

25-1104-cv

United States Court of Appeals
for the
Second Circuit

KEITH MASSIMINO,

Plaintiff-Appellant,

— v. —

MATTHEW BENOIT and FRANK LAONE,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT, NEW HAVEN

JOINT APPENDIX
Volume 2 of 2 (Pages JA-287 to JA-461)

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Exhibit 7

(Superior Court filings)

JA-265

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JD-CR-71 P REV. 7-05

STATE OF CONNECTICUT
SUPERIOR COURT

DOB: [REDACTED]

ORIGINAL INFORMATION

COURT DATE:

AT:

DISPOSITION DATE

YES

11/08/2018

GA04 - WATERBURY

DOCKET NO.: U04W-CR18-0454740-S

The undersigned Prosecuting Authority of the Superior Court of the State of Connecticut charges that

MASSIMINO KEITH P

[REDACTED] WALLINGFORD, CT 06492

Did commit the offenses recited below:

Count: 1 INTERFERE WITH OFFCR/RESISTING Type/Class: M/A At: WATERBURY
On or About: 10/30/2018 In Violation Of CGS/PA No: 53a-167a

SEE OTHER SHEETS FOR ADDITIONAL COUNTS	DATE	SIGNED (PROSECUTING AUTHORITY)
---	------	--------------------------------

COURT ACTION

DEFENDANT ADVISED OF RIGHTS BEFORE PLEA

(JUDGE)

(DATE)

BOND

SURETY

WPA

☐ CASH

ELECTION

☐ COURT☐ JURY☐ ATTY ☐ PUB DEFENDER

GUARDIAN

REDUCTION

B.O.

APPEAL

ELECTION WITHDRAWN DATE

☒ SEIZED PROPERTY

COUNT NO	PLEA DATE	PLEA	PLEA WITHDRAWN DATE	NEW PLEA	VERDICT FINDING	FINE	JAIL	ADDITIONAL DISPOSITION
1	NOV 08 2018	NG						102955WW

DATE	OTHER COURT ACTION	JUDGE	CONTINUANCES		
			DATE	PURPOSE	REASON
NOV 08 2018	Atty Sastre appearance Filed oral motion for return of seized property - denied	Crowford J	1. 12-7-18 X		7-11-19 X
			2. 1-16-19 X		8-1-19 X
11-27-18	Motion For Bill of Particulars Filed		3. 2-20-19 X		9-20-19 X
DEC 07 2018	motion for Bill of Particulars Granted	Ferguson	4. 3-22-19 X		10-18-19 X
JAN 16 2019	Request for Presentment @ Doyle		5. 3-27-19 X		11-18-19 X
FEB 20 2019	Argument on Bill of Particulars State to provide Defense Counsel with a long form	Doyle	6. 3-11-19 X		11-27-19 X
			7. 3-22-19 X		1-16-20 X
			8. 4-12-19 X		8pm
			9. 5-3-19 X		2-20-20 X
			10. 5-31-19 X		3-25-20 X
FINE PAID	RECEIPT NO	MITTIMUS DATE	TRIAL TOWN		
PROSECUTOR ON ORIGINAL DISPOSITION			REPORTER ON ORIGINAL DISPOSITION		
SIGNED CLERK			SIGNED JUDGE		

3/4/21 X
5.6.21 X

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FEB 20 2019

Case 3:21-cv-01132-RNC Document 38-7 Filed 06/17/22 Page 3 of 9
 Motion for Return of Seized Property
 to be heard on 3-1-19

Doyle

Defense counsel to file motion to Dismiss
 to be heard on 3-22-19

MAR 01 2019

Δ stipulates to secondary evidence
 Tri-pod, cell phone, and camera-without the
 memory card to be returned to rightful owner

Doyle

3-22-19 Defendant's motion to Dismiss filed.

MAY 03 2019

State's objection to Defendant's motion to
 Dismiss filed

5-21-19 motion for continuance filed and granted
 to 6-6-19

Doyle

5/30/2019

Supplement to motion to Dismiss filed

AUG 01 2019

Δ rejects AR, to 9-26-19 x
 12/16/19 - Atty Ioannisa Kaloidis appears filed

Doyle

12/27/19

Motion for Continuance filed

11/20/19

Δ's Request for Sanctions filed

12-18-19

Motion for continuance filed

12-5-19

Δ's motion for discovery filed.

1/23/20

Δ's motion for discovery filed

FEB 20 2020

All Appropriate motions have been filed
 PT to 3-25-20

Ioanniti

3-25-21

Status conference to 4-14-21 9:15 AM

4-14-21

PT to 5-6-21

DATE	COURT ACTION	JUDGE
JUN 06 2019	motion to dismiss- 10:10 AM	Schwartz
	Δ's argument 10:12	
	10:32	
	State's argument 10:41	
	10:48	
	recess 10:53	
	back on record 11:13	
	motion to dismiss - denied	
11-27-19	Defendants Request for Sanctions	Iannotti
	Counsel to file a motion for Discovery articulating what discovery he needs	
	State to comply with motion within 45 days	
	State has 45 days to comply with all discovery	
	All discovery to be in by 1-6-20	
	cont'd for Discovery motion-hearing for 1-16-20 @ 2pm	

ADDITIONAL FILE ENTRIES

[illegible]

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Case 3:21-cv-01132-RNC Document 38-7 Filed 06/17/22 Page 6 of 9

UNIFORM ARREST REPORT JD-CR-21(1)				FOR SPBI USE ONLY			
NAME OF ACCUSED (LAST, FIRST MIDDLE) MASSIMINO, KEITH P				SPBI USE ONLY			
NO. STREET CITY STATE AND ZIP WALLINGFORD, CT 06492				UAR: 6656065			
SEX M	RACE W	HISP <input type="checkbox"/> YES	DATE OF BIRTH [REDACTED]	PLACE OF BIRTH CT	SS# [REDACTED]	HT 510	WT 190
						HAIR BRO	EYES BRO
						DOCKET NO CR18-454740	
PHYSICAL CHARACTERISTICS (SMT)							
PHYSICAL DISABILITIES				RIGHT OR LEFT HANDED RIGHT		TEETH	
EMPLOYER SELF EMPLOYEED WATERBURY, CT				OCCUPATION VIDEO			
MARITAL STATUS MARRIED				NUMBER OF CHILDREN 1		EDUCATION 16	
NATIONALITY UNITED STATES				SKIN COMPLEXION FAI			
ACCOMPLICES				PLACE ARRESTED 00255 E MAIN ST			
PHOTO AVAILABLE <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		NAME AND ADDRESS OF RELATIVE OR PERSON TO BE NOTIFIED IN CASE OF EMERGENCY					
PALM PRINTS AVAILABLE <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO							
ALIAS/MAIDEN NAME [REDACTED]		ALIEN REG. NO.		OPERATOR'S LICENSE NO. (MV) [REDACTED]		STATE CT	
DATE AND TIME ARRESTED 10-30-2018 1830							
SURETY [REDACTED]		AMOUNT OF BOND [REDACTED]		CASH [REDACTED]		COMMERCIAL/HAZ. MAT. [REDACTED]	
DETAINED [REDACTED]		OTHER [REDACTED]		CDL [REDACTED]		CV [REDACTED]	
TOWN OF ARREST 151		TOWN OF OFFENSE 151					
ARRESTING OFFICER BENOIT, MATTHEW		SHIELD NO. 775		SIGNATURE OF ACCUSED [REDACTED]		SIGNED - OFFICIAL TAKING PRINTS HARDA719	
DEPARTMENT OR TROOP/ORI CT0015100		MOT VEH. REG. #		P.D. ID NO. 1012559		P.D. CASE NO. 1800103981	
REMARKS				COURT DATE 11-8-18		NOTE AMP	
				DATE FINGERPRINTED 10-30-2018		S.P.B.I. NO	
				GA. NO. GA-04		F.B.I. NO	
CHARGE(S) AND STATUTE NO							
DATE OF OFFENSE							
53a-167a INTRFERE/RESIST 10-30-2018							

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APPEARANCEJD-CL-12 Rev. 9-13
P.B. §§ 3-1 thru 3-6, 3-8, 10-13, 25A-2STATE OF CONNECTICUT
SUPERIOR COURT
www.jud.ct.govInstructions — See Back/Page 2
ADA Notice — See Back/Page 2**Notice To Self-Represented Parties**

A self-represented party is a person who represents himself or herself. If you are a self-represented party and you filed an appearance before and you have since changed your address, you must let the court and all attorneys and self-represented parties of record know that you have changed your address by checking the box below:

☐ I am filing this appearance to let the court and all attorneys and self-represented parties of record know that I have changed my address. My new address is below.

Return date
Docket number

Name of case (Full name of Plaintiff vs. Full name of Defendant)

State v. Maximino

<input type="checkbox"/> Judicial District	<input type="checkbox"/> Housing Session	<input type="checkbox"/> Small Claims	<input checked="" type="checkbox"/> Geographic Area number	Address of Court (Number, street, town and zip code)
			41	Waterbury

Scheduled Court date (Criminal/Motor Vehicle Matters)

11/8/18

Please Enter the Appearance of

Name of self-represented party (See "Notice to Self-Represented Parties" at top), or name of official, firm, professional corporation, or individual attorney	Juris number of attorney or firm
J.R. Sastre	429450

Mailing Address (Number, street) (Notice to attorneys and law firms - The address to which papers will be mailed from the court is the one registered or affiliated with your juris number. That address cannot be changed in this form.)	Post office box	Telephone number (Area code first)
67 Chestnut St.		860 261-5643
City/town	State	Zip code
Bristol	CT	06010
Fax number (Area code first)	E-mail address	
860 261-5786	joseph.sastre@gmail.com	

in the case named above for: ("x" one of the following parties; if this is a Family Matters case, also indicate the scope of your appearance)

- ☐ The Plaintiff (includes the person suing another person).
☐ All Plaintiffs.
☐ The following Plaintiff(s) only: _____
☒ The Defendant (includes the person being sued or charged with a crime).
☐ The Defendant for the purpose of the bail hearing only (in criminal and motor vehicle cases only).
☐ All Defendants.
☐ The following Defendant(s) only: _____
☐ Other (Specify): _____
☐ This is a Family Matters case and my appearance is for: ("x" one or both)

☐ matters in the Family Division of the Superior Court ☐ Title IV-D Child Support matters

Note: If other counsel or a self-represented party has already filed an appearance for the party or parties "x'd" above, put an "x" in box 1 or 2 below:

1. ☐ This appearance is in place of the appearance of the following attorney, firm or self-represented party on file (P.B. Sec. 3-8): _____

(Name and Juris Number)

2. ☐ This appearance is in addition to an appearance already on file.

I agree to accept papers (service) electronically in this case under Practice Book Section 10-13

☐ Yes ☐ No

Signed (Individual attorney or self-represented party)	Name of person signing at left (Print or type)	Date signed
	Joe Sastre	11/8/18

Certification

I certify that a copy of this document was mailed or delivered electronically or non-electronically on (date) _____ to all attorneys and self-represented parties of record and that written consent for electronic delivery was received from all attorneys and self-represented parties receiving electronic delivery.

Name and address of each party and attorney that copy was mailed or delivered to*

For Court Use Only

Signed (Signature of filer)	Print or type name of person signing	Date signed	Telephone number

*If necessary, attach an additional sheet or sheets with the name of each party and the address which the copy was mailed or delivered to.

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12-13-'19 Case 3:21-cv-01132-RNO Document 235-7 Filed 06/17/22 Page 8 of 9 002/0002 F-439

APPEARANCEJD-CL-12 Rev. 1-12
P.B. §§ 3-1 thru 3-6, 3-8, 10-13, 25A-2STATE OF CONNECTICUT
SUPERIOR COURT
www.jud.ct.gov

Instructions — See Back/Page 2

Notice To Self-Represented Parties

A self-represented party is a person who represents himself or herself. If you are a self-represented party and you filed an appearance before and you have since changed your address, you must let the court and all attorneys and self-represented parties of record know that you have changed your address by checking the box below:

☐ I am filing this appearance to let the court and all attorneys and self-represented parties of record know that I have changed my address. My new address is below.

Return date

Docket number

U04W-CR18-0454740-S

Name of case (Full name of Plaintiff vs. Full name of Defendant)

State v. Keith Massimino

☐ Judicial District
☐ Housing Session
☐ Small Claims
☒ Geographic Area number 4

Address of Court (Number, street, town and zip code)

400 Grand Street, Waterbury, Connecticut 06702

Scheduled Court date (Criminal/Motor Vehicle Matters)

January 16, 2020

Please Enter the Appearance of

Name of self-represented party (See "Notice to Self-Represented Parties" at top), or name of official, firm, professional corporation, or individual attorney

Ioannis A. Kaloidis, The Kaloidis Law Firm, LLC

Juns number of attorney or firm

435607

Mailing Address (Number, street) (Notice to attorneys and law firms - The address to which papers will be mailed from the court is the one registered or affiliated with your juns number. That address cannot be changed in this form.)

580 Watertown Avenue

Post office box

Telephone number (Area code first)

203-597-0010

City/town

Waterbury

State

CT

Zip code

06708

Fax number (Area code first)

203-597-0024

E-mail address

John@kaloidislaw.com

in the case named above for: ("x" one of the following parties; if this is a Family Matters case, also indicate the scope of your appearance)

☐ The Plaintiff (includes the person suing another person).☐ All Plaintiffs.☐ The following Plaintiff(s) only: _____☒ The Defendant (includes the person being sued or charged with a crime).☐ The Defendant for the purpose of the bail hearing only (in criminal and motor vehicle cases only).☐ All Defendants.☐ The following Defendant(s) only: _____☐ Other (Specify): _____☐ This is a Family Matters case and my appearance is for: ("x" one or both)☐ matters in the Family Division of the Superior Court ☐ Title IV-D Child Support matters

Note: If other counsel or a self-represented party has already filed an appearance for the party or parties "x'd" above, put an "x" in box 1 or 2 below:

1. ☐ This appearance is in place of the appearance of the following attorney, firm or self-represented party on file (P.B. Sec. 3-8): _____

(Name and Juns Number)

2. ☒ This appearance is in addition to an appearance already on file.

I agree to accept papers (service) electronically in this case under Practice Book Section 10-13

☒ Yes☐ No

Signed (Individual attorney or self-represented party)

▶ 435607

Name of person signing at left (Print or type)

Ioannis A. Kaloidis

Date signed

12/13/2019

Certification

I certify that a copy of this document was mailed or delivered electronically or non-electronically on (date) 12/13/2019 to all attorneys and self-represented parties of record and that written consent for electronic delivery was received from all attorneys and self-represented parties receiving electronic delivery.

Name and address of each party and attorney that copy was mailed or delivered to*

Office of the State's Attorney

400 Grand Street

Waterbury, Connecticut 06702

VIA FACSIMILE ONLY: 203-236-8161

The Law Office of Joseph R. Sastre, LLC.

67 Chesnut Street

Bristol, Connecticut 06010

Via Email

For Court Use Only

DEC 16 2019

CLERK'S OFFICE

Signed (Signature of filer)

▶ 435607

Print or type name of person signing

Ioannis A. Kaloidis

Date signed

12/13/2019

Telephone number

203-597-0010

*If necessary, attach an additional sheet or sheets with the name of each party and the address which the copy was mailed or delivered to.

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PROMISE TO APPEAR

JD-CR-13 Rev. 10-17

C.G.S. §§ 53a-35a, 53a-36, 53a-40b, 53a-41, 53a-42, 53a-172, 53a-173, 53a-222, 53a-222a, 54-63a to 54-63g, 54-64a to 54-64g; P.B. §§ 38-1 to 38-6, 38-15, 38-19, 38-20, 38-21; P.A. 17-31 §§ 6, 7

STATE OF CONNECTICUT
SUPERIOR COURT
www.jud.ct.gov**Instructions****Use this form only for defendants released upon a written promise who are charged with a MISDEMEANOR, A MOTOR VEHICLE VIOLATION FOR WHICH A TERM OF IMPRISONMENT MAY BE IMPOSED, or a FELONY.****To: Any Proper Officer of the State of Connecticut**

Docket number

CR18-454740

Telephone number

From (Name of defendant)

Massimino, Keith

Address of defendant

[Redacted] Wallingford CT

Judicial District / Geographical Area Court

Address of court

400 Grand St. Waterbury CT

Police case number

Crime(s) charged against defendant

53a-167A

Appearance date and time (Initial appearance not more than 14 days after date of arrest) 11/8/18 @ 9 A .m.

PROMISE TO APPEAR

I, the defendant named above, promise to appear before (come to):

1. The Superior Court at the address listed above, on the **Appearance date and the time listed above;**
2. The court on any other date and time that the court continues my case to;
3. Any other court where my case may be transferred (sent to); and
4. The court on any other date and time at which there is a hearing on the conditions of my release.

I also promise to follow all of the Conditions of Release listed below, which were ordered by the court, a bail commissioner, or a police officer.

I have read, or have had read to me, the Notice to Defendant below, and I understand everything in that notice.

A. Conditions of Release

1. Do not commit a federal, state or local crime.

Signed (Defendant)

[Signature]

Date and Time Signed

10/30/18 @ 1:55 P.M.

Signed (Parent or Guardian if minor)

Date and Time Signed

.m.

Subscribed to before me. Defendant was advised of the requirements listed above, and was given a copy of this Promise to Appear and the Notice below.

Signed (Police Officer, Asst. Clerk, Bail Comm., Prob. Officer)

Date and Time Signed

10/30/18 .m.

