

The Independent OBSERVER

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September 21, 2008

COURT: Hingham District Court – Hingham (Plymouth County) - Massachusetts

CASE: 0558CR000954 [Commonwealth of Massachusetts v. Jeffrey L. Clemens]

DATE: September 18, 2008 (Note: Incident Date of May 12, 2005)

JUDGE: Judge [Ronald F.] Moynahan

OBSERVED: Prejudice

The extent of issues and specific examples of prejudice exhibited in the proceedings of a September 18, 2008 criminal jury trial in Hingham District Court are numerous. This trial is a milestone in the life of the Defendant Jeffrey L. Clemens, as it represents the first time that he was ever on trial for an alleged crime. Every alleged crime in the life of this Defendant was derived from a police officer allegedly witnessing the crime. There is no record anywhere in the United States whereby a non-police officer ever submitted a written statement or complaint alleging a crime by this person. There are no sworn statements by any non-police officer anywhere that alleges criminal behavior on the part of this person. Never before September 18, 2008 had this person ever been found guilty of a crime or been convicted of a crime as a result of a trial. This person has never plead guilty to a crime.

The single most important prejudicial act to note in this matter is the fact that **Pre-Trial issues had not been resolved before the start of the trial**. Specifically, the constitutionally protected right to due process was not respected, in that probable cause for even going to trial had not been established and allowed to be challenged. In fact, the arrest report serving as the basis for the Criminal Complaint filed on May 13, 2005 does not even describe a crime on the face. Notable is the fact that the Defendant was arrested BEFORE being charged with a crime. In fact, a pending motion (in front of this same judge) addressing the legality of another charge resulting from the same incident on May 12, 2005 still stands as unresolved. The unresolved motion in this court is directly related to the probable cause for this Disorderly Conduct charge.

Observed Sequence of Events of Trial

9:35 am Call-up – Several parties from several cases assemble in Session Three courtroom
9:xx am Judge defers this [Disorderly Conduct] case momentarily and addresses all others
9:xx am Bailiff Mahoney verbally tells Defendant (sitting with his brother in the public seating area of the courtroom) not to talk [Defendant was whispering to his brother – the Defendant’s attorney, Robert Greenspan, was no where to be seen]. Moments later, the Bailiff tells the Defendant and brother to leave the courtroom, not because they were talking [they were not], but because they were writing to each other on a notepad – the brother had written “Where is RG”; the Defendant and brother left and went to the lobby in front of the main door to the courtroom. Moments later, the Bailiff comes out and asks the Defendant and brother what they were writing, saying that the Judge wanted to know!

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10:xx am Court returns to this reference matter, having addressed all other cases scheduled on the Session Three docket for that day.

10:03 am Judge asks attorneys [in this reference case] if they were ready [yes, they said].

10:xx am **Defendant asks, at the microphone, to speak [as he was NOT ready].**

The Court does not allow the Defendant to speak. Technicalities and minor issues were discussed amongst the attorneys and Judge, including which evidence is to be excluded or not; **Defendant Attorney (court-appointed) Robert Greenspan states that they were not prepared to go forward.** Moments later, the Judge calls for the jury pool and the Defendant's brother was asked to leave the courtroom (during jury selection); the courtroom door was locked by the Bailiff.

10:20 am Mike O'Hara (police officer and only prosecution witness in this case) was called to the courtroom over the PA system.

10:42 am Defendant brother re-enters the courtroom, as the Jury had just been enpaneled.

10:43 am The excused portion of the jury pool was being let out of the courtroom. Judge is heard asking a question [to somebody, presumably the Defendant], stating "Do you want to talk with Mr. [inaudible]?". The Judge then states, in front of the jury, to the Defendant "Do not point your finger at me." Defendant states that he did not point his finger at the judge. The Judge said that the Defendant had pointed "twice". Moments later, the Judge states "Wait! [Sequester] the jury", who were then excused.

Note: **The Case Docket contains a note stating "Defendant given contempt [sic] warning 10:49"** [The time given here is the observer's time reference, not the court's.]

10:45 am The Judge looks at the Defendant's brother and states that there is to be no note taking. The Defendant's brother wrote down the order in his notes and the Judge immediately ordered the brother out of the courtroom, again, in front of the jury. A closed session occurred for a few minutes with Defendant, Defense Counsel, and others, except the Defendant's brother.

10:49 am The Defendant and Defense Counsel (Robert Greenspan) leave the courtroom and join the Defendant's brother in the lobby. The Defendant orders the Defense Counsel to "STOP this!", or else he would have to excuse the attorney. The Defendant continued to insist that pre-trial matters had not been completed and that the probable cause for this [Disorderly Conduct] charge had not been addressed yet. Defense Counsel says that he would address the court. **Defense Counsel states to the Defendant's brother, per the Judge, that he is to NOT take notes during the trial.**

10:55 am Defendant dismisses his court-appointed counsel and requests new counsel. Judge orders that the dismissed counsel be on "stand-by" and proceeds to start the trial.

11:00 am Roughly the start of the trial. Defendant's brother was specifically seated by the Bailiff onto the bench on the side of the courtroom, the same side as the jury, thus, the jury, when watching the trial, could not see the Defendant's brother. Nearby, a woman sits in full view of the jury while doing paperwork and paying bills, as a checkbook was seen by the Defendant's brother.

