represented by an attorney allowed by right by the U.S. Constitution.

The Defendant kindly asks the court to recognize the extreme prejudice exhibited by the lack of Probable Cause and the lack of challenge to the Probable Cause before the September 18, 2008 trial. Responsibility for challenging the Probable Cause of the Disorderly Conduct charge fell to the court-appointed counsel, who despite insistences from the Defendant, failed and was actually unwilling to challenge the Probable Cause, thus the firing on September 18, 2008.

The Defendant kindly asks the court to forthwith reverse the trial verdict and dismiss the Disorderly Conduct charge with prejudice.

DATED this \_\_\_\_\_ day of November 2008

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EXHIBITS (29 Pages)

- A Reporting Officer Report
- B 911 Call Recording (Tape) Transcript
- C Police Radio Logs Transcript
- D Deposition of Officer O'Hara [partial copy; Note, Assistant DA Linehan is believed to be in possession of a full copy, since before the September 18 trial.]

**Certificate of Service**

I declare, under the penalty of perjury under the laws of the State of Ohio and the Commonwealth of Massachusetts, that I served a copy of this Motion for Injunctive Relief upon:

Assistant District Attorney Linehan  
District Attorney Office  
Hingham District Court  
28 George Washington Blvd  
Hingham, MA 02043

via Overnight Express (US Postal Service) and by FAX [Brief only, not Exhibits] to (781) 749-9601, on November 3, 2008.

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Jonathan A. Clemens  
(in Port Angeles, WA)