Job Title

Police Department (if applicable)

NOTICE TO DEFENDANT

1. You **must** come to court on the Appearance date and time listed above and at any other time and place that the court tells you.
2. If you do not come to court as required, you will be committing the crime of Failure to Appear, and:
 - a. You may be arrested immediately, or the court may issue a **capias** (order for your arrest); and
 - b. You may be subject to the following added criminal penalties:
 - i. If you were released on this Promise to Appear for one or more felonies, you may be charged with an additional Class D felony, and the court may sentence you to up to 5 years in prison, fine you up to \$5,000, or both, for failing to appear.
 - ii. If you were released on this Promise to Appear for one or more misdemeanors or motor vehicle violations, you may be charged with an additional Class A misdemeanor, and the court may sentence you to up to 1 year in prison, fine you up to \$2,000, or both, for failing to appear.
3. If you commit another crime after you have been released on this Promise to Appear, you may be subject to added criminal penalties in addition to any sentence that the court may give you for that crime:
 - a. If the new crime is a **felony**, the court may sentence you to up to ten (10) additional years in prison; or
 - b. If the new crime is a **misdemeanor**, the court may sentence you to up to one (1) additional year in prison.
4. You **must** follow all of the conditions of your release.
5. If you do not follow the conditions of your release, you will be committing the crime of Violation of Conditions of Release, and:
 - a. The court may change or add to the conditions of your release;
 - b. The court may revoke (take away) your Promise to Appear and release; and/or
 - c. You may be subject to the following additional criminal penalties:
 - i. If you were released on this Promise to Appear for one or more felonies:
 - Generally, you may be charged with an additional Class D felony, and the court may sentence you to up to 5 years in prison, fine you up to \$5,000, or both, for violating your conditions of release.
 - BUT, if you violate the conditions of your release by (1) putting any restraint (restriction) on a person or the liberty (freedom) of a person; or (2) threatening, harassing, assaulting, molesting, sexually assaulting or attacking a person, you may be charged with an additional Class C felony, and the court may sentence you to between 1 and 10 years in prison, fine you up to \$10,000, or both, for violating your conditions of release in this way.
 - ii. If you were released on this Promise to Appear for one or more misdemeanors or motor vehicle violations:
 - Generally, you may be charged with an additional Class A misdemeanor, and the court may sentence you to up to 1 year in prison, fine you up to \$2,000, or both, for violating your conditions of release.
 - BUT, if you violate the conditions of your release by (1) putting any restraint (restriction) on a person or the liberty (freedom) of a person; or (2) threatening, harassing, assaulting, molesting, sexually assaulting or attacking a person, you may be charged with an additional Class D felony, and the court may sentence you to up to 5 years in prison, fine you up to \$5,000, or both, for violating your conditions of release in this way.
6. Your release may be revoked (taken away) if:
 - a. You have been charged with a crime for which the term of imprisonment may be more than 10 years;
 - b. The court finds that you have violated any condition of your release; and
 - c. The court finds that the safety of any other person is endangered (put at risk) while you are on release.

FOR COURT USE

ADA NOTICEThe Judicial Branch of the State of Connecticut complies with the Americans with Disabilities Act (ADA). If you need a reasonable accommodation in accordance with the ADA, contact a court clerk or an ADA contact person listed at www.jud.ct.gov/ADA.

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Exhibit 8

(Initial Appearance Transcript

State of Connecticut v. Massimino, No. Uo4W-CR18-0454740-S)

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1

NO: UO4W CR18-0454740-S : SUPERIOR COURT
STATE OF CONNECTICUT : G.A. 4
V : AT WATERBURY
KEITH MASSIMINO : NOVEMBER 8, 2018

B E F O R E:

THE HONORABLE JULIETT L. CRAWFORD,

Judge

A P P E A R A N C E S:

Representing the State of Connecticut:

ATTORNEY LEEANN NEAL
Assistant State's Attorney
400 Grand Street
Waterbury, Connecticut 06702

Representing the Defendant:

ATTORNEY JOSEPH R. SASTRE
67 Chestnut Street
Bristol, Connecticut 06010

Recorded and Transcribed By:
Patricia Sabol
Court Monitor
400 Grand Street
Waterbury, Connecticut 06702

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2

1 ATTY. NEAL: Line 202, Keith Massimino.

2 ATTY. SASTRE: Good morning, your Honor. Joseph
3 Sastre for Mr. Massimino, who's to my left. I have an
4 appearance for the clerk.

5 Your Honor, I'm not sure if the clerk is in
6 receipt of it already, but I faxed in a motion for
7 return of my client's property last week before --
8 actually, it was earlier this week before the case was
9 even docketed.

10 THE COURT: There's no motion. Do you have any
11 inventory?

12 THE CLERK: I have inventory, yes, Judge.

13 THE COURT: What happened here?

14 ATTY. NEAL: The defendant was at the police
15 headquarters parking garage where officers as well as
16 civilian employees park their motor vehicles, and he
17 was videotaping, holding a video camera that did cause
18 some officers to fear for their safety based off of
19 recent events with officers and targeted
20 assassinations.

21 THE COURT: He was where?

22 ATTY. NEAL: He was at the police department
23 parking garage where officers park their cars and pump
24 their gas recording officers coming in with their
25 civilian vehicles.

26 THE COURT: Okay. You'll have to at least wait
27 for your written motion because essentially what is

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3

1 seized is what is the evidence in the case. So --

2 ATTY. SASTRE: I know, your Honor. I don't know
3 where the claim that my client was in a parking garage
4 --

5 THE COURT: Again, it's the first time down, so
6 perhaps before you leave, make sure you get a copy now
7 that you -- he did file his appearance?

8 ATTY. NEAL: I gave counsel a copy of the police
9 report that we had.

10 THE COURT: This morning?

11 ATTY. NEAL: This morning.

12 THE COURT: Okay. So you have the report now,
13 you can review it, but you heard what's stated. So we
14 don't have your written motion. The oral motion is
15 denied at this time. Then once you've gone through
16 it, because given what was stated, that's clearly the
17 evidence they need in the case. So --

18 ATTY. SASTRE: I don't need very much time. I'd
19 ask the matter be placed on the pretrial docket and
20 taken up as soon as possible.

21 THE COURT: Well, it's not -- you need to enter
22 whatever pleas and election you're making.

23 ATTY. SASTRE: Not guilty and a jury election.

24 THE COURT: Pleas and election noted. And when
25 is the next available date? I'll give you the soonest
26 that's available.

27 December 7th is the pretrial date. And perhaps

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4

1 between now and the next court date the state can have
2 some contact with the police department so you have
3 some information to --

4 ATTY. SASTRE: I'd just like to state for the
5 record --

6 THE COURT: Is the 7th okay?

7 ATTY. SASTRE: The 7th will have to work. I'm
8 available.

9 I don't think I have the whole police report. It
10 doesn't mention anything about his booking or
11 considering his bond. So it doesn't appear --

12 THE COURT: Sorry?

13 ATTY. SASTRE: I have what appears to be half of
14 a police report.

15 THE COURT: How many pages do you have?

16 ATTY. SASTRE: It's two pages.

17 THE COURT: How many pages do you have?

18 ATTY. NEAL: Two pages, your Honor. I did tell
19 counsel that I would request the entire case file. If
20 we receive anything else, I'll give him --

21 THE COURT: That's fine. I thought you were
22 reading from the report. He's saying whatever you
23 reference as to where he was he doesn't have that --
24 is this a two-sided report?

25 ATTY. NEAL: Yes.

26 THE COURT: Did you get both sides of the report?

27 ATTY. SASTRE: Yes. But the report doesn't

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5

1 mention his bond.

2 THE COURT: The report wouldn't mention his bond
3 except at the very end. What are you talking about?
4 What does his bond have to do with --

5 ATTY. SASTRE: It would have been mentioned in
6 the police report is all that I'm saying. It's
7 clearly only a police report up to the point of the
8 arrest. There is no report as to his booking or his
9 bond. It also doesn't mention some of his property.
10 It's clearly not the entire police report. It might
11 be all that's in the state's attorney's file.

12 THE COURT: Well, they've indicated that they
13 will make a request, but I have a feeling there may be
14 either some misunderstanding or whatever, but they've
15 indicated they will contact the police department to
16 see if there's actually something that didn't come to
17 them so they can have it for the next court date.

18 ATTY. SASTRE: That's fine, your Honor. I don't
19 want anyone to think I left thinking I had the entire
20 thing.

21 ATTY. NEAL: I told you this morning that I would
22 request it.

23 THE COURT: They will check to see whether or not
24 you have it.

25 ATTY. SASTRE: Understood. Thank you, your
26 Honor.

THE COURT: See you on the 7th.

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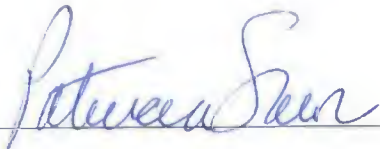
6

NO: UO4W CR18-0454740-S : SUPERIOR COURT
STATE OF CONNECTICUT : G.A. 4
V : AT WATERBURY, CONNECTICUT
KEITH MASSIMINO : NOVEMBER 8, 2018

C E R T I F I C A T I O N

I hereby certify the foregoing pages are a true and correct transcription of the audio recording of the above-referenced case, heard in the Superior Court, G.A. 4, at Waterbury, Connecticut, before the Honorable Juliett L. Crawford, Judge, on the 8th day of November, 2018.

Dated this 9th day of November, 2018, in Waterbury, Connecticut.

A handwritten signature in blue ink, appearing to read "Patricia Sabol", is written over a horizontal line.

Patricia Sabol

Court Monitor

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Case 3:21-cv-01132-RNC Document 38-9 Filed 06/17/22 Page 1 of 7

Exhibit 9

(Dismissal Transcript)

State of Connecticut v. Massimino, No. Uo4W-CR18-0454740-S)

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Case 3:21-cv-01132-RNC Document 38-9 Filed 06/17/22 Page 2 of 7

NO: U04W-CR18-0454740S : SUPERIOR COURT
STATE OF CONNECTICUT : JUDICIAL DISTRICT
OF WATERBURY
V. : AT WATERBURY, CONNECTICUT
KEITH P. MASSIMINO : MAY 21, 2021

BEFORE THE HONORABLE JOSEPH B. SCHWARTZ, JUDGE

A P P E A R A N C E S:

Representing the State of Connecticut:
OFFICE OF THE STATE'S ATTORNEY
Attorney John J. Davenport, SASA
400 Grand Street
Waterbury, CT 06702

Representing the Defendant:
THE KALOIDIS LAW FIRM
Attorney Ioannis A. Kaloidis
580 Watertown Avenue
Waterbury, CT 06708

THE LAW OFFICE OF JOSEPH R. SASTRE, LLC
Attorney Joseph R. Sastre
67 Chestnut Street
Bristol, CT 06010

RECORDED AND TRANSCRIBED BY:
Linda Coon
Court Monitor/Court Reporter
400 Grand Street
Waterbury, CT 06702

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1 ATTY. KALOIDIS: Good morning, Your Honor.

2 THE COURT: Attorney Davenport.

3 VOICE: Your Honor --

4 THE COURT: Attorney Davenport is in the
5 courtroom.

6 Do you have a case to call?

7 ATTY. DAVENPORT: Just one briefly, Your Honor.
8 Attorney Kaloidis and his client should be down in
9 courtroom 1B.

10 This is line eight on your morning morning
11 pretrial docket. That's 80, Keith Massimino or
12 Massimino.

13 ATTY. KALOIDIS: Good morning, Your Honor.
14 Ioannis Kaloidis and Attorney Joseph Sastri will
15 appear on behalf of Mr. Massimino who is present and
16 beside us.

17 VOICE: Good morning, Your Honor.

18 THE COURT: Good morning.

19 ATTY. DAVENPORT: Your Honor, this matter had
20 been assigned to me a week ago, Wednesday, with an
21 expectation of a Court trial.

22 Based on a thorough review of the file and all
23 of video accompanying, this case is going to be
24 nolledd today.

25 THE COURT: All right. Anything further from
26 either counsel?

27 ATTY. KALOIDIS: Your Honor, I appreciate the

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1 state's review of this and entering the nolle. We
2 are going to move for a dismissal at this time.

3 ATTY. DAVENPORT: No grounds to object, Your
4 Honor.

5 THE COURT: Grant the dismissal. You are all
6 set.

7 THE CLERK: There is property. There is a
8 camera.

9 ATTY. DAVENPORT: One moment, please? We are
10 going to address property.

11 ATTY. KALOIDIS: I believe the property was a
12 camera and we would ask that it be returned to the --
13 Mr. Massimino.

14 ATTY. SASTRI: At this time, I think it's just
15 the SD card. I think that the camera and the tripod
16 -- (INDISCERNIBLE)-- Were returned earlier.

17 ATTY. DAVENPORT: Correct. It should be
18 returned to Mr. Massimino.

19 THE COURT: So ordered.

20 ATTY. SASTRI: Is anybody at liberty to say if
21 it was in the possession of the state's attorney or
22 the police? (INDISCERNIBLE).

23 ATTY. KALOIDIS: That's follow-up.

24 Thank you very much, Your Honor.

25 THE COURT: You are all set.
26
27

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Case 3:21-cv-01132-RNC Document 38-9 Filed 06/17/22 Page 5 of 7

NO: U04W-CR18-0454740S : SUPERIOR COURT
STATE OF CONNECTICUT : JUDICIAL DISTRICT
OF WATERBURY
V. : AT WATERBURY, CONNECTICUT
KEITH P. MASSIMINO : MAY 21, 2021

C E R T I F I C A T E

I, Linda A. Coon, hereby certify that this is a true and accurate transcription of the above-referenced case, heard in Superior Court, Judicial District of Waterbury, Connecticut, before the Honorable Joseph B. Schwartz, on this 21st day of May, 2021.

Dated this 7th day of July, 2021, in Waterbury, Connecticut.

Linda A. Coon
Court Monitor/ Court Reporter

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Case 3:21-cv-01132-RNC Document 38-9 Filed 06/17/22 Page 6 of 7

NO: U04W-CR18-0454740S : SUPERIOR COURT
STATE OF CONNECTICUT : JUDICIAL DISTRICT
OF WATERBURY
V. : AT WATERBURY, CONNECTICUT
KEITH P. MASSIMINO : MAY 21, 2021

E L E C T R O N I C C E R T I F I C A T E

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Dated this 7th day of July, 2021, in Waterbury, Connecticut.

Linda A. Coon
Court Monitor/ Court Reporter

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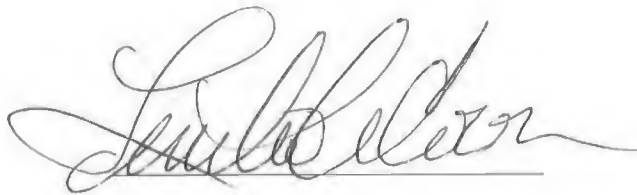
Case 3:21-cv-01132-RNC Document 38-9 Filed 06/17/22 Page 7 of 7

NO: U04W-CR18-0454740S : SUPERIOR COURT
STATE OF CONNECTICUT : JUDICIAL DISTRICT
OF WATERBURY
V. : AT WATERBURY, CONNECTICUT
KEITH P. MASSIMINO : MAY 21, 2021

E L E C T R O N I C C E R T I F I C A T E

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Dated this 7th day of July, 2021, in Waterbury, Connecticut.

A handwritten signature in cursive script, appearing to read "Linda A. Coon", written over a horizontal line.

Linda A. Coon
Court Monitor/ Court Reporter

Plaintiff's D. Conn. Local R. 56(a)(1) Statement of Undisputed Material Facts

1.	The Waterbury police department is located at 255 East Main Street in that city.	Pl.'s Req. to Admit # 1 [Ex. 1]; Defs.' Admissions [Ex. 2] (admitting all).
2.	The Waterbury police department building occupies an entire block.	Pl.'s Req. to Admit # 2; Defs.' Admissions (admitting all).
3.	The front entrance to the Waterbury police department faces East Main Street.	Pl.'s Req. to Admit # 3; Defs.' Admissions (admitting all).
4.	The sides of the building face North Elm Street and Maple Street.	Pl.'s Req. to Admit # 4; Defs.' Admissions (admitting all).
5.	The back of the building faces Water Street.	Pl.'s Req. to Admit # 5; Defs.' Admissions (admitting all).
6.	The map at paragraph thirteen of the complaint [ECF # 1] fairly and accurately depicts the Waterbury police department's location.	Pl.'s Req. to Admit # 6; Defs.' Admissions (admitting all).
7.	All four sides of the Waterbury police department have sidewalks on them.	Pl.'s Req. to Admit # 7; Defs.' Admissions (admitting all).
8.	On October 30, 2018, there were no fences, shrubs, or any other obstructions interfering with a person's view of the building from any of the streets or sidewalks surrounding the Waterbury police department.	Pl.'s Req. to Admit # 8; Defs.' Admissions (admitting all).

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9.	On October 30, 2018, there were no signs on the exterior of the police station saying that recording was prohibited.	Declaration of Keith Massimino [Ex. 3] ¶ 3.
10.	On the evening of October 30, 2018, Keith Massimino was driving through Waterbury on his way home from a job, and became stuck in traffic on Interstate 84.	Keith Massimino Depo. Tr. [Ex. # 4] 38:24-39:19.
11.	Massimino decided to film the exterior of the Waterbury police department.	Massimino 39:20-40:17.
12.	Massimino parked his car about a half-mile away and set out on foot towards the police station.	Massimino 62:6-63:8.
13.	Of the two digital cameras and two tripods that he had with him that day for work, Massimino took the smaller camera and tripod to film the police department.	Massimino 48:10-49:1.
14.	He left the larger video camera and tripod in his car, along with his wallet.	Massimino 47:20-49:1 (camera and tripod); <i>id.</i> 45:22-46:13 (wallet).
15.	From the time that he arrived outside the police station until he was arrested, Mr. Massimino never left the sidewalks surrounding it.	Frank Laone Depo. Tr. [Ex # 5] 31:20-22; Matthew Benoit Depo. Tr. [Ex. # 6] 17:7-12.

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16.	Massimino recorded the front of the police station while walking down the East Main Street sidewalk.	Complaint Ex. 1 (“Video”) 00:30-01:49.
17.	He reached the corner of East Main and North Elm Streets after about a minute of recording.	Video 01:49.
18.	At least one surveillance camera was mounted on the exterior of the Waterbury police station on its East Main and North Elm corner, and the camera was visible from the sidewalk.	Video 1:59-2:03; Laone 16:15-17:9 (confirming existence of exterior surveillance cameras).
19.	Mr. Massimino videorecorded the camera.	Video 1:59-2:03.
20.	After turning the corner onto North Elm Street, Mr. Massimino filmed the exterior of the building.	Video 2:08-4:19.
21.	During his time on North Elm Street, Mr. Massimino videorecorded the police station’s garage.	Video 2:48-3:50.
22.	The gate on the entrance and exit to the garage was open when Massimino was videorecording from the sidewalk.	Laone 28:8-25; Benoit 24:1-7.
23.	Mr. Massimino never entered the police station’s garage.	Laone 31:13-19.

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24.	During his time on North Elm Street, Mr. Massimino also videorecorded the entrance to the police department's youth division.	Video 2:23-2:33.
25.	The door to the youth division of the police department is visible from North Elm Street.	Video 2:23-2:33; Laone 30:12-20.
26.	The door to the youth division of the police department is marked by a sign.	Video 2:23-2:33; Laone 30:21-24; Benoit 25:17-19.
27.	Massimino finished recording on North Elm, and walked back around the corner to the front of the police station on East Main.	Video 04:17.
28.	During Massimino's time on North Elm, Defendant Benoit saw Massimino recording when Benoit looked outside.	Benoit 13:8-21.
29.	Benoit told Laone about Massimino.	Benoit 14:7-9.
30.	Benoit "drove around the building a couple of times" to see what Massimino was doing.	Benoit 14:15-17.
31.	Laone used the surveillance cameras on the police station's exterior to observe Massimino standing on the sidewalk and videorecording.	Laone 15:19-24, 17:17-23.
32.	The defendants believed that Mr. Massimino's videorecording of the police station's garage, youth squad exterior door, and exterior surveillance cameras was suspicious.	Laone 34:8-11; Benoit 20:19-22.