The trial begins with a sidebar meeting with the Judge, Defendant, and attorneys.

Defense Counsel at one point calls for a Mistrial, but **the Judge verbally denied the motion for a mistrial, which is NOT noted in the Docket!** The Defendant continues the trial with NO defense counsel. In his opening statement to the jury, the Defendant states that he did not know that the trial was to start that day and that he was unprepared for the trial. The first witness called to testify was the prosecution's only witness – Mike O'Hara of the Scituate Police Department.

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1:08 pm Court goes into recess, at a point when the DA was cross-examining the Defendant.

2:15 pm Court resumes. DA continues cross-examination of the Defendant.

The Judge allowed an expanding access into irrelevant and prejudicial material by the District Attorney cross-examining the Defendant. For example (and this is from memory, as the observer herein was disallowed to take notes during the trial), the DA was allowed to venture into the civil litigation pending against the Town of Scituate, into what future litigation the Defendant may engage in with the Town, the civil litigation by the Defendant that occurred previously in California, the name of a person of interest in civil litigation (having nothing to do with the Disorderly Conduct matter), and into REPEATED “Why” questions as to the Defendant being in a driveway hundreds of feet away from a residence...implying to the jury that the Defendant was “casing” somebody, when in fact he was not and that he was enjoying his US Constitutional right to exist.

The Judge disallowed access to relevant information by the Defendant in cross-examining the District Attorney’s only witness. For example (and this is from memory, as the observer herein was disallowed to take notes during the trial), Defendant Clemens was questioning Witness O’Hara on what he said or not said into an inquiry by the arrested Defendant in 2005, particularly about what “D.O.” meant and whether or not the officer had stated that as an answer to why he was being arrested, and the Judge stopped further questioning of the witness on the subject surrounding disclosure of why the Defendant was arrested. Note: The Defendant later testified that he was not told of the reason for the arrest until the Defendant asked later at the police station, receiving only the response “D.O.”, later learned to be “Disorderly Conduct”.

3:10 pm Judge completes Jury Instructions, reading and citing for at least the past 5 minutes. The jury is sent away for Deliberation.

3:24 pm A verbal announcement is made in the hall that a Verdict had been reached!

The 6 person jury deliberates for less than 14 minutes, despite hours of testimony, dozens of objections, and over 5 minutes of jury instructions.

3:26 pm Three Bailiffs (one more than the previous two) entered the courtroom and took positions. A Bailiff approached a jury member and obtained a piece of paper. Moments later, the jury foreman was asked to present the verdict – GUILTY. The jury was immediately let go and proceeded to leave the courtroom. The Defendant was immediately handcuffed.

3:30 pm The Judge goes into chambers.

3:39 pm The Judge emerges from chambers. The DA speaks. Defense Counsel Robert Greenspan speaks, noting that there had been no assault, no threats, no weapon involved in the incident. The Judge at one point asks, “What was he [defendant] doing with a Plot Plan?” The Judge had implied that the Defendant had been “casing”, if not stalking, a residence. Within a few minutes, a Sentence of 6 months was imposed. Defense Counsel Greenspan asks, as the Judge walked off, if he would Stay the Sentence (presumably during an appeal) – Answer: NO.

[Court is ended at about 3:45 pm]

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Summary

An innocent man has been found guilty by a jury in a court of law, while intentional and malicious prejudice surrounds the trial and pre-trial proceedings. The 5 hour trial is punctuated by a mere 10 minute deliberation by the jury. The Defendant is disallowed to speak prior to the enpaneling of the jury (thus, before the start of the trial). The Defendant's brother is disallowed by the trial judge to take notes, even though others in the public area of the courtroom were allowed. The record of the case shows open issues concerning related charges involving the very same incident from which the tried charge was derived. The Defendant is denied new counsel after dismissing his current counsel for not addressing pre-trial probable cause issues. Irrelevant material was allowed into the trial through the District Attorney, thus prejudicing the jury through leaving them to speculate on a myriad of unrelated information about the Defendant. Relevant material was disallowed into the trial through the Defendant, prejudicing the jury through leaving them to speculate on what actually happened during the arrest and booking on the charge presented to the jury to decide.

By all appearances, a persistent and intentional effort was exerted to prejudice the jury and persons reading the Docket sheet. This case is a matter of an officer alleging disorderly conduct by the defendant toward the officer. The determination of guilt or innocence is essentially one of deciding to believe either the defendant or the reporting officer, testimony of which mirrored an arrest report written prior to presentation to a court of law for a determination of probable cause. **There was and is no legal basis for the trial.**

The behavior of the trial judge is more than an appearance of impropriety. Such behavior is also **disrespect toward the Defendant** and a clear inconsistency with the court's Mission Statement:

*"As the gateway to justice in the Commonwealth of Massachusetts, the District Court is dedicated to the administration of justice in a fair, impartial and timely manner in accordance with the rule of law. In fulfilling this role, **the District Court shall provide the communities it serves with an environment that is safe, accessible and respectful to all** [emphasis added]. The District Court shall conduct its business with integrity, competence and a commitment to excellence in order to promote public trust and confidence in the judicial system."*

The trial judge has demonstrated that he is on another mission, perhaps his own mission, one of luring himself to the awful realm of prejudice, of which requires integrity, competence and a commitment to excellence in order to avoid in an adversarial system such as the courts.

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