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33.	Mr. Massimino's videorecording did not cause Defendant Benoit to suspect Mr. Massimino of committing any specific crime; he thought Mr. Massimino could have been planning "anything from criminal mischief up [to] an assault or homicide."	Benoit 19:15-21; 30:14-17.
34.	Mr. Massimino's videorecording did not cause Defendant Laone to suspect Mr. Massimino of committing any specific crime; he thought that "[i]t could have been a wide range of spectrum of crimes that [Massimino] could have been committing."	Laone 25:21-23; <i>id.</i> 25:20-21; <i>id.</i> 36:6-8; <i>id.</i> 37:19-22.
35.	The defendants approached Mr. Massimino on the East Main Street sidewalk.	Benoit 16:3-10; Laone 19:4-12; Video 06:39.
36.	The defendants were both wearing police uniforms.	Video 06:39.
37.	Prior to speaking with Mr. Massimino, the defendants' sole basis for being suspicious of him was his videorecording.	Benoit 38:16-22; Laone 33:22-34:11.

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38.	The defendants did not suspect that Mr. Massimino had a weapon.	Benoit 17:13-18:2 (testifying that if he had been suspicious of a weapon, he would have patted Massimino down), Laone 20:15-18 (same); Video 06:39-10:56 (showing that no pat-down occurred).
39.	The total time that Mr. Massimino spent videorecording the police station before the defendants approached him on the sidewalk was six minutes and nine seconds.	Video 00:30-06:39.
40.	Frank Laone asked him what he was “taping.”	Video 06:40.
41.	The defendants stood close to Massimino, with one on either side of him.	Video 06:55-07:00.
42.	Massimino stated that he was “getting footage” and “just getting content for a story.”	Video 06:41-06:48.
43.	Laone asked "what kind of story," and Massimino declined to reveal its contents.	Video 06:50-06:54.
44.	Benoit instructed Massimino that “we need ID,” and Laone immediately repeated “we need ID.”	Video 07:01.

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45.	The total time of the parties' conversation before the defendants ordered Massimino to produce ID was twenty-two seconds.	Video 06:39-07:01.
46.	Massimino asked why he would need to identify himself when he was engaged in First Amendment protected activity.	Video 07:03-07:05.
47.	Benoit stated that Massimino presented "a security issue," because he was "videotaping a police station."	Video 07:05-07:09.
48.	Laone asked Massimino "how do we know you're not planning on blowing up the building?," chuckling.	Video 07:20.
49.	When Massimino assured the defendants that he had no ill will, Benoit responded "we don't know that."	Video 07:26-7.
50.	Laone told Massimino that the defendants' demand to identify himself was "a lawful order."	Video 07:37.
51.	The total time of the parties' conversation before the defendants told Massimino that their identification request was "a lawful order" was 56 seconds.	Video 07:35.

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52.	Benoit told Massimino several times that he was “not allowed to videotape a police station.”	Video 08:10.
53.	Laone agreed with Benoit’s assertions that it was illegal to videorecord a police station.	Video 08:21.
54.	Massimino asked the pair to “articulate a crime I’ve committed,” and Laone announced simply: “reasonable suspicion.”	Video 08:26-08:28.
55.	Laone also claimed that Massimino was “videotaping secure areas of the police station.”	Video 08:36.
56.	Laone confirmed that Massimino was not free to leave.	Video 08:44.
57.	Massimino again asked what crime he had committed, and Laone again responded that the name of the ‘crime’ he was suspected of was “reasonable suspicion.”	Video 08:47.
58.	Benoit demanded that Massimino identify himself.	Video 08:56.
59.	Massimino declined, and the defendants ordered him to put his hands behind his back for arrest.	Video 08:58.

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60.	The total time of the parties' conversation before Benoit ordered Massimino to put his hands behind his back for arrest was two minutes and twenty seconds.	Video 06:39-08:59.
61.	The video comprising Exhibit 1 to the complaint [ECF # 1] is a fair and accurate depiction of the parties' interaction on the evening of October 30, 2018, and is authentic for purposes of Fed. R. Evid. 901.	Pl.'s Req. to Admit ## 9 and 10; Defs.' Admissions (admitting all).
62.	Once Massimino was inside the police station, the defendants charged Mr. Massimino with violating Conn. Gen. Stat. § 53a-167a.	Laone 43:7-19; Benoit 33:21-34:2.
63.	The defendants did not have probable cause for any other charge.	Laone 38:14-39:3; Benoit 34:3-5.
64.	Laone set a financial condition of release on Massimino in the amount of \$10,000.	Laone 41:1-3.
65.	Unable to produce \$10,000, Massimino was held until approximately 10:00PM before a state bail commissioner modified his conditions of release.	Promise to appear, <i>State v. Massimino</i> , No. Uo4W-CR18-0454740-S (Conn. Super. Ct. Oct. 31, 2018) [Ex. 7 at 8].

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66.	The bail commissioner did away with the \$10,000 financial condition of release and set Massimino's conditions as (1) appearance at all future court dates, and (2) not "commit[ting] a federal, state, or local crime" during the pendency of his criminal case.	Promise to appear, <i>State v. Massimino</i> , No. Uo4W-CR18-0454740-S (Conn. Super. Ct. Oct. 31, 2018) [Ex. 7 at 8].
67.	The interference charge laid against him by the defendants resulted in a criminal case being initiated in the Connecticut Superior Court against Massimino.	Information, <i>State v. Massimino</i> , No. Uo4W-CR18-0454740-S (Conn. Super. Ct. Nov. 8, 2018) [Ex. 7 at 1].
68.	At Massimino's initial appearance in the case, the superior court did not alter the conditions of release imposed by the bail commissioner on the night of Mr. Massimino's arrest.	Transcript of initial appearance [Ex. 8] 2-5, <i>State v. Massimino</i> , No. Uo4W-CR18-0454740-S (Conn. Super. Ct. Nov. 8, 2018).

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69.	Massimino retained two criminal defense lawyers, Joseph Sastre and Ioannis Kaloidis, to litigate the criminal charge against him.	Joseph Sastre notice of appearance, <i>State v. Massimino</i> , No. Uo4W-CR18-0454740-S (Conn. Super. Ct. Nov. 8, 2018); Ioannis Kaloidis notice of appearance, <i>State v. Massimino</i> , No. Uo4W-CR18-0454740-S (Conn. Super. Ct. Dec. 13, 2019) [Ex. 7 at 6-7].
70.	The superior court held more than twenty hearings in the criminal case.	Massimino Decl. ¶ 5.
71.	Mr. Massimino attended all but a few of those hearings.	Massimino Decl. ¶ 6.
72.	The superior court dismissed the lone charge against Mr. Massimino on May 15, 2021.	Transcript of hearing [Ex. 9] 2-3, <i>State v. Massimino</i> , No. Uo4W-CR18-0454740-S (Conn. Super. Ct. May 21, 2021).

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Case 3:21-cv-01132-RNC Document 40 Filed 06/17/22 Page 1 of 3

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

KEITH MASSIMINO
Plaintiff

VS.

MATTHEW BENOIT AND
FRANK LAONE
Defendants

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:
:

NO: 3:21-cv-01132 (RNC)

JUNE 17, 2022

**DEFENDANTS, MATTHEW BENOIT AND FRANK LAONE'S
MOTION FOR SUMMARY JUDGMENT**

Pursuant to Fed. R. Civ. P. 56(b), the defendants, Matthew Benoit and Frank Laone, respectfully move this Court for an entry of Summary Judgment in their favor on the following grounds:

1. The Plaintiff has failed to produce any evidence to prove the absence of probable cause to support his Fourth Amendment claims concerning his arrest.
2. The Plaintiff has failed to produce any evidence to prove the absence of probable cause to support his Fourth Amendment claim of Malicious Prosecution.
3. The Plaintiff has failed to produce any evidence to support his First Amendment claim that the defendant officers acted without reasonable suspicion in approaching him while he was videotaping the Waterbury Police Department building.

Attached in support of this Motion are the Defendants Memorandum of Law, Defendants Local Rule 56(a) Statement and the following Exhibits:

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Case 3:21-cv-01132-RNC Document 40 Filed 06/17/22 Page 2 of 3

Exhibit 1 – Deposition of Keith Massimino, taken on April 28, 2022, pertinent pages

Exhibit A – Complaint Exhibit 1, Doc #3 – Massimino Video

Exhibit 2 – Affidavit of Sergeant Matthew Benoit

Exhibit 3 – Affidavit of Sergeant Frank Laone

Exhibit 4 – Court Transcript of June 6, 2019, Docket #CR18-0454704 S

WHEREFORE, and for the reasons set forth in the accompanying Memorandum, the Defendants move this Court for Judgment on all issues pertaining to the Plaintiff's claims as set forth in his Complaint as the Defendants are entitled to Summary Judgment on those claims.

DEFENDANTS, MATTHEW BENOIT AND
FRANK LAONE

BY: /s/ ct05394
Joseph A. Mengacci, Special Counsel
Federal Bar Number: ct05394
Office of Corporation Counsel
235 Grand Street, 3rd Floor
Waterbury, Connecticut 06702
Phone: (203) 574-6731
Fax: (203) 574-8340
jmengacci@waterburyct.org

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Case 3:21-cv-01132-RNC Document 40 Filed 06/17/22 Page 3 of 3

CERTIFICATE OF SERVICE

I hereby certify that on the above date a copy of the foregoing, was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing. Parties may access this filing through the Court's system.

BY: /s/ ct05394
Joseph A. Mengacci

JA-301

Case 3:21-cv-01132-RNC Document 40-1 Filed 06/17/22 Page 1 of 15

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

KEITH MASSIMINO
Plaintiff

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NO: 3:21-cv-01132 (RNC)

VS.

MATTHEW BENOIT AND
FRANK LAONE
Defendants

JUNE 17, 2022

DEFENDANTS, MATTHEW BENOIT AND FRANK LAONE'S
RULE 56a(1) STATEMENT OF FACTS

1. Keith Massimino has been a freelance photographer from 2012 to the present time. (Exhibit 1, Deposition Massimino p. 19).

2. On October 30, 2018, Keith Massimino was a freelance photographer and was a self-employed professional videographer. (Exhibit 1, Deposition Massimino pp. 20-21)

3. On October 30, 2018, Keith Massimino possessed press or media credentials for some promotions where credentials were needed. (Exhibit 1, Deposition Massimino pp. 20-21)

4. One instance where Keith Massimino needed press or media credentials was the New Jersey State Football Championship held at the MetLife Stadium. (Exhibit 1, Deposition Massimino p. 21)

5. On and before October 30, 2018, Keith Massimino maintained a You Tube page under the name of Northeast Auditor and uploaded to his You Tube channel video recordings he had taken. (Exhibit 1, Deposition Massimino p. 23)

6. Mr. Massimino planned to upload to his You Tube channel video recording of the Waterbury Police Department building even if he had not had his encounter with Sergeants Laone and Benoit and been arrested to show that his First Amendment Audit was successful. (Exhibit 1, Deposition of Massimino pp. 63-64)

7. Sometime before October 30, 2018 Keith Massimino began engaging in First Amendment Audits (Exhibit 1, Deposition Massimino p. 37; Exhibit A – Complaint Exhibit 1, Doc #3, Massimino Video)

8. On October 30, 2018, Keith Massimino had attended an event as a professional videographer at Met Life Stadium for which he received press or media credentials. (Exhibit 1, Deposition Massimino pp. 21, 39)

9. On October 30, 2018, Keith Massimino resided in Wallingford, Connecticut. (Exhibit 1, Deposition Massimino p. 41)

10. After completing his assignment at Met Life Stadium, Keith Massimino intended to travel back from New Jersey to his home in Wallingford, Connecticut. (Exhibit 1, Deposition Massimino pp. 40-41)

11. While traveling on Interstate 84 Keith Massimino encountered some type of accident on the highway resulting in a traffic backup. (Exhibit 1, Deposition Massimino p. 39)

12. As Keith Massimino sat in traffic he thought instead of sitting in traffic he would film the Waterbury Police Department building. (Exhibit 1, Deposition Massimino p. 40)

13. Prior to getting stuck in traffic, Keith Massimino, had not planned to stop in Waterbury to film the Waterbury Police Department building. (Exhibit 1, Deposition Massimino p. 40)

14. Keith Massimino's sole purpose for going to the Waterbury Police Department on October 31, 2018 was to conduct a First Amendment Audit by videotaping the exterior of the Waterbury Police Department. (Exhibit 1, Deposition Massimino pp. 44, 60)

15. Keith Massimino assumed it could be a possibility that he would be approached by one or more Waterbury police officers as he was videotaping the Waterbury Police Department building, considering he was outside a police station where police work. (Exhibit 1, Deposition Massimino p. 45)

16. On October 30, 2018, Keith Massimino exited Interstate 84 at some point after the Route 8/I-84 Mixmaster and parked his vehicle behind the mall parking lot area closest to the Waterbury Police Department. (Exhibit 1, Deposition Massimino p. 62)

17. When Keith Massimino exited his vehicle to undertake his First Amendment Audit, his driver's license, which was in his wallet, remained in his car along with his media credentials from the Met Life event (Exhibit 1, Deposition Massimino pp. 21, 39, 45-46).

18. Keith Massimino had no other form of identification on his person other than a check made payable to him. (Exhibit 1, Deposition Massimino p. 47)

19. After parking his vehicle, Keith Massimino gathered a video camera and tripod and proceeded to walk down East Main Street and at a point on East Main Street, approaching the Waterbury Police Department, he began filming his First Amendment Audit. (Exhibit 1, Deposition Massimino pp. 60, 63; Exhibit A – Complaint Exhibit 1, Doc #3, Massimino Video)

20. On October 30, 2018, at approximately 6:00 p.m., Keith Massimino was actively videotaping the Waterbury Police Department building from various angles as he moved

around the building. (Exhibit 1, Deposition Massimino p. 49; Exhibit A – Complaint Exhibit 1, Doc #3, Massimino Video)

21. Prior to October 30, 2018, Keith Massimino did not have any involvement or issues with the Waterbury Police Department or any department or employee of the City of Waterbury. (Exhibit 1, Deposition Massimino pp. 51-52)

22. On October 30, 2018, as Keith Massimino was in the process of actively videotaping the exterior of the Waterbury Police Department, he was approached by Sergeants Matthew Benoit and Frank Laone. (Exhibit 1, Deposition Massimino p. 52; Exhibit 2, Benoit Affidavit ¶13; Exhibit 3, Laone Affidavit ¶16; Exhibit A – Complaint Exhibit 1, Doc #3, Massimino Video)

23. Sergeant Laone inquired initially of Keith Massimino as to what he was doing as he continued to videotape the Waterbury Police Department building. (Exhibit 3, Laone Affidavit ¶16)

24. Keith Massimino told the officers that he was a journalist getting content for a story. (Exhibit 1, Deposition Massimino p. 60; Exhibit A – Complaint Exhibit 1, Doc #3, Massimino Video; Exhibit 2, Benoit Affidavit ¶14; Exhibit 3, Laone Affidavit ¶16)

25. As a videographer, Keith Massimino considers himself to be a journalist. (Exhibit 1, Deposition Massimino pp. 52-53, 69)

26. Keith Massimino never told the Waterbury police officers that he was a videographer or photojournalist, but consistently stated he was a journalist doing a story. (Exhibit 1, Deposition Massimino pp. 69-70; Exhibit A – Complaint Exhibit 1, Doc #3, Massimino Video)

27. Although Keith Massimino was conducting a First Amendment Audit, he never disclosed that fact to Sergeants Benoit and Laone. (Exhibit 1, Deposition Massimino p. 70; Exhibit A – Complaint Exhibit 1, Doc #3, Massimino Video)

28. When asked for identification that he was a journalist, Keith Massimino refused to comply with the requests of Sergeant Benoit and Sergeant Laone. (Exhibit 2, Benoit Affidavit ¶15; Exhibit 3, Laone Affidavit ¶19)

29. Keith Massimino was placed under arrest and charged with violation of Conn. Gen. Stat. §53a-167a, Interfering with a Peace Officer. (Exhibit 2, Benoit Affidavit ¶24; Exhibit 3, Laone Affidavit ¶25)

30. At some time after his arrest, Massimino uploaded the video of the Waterbury Police Department station and his encounter with Sergeants Laone and Benoit to his Northeast Auditor You Tube channel. (Exhibit 1, Deposition Massimino p. 23)

31. In the present action, Keith Massimino alleges that Sergeants Benoit and Laone violated his First Amendment rights by stopping him from viewing and memorializing the Waterbury Police Department building in plain view from a public sidewalk. (Complaint, Doc. #1, Count 1 ¶53) and his Fourth Amendment rights in the absence of probable cause for his unreasonable seizure and for initiating criminal prosecution against him (Malicious Prosecution). (Complaint, Doc. #1, Count 3, ¶55)

32. On June 6, 2019, Keith Massimino appeared before the Honorable Joseph B. Schwartz, Judge of the Superior Court, at GA #4 in Waterbury, Connecticut, during which proceeding Keith Massimino was represented by Attorney Joseph Sastre. (Exhibit 4, June 6, 2019 Transcript, p. 1)

33. The matter before Judge Schwartz was a Motion to Dismiss filed by counsel for Keith Massimino which asserted in part that the continued prosecution of Mr. Keith Massimino was not justified in the absence of probable cause for his arrest. (Exhibit 4, June 6, 2019 Transcript, p. 2)

34. The Court, after hearing arguments from Mr. Massimino's attorney and the State made a finding that probable cause did exist for the charge in interfering with an officer in violation of Conn. Gen. Stat. §53a-167a. (Exhibit 4, June 6, 2019 Transcript, pp. 29-34)

35. Massimino had a full and fair opportunity to litigate the issue of probable cause for his arrest. (Exhibit 4, June 6, 2019 Transcript pp. 1-34 inclusive)

36. After the denial of Massimino's Motion to Dismiss, the prosecution continued until May 21, 2021, when the State entered a nolle prosequi and thereafter, a Judge of the Superior Court granted Mr. Massimino's oral motion for dismissal. (Complaint, Doc. #1, ¶¶47-48)

37. Sergeant Matthew Benoit is currently employed by the City of Waterbury Police Department and has been for fourteen (14) years. He became a Sergeant on June 12, 2018. On October 30, 2018, he was working as a Patrol Supervisor on the 3:30 p.m. to 11:30 p.m. shift. (Exhibit 2, Benoit Affidavit ¶¶2, 3)

38. On October 30, 2018, at approximately 6:00 p.m. as Sergeant Benoit was exiting the bathroom of the police department lower level and exit to the garage, he observed an individual, later identified as Keith Massimino, videotaping gas pumps located in the garage area under the Waterbury Police Department building as well as exterior surveillance

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cameras, the exterior of the Youth Division and marked and unmarked police vehicles located in the garage including undercover vehicles. (Exhibit 2, Benoit Affidavit ¶4)

39. Sergeant Benoit observed Keith Massimino for several minutes and continued his surveillance of Massimino's conduct by getting into his marked police vehicle and driving around the Waterbury Police Department a couple of times. (Exhibit 2, Benoit Affidavit ¶5)

40. Benoit continued to observe Massimino as he videotaped the department's gas pumps, youth division, surveillance cameras, the daily operations, and various entry and exit points of the police department building. (Exhibit 2, Benoit Affidavit ¶6; Exhibit A – Complaint Exhibit 1, Doc #3, Massimino Video)

41. Sergeant Benoit clearly observed the plaintiff as he had his camcorder viewing apparatus directed toward the surveillance cameras. (Exhibit 2, Benoit Affidavit ¶7)

42. It was Benoit's impression that Massimino was casing the police department for the purpose of engaging in some criminal activity and it was clear to Sergeant Benoit that he was videotaping areas of potential danger to persons and property. (Exhibit 2, Benoit Affidavit ¶8)

43. At that time, Benoit was aware of numerous attacks in recent years of officers and police stations, including the targeting and assassinations of police officers across the country including a Texas officer who was assassinated in 2015 while pumping gas. (Exhibit 2, Benoit Affidavit ¶9)

44. The manner in which Keith Massimino was videotaping was suspicious and alarming and Benoit was concerned that Massimino was casing the police department for

some potential criminal act ranging anywhere from criminal mischief up to assault or homicide. (Exhibit 2, Benoit Affidavit ¶10)

45. Mr. Massimino was wearing a jacket and Sergeant Benoit was unable to determine whether he may be in possession of a concealed weapon. (Exhibit 2, Benoit Affidavit ¶11)

46. Sergeant Benoit continued to observe Massimino and told Sergeant Frank Laone, who was on duty as the desk sergeant at that time, to view the surveillance cameras to observe Mr. Massimino's actions as well. (Exhibit 2, Benoit Affidavit ¶12)

47. Sergeant Frank Laone thereafter came outside to further investigate and both Sergeants Laone and Benoit approached Mr. Massimino who continued recording with his camcorder. (Exhibit 2, Benoit Affidavit ¶13; Exhibit A – Complaint Exhibit 1, Doc #3, Massimino Video)

48. Sergeants Laone and Benoit asked Mr. Massimino what he was doing to which he replied that he was a journalist and was filming content for a story. (Exhibit 2, Benoit Affidavit ¶14; Exhibit A – Complaint Exhibit 1, Doc #3, Massimino Video)

49. Mr. Massimino was asked several times by Sergeants Benoit and Laone for credentials to prove he was a photographer or member of the media. He was also asked to provide photo identification several times, but continuously refused. (Exhibit 2, Benoit Affidavit ¶15; Exhibit 3, Laone Affidavit ¶19; Exhibit A – Complaint Exhibit 1, Doc #3, Massimino Video)

50. Mr. Massimino stated several times that “he knows his rights and did not need to show identification,” but Sergeant Laone said to him that there was “reasonable suspicion”

to detain him and for him to provide identification based upon his suspicious activities including his videotaping of sensitive areas of the building and safety concerns, but he again refused to produce media credentials or any form of identification. (Exhibit 2, Benoit Affidavit ¶16; Exhibit A – Complaint Exhibit 1, Doc #3, Massimino Video)

51. Sergeant Benoit, in his fourteen years of police experience, has not seen anyone clearly recording the daily operations of the police department as Mr. Massimino was doing. (Exhibit 2, Benoit Affidavit ¶17)

52. In Benoit's experience, all media personnel with whom the police department interacts, on and around police property, always provide media credentials. (Exhibit 2, Benoit Affidavit ¶18)

53. Both Sergeants Benoit and Laone's level of suspicion was raised when Keith Massimino, who identified himself as a journalist, refused to provide any credentials and/or identification to substantiate his claim as a journalist or member of the media. (Exhibit 2, Benoit Affidavit ¶19; Exhibit A – Complaint Exhibit 1, Doc #3, Massimino Video)

54. Prior to Benoit's encounter with Mr. Massimino, he had no prior contact with him and did not know who Massimino was and he had no way to verify his claim that he was a journalist getting content for a story without some form of identification. (Exhibit 2, Benoit Affidavit ¶20)

55. Had Mr. Massimino identified himself, Benoit and Laone would have continued their investigation by checking about Keith Massimino through NCIC, COLLECT in-house for warrants, protective orders, past arrests, background checks and other past history which

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would have been very helpful in alleviating the situation and documenting what he was doing. (Exhibit 2, Benoit Affidavit ¶21)

56. After Mr. Massimino was arrested and identified, the background investigation noted in ¶55 was performed and no information was found to suggest that Mr. Massimino was a threat and in fact confirmed that he was a professional videographer. (Exhibit 2, Benoit Affidavit ¶22)

57. Had Mr. Massimino produced identification as requested, the background check would have been undertaken and Mr. Massimino would not have been arrested. (Exhibit 2, Benoit Affidavit ¶23)

58. Because Sergeants Benoit and Laone's level of suspicion was heightened by Mr. Massimino's refusal to produce identification or otherwise identify himself, he was placed under arrest for interfering and hindering the investigation in violation of Conn. Gen. Stat. §53a-167a. (Exhibit 2, Benoit Affidavit ¶24)

59. On October 30, 2018, Sergeant Laone was working as the Desk Sergeant on the 2:00 p.m. to 10:00 p.m. shift and was in charge of security for the Waterbury Police Department, the booking of arrested individuals and the oversight of 3-4 booking officers and was the only desk sergeant on duty that afternoon and evening. (Exhibit 3, Laone Affidavit ¶3)

60. On that date there were a couple of surveillance cameras located on the exterior of the police department building to which Sergeant Laone had access to view as necessary. (Exhibit 3, Laone Affidavit ¶4)

61. At approximately 6:00 p.m. on October 30, 2018, Sergeant Matthew Benoit told Sergeant Laone to look at the video cameras to observe a male individual, later identified as Keith Massimino. (Exhibit 3, Laone Affidavit ¶5)

62. At Sergeant Benoit's request Sergeant Laone viewed the camera on the North Elm/East Main Street side of the Waterbury Police Department building at which time Laone observed the male individual videotaping as he was moving around the building. (Exhibit 3, Laone Affidavit ¶6)

63. Laone observed him videotaping the gas pump area, where there were marked and unmarked police vehicles, including undercover vehicles, surveillance cameras and the Youth Division entrance/exit door area. (Exhibit 3, Laone Affidavit ¶7; Exhibit A – Complaint Exhibit 1, Doc #3, Massimino Video)

64. The Youth Division offices are comprised of school resource officers, a few detectives that handle juvenile matters, and any arrested juveniles who are processed in that office. (Exhibit 3, Laone Affidavit ¶8)

65. The Youth Division exterior glass is blacked out to try and protect the identity of the juveniles who are arrested as the identity of juveniles is confidential by statute as well as victims who are interviewed in that office. (Exhibit 3, Laone Affidavit ¶9; Exhibit A – Complaint Exhibit 1, Doc #3, Massimino Video)

66. Mr. Massimino's actions in videotaping surveillance cameras, gas pumps, marked and unmarked and undercover vehicles as well as the Youth Division office caused Sergeant Laone to be very suspicious of his activities. (Exhibit 3, Laone Affidavit ¶10)

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67. Before this incident with Mr. Massimino, Sergeant Laone was aware that in recent years there have been attacks on officers, including an incident involving a Texas officer who was assassinated while putting gas in his vehicle in 2015. These attacks included the targeting and assassinations of police officers across the country. (Exhibit 3, Laone Affidavit ¶11)

68. The manner in which Massimino was videotaping was suspicious and alarming, as it appeared that he was possibly casing the police department for some potential criminal act leading from anything from criminal mischief up to assault or homicide. (Exhibit 3, Laone Affidavit ¶12; Exhibit A – Complaint Exhibit 1, Doc #3, Massimino Video)

69. Mr. Massimino was wearing a jacket and Sergeant Laone was unable to determine whether he may be in possession of a concealed weapon. (Exhibit 3, Laone Affidavit ¶13)

70. The Waterbury Police Department is not a public building with the exception of the lobby area located on East Main Street. Access to the public is not allowed without permission except in the lobby area. (Exhibit 3, Laone Affidavit ¶14)

71. Since Sergeant Laone was in charge of the security of the police department building and had a duty to investigate and protect the civilian employees and sworn personnel inside the police station, Laone went outside to inquire of the male individual as to what he was doing in order to confirm or refute Laone's suspicions. (Exhibit 3, Laone Affidavit ¶15; Exhibit A – Complaint Exhibit 1, Doc #3, Massimino Video)

72. Sergeants Laone and Benoit, approached Mr. Massimino to inquire what he was doing and he replied that he was a journalist and was filming content for a story. (Exhibit 3, Laone Affidavit ¶16; Exhibit A – Complaint Exhibit 1, Doc #3, Massimino Video)

73. In Laone's 17 years as a Waterbury Police Officer, he has never met a journalist that shows up and starts filming, as was done by Mr. Massimino, without first notifying someone at the front desk of the Waterbury police department. (Exhibit 3, Laone Affidavit ¶17)

74. Journalists and media usually show up in some sort of marked vehicle and if they happen to come in their personal car, they usually walk into the front door to the front desk and identify themselves and for whom they are employed or working and tell the desk sergeant that they were planning on filming something at or near the police station. (Exhibit 3, Laone Affidavit ¶18)

75. Sergeant Laone asked Mr. Massimino several times for identification or credentials to substantiate his claim that he was a journalist and Massimino continually refused. (Exhibit 3, Laone Affidavit ¶19; Exhibit A – Complaint Exhibit 1, Doc #3, Massimino Video)

76. Laone told Mr. Massimino that he had concerns with safety issues and did not know, for example, if he was planning to blow up the building or engage in a shooting. (Exhibit 3, Laone Affidavit ¶20; Exhibit A – Complaint Exhibit 1, Doc #3, Massimino Video)

77. Mr. Massimino was filming a number of secure areas of the building for which Sergeant Laone was reasonably suspicious of his activity and when he continually refused to provide any journalist credentials or other form of identification, Laone's suspicions were

heightened that Massimino was possibly engaging in or planning to engage in some form of criminal activity that could involve injury to persons and/or property. (Exhibit 3, Laone Affidavit ¶21)

78. Prior to Laone's encounter with Mr. Massimino, he had no prior contact with him and did not know who he was and had no way to verify his claim that he was a journalist getting content for a story without some form of identification. (Exhibit 3, Laone Affidavit ¶22)

79. Had Mr. Massimino identified himself, both Benoit and Laone would have continued their investigation by checking about him through NCIC, COLLECT in-house for warrants, protective orders, past arrests, background checks and other past history which would have been very helpful in alleviating the situation and documenting what he was doing. (Exhibit 2, Benoit Affidavit ¶21; Exhibit 3, Laone Affidavit ¶23)

80. After Mr. Massimino was arrested and identified, the background investigation noted in ¶79 was performed and no information was found to suggest that Mr. Massimino was a threat and was in fact a professional videographer. (Exhibit 3, Laone Affidavit ¶24)

81. Had Mr. Massimino produced identification as requested, the background check would have been undertaken and Mr. Massimino would not have been arrested. (Exhibit 3, Laone Affidavit ¶25)

82. Because Sergeants Benoit and Laone's level of suspicion was heightened by Mr. Massimino's refusal to produce identification or otherwise identify himself, he was placed under arrest for interfering and hindering the investigation in violation of Conn. Gen. Stat. §53a-167a. (Exhibit 3, Laone Affidavit ¶26)

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DEFENDANTS, MATTHEW BENOIT AND
FRANK LAONE

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CERTIFICATE OF SERVICE

I hereby certify that on the above date a copy of the foregoing, was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing. Parties may access this filing through the Court's system.

BY: /s/ Joseph A. Mengacci
Joseph A. Mengacci
Federal Bar Number: ct05394

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**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

KEITH MASSIMINO	:	
Plaintiff	:	NO: 3:21-cv-01132 (RNC)
	:	
VS.	:	
	:	
MATTHEW BENOIT AND	:	
FRANK LAONE	:	JUNE 17, 2022
Defendants	:	

**DEFENDANTS, MATTHEW BENOIT AND FRANK LAONE'S
MEMORANDUM OF LAW IN SUPPORT OF THEIR
MOTION FOR SUMMARY JUDGMENT**

I. PRELIMINARY STATEMENT

The Plaintiff, Keith Massimino, (hereinafter, "Massimino") instituted the present action against Waterbury Police Officers Matthew Benoit (hereinafter, "Benoit") and Frank Laone (hereinafter "Laone"), in their individual capacities for their alleged violation of his First and Fourth Amendment rights pursuant to Title 42 USC §1983. (Complaint, Doc. #1). While taking a video recording of the exterior of the Waterbury Police Department, Massimino was arrested and charged with misdemeanor interference in violation of Conn. Gen. Stat. §53a-167a(a). Massimino was required to attend proceedings in the Connecticut Superior Court and the prosecutor subsequently entered a nolle prosequi and thereafter his Motion to Dismiss the charges was granted.

Massimino alleges he had a First Amendment right to video record the exterior of the Waterbury Police Department, which he alleges to be a public building.

Approximately six and a half minutes into his filming, as he was standing on the sidewalk, he was approached by the Defendants, Benoit and Laone who requested that he

explain why he was filming. He responded that he was a journalist getting content for an undisclosed story. The Defendant officers requested that he produce identification and Massimino refused to identify himself in response to the request.

Massimino is a professional videographer and photojournalist primarily covering sporting events and has an interest in freedom of information and speech and considers himself a journalist. However, at no point did he show any identification or verification that he is in fact a “journalist.” To the contrary he admits he refused to show any form of identification or otherwise identify himself.

Prior to approaching Massimino on the street both Defendants had observed him walking around the building, videotaping gas pumps located in a garage area that also housed marked, unmarked and undercover vehicles, surveillance cameras located on top of the building and the Youth Division office where juvenile arrestees are processed. Based upon their observations, the defendant officers believed that Massimino was “casing” the police station to possibly about to engage in some criminal activity as they were aware of past incidents involving attacks on police officers and police property.

As a result of the defendant officers’ suspicions and Massimino’s refusal to show identification, he was placed under arrest and charged with Interfering with an Officer in violation of Conn. Gen. Stat. §53a-167a and subsequently released on a Promise to Appear. Massimino retained counsel to represent him in the criminal proceeding during which his attorney filed a Motion to Dismiss the continuation of the prosecution alleging that the defendants arrested him without probable cause. However, after a full and fair hearing the Court found the defendant officers did in fact have probable cause for his arrest.

II. STANDARD OF REVIEW

Summary Judgment is appropriate under Federal Rule of Civil Procedure 56(c) when the moving party establishes that there is no genuine issue of material fact to be resolved at trial and that the moving party is entitled to a judgment as a matter of law. See, Celotex Corp. v. Catrett, 477 U.S. 317 (1986). Materiality is determined by the substantive law that governs the case. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). In this inquiry, “[o]nly disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment.” *Id.* “Where the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no genuine issue for trial.” Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986).

In moving for summary judgment against a party who will bear the ultimate burden of proof at trial, the movant’s burden of establishing that there is no genuine issue of material fact in dispute will be satisfied if he or she can point to an absence of evidence to support an essential claim of the non-moving party’s claim. Celotex, 477 U.S. at 322-23. “A Defendant need not prove a negative when it moves for summary judgment on an issue that the Plaintiff must prove at trial. It need only point to an absence of proof on Plaintiff’s part, and, at that point, Plaintiff must ‘designate specific facts showing that there is a genuine issue for trial.’” Parker v. Sony Pictures Entm’t, Inc., 260 F.3d 100, 111 (2d Cir. 2001) (quoting Celotex, 477 U.S. at 324; see *a/so* Gallo v. Prudential Residential Servs., 22 F. 3d 1219, 1223-24 (2d Cir. 1994) (“[T]he moving party may obtain summary judgment by showing that little or no evidence may be found in support of the nonmoving party’s case.”). The non-moving party, in order to defeat summary judgment, must then come forward with evidence that would be

sufficient to support a jury verdict in his or her favor. Anderson, 477 U.S. at 249 (“[T]here is not an issue for trial unless there is sufficient evidence favoring the nonmoving party for a jury to return a verdict for that party”). In making this determination, the Court draws all reasonable inferences in the light most favorable to the party opposing the motion. Matsushita, 475 U.S. at 587. However, a party opposing summary judgment “may not rest upon the mere allegations or denials of the adverse party’s pleading,” Fed. R. Civ. P. 56(e), and “some metaphysical doubt as to the material facts” is insufficient. *Id.* at 586 (citations omitted). On the other hand, “[i]f reasonable minds could differ as to the import of the evidence...and if there is any evidence in the record from any source from which a reasonable inference in the nonmoving party’s favor may be drawn, the moving party simply cannot obtain summary judgment. R.B. Ventures, Ltd. v. Shane, 112 F.3d 54, 59 (2d Cir. 1997).

III. FACTS OF THE CASE

The Defendants’ Local Rule 56(a)1 Statement of Undisputed Facts submitted pursuant to Local Rule 56(a)1 constitutes the facts of this case and is incorporated herein by reference.

IV. ARGUMENT

A. The Defendant Officers’ Initial Questioning of Massimino did not Violate his First or Fourth Amendment Rights

The issue of whether a seizure and subsequent detention of an individual’s person complies with the Fourth Amendment to the United States Constitution is governed by the standard set forth in Terry v. Ohio, 392 U.S. 1 (1968). Under Terry, if a law enforcement

officer can point to specific, articulable facts as the basis for a reasonable suspicion “that criminal activity may be afoot,” he is justified in briefly detaining an individual to investigate. Terry, 392 U.S. at 30.

In general, the legality of such a stop is determined by a two-part test. First, courts examine “whether the officer’s action was justified at its inception” and, next, they assess whether the officer’s subsequent actions were “reasonably related in scope” to the circumstances that justified the stop. *Id.* at 19-20. The analysis under the first prong - whether the officer’s action was justified at its inception – depends on the type of officer action at issue. If the initial action was of a type that invokes the protections of the Fourth Amendment, such as a seizure or a Terry stop¹, then the officer must be able to articulate a reasonable suspicion of criminal activity in order to justify his actions. See, United States v. Tehrani, 49 F.3d 54, 58 (2d Cir. 1995). Even so, the reasonable suspicion standard is far less exacting than what is required for probable cause. “The showing required to demonstrate ‘reasonable suspicion’ is considerably less than that which is necessary to prove probable cause.” United States v. Rideau, 969 F.2d 1572, 1574 (5th Cir. 1992). In fact, “the Fourth Amendment requires only some minimal level of objective justification for the officer’s actions, measured in light of the totality of the circumstances.” *Id.* “The concept of reasonable suspicion, like probable cause, is not readily, or even usefully, reduced to a neat set of legal rules.” United States v. Sokolow, 490 U.S. 1, 7 (1989) (internal quotations omitted). “Reasonable suspicion,

¹ A Terry stop is functionally equivalent to a seizure under the Fourth Amendment. Indeed, it can fairly be said that a Terry stop is the colloquial term for a Fourth Amendment seizure. See, United States v. Price, 599 F.2d 494, 498-99 (2d Cir. 1979) (treating question of when the Terry stop began and when defendant was seized as identical).

therefore, is an intermediate standard that cannot be precisely defined, but must be determined on a case-by-case basis taking into consideration the totality of circumstances.” United States v. Moore, No. 03-CR-32E, 2006 U.S. Dist. LEXIS 9184, at *11 (W.D.N.Y. Feb. 24, 2006).

Nonetheless, certain types of police action can be undertaken even without a showing of reasonable suspicion. If, at its inception, an encounter between an officer and a citizen falls short of a seizure then the protections of the Fourth Amendment do not apply and reasonable suspicion is not needed to justify the police action. See United States v. Lee, 916 F.2d 814, 819 (2d Cir. 1990) (“Not every encounter between a police officer and an individual is a seizure implicating the Fourth Amendment's protections.”). Thus, any type of police conduct that falls short of this threshold—that of seizing an individual or effectuating a Terry stop - is legally permissible even in the absence of reasonable suspicion. See, United States v. Lopez, 432 F. Supp .3d 99, 113 (D. Conn. Jan. 10, 2020) (officer driving by defendant’s car and shining spotlight inside “was not unlawful” as “the police are entitled to conduct further investigation even in the absence of reasonable suspicion”).

Many types of police conduct, including some at issue here, have been classified as less than a seizure. For instance, “a police officer is free to approach a person in public and ask a few questions; such conduct, without more, does not constitute a seizure.” Lee, 916 F.2d at 819; see *a/so*, Florida v. Bostick, 501 U.S. 429, 434 (1991) (“[A] seizure does not occur simply because a police officer approaches an individual and asks a few questions.”)

Here, the encounter between Sergeants Benoit and Laone and Massimino began when they approached Massimino on the sidewalk outside the Waterbury Police Department

and inquired as to why Massimino was videotaping the Waterbury Police Department building. This is precisely the type of “further investigation even in the absence of reasonable suspicion” that officers are authorized to undertake and indeed, expected, to pursue. Lopez, 432 F. Supp. 3d at 113. As such, there are no Constitutional limitations placed on this type of police conduct. See, e.g., State v. Courchesne, 296 Conn. 622, 649 (2010) (officer action that included blocking in defendant’s car with police car, approaching defendant and communicating with defendant found to be constitutionally permissible) (remanded on other grounds). None of these initial actions rises to the level of a seizure. Therefore, the initial interaction between Officers Benoit and Laone and Massimino was “justified at its inception,” as the first prong of the two-part Terry test demands.

Moving on to the second prong of the Terry test - the legality of the officer’s subsequent actions - the first question that must be addressed is when the seizure or Terry stop occurred.

“When considering the validity of a ... stop, our threshold inquiry is twofold. First, we must determine at what point, if any . . . the encounter between [the police officer] and the defendant constitute[d] an investigatory stop or seizure. . . . Next, [i]f we conclude that there was such a seizure, we must then determine whether [the police officers] possessed a reasonable and articulable suspicion at the time the seizure occurred.” State v. Courchesne, 296 Conn. 622, 642-643 (2010) (quoting State v. Santos, 267 Conn. 495, 503 (2004)) (internal quotation marks omitted); see *a/so*, Lopez, 432 F. Supp. 3d at 109 (“The first step... is determining when the encounter between the officers and [the defendant] became a Terry stop.”).

"A seizure requires either physical force . . . or, where that is absent, submission to the assertion of authority." Lopez, 432 F. Supp. 3d at 110 (quoting United States v. Swindle, 407 F.3d 562, 572 (2d Cir. 2005) (internal quotations omitted)). It has been held that "to comply with an order to stop - and thus to become seized - a suspect must do more than halt temporarily; he must submit to police authority, for 'there is no seizure without actual submission.'" United States v. Baldwin, 496 F.3d 215, 218 (2d Cir. 2007) (quoting Brendlin v. California, 551 U.S. 249, (2007)). "We have . . . defined a person as seized under our state constitution when by means of physical force or a show of authority, his freedom of movement is restrained." State v. Santos, 267 Conn. 495, 503 (2004) (quoting State v. James, 237 Conn. 390, 404 (1996)).

Here, Plaintiff was not initially seized, for purposes of the Fourth Amendment, when Benoit and Laone approached him and inquired as to the reason for videotaping the police department building. The videotape shows clearly that Massimino did not submit to police authority, that the officers showed any physical force or that Massimino attempted to leave and was in some way restrained. Baldwin, 496 F.3d at 218; Swindle, 407 F.3d at 572.

Even assuming a conclusion that Massimino was seized, Terry provides that investigative detentions are justified where predicated upon a reasonable suspicion of criminal activity. Terry, 392 U.S. at 30. However, even an investigative detention that is adequately supported by reasonable suspicion "must be temporary and last no longer than is necessary to effectuate the purpose of the stop. Similarly, the investigative methods employed should be the least intrusive means reasonably available to verify or dispel the officer's suspicion in a short period of time." Gilles v. Repicky, 511 F.3d 239, 245 (2d Cir.

2007) (quoting Florida v. Royer, 460 U.S. 491, 500 (1983)). Here, plaintiff's detention conforms with Terry and its progeny by virtue of being rooted in reasonable suspicion and appropriately tailored in scope and duration. As discussed above, the officers had a reasonable suspicion that the Plaintiff might be intending to engage in an activity that could be dangerous to the officers and the public. As the officers stated in the video, the plaintiff could be videotaping the police department building to later blow up the building or engage in a shooting, having previously observed him walking around the police station and recording gas pumps, marked and unmarked and undercover vehicles, surveillance cameras and the exterior of the Youth Division office.

At that time the defendant officers were justified in requesting Massimino to produce identification. State v. Aloj, 280 Conn. 824, 834 911 A.2d 1086, 1093 (2007). Once the plaintiff refused to show any identification or verify his credentials as a journalist the officers' suspicions were heightened. Furthermore, the detention was temporary – spanning only a few minutes - and lasted no longer than was necessary. United States v. Tehrani, 49 F.3d 54, 57 (2d Cir. 1995) (holding that thirty minute detention in an airport security office was lawful because police diligently sought to confirm the defendant's identity during this time).

In Terry v. Ohio, 392 U.S. 1, 88 S.Ct 1868 20 L.Ed.2d 899, the Supreme Court was confronted with the serious question of the role of the Fourth Amendment in the confrontation on the street between a citizen and a police officer investigating suspicious circumstances. Terry at 4. The Court held that, "where a police officer observes unusual conduct which leads him reasonably to conclude in light of his experience that **criminal activity may be afoot**," (emphasis added) a police officer may in appropriate circumstances and in an

appropriate manner approach a person for purposes of investigating possible criminal behavior even though there is no probable cause at the point to make an arrest.

The facts in Terry upon which the Court held the police officer had reasonable suspicion to approach the defendant Terry and conduct an investigation are not dissimilar to the facts in the present case. Although the Court focused primarily on the issue of the search of Terry's person for which weapons were found, the officer's legal authority to initially approach Terry in order to conduct his investigation was found to exist.

Officer McFadden, the officer who initially approached Terry, had been patrolling in plain clothes in downtown Cleveland at approximately 2:30 p.m. on October 31, when his attention was distracted by two men, Chilton and Terry, who were standing on the corner of Huron Road and Euclid Avenue. Officer McFadden had never seen the two men before.

McFadden was a policeman for 39 years and a detective for 35 years and had been assigned to patrol that vicinity of downtown Cleveland for shoplifters and pickpockets for 30 years and had developed routine habits of observations. McFadden also testified in Terry's trial that "they didn't look right to me at the time." He observed them repeatedly walking short distances, turning back, peering in a store window and suspected they were "casing a job, a stick up" and considered it his duty to investigate further and approached the two men and asked for their names. Terry at 5-7.

In the present case, the defendants did not know or have reason to know Massimino's identity. They observed him videotaping sensitive areas of the police station including the garage area, where gas pumps were located together with marked, unmarked and undercover police vehicles, the surveillance cameras located on the top of the building and

the Youth Division entrance and exit where juvenile offenders are processed. In addition, if press or media personnel were to record any footage they would have first checked in at the front desk to give prior notice of their intended actions.

Both defendant officers were familiar with prior incidents of attacks on police officers and police facilities and found Massimino's actions highly suspicious.

Terry does not require, as the plaintiff contends that the defendant officers had to have reasonable suspicion that a crime was being committed or was committed. (See Exhibit A – Complaint Exhibit 1, Massimino Video) In fact, Terry had not committed any crime or was he committing any crime by walking back and forth on a public street and looking into a store window, yet Officer McFadden's reasonable suspicion that they were "casing a job" based on his observations and experience led him to reasonably conclude the "criminal activity may be afoot."

The Court in Terry specifically stated that government and, therefore, the police have a general interest in crime prevention and detection and it is that interest which underlies the recognition that a police officer may in appropriate circumstances and in an appropriate manner, approach a person for purpose of investigating possible criminal behavior even though there is no probable cause to make an arrest. Terry at 22-23.

Interestingly, the Court in Terry took notice of the statistics regarding the number of law enforcement officers killed and injured by criminals in 1966, the year of Terry's arrest. Terry at 25. Footnote 21, a further indication of the reasonableness of a police officer's concern for safety, as was the case with the defendants, Laone and Benoit.

The Court further commented that given McFadden's years of experience as a police officer and crime detective that it would have been poor police work to have failed to investigate the observed behavior of Terry and his accomplice. Terry at 23.

Further as Justice Harlan noted in his concurring opinion, McFadden was warranted in forcing an encounter with Terry "in an effort to **prevent** or investigate a crime." Terry at 34 (emphasis added).

In United States v. Gonzalez, the New York Southern District Court later elaborated on searches motivated by reasonable suspicion in a similar circumstance to Terry. (In Terry the two individuals were pacing in front of the store, peering into the windows and conferring. Terry, 392 U.S. AT 5-6, 28-30.) In Gonzalez, a Honda Accord drove slowly past a store and parked on the opposite side of the street a few spaces past the entrance. United States v. Gonzalez, 2009 U.S. Dist. LEXIS 59742, 3 (S.D.N.Y., Mar. 2, 2009). In combination with Gonzalez peering into the detective's vehicle and swiftly moving away from the Accord and the store, he appeared to be "casing" in preparation of a crime, which led to greater suspicion. Id. at 15-16. Further the Court stated that "while the activity that the police observed could have been consistent with innocent behavior, it was also consistent with 'casing.'" Id. at 15.

In United States v. Manuel, police officers had reasonable suspicion that Manuel was in violation of an open container law after seeing him drink from a cup around 3:30 a.m., and slouching. United States v. Manuel, 647 Fed.App'x. 11, 12 (2d Cir. 2016). The court held, "to be sure, a standard beer can is similar in size to a soft drink can but the law 'does not demand that all possible innocent explanations be eliminated before conduct can be

considered as part of the totality of circumstances supporting a reasonable basis to believe that criminal activity may be afoot.” Id. at 12-2. (Quoting United States v. Bailey, 743 F.3d 322, 333 (2d Cir. 2014).

In viewing the totality of the circumstances that may “[indicate] possible illicit activity, [an officer must be] properly informed by ‘commonsense judgment and inferences about human behavior.’” United States v. Singletary, 798 F.3d 55, 60 (2d Cir. 2015) (quoting Illinois v. Wardlow, 528 U.S. at 125).

In United States v. Padilla, 548 F.3d 179 (2008), the court upheld a finding of reasonable suspicion to conduct a Terry stop where no crime was or had occurred, but the officer believed a robbery might take place. The Court noted that under Terry, a police officer may briefly detain an individual for questioning if the officer has a reasonable suspicion that the individual has been or is about to be engaged in criminal activity or some indication of possible illicit activity. Id. at 186-187.

In United States v. Singletary, 798 F.3d 55 (2015) noted that “[i]n Terry v. Ohio, the Supreme Court ‘expressly recognized that government interests in ‘effective crime prevention and detection,’ as well as in officer and public safety while pursuing criminal investigations, could make it constitutionally reasonable ‘in appropriate circumstances and in an appropriate manner’ temporarily to detain a person’ to investigate possible criminality even in the absence of a warrant or probable cause for arrest” Id. at 59.

The Court further noted in Singletary that reasonable suspicion demands “specific and articulable facts, which taken together with rational inferences from those facts provide detaining officers with a ‘particularized and objective basis for suspecting legal wrongdoing.’”

(Citing United States v. Arvizu, 534 U.S. 266, 273 122 S.Ct 744, 151 L.Ed.2d 740 (2002))

The Court noted however, that this standard requires more than a “hunch” which the Court defined as an ‘inchoate and unparticularized suspicion or a conclusion derived from intuition in the absence of articulable, object facts’ at 60 (citing Illinois v. Wardlow, 528 U.S. at 124, (quoting Terry v. Ohio, 392 at 27)) “[T]he law ‘does not demand all possible innocent explanations be re-eliminated before conduct can be considered as part of the totality of circumstances supporting a reasonable basis to believe that criminal activity may be afoot.’” at 60 (citing United States v. Barley, 743 F.3d at 333; See Navarette v. California, 134 S.Ct at 1691) “Nor does reasonable suspicion demand actual observation of a person engaged in prohibited conduct. This is evident from precedent recognizing that reasonable suspicion can arise even where a defendant’s conduct is consistent with innocence as with guilt, so long as there is ‘some indication of possible illicit activity’” (citing United States v. Padilla, 548 F.3d at 187) “Indeed, if officers had observed actual prohibited conduct, they would have had probable cause to arrest. It is precisely because reasonable suspicion is based in something less that it approves only a brief investigating stop” at 62.

In addition, an officer is entitled to draw on his experience and specialized training to make inferences from and deductions about the cumulative information available to him that might well elude an untrained person. Courts evaluate the circumstances surrounding the stop “through the eyes of a reasonable and cautious police officer on the scene guided by his experience and training.” United States v. Padilla, at 187 (citing Bayless, 201 F.3d at 133) (Quoting United States v. Oates, 560 F.2d 45, 61 (2d Cir. 1977).

An indication of possible illicit activity is properly informed by “commonsense judgment and inference about human behavior.” Singletary at 6 (citing Illinois v. Wardlow, 528 U.S. 199, 125 S.Ct 673 145 L.Ed.2d 570 (2000))

B. The Defendants Laone and Benoit had Articulate Objective Facts Upon Which to Believe Massimino Might be Intending to Engage in Criminal Activity

The undisputed facts are that Laone and Benoit, both Sergeants with the Waterbury Police Department with 17 and 14 years of police experience respectively, observed Massimino as he was walking around the police department building while filming with his camcorder. Massimino was observed by both defendants to be videotaping gas pumps in an enclosed garage area, which also housed marked, unmarked and undercover vehicles, surveillance cameras located on the rooftop area of the police station and the Youth Division where juvenile offenders are processed after arrest. Massimino wore a jacket under which he may have possessed a concealed weapon. Both Defendants were keenly aware of a number of prior assassinations and attacks on police officers and police properties. The Defendant officers' observations lead them to suspect Massimino was casing the police department building to possibly engage in some form of criminal activity. Additionally, in the experience of both Defendants, they had never observed any media or press individuals filming the police department without first checking in with the front desk officer to disclose their intentions to film from outside the police department building.

Sergeant Laone, as the on duty desk sergeant, was responsible for the safety of the building, its civilians and civilian employees. Massimino admits he was filming for approximately 6:40 minutes before the Defendant officers approached him. When asked

what he was doing he replied that he was a journalist and was getting content for a story about which he would not disclose. Massimino never disclosed to the defendant officers that he was conducting a so-called First Amendment Audit.

Massimino was asked to show his press or media identification or credentials, which he refused, steadfastly, maintaining that he was under no obligation to do so. Despite repeated requests for identification, Massimino continued to refuse to comply with the Defendant officers' requests. As a result of Massimino's refusal to produce identification to comply with the Defendant officers' investigation into what they reasonably believed were suspicious activities and circumstances, Massimino was charged with Interfering with a Peace Officer in violation of Conn. Gen. Stat. §53a-167a and placed under arrest.

Based upon the Defendant officers' training and experience of nearly two decades on the job, their direct observations of Massimino's conduct, their knowledge of prior attacks on police officers and their concern for their safety as well as the safety of the public, they sought to obtain from Massimino the reason for his action in videotaping the police department building including potentially sensitive areas.

The defendant officers had specific and articulable facts, which taken together with rational inferences from those facts, commonsense judgments, their experience and training, and inferences about human behavior, provided a reasonable and legal basis to approach Massimino to investigate further to substantiate or refute their concerns.

When Massimino told them he was a journalist and refused to produce any press or medial credentials, their suspicions were further heightened. Massimino's continued refusal to produce identification was a hindrance and interference in the Defendant officers' attempt

to perform their investigatory duties at which point probable cause existed to arrest Massimino pursuant to Conn. Gen. Stat. §53a-167a. See State v. Aloj, 280 Conn. 824 (2007).

C. Massimino is Collaterally Estopped From Claiming an Absence Of Probable Cause

After his arrest, Massimino went through the booking process and was later released on a Promise to Appear. He retained the services of an attorney who on his behalf filed a Motion to Dismiss in connection with the criminal charges. A hearing was held before Superior Court Judge Joseph Schwartz on June 6, 2019. Massimino claimed, *inter alia*, that his case should be dismissed because the Defendant officers lacked probable cause for his arrest. After hearing arguments from Massimino's counsel and the State, Judge Schwartz denied the Motion to Dismiss and specifically found the Defendant officers in fact had probable cause to arrest Massimino for Interfering with a police officer in that he hindered and interfered with the officers' investigatory duties.

Subsequent to the denial of the Motion to Dismiss the criminal case proceeded until May 21, 2021 when the State entered a nolle followed by a dismissal of the charges.

“Collateral estoppel or issue preclusion, prevents parties or their privies from relitigating in a subsequent action of fact or law that was fully and fairly litigated in a Marvel Characters, Inc. v. Simon, 310 F. 3d 280, 288 (2d Cir. 2002). It may be applied non-mutually; third parties may raise **collateral estoppel** defensively against a party who had fully and fairly litigated an issue to prevent that party from raising the same issue in a subsequent lawsuit. See ACLI gov't Secs. V. Rhoades, 963 F.2d 530, 533 (2d Cir. 1992) (citing Parklane Hosiery Co., Inc. v. Shore, 439 U.S. 322, 326-31 99 S.Ct. 645, 58 L.Ed.2d 552 (1979) (noting

that “doctrine of mutuality, at least for defensive use of collateral estoppel, no longer applies.”)). For the doctrine to apply, a party must show that “(1) the identical issue was raised in a previous proceeding; (2) the issue was actually litigated and decided in the previous proceeding; (3) the party had a full and fair opportunity to litigate the issue; and (4) the resolution of the issue was necessary to support a valid and final judgment on the merits.” Marvel Characters, Inc. v. Simon, 310 F.3d at 288-289.

In Barton v Undercover Officer, 671 Fed. App'x 4, 2016 U.S. App. LEXIS 21743, 211 6 WL 7131861 (2d Cir. 2016) the Court of Appeals held that in a prior lawsuit, the plaintiff Burton had litigated the issue of whether there was probable cause for his arrest. In the prior proceeding the District Court determined there was probable cause for two of the five charges levied against Burton. As to those two charges for which probable cause was found to exist, Burton's malicious prosecution action was dismissed.

Probable cause is a complete defense to a claim for malicious prosecution, Burton at 5. The identical issue of probable cause was litigated and decided in Massimino's criminal case following a full and fair opportunity to litigate that issue. (See Criminal Transcript pages 1 through 34) Since probable cause was found to exist for Massimino's arrest in the prior proceeding, he is collaterally estopped from again attempting to litigate that same issue in the present case. As a result, since probable cause has been found to exist, both his claims as to his arrest and malicious prosecution under 42 U.S. §1983 are barred and the Defendants' Motion for Summary Judgment should be granted.

D. Massimino Has Failed to Produce Admissible Evidence to Prove an Absence of Probable Cause for his Arrest and for his Claimed Malicious Prosecution Pursuant to §1983 as Probable Cause Existed for His Arrest and Prosecution

Alternatively, should the Court not apply the collateral estoppel doctrine, the Defendants submit that the undisputed facts substantiate that the defendant officers had probable cause to arrest Massimino.

The Plaintiff's failure to prove an absence of probable cause is fatal to both his claims for his arrest and malicious prosecution pursuant to his Fourth Amendment Rights. Massimino's Fourth Amendment claim is based upon the alleged absence of probable cause. (Complaint, Doc. #1, Counts 2 and 3)

The elements of malicious prosecution are well established and are identical under both Federal and Connecticut law holding that a plaintiff must prove among other elements the absence of probable cause to arrest did not exist. Raysor v. Port Authority of New York and New Jersey, 768 F.2d 34, 39 (2d Cir. 1985), cert. denied, 475 U.S. 1027, 89 L. Ed. 2d 337, 106 S. Ct. 1227 (1986). Walczyk v. Rio, 496 F.3d 139, 156 (2d Cir. 2007) (internal quotation marks omitted).

"An action for malicious prosecution requires a Plaintiff to prove that: (1) the Defendant initiated or procured the institution of criminal proceedings against the Plaintiff; (2) the criminal proceedings have terminated in favor of the Plaintiff; (3) the Defendant acted without probable cause; and the Defendant acted with malice, primarily for a purpose other than that of bringing an offender to justice." McHale v. W.B.S. Corp., supra 187 Conn. App. 447, 446 A.2d 815; see also 52 Am.Jur.2d 145, Malicious Prosecution §8 (2000); D. Wright, J.

Fitzgerald & W. Ankerman, Connecticut Law of Torts (3d Ed. 1991) §161, p. 430. The Connecticut Supreme Court has described these elements of the tort as the “‘stringent requirements’....” Gallo v. Barile, 284 Conn. 459, 475, 935 A.2d 103 (2007); 52 Am. Jur. 2d 143, supra Sec at 5 (“Actions for malicious prosecution are not favored by the courts. Thus, a malicious prosecution action is subject to limitations that are more stringent than those surrounding other kinds of actions, and recovery is allowed only if the requirements have been fully complied with.”) Bhatia v. Debek, 287 Conn. 397, 404 (2008); Giannamore v. Schevchuk, 108 Conn. App. 303, 310 (2008).

The third element of a claim for malicious prosecution is lack of probable cause. McHale v. W.B.S. Corp., supra 187 Conn. App. 447, 446 A.2d 815.

“The existence of probable cause is an absolute protection against an action for malicious prosecution, and what facts, and whether particular facts, constitute probable cause is always a question of law.” (Internal quotation marks omitted.) Falls Church Group, Ltd. v. Tyler, Cooper & Alcorn, LLP, supra 281 Conn. App. 94, 912 A.2d 1019; Mulligan v. Rioux, 229 Conn. 716, 739, 643 A.2d 1226 (1994), on appeal after remand, 38 Conn. App. 546, 662 A.2d 153 (1995). It is well established in our jurisprudence that “[t]he existence of probable cause is an absolute protection against an action for malicious prosecution....” (Internal quotation marks omitted.) Vandersluis v. Weil, 176 Conn. 353, 356, 407 A.2d 982 (1978); Hebrew Home & Hospital v. Brewer, 92 Conn. App. 762, 767, 886 A.2d 1248 (2005).

“[P]robable cause is a fluid concept ... not readily, or even usefully, reduced to a neat set of legal rules.... While probable cause requires more than a ‘mere suspicion’ of wrongdoing, its focus is on ‘probabilities,’ not ‘hard certainties’....” *Id.* (internal citations and

quotation marks omitted). “In assessing probabilities, a judicial officer must look to the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act.” *Id.* (internal quotation marks omitted). In sum, probable cause “requires only such facts as make wrongdoing or the discovery of evidence thereof probable.” *Id.* at 157.

“Probable cause has been defined as the knowledge of facts sufficient to justify a reasonable [person] in the belief that he has reasonable grounds for prosecuting an action.... Mere conjecture or suspicion is insufficient. . . .Moreover, belief alone, no matter how sincere it may be, is not enough, since it must be based on circumstances which make it reasonable. Although want of probable cause is negative in character, the burden is upon the plaintiff to prove affirmatively, by circumstances or otherwise, that the defendant had no reasonable ground for instituting the criminal proceeding.” (Citations omitted.) Zenik v. O'Brien, supra 137 Conn. App. 597, 79 A.2d 769.

It has long been recognized that, where there is no dispute as to what facts were relied on to demonstrate probable cause, the existence of probable cause is a question of law for the court. Walczyk v. Rio, et al, 496 3d 139,157 2d Cir. 2007); See, Stewart v. Sonneborn, 98 U.S. 187, 194, 25 L. Ed. 116 (1878) (observing that whether facts alleged to show probable cause are true is a matter of fact, “but whether, supposing them to be true, they amount to a probable cause, is a question of law” (internal quotation marks omitted)); accord Director General of Railroads v. Kastenbaum, 263 U.S. 25, 28, 44 S.Ct. 52, 68 L. Ed. 146 (1923) (probable cause if proved”).

Liability under §1983 may be anchored in a claim for malicious prosecution, as this tort "typically implicates constitutional rights secured by the Fourteenth Amendment, such as deprivation of liberty." Easton, 947 F.2d at 1017. Though Section 1983 provides the federal claim, the elements of the underlying malicious prosecution tort are borrowed from state law. See, Raysor v. Port Authority of New York and New Jersey, 768 F.2d 34, 39 (2d Cir. 1985), cert. denied, 475 U.S. 1027, 89 L. Ed. 2d 337, 106 S. Ct. 1227 (1986). Holman v. Cascio, 390 F. Supp. 2d 120, 122 (D. Conn. 2005) (quoting QSP, Inc. v. Aetna Casualty & Surety Co., 256 Conn. 343, 360 n. 16, 773 A.2d 906 (Conn. 2001); McHale v. W.B.S. Corp., 187 Conn. 444, 447, 446 A.2d 815 (Conn. 1982); Vandersluis v. Weil, 176 Conn. 353, 356, 407 A.2d 982 (Conn. 1978)). In order to prevail on a malicious prosecution claim under both Section 1983 and state law, a plaintiff is required to demonstrate "that there was no probable cause for the proceeding." Mitchell, 841 F.3d at 79 (quoting Kinzer v. Jackson, 316 F.3d 139, 143 (2d Cir. 2003)). In a malicious prosecution action, "it is necessary to prove want of probable cause, malice and a termination of [the] suit in the plaintiffs' favor." DeLaurentis v. New Haven, 220 Conn. 225, 248, 597 A.2d 807 (1991).

The fact that the Plaintiff was ultimately found not guilty of the charge is not dispositive. "[P]robable cause does not require an officer to be certain that subsequent prosecution of the arrestee will be successful." Krause v. Bennett, 887 F.2d 362, 371 (2d Cir. 1989). Moreover, the failure of an arrest to lead to a conviction does not establish a lack of probable cause for that arrest because "[t]he quantum of evidence required to establish probable cause to arrest need not reach the level of evidence necessary to support a conviction...." United States v. Fisher, 702 F.2d 372, 375 (2d Cir. 1983).

"Probable cause is a flexible, common-sense standard." Texas v. Brown, 460 U.S. 730, 742 (1983). "Probable cause requires only a probability or substantial chance of criminal activity, not an actual showing of such activity." United States v. Bakhtiari, 913 F.2d 1053, 1062 (2d Cir. 1990). "The principal components of a determination of . . . probable cause will be the events which occurred leading up to the stop or search, and then the decision whether these historical facts, viewed from the standpoint of an objectively reasonable police officer, amount to... probable cause." Ornelas v. United States, 517 U.S. 690, 696 (1996).

Probable cause exists when the facts and circumstances within the knowledge of the officer and of which he has reasonable trustworthy information are sufficient in themselves to warrant a man of reasonable caution to believe that a [crime] has been committed.

Massimino was arrested for violating Conn. Gen. Stat. §53a-167a, Interfering with An Officer, which provides as follows:

Sec. 53a-167a. Interfering with an officer: Class A misdemeanor or class D felony.

(a) A person is guilty of interfering with an officer when such person obstructs, resists, hinders or endangers any peace officer, special policeman appointed under Section 29-18b or firefighter in the performance of such peace officer's, special policeman's or firefighter's duties. (Emphasis added)

Here, the officers had probable cause to arrest Massimino for violation of Conn. Gen. Stat. §53a-167a. Massimino obstructed, resisted, hindered and endangered the defendant officers in the performance of their duties. The Defendant officers possessed reasonable suspicion as noted in Section IV A & B of this Memorandum of Law to approach Massimino to inquire about his actions. Since the Defendants had authority to perform a Terry stop, they had the authority to request identification from Massimino and his continued refusal to

produce identification, including his credentials as a purported journalist, and his consistent engagement in the hindering, obstruction and resistance of the defendant peace officers in the performance of their investigative duties. State v. Aloj, 280 Conn. 824 911 A.2d 1086, 2007 Conn. LEXIS 2 (2007)

In State v. Aloj, supra, the Court noted the difference between police asking for identification just to ask for identification rather than asking for identification when acting within the scope of their investigatory duties. At 820. “[A] suspect’s refusal to comply with a lawful police command to provide identification following a Terry stop is likely to impeded a delay in the process of the police investigation, even when the refusal is peaceable.”. . . This refusal to comply with a police command to provide identification in the course of a Terry stop may constitute a violation of Conn. Gen. Stat. §53a-167a even if that refusal is unaccompanied by any physical force or affirmative act.” In the present case the defendant officers did not ask for identification just to ask for it, they had grounds upon which to approach Massimino and investigate their concerns.

Once the valid Terry stop occurred, Massimino was duty bound to produce identification in response to the request of the officers. His continued refusal not only heightened the Defendants degree of suspicion, but created a basis upon which probable cause existed to arrest Massimino for his obstruction, hindering and resisting of the defendant officers in the performance of their investigatory duties. Since probable cause existed for his arrest, his Fourth Amendment claims fail and the Defendants’ Motion for Summary Judgment should be granted.

E. Even if the Plaintiff had met his Burden to Demonstrate an Issue Concerning the Absence of Probable Cause, his Success in his Malicious Prosecution Claim also Requires Proof of Malice

To satisfy element (2) of Connecticut's malicious prosecution claim, the plaintiff must prove that "the action was brought with malice." *Id.* An act of malice asserts, "that the defendant must have commenced the criminal proceeding due to a wrong or improper motive, something other than a desire to see the ends of justice served."

Under Connecticut law, malice is demonstrated when "a prosecution was undertaken for 'improper or wrongful motives, or in reckless disregard of the rights of the plaintiff,' including initiating proceeding without probable cause." *Turner v. Boye*, 116 F. Supp. 3d 58, 85 (2015 (quoting *Pinsky v Duncan*, 79 F.3d 306, 313 (2d Cir. 1996))

Malice and probable cause usually compete with each other, however, "lack of probable cause does not definitively establish that a defendant acted with malice." *Manganiello v. City of N.Y.*, 612 F.3d 149, 163 (2d Cir. 2010). The presence of malice can only reasonably be inferred, "where probable cause to initiate a proceeding is so totally lacking." *Sulkowska v. City of New York*, 129 F. Supp. 2d 274, 295 (S.D.N.Y. 2001 (internal quotations omitted). Otherwise, both elements must be analyzed independently in a malicious prosecution action. *Id.*

The court in *Sulkowska* articulates a dramatic threshold to illustrate the relationship between probable cause and malice. This viewpoint is significant because it requires the plaintiff to provide evidence establishing malice independently, and not simply infer it based on the lack of probable cause.

The Plaintiff cannot produce any admissible evidence to meet his burden that the defendant officers or either of them acted with malice.

F. The Defendants are Entitled to Qualified Immunity

1. **Even if the Court were to conclude that the Defendants are not entitled to summary judgment based upon the arguments previously set forth, the Defendants are entitled to invoke the defense of Qualified Immunity**

Under the undisputed facts neither Officer Benoit nor Laone violated Massimino's constitutional rights. Massimino is unable to establish that any violation of his First or Fourth Amendment rights occurred.

Qualified immunity first requires resolution of a "threshold question: Taken in the light most favorable to the party asserting the injury, do the facts alleged show the officer's conduct violated a constitutional right?" Saucier v. Katz, 533 U.S. 194, 201, 121 S.Ct. 2151, 150 L. Ed. 2d 272, 377-378 188 L. 2d 1056 (2014); Plumhoff v. Rickard, 872 U.S. 765 134 S.Ct. 2012 188 L. Ed. 2d (2014); Scott v. Harris, 550 U.S. 372 127 S. Ct. 1769 167 L. Ed. 2d. 686 (2007). In resolving questions of qualified immunity, courts are required to initially resolve that threshold question. If, and only if, the court finds a violation of a constitutional right, "the next sequential step is to ask whether the right was clearly established in light of the specific context of the case." *Ibid*.

Massimino's claims of both an unreasonable search and seizure in violation of his Fourth Amendment rights as well as a violation of his First Amendment rights require analyzing the totality of the circumstances from the perspective "of a reasonable officer on the scene." Graham v. Connor, 490 U.S. 386, 396, 109 S.Ct. 1865, 104 L. Ed. 2d 443.

In Saucier v. Katz, 533 U. S. 194, 200, 121 S.Ct. 2151, 150 L. Ed. 2d 272 (2001), the Supreme Court held that “the first inquiry must be whether a constitutional right would have been violated on the facts alleged.” Only after deciding that question may Appellate Court turn to the question whether the right at issue was clearly established at the relevant time. *Ibid.*

In Graham v. Connor, 490 U. S. 386, 109 S. Ct. 1865, 104 L. Ed. 2d 443 (1989); the Supreme Court determined the objective reasonableness of a particular seizure under the Fourth Amendment “requires a careful balancing of the nature and quality of the intrusion on the individual’s Fourth Amendment interests against the countervailing governmental interests at stake.” 490 U. S., at 396, 109 S. Ct. 1865, 104 L. Ed. 2d 443 (internal quotation marks omitted). The inquiry requires analyzing the totality of the circumstances. See *ibid.* See also Tennessee v. Garner, 471 U. S. 1, 105 S. Ct. 1694, 85 L. Ed. 2d 1 (1985)

The Court must analyze this question from the perspective “of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.” *Ibid.* Consideration of this issue must allow for the fact that police officers are often forced to make split second judgments in circumstances that are tense, uncertain, and rapidly evolving about what is necessary in a particular situation. *Id.*, at 396-397, 109 S.Ct. 1865, 104 L. Ed. 2d 443.

The actions of the Defendant officers were objectively reasonable and, therefore, neither the Plaintiff’s First nor Fourth Amendment rights were violated.

2. **Assuming arguendo that Massimino's First and/or Fourth Amendment rights were violated Benoit and Laone nonetheless are entitled to Qualified Immunity**

Even where an officer is found to have violated a person's constitutional rights, however, the doctrine of qualified immunity will shield that officer from liability for damages if his "conduct d[id] not violate clearly established statutory or constitutional rights of which a reasonable person would have known." Mullenix v. Luna, 136 S. Ct. 305, 308, 193 L. Ed. 2d 255 (2015)(internal quotation marks omitted); see, e.g., Anderson v. Creighton, 483 U.S. 635, 639, 107 S.Ct. 3034, 97 L. Ed. 2d 523 (1987).

Qualified immunity protects officials from liability for civil damages as long as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known. Taravella v. Town of Wolcott, 599 F.3d 129, 133 (2d Cir. 2010). When a defendant invokes qualified immunity, courts consider whether the plaintiff has shown, "(1) that the defendant violated a statutory or constitutional right, and (2) that the right was 'clearly established' at the time of the challenged conduct. Wood v. Moss, 572 U.S. 744, 757, 134 S.Ct. 2056, 188 L. Ed 2d 1039 (20140) (quoting Ashcroft v. al-Kidd, 563 U.S. 731, 735 131 S.Ct. 2074, 179 L. Ed. 2d 1149 (2011)). "A right is clearly established only if its contours are sufficiently clear that 'a reasonable official would understand that what he is doing violates that right.'" Carroll v. Carman, 574 U.S. 13, 135 S.Ct. 348, 350 190 L. Ed. 2d 311 (quoting Anderson v. Creighton, 483 U.S. 635, 640 107 S.Ct. 3034, 97 L. Ed. 2d 523 (1987)).

To determine whether the relevant law was clearly established, consideration must be given to whether a right is defined with specificity, the existence of Supreme Court or Court of

Appeals case law on the subject, and the understanding of a reasonable officer in light of preexisting law.” Terebesi, 764 F. 3d at 222. An officer is entitled to qualified immunity if “any reasonable officer, out of the wide range of reasonable people who enforce the laws in this country, could have determined that the challenged action was lawful.” Figueroa v. Mazza, 825 F. 3d 89, 100 (2d Cir. 2016). The inquiry on qualified immunity is not whether the officer should have acted as he did, nor is it whether a singular, hypothetical entity exemplifying the “reasonable officer” have acted in the same way.

The United States Supreme Court has repeatedly held that a police officer is entitled to qualified immunity if “a reasonable officer could have believed [his actions] lawful, in light of clearly established law and the information the . . . officer [] possessed.” Anderson v. Creighton, 483 U.S. 635 (1987); White v. Pauly, 137 S.Ct. 548, 551 (2017) (per curiam); Kisela v. Hughes, 138 S.Ct. 1148, 1152 (2018).

In order for the law to be clearly established, “[t]he contours of [a] right must be sufficiently clear that a reasonable [officer] would understand that what he is doing violates that right.” Anderson, 483 U.S. at 640. In other words, “existing precedent must have placed the constitutional question beyond debate.” Ashcroft v. al-Kidd, 563 U.S. 731, 741 (2011.)

Moreover, clearly established law must be determined “in light of the specific context of the case, not as broad general proposition.” Brosseau v. Haugen, 542 U.S. 194, 198 (2004). Indeed, the Supreme Court has repeatedly admonished the Appellate Courts for defining the clearly established law at too high a level of generality. See, Kisela, 138 S.Ct., at 1152; City and County of San Francisco v. Sheehan, 135 S.Ct. 1765, 1775-76 (2015);

al-Kidd, 563 U.S. at 742. Qualified immunity “protects ‘all but the plainly incompetent or those who knowingly violate the law.’” *Id.* at 743.

In District of Columbia v. Wesby, 138 S.Ct. 577 (2018), the Court again emphasized, “[w] have not yet decided what precedents - other than our own - qualify as controlling authority for purposes of qualified immunity.” 138 S.Ct. at 591 n.8. The Court held that the officer in the case before it was entitled to qualified immunity for wrongful arrest because the lower court had relied on a single decision from that court, which the Supreme Court found largely inapposite. The Court emphasized that “a body of relevant case law’ is usually necessary to” clearly establish the law for purposes of qualified immunity. *Id.* at 590.

More recently, in City of Escondido v. Emmons, 139 S.Ct. 500, 503 (2019) the Court once again noted that it had not decided what precedents other than its own could clearly establish the relevant law, but granted qualified immunity based upon the absence of applicable law within the circuit in which the case arose concerning the precise factual situation confronted by the officer.

Existing authority must be highly factually analogous to the situation confronted by the officers in a particular case in order to constitute clearly established law for purposes of defeating qualified immunity. As the Court emphasized in Plumhoff v. Richard, 134 S.Ct. 2012, 2023 (2014), “[T]he crucial question [is] whether the official acted reasonably in the *particular circumstances* that he or she faced.” (Emphasis added.)

The Court highlighted the fact-specific nature of the inquiry, which made it essential that there be some authority directly on point in order to defeat immunity. Kisela v. Hughes, 148 S.Ct. 1148 (2018) (per curiam). The result depends very much on the facts of each

case, and thus police officers are entitled to qualified immunity unless existing precedent 'squarely governs' the specific facts at issue. Id. at 1153.

Although several other circuits have addressed the issue of a First Amendment right to record police activity, only the Fifth Circuit has addressed the issue of videotaping police activity outside a police station. Turner v. Driver, 848 F.3d 678 (5th Cir. 2017) The Ninth², Eleventh³, First⁴, Seventh⁵ Circuits and after the decision in Turner, the Fifth⁶ Circuit hold that the right to record the police is "clearly established." Contrastingly, the Third⁷ and Fourth⁸ Circuits have held that the Right to Record the Police is *NOT* "clearly established." Notably, this leaves the Second and Sixth Circuits "undecided" on the issue of whether a "clearly established" right exists to record the police.

² *Id.* Citing Fordyce v. City of Seattle, 55 F.3d 436 (9th Cir. 1995) ("The Ninth Circuit found that Fordyce had a 'First Amendment' right to film matters of public interest' but did not provide an analysis for this conclusion").

³ *Id.* Citing Smith v. City of Cumming, 212 F.3d 1332, 1333 (11th Cir. 2000) ("The Eleventh Circuit held that '[t]he First Amendment protects the right to gather information about what public officials do on public property, and specifically, a right to record matters of public interest.'").

⁴ *Id.* Citing Glik v. Cunniffe, 655 F.3d 78, 85 (1st Cir. 2011) ("The court boldly chose to address the difficult constitutional issue at hand and framed the issue by asking: 'Is there a constitutionally protected right to videotape police carrying out their duties in public?'. . . In a unanimous decision, the First Circuit ultimately held that a citizen's right to record the police 'is a basic, vital, and well-established liberty safeguarded by the First Amendment' and the officers were not entitled to qualified immunity because this right was clearly established.").

⁵ *Id.* Citing American Civil Liberties Union of Illinois v. Alvarez, 679 F.3d 583 (7th Cir. 2012) ("The Seventh Circuit held that the First Amendment protects the audio recording of the police and concluded that the wiretapping statute, which criminalized the audio recording of police officers, warranted heightened scrutiny because of its burden on First Amendment Rights.").

⁶ *Id.* Citing Turner v. Driver, 848 F.3d 678, 687-88 (5th Cir. 2017) ("The Fifth Circuit pointed out that neither the Supreme Court, nor the Fifth Circuit has found that the First Amendment protects an individual's right to record the police . . . although the right to record the police was not clearly established at the time Turner was detained by the police, going forward, the right is clearly established in the Fifth Circuit.").

⁷ *Id.* Citing Kelly v. Borough of Carlisle, 622 F.3d 248, 262 (3^d Cir. 2010) ("The Third Circuit affirmed the district court's ruling and reasoned that (1) the right to record the police had only been 'hypothesized,' (2) cases that support a 'general right to record' were 'insufficiently analogous' to this case, and (3) the analogous cases Kelly cited were not sufficient to find the right clearly established.").

⁸ *Id.* Citing Szynecki v. Houck, 353 F. App'x 852, 853 (4th Cir. 2009) ("The Fourth Circuit. . . rejected the notion that the right to record the police is clearly established in the circuit. The court did not provide an analysis of facts or law and failed to outline how cases should be brought in the future. In spite of this finding, other district courts within the Fourth Circuit have found that video recordings of police activity, which are done peacefully and without interfering with the performance of police duties, are protected by the First Amendment.").

Absent even one decision by the Second Circuit, at the time of the subject incident on the issue of whether videotaping police activity, and even more specifically a police station, is a clearly defined right, the defendants could not have known that their actions violated a clearly defined right and, therefore, are entitled to Qualified Immunity. At present, since the federal circuit courts are not in agreement that such a constitutional right exists, it cannot be a clearly defined right of which the defendants should have known.

The decision of the Fifth Circuit, although not binding precedent in the Second Circuit, sets forth a useful analysis of qualified immunity in a claimed First Amendment violation.

Turner, the plaintiff in that case, was videotaping the Fort Worth Police Station from a public sidewalk across the street from the station when he was approached by a defendant police officer who repeatedly asked for his identification. When Turner asked if he was being detained, the defendant officer responded that he was being detained for investigation. The defendant officer continued to ask Turner to produce identification which he refused at which point he was “suddenly and without warning” handcuffed and placed in a police cruiser and was told, “this is what happens when you don’t I.D. yourself.” Turner alleged that the officers placed him in a police cruiser and they “left him there to sweat for a while with the windows rolled up.” Turner alleged that no air was getting to the back seat and that he banged on the door so the officers would roll down the windows. Turner was subsequently removed from the police cruiser, the handcuffs were removed, his camera was returned to him, and he was released without being arrested or charged with any offense.

Turner instituted a §1983 claim in which he asserted a violation of his First, Fourth and Fourteenth Amendment rights. The district court granted the Defendants' Motion to Dismiss based upon Qualified Immunity. Turner appealed to the Fifth Circuit Court of Appeals.

On the First Amendment issue, the Court agreed that the District Court ruling that the First Amendment right to video record police activity was not clearly established and concurred with that conclusion. "Where no controlling authority specifically prohibits the defendant's conduct, and when the federal circuit courts are split on the issue, the law cannot be said to be clearly established." "At the time in question, neither the Supreme Court nor this court had determined whether First Amendment protection extends to the recording or filming of police." *Id.* at 686.

In the present case the same is true, there was not at the time of the subject incident a clearly defined constitutional right in the Second Circuit to videotape police activity or more specifically a police station. Therefore, no such clearly established right existed.

Although in Turner, the plaintiff was videotaping the exterior of the Fort Worth Police Department, and police activity in and around the police station, the Fifth Circuit's decision appears to be based upon the broader concept of police activity as opposed to the more narrow issue of a police department building. In that regard, the Court did note that "the filming of government officials engaged in their duties in a public place, including police officers performing their responsibilities fits comfortably within the basic First Amendment principles" "This right however 'is not without limitations.'" "Like all speech, filming the police 'may be subject to reasonable time, place and manner restrictions.'" *Id.* at 690.

In Turner the defendants were not granted Qualified Immunity for the claimed violation of Turner's Fourth Amendment right to be free from an unlawful arrest. Not only did the Court conclude that no probable cause existed to arrest or detain Turner, the defendant officers did not dispute that if Turner was found to have been "arrested" the defendant officers lacked probable cause. No Texas law existed similar to Conn. Gen. Stat. §53a-167a under which Turner could be charged for failing to show identification to investigating officers.

In Turner, the defendants reasoning for detaining the plaintiff was based solely on his failure to show his ID which did not violate any Texas law. In the present case, however, the refusal to provide identification was a violation of Conn. Gen. Stat. §53a-167a for which under controlling Connecticut law, the defendants had probable cause to arrest Massimino for his failure to comply with a lawful order to produce identification for thus obstructing, hindering and resisting the Defendant officers in the performance of their investigating duties. (See State v. Aloj, *supra*)

The Turner Court proceeded to determine whether the plaintiff's Fourth Amendment claim was also subject to the Qualified Immunity defense. The Court noted that Turner's Amended Complaint asserted that he was videotaping "the routine activities at the Fort Worth Police Department building." The Court found that "Turner's filming in front of the police station 'potentially threatened security procedures at a location where order was paramount.'" "An objectively reasonable person in [the defendants'] position could have suspected that Turner was casing the station for an attack, stalking an officer or otherwise preparing criminal activity, and thus could have found Turner's filming of the "routine activities" of the station sufficiently suspicious to warrant questioning and a brief detention. The officers' detention of

Turner under these circumstances was not ‘plainly incompetent’ or a knowing violation of the law.” The Court concluded that the initial questioning or detention of Turner before he was handcuffed was not objectively unreasonable in light of clearly established law.

In the present case, the same would be true with regard to any pre-arrest investigation and discussions and detention of Massimino by the defendants. Qualified Immunity would apply to any pre-arrest conduct of the defendants.

A distinction must be made when an officer simply stops an individual and demands identification without any specific basis for believing the individual maybe involved in some criminal activity. See, Hiibel v. Sixth Judicial District Court of Nev. Humboldt Cty., 542 U.S. 177, 188 124 S.Ct 2451, 159 L. Ed. 2d. 292 (2004); see also State v. Aloji, supra. In the present case, the defendants specifically told Massimino the police station was not a public building, that they had reasonable suspicion and “safety concerns,” including whether his videotaping was to blow up or shoot up the building. Massimino was made aware of the officers’ specific concerns, the purpose of their questioning and their safety concerns. Massimino nonetheless continued to obstruct, resist and hinder the officers’ investigation and potentially endanger officer safety in the performance of their duties.

Although the Turner Court did not have the benefit of a video and the defendants’ version of the encounter with Turner, the Court nonetheless assumed that Turner’s filming in front of the police station “potentially threatened security procedures at a location where order was paramount” and that it was reasonable for the officers to have suspected that Turner was “otherwise preparing for criminal activity . . . and found the filming of the station “sufficiently suspicious to warrant questioning and a brief detention.”

The facts before the Court in this case are greatly enhanced from the facts in Turner. As noted previously, the application of the qualified immunity defense is highly fact specific. The defendants herein contend that their actions in placing Massimino under arrest were “objectively reasonable” and if not “objectively reasonable” there was no clearly defined right of the plaintiff to be free from seizure and arrest under the facts of this case.

The defense of qualified immunity “shields law enforcement officers from §1983 claims for money damages provided that their conduct does not violate clearly established constitutional rights of which a reasonable person would have been aware.” Zalaski, 723 F.3d at 388. The doctrine aims to give officials room to act with confidence in gray areas by absolving from personal liability “all but the plainly incompetent or those who knowingly violate the law.” Mullenix v. Luna, 136 S.Ct. 305, 308 193 L. Ed. 2d 255 (2015) (quoting Malley 475 U.S. at 341).

In addition, police officers are entitled to draw reasonable inferences from the facts they possess at the time of a seizure based upon their own experiences. See Ornelas v. United States, 517 U.S. 690699, 134 L. Ed. 2d. 911, 116 S.Ct. 1657 (1996) (noting that “a police officer views the facts through the lens of his police experience and expertise. The background facts provide a context for the historical facts and when seen together yield inferences that deserve deference”).

When a plaintiff alleges that a law enforcement officer’s official conduct renders him personally liable in damages, the inquiry is not whether the officer should have acted as he did. Nor is it whether a singular, hypothetical entity exemplifying the “reasonable officer” – a creature akin to the “reasonable man” of the law of torts. See Restatement (Second) of Torts

§283 cmt. c, (Am. Law Inst. 1975) – would have acted in the same way. It is instead whether any reasonable officer, out of the wide range of reasonable people who enforce the laws in this country, could have determined that the challenged action was lawful. See Malley, 475 U.S. at 341; compare Walczyk v. Rio, 496 F.3d 157 n. 16 (2d Cir. 2007), with *Id.* at 169-170. (Sotomayor, J., concurring).

Applying this standard to the facts of the present case, the defendants are entitled to Qualified Immunity on Massimino's §1983 First and Fourth Amendment claims as no violation of Massimino's constitutional rights occurred and even if such a constitutional right existed, there was no clearly defined right to videotape a police department or police activity.

V. CONCLUSION

The defendants are entitled to summary judgment on both Massimino's First and Fourth amendment claims and for the foregoing reasons, Defendants Benoit and Laone respectfully request that their Motion for Summary Judgment be granted.

DEFENDANTS, MATTHEW BENOIT AND
FRANK LAONE

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CERTIFICATE OF SERVICE

I hereby certify that on the above date a copy of the foregoing, was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing. Parties may access this filing through the Court's system.

BY: /s/ ct05394
Joseph A. Mengacci

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EXHIBIT 1

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1

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

KEITH MASSIMINO, : NO: 21-cv-01132 (RNC)
Plaintiff :
V. :
MATTHEW BENOIT AND :
FRANK LAONE, :
Defendants :

Remote deposition of KEITH MASSIMINO,
appearing remotely from Hartford, Connecticut,
taken on behalf of the Defendants, through
counsel, pursuant to Fed. R. Civ. P. 30, before
DONNA OLIVER, Court Reporter and Notary Public
duly commissioned and qualified, in and for the
State of Connecticut, appearing remotely from
Waterbury, Connecticut, on April 28, 2022,
commencing at 9:58 a.m.

GERSON REPORTING SERVICE
Office (203) 754-2024
Fax (203) 528-3796

GERSON REPORTING SERVICE (203) 754-2024

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2

1 REMOTE APPEARANCES:

2
3 For the Plaintiff:

4 ACLU Foundation of Connecticut

5 765 Asylum Avenue

6 Hartford, CT 06105

7 BY: DAN BARRETT, ESQ.

8 For the Defendants:

9 Office of Corporation Counsel

10 City of Waterbury

11 235 Grand Street, 3rd Floor

12 Waterbury, CT 06702

13 BY: JOSEPH A. MENGACCI, ESQ.

S T I P U L A T I O N S

IT IS HEREBY STIPULATED AND AGREED by and among counsel for the respective parties that all formalities in connection with the taking of the deposition, including time, place, sufficiency of notice, and the authority of the officer before whom it is being taken are hereby waived.

IT IS FURTHER STIPULATED AND AGREED by and among counsel for the respective parties that all objections, except as to form, are reserved until the time of trial.

IT IS FURTHER STIPULATED AND AGREED by and among counsel for the respective parties that the deposition may be signed before any Notary Public.

IT IS FURTHER STIPULATED AND AGREED by and among counsel for the respective parties that the reporting of the deposition and oath administered are being done remotely.

1 KEITH MASSIMINO,

2 called as a witness, being first duly
3 sworn/affirmed remotely by Attorney Barrett, duly
4 commissioned and qualified, was examined and
5 testified on his oath as follows:

6 MR. MENGACCI: Usual stipulations with
7 the exception that the witness will read and
8 sign the deposition transcript, correct,
9 Attorney Barrett?

10 MR. BARRETT: So long as those encompass
11 all objections being withheld except for
12 form. Remind me of the others, Mr.
13 Mengacci.

14 MR. MENGACCI: Well, we're obeying to the
15 authority of the court reporter, the
16 competency of the court reporter, any
17 deficiencies of notice. I believe that
18 those are what the usual stipulations are.

19 MR. BARRETT: Those sound good to me.

20 MR. MENGACCI: Okay, great.

21 DIRECT EXAMINATION

22 BY MR. MENGACCI:

23 Q. Mr. Massimino, I'm going to ask you some
24 questions today. If there's any question that I
25 ask you that is confusing in any way or you don't

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1 which is Birds Eye Sports. I had a brief
2 employment with ESPN in 2015, I believe it was.

3 Q. For how long?

4 A. I think eight months. Six or eight
5 months. It was less than a year.

6 Q. And what position did you have during
7 that time at ESPN?

8 A. I was a camera operator in the studio.

9 Q. You said that from 2012 to the present
10 time you also worked as a freelance photographer,
11 but did you say mainly for Birds Eye Sports?

12 A. Correct. Most of my work is through
13 Birds Eye Sports. I'd say probably 80 percent of
14 my work is through Birds Eye and another 20 is
15 through other various companies.

16 Q. Are you considered an independent
17 contractor with regard to your work for Birds Eye?

18 A. Yes.

19 Q. And my understanding of your testimony
20 is that you have continuously been a freelance
21 photographer since 2012 through the present time,
22 correct?

23 A. Correct.

24 Q. And that was the same occupation and
25 form of employment that you held at the time of

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1 this incident in October of 2018; is that correct?

2 A. Correct.

3 Q. As a freelance photographer, do you do
4 both still as well as video recordings?

5 A. Mainly only video.

6 Q. And do you have a place of business or
7 do you work from your home?

8 A. I work from my home.

9 Q. And do you have some sort of setup at
10 your home that allows you to edit and do other
11 types of procedures with regard to videotaping
12 that you may do?

13 A. Yes. I have an editing suite in my
14 office.

15 Q. Does that suite contain equipment that
16 allows you to edit and ultimately produce a
17 finished product?

18 A. Yes. I edit on a Final Cut Pro 7, as
19 well as iSkysoft.

20 Q. As a professional photographer -- and am
21 I saying that correctly? Is that how we --

22 A. Videographer.

23 Q. Videographer, okay. As a professional
24 videographer and as a self-employed individual
25 doing that type of work, do you possess any type

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1 of press or media credentials?

2 A. I'm not really sure how to answer the
3 question because when I -- for some productions
4 there is no credentials needed and we don't have
5 any and aren't given, and some we are given.

6 Q. Okay. Give me examples of when you
7 would be in possession of press credentials in
8 performing your job.

9 A. Sure. So every year I do the New Jersey
10 state football championships out of MetLife
11 Stadium.

12 Q. I'm sorry, New Jersey state football
13 championships where?

14 A. MetLife Stadium. And for those, for
15 instance, we are given credentials from MetLife.
16 Instances where I do not receive credentials would
17 be local corporate events, local high school
18 events, any gigs I am picking up with Stringer to
19 cover local accidents, police activity, things of
20 that nature.

21 Q. I'm sorry, could you repeat that last
22 answer?

23 A. Stringer is another form -- it's an App
24 where local news stations ask for whether it be
25 car accidents, robberies, anything involving

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1 road and I was to see a motor vehicle accident and
2 I thought maybe they would purchase it, I could
3 pull over, film that, upload it and then, again,
4 if they decide to purchase it, I would get paid.

5 Q. Okay. So Stringer App, that's serves as
6 a clearing house between individuals looking for
7 certain video information and individuals who have
8 certain video information?

9 A. Correct.

10 Q. Did you upload to the Stringer App the
11 footage from this particular incident?

12 A. No.

13 Q. Did you upload or make available through
14 any social media platforms the footage from the
15 incident in October of 2018 with the Waterbury
16 police officers?

17 A. Yes. My YouTube page.

18 Q. And does your YouTube page have a name?

19 A. Northeast Auditor.

20 Q. Other than your YouTube page, do you
21 have any blogs?

22 A. No.

23 Q. Do you post anything on Facebook
24 concerning any auditing?

25 A. I don't believe I have, no.

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1 information and speech?

2 A. About the time I started Stringer, I was
3 noticing that on certain calls where I would go
4 film, I would be stopped by law enforcement or
5 told I could not film or just hindered in filming,
6 which led me to do research and look into, you
7 know, what parameters you have to film.

8 Q. Okay. And that peaked your interest in
9 issues relating to free speech and freedom of
10 information?

11 A. Correct.

12 Q. And when did you first begin doing any
13 type of First Amendment audits?

14 A. I want to say it was -- it wasn't too
15 far before the incident in Waterbury, so I want to
16 say within that year.

17 Q. So earlier in 2018?

18 A. Yes.

19 Q. And after this incident in October of
20 2018, had you undertaken to perform any other
21 First Amendment audits?

22 A. I have not.

23 Q. Why is that?

24 A. At the time I had the criminal case
25 pending in Waterbury, and I wanted to get that

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1 30, 2018, Mr. Massimino was driving through
2 Waterbury on his way home from a job." Is that
3 accurate?

4 A. Yes.

5 Q. And do you remember from where it was
6 you were coming from that job?

7 A. I was actually coming from MetLife
8 Stadium in New Jersey.

9 Q. And what route were you on as you were
10 passing through Waterbury?

11 A. 84.

12 Q. And it goes on to say that you became
13 stuck in traffic on Interstate 84. Was there some
14 sort of accident or was it just a backup of the
15 number of cars in that area of the highway?

16 A. I'm not sure. It was just heavy
17 traffic.

18 Q. It was just what?

19 A. Heavy traffic.

20 Q. And according to the complaint, you then
21 decided to film the exterior of the Waterbury
22 Police Department located at 255 East Main Street.
23 Is that correct?

24 A. Correct.

25 Q. Could you bring me through your thought

1 process, Mr. Massimino, as to how you went from
2 coming -- well, withdrawn.

3 Was it your intent, had you not got
4 stuck in traffic, to continue on Route 84 through
5 Waterbury and eventually on to your home?

6 A. I'm not understanding the question.

7 Q. According to the way I'm reading the
8 complaint -- tell me if I'm wrong -- you point out
9 the fact that you got stuck in traffic and somehow
10 that motivated you to go ahead and film the
11 Waterbury Police Department, right? That's what
12 this says?

13 A. Yes. So I was in traffic, and I was
14 just waiting in traffic, and I said instead of
15 sitting here in traffic for, let's say, the next
16 half hour, I have my gear with me, I'll go get
17 some footage.

18 Q. Okay. So before you got stuck in
19 traffic, did you have any plan or intention to
20 stop in Waterbury and film the Waterbury Police
21 Department?

22 A. Not on that day, no.

23 Q. Okay. Had you had any thoughts prior to
24 that day about going to Waterbury and filming the
25 Waterbury Police Department?

JA-366

1 A. Yes.

2 Q. And what caused you to have those kinds
3 of thoughts or motivation?

4 A. Just in thinking of doing audits, I was
5 thinking about local government agencies that were
6 close to me.

7 Q. All right. You live in Wallingford,
8 right?

9 A. Correct.

10 Q. You could have photographed the
11 Wallingford Police Department, correct?

12 A. Correct.

13 Q. The Meriden Police Department, correct?

14 A. Correct.

15 Q. The New Britain Police Department,
16 correct?

17 A. Correct.

18 Q. All closer than Waterbury, correct?

19 A. I don't know if New Britain -- I think
20 Waterbury is actually closer than New Britain.

21 Q. But you would agree that Wallingford,
22 Cheshire, perhaps, is closer?

23 A. Correct.

24 Q. What other police departments would be
25 closer to your home in Wallingford other than the

JA-367

1 buildings, correct?

2 A. Correct.

3 Q. And so you decided that at some point
4 you were going to undertake to do such a First
5 Amendment audit somewhere?

6 A. Correct.

7 Q. So back to coming from MetLife Stadium
8 through Waterbury. When you left MetLife Stadium
9 and any time before you got stuck in traffic in
10 Waterbury, had you contemplated stopping in
11 Waterbury to do this First Amendment audit?

12 A. I don't recall.

13 Q. And you do recall you specifically state
14 in your complaint that once you were involved in
15 this traffic delay on 84, you did at that point
16 make the decision to get off the highway and go to
17 the Waterbury Police Department, correct?

18 A. Correct.

19 Q. And was your sole purpose in going to
20 the Waterbury Police Department that day to
21 videotape the exterior of the police department in
22 Waterbury?

23 A. Yes.

24 Q. Was there any other purpose that you had
25 in mind?

JA-368

1 A. No.

2 Q. Did you in any way anticipate that you
3 would be approached in any way by one or more
4 Waterbury police officers as you were videotaping
5 the police department?

6 A. I didn't anticipate it, but I was
7 assuming it could be a possibility considering I
8 was outside of a police station and that's where
9 police work.

10 Q. Let me ask you this: You mentioned
11 previously that one of the situations in which you
12 would have press or media credentials was when you
13 worked at MetLife stadium, correct?

14 A. Correct.

15 Q. Were you in possession of those
16 credentials when you were driving through
17 Waterbury?

18 A. I believe so.

19 Q. Were you in possession of your driver's
20 license when you were driving through Waterbury?

21 A. Yes.

22 Q. And when you were videotaping the
23 Waterbury Police Department, did you have on your
24 physical person at that time your driver's
25 license?

JA-369

1 A. I did not.

2 Q. And did you have on your physical person
3 at that time your credentials, your press
4 credentials from MetLife?

5 A. I did not.

6 Q. And where was your driver's license?

7 A. In my wallet.

8 Q. And where was your wallet?

9 A. In my car.

10 Q. And do you customarily leave your wallet
11 in your car or do you customarily have it in your
12 pants pocket, for example?

13 A. I customarily leave it in my vehicle.

14 Q. Okay. So when you were passing through
15 Waterbury and encountered the traffic, your wallet
16 was already somewhere in your vehicle other than
17 on your person?

18 A. Correct.

19 Q. And, therefore, your identification was
20 somewhere other than on your person?

21 A. Correct.

22 Q. So when you appeared at the Waterbury
23 Police Department, you did not have any form of
24 identification on your person; is that correct?

25 A. The only thing I had with my name was my

JA-370

1 pay stub in my pocket.

2 Q. And that would have been a pay stub from
3 where?

4 A. It was actually a check written out by
5 Birds Eye Sports to me.

6 Q. And was it a check or the stub? In
7 other words, did you have an actual check?

8 A. It was the actual check.

9 Q. Was it made out in your name?

10 A. Yes.

11 Q. Did it have any other form of
12 identification on it other than your name; for
13 example, Social Security number, employee number,
14 invoice number, anything like that?

15 A. No.

16 Q. So you're coming through Waterbury, and
17 you get stuck in traffic, and you decide to go
18 film the Waterbury Police Department, correct?

19 A. Correct.

20 Q. And the video camera that you had with
21 you, is that the same video camera that you had
22 used for your work at the MetLife Stadium?

23 A. No.

24 Q. Separate camera?

25 A. Yes.

JA-371

1 me.

2 Q. Okay. Now, I recall from the video, but
3 help me out here. It looked like you were moving
4 as you were filming the police station from
5 various angles; is that correct?

6 A. Correct.

7 Q. Was there any point in time that you
8 placed the video camera on a tripod to film some
9 or all of the police station?

10 A. It was mounted on the tripod the whole
11 time, I would just fold the legs and walk with it,
12 and then there was some times where I would spread
13 the legs and set it down.

14 Q. Okay.

15 A. In the video there's a shot where I zoom
16 in on Sergeant Benoit. At that point the legs are
17 spread and it's stable on, like, I think it was a
18 barrier at some point.

19 Q. So as we look at the video, we see you
20 moving from one point to another point. That
21 means that you collapsed the tripod legs and
22 you're basically moving along with just the
23 camera?

24 A. Yes. So I would fold the legs in, hold
25 the legs with the left hand and hold the camera

JA-372

1 Q. Okay. So let me ask you this: When you
2 first started to videotape the police department
3 building, is the first place you started
4 videotaping what you believe to be the main
5 entrance?

6 A. I haven't reviewed the video in some
7 time, especially the beginning. But, yes, that
8 would make sense, because I walked up right in
9 front of the front of the building. So, yes, I
10 believe that's the first area I filmed.

11 Q. And before the date of this incident,
12 Mr. Massimino, had you ever been to the Waterbury
13 Police Department or in that particular area of
14 Waterbury?

15 A. I had driven by it, yes.

16 Q. And when you say "driven by it," driven
17 along East Main Street past the front of the
18 building?

19 A. Yes.

20 Q. And that would be on other occasions
21 that you may have been in Waterbury for business
22 or non-business reasons?

23 A. Correct.

24 Q. Before this incident had you had any
25 involvement in any way with the Waterbury Police

JA-373

1 Department or any Waterbury police officer?

2 A. Never.

3 Q. Prior to the date of this incident, had
4 you had any issues or involvement with any
5 department or employee of the City of Waterbury?

6 A. Never.

7 Q. Okay. Mr. Massimino, I'd like you to
8 describe for me in your own words the incident of
9 October 30, 2018. In other words, what did you do
10 once you got out of your vehicle, through and
11 including the time that you were placed in a
12 police vehicle under arrest.

13 A. I walked out from my vehicle; I
14 approached the PD while filming; I filmed the
15 front from the sidewalk; I filmed the side of the
16 building from the sidewalk; I filmed, like I said,
17 Sergeant Benoit driving his cruiser, and then I
18 was approached by the two sergeants, we had a
19 discussion, and then I was placed in the vehicle.

20 Q. And do you recall from the video or --
21 well, withdrawn.

22 Do you recall saying to the officers
23 that you were a journalist?

24 A. Yes.

25 Q. And as an videographer and

JA-374

1 photojournalist, do you consider yourself to be a
2 journalist?

3 A. Yes.

4 Q. After you were placed under arrest, you
5 were brought into the police department and you
6 went through a bookings or processing process,
7 correct?

8 A. Yes.

9 Q. And am I correct that both at the time
10 that the officers asked you for identification
11 through and including the time that you went
12 through the bookings process, you continued to
13 refuse to give any form of identification?

14 A. No.

15 Q. When did you give identification?

16 A. When I was in the vehicle.

17 Q. When you were in the police vehicle?

18 A. Correct.

19 Q. Okay. And you were in the police
20 vehicle with an officer other than the defendants
21 in this case, Benoit and Laone, correct?

22 A. Correct.

23 Q. And how did it come about that you gave
24 identification to that individual?

25 A. When I was still on the sidewalk and

JA-375

1 anything that would have come up in the NCIC check
2 or any issues concerning outstanding warrants or
3 anything like that?

4 A. No.

5 Q. What was it that you recall telling the
6 officers as to what it was you were doing as you
7 were videotaping?

8 A. I believe I told them that I was a
9 journalist getting content for a story.

10 Q. And can you tell me what story you were
11 contemplating on doing with that videotape?

12 A. The story of the First Amendment audit
13 of the Waterbury police station.

14 Q. And when had you decided that you were
15 going to do a story of the First Amendment audit
16 of the Waterbury Police Department that day?

17 A. When I got off the highway from the
18 traffic.

19 Q. And by the way, when you got off the
20 highway from the traffic, was the reason you got
21 off the highway to try to find an alternative
22 route around the traffic or was it specifically at
23 that point to go to the Waterbury Police
24 Department?

25 A. I'm not sure if it was the chicken or

JA-376

1 while you were on the Mixmaster, or beyond the
2 Mixmaster?

3 A. I honestly don't recall.

4 Q. Do you remember once you got off the
5 highway, where your route took you?

6 A. I parked behind the mall, so I would
7 assume I got off after the Mixmaster. But again,
8 I'm speculating. I'm not a hundred percent.

9 Q. Okay. And when you say you parked
10 behind the mall, is that where you parked before
11 you walked down to Waterbury Police Department?

12 A. Correct.

13 Q. And about how far away would you say
14 your car was parked from the Waterbury Police
15 Department?

16 A. It wasn't directly behind the mall, it
17 was like that giant plaza where the mall is, so I
18 want to say it was on the further end closest to
19 the PD, so I want to say maybe a half a mile.

20 Q. Is the portion of the mall parking lot
21 where McDonald's is located?

22 A. I believe so.

23 Q. Okay. So somewhere in that area you
24 parked your car, and then you get your video
25 camera and your tripod, and then you start walking

JA-377

1 over to East Main Street and then eventually down
2 East Main Street toward the Waterbury Police
3 Department; is that correct?

4 A. Correct.

5 Q. And there's a point in your video where
6 you, in fact, are filming before you even get to
7 the police department, correct?

8 A. Correct. As I'm walking up.

9 Q. As you're walking. And you're
10 announcing that it's your intent to videotape the
11 Waterbury Police Department, correct?

12 A. Correct.

13 Q. The story that you intended to do on
14 First Amendment audit, had you obtained or
15 prepared any preliminary materials for that story
16 before you actually did the videotape?

17 A. No.

18 Q. So tell me what your plan would have
19 been with regard to this story had you not been
20 arrested.

21 A. I would have filmed, captured the
22 footage that I captured, and then left, and then
23 at some point if I had time, I would have injusted
24 (phonetic) it into my computer and then uploaded
25 it to YouTube.

JA-378

1 Q. And so what would the story have been
2 about if you weren't arrested?

3 A. A First Amendment audit.

4 Q. So simply you would be posting a story
5 that said "Here's a video that I took of the
6 Waterbury Police Department as part of a First
7 Amendment audit," and that's it?

8 A. Correct.

9 Q. Why would that be of any newsworthiness?

10 A. Well, because it's showing that the
11 First Amendment audit was a successful one.

12 Q. And what do you mean by that, it was
13 successful?

14 A. That the government agencies adhered to
15 the Constitution and did not impede any filming.

16 Q. So that would have been the complete
17 story?

18 A. Correct.

19 Q. So the story is that you, as a photo
20 journalist, go to the Waterbury Police Department,
21 you videotape areas of the building, all sides of
22 the building, correct?

23 A. Just two sides.

24 Q. Two sides. Okay. -- two sides of the
25 building, and you were you intending to videotape

JA-379

1 with, are they in the videophotography area or are
2 they in areas of writing of stories or reporting
3 on the news?

4 A. Videophotography. That's who I work
5 with.

6 Q. All right. So would you agree with me
7 that a videographer is not, in fact, a journalist?

8 A. No.

9 Q. You wouldn't agree with that? So in
10 your opinion, someone who is a professional
11 videographer is a journalist?

12 A. Yes.

13 Q. And you consider yourself both a
14 professional videographer and a photojournalist?

15 A. Yes.

16 Q. But when you spoke to the police
17 officers, you didn't make that distinction, did
18 you?

19 A. I don't understand the question.

20 Q. You just said "I'm a journalist"?

21 A. Yes.

22 Q. You never said "I'm a videographer and
23 photojournalist," correct?

24 A. No, I never said -- I mean, it's one in
25 the same. I wouldn't -- that's like saying I'm a

1 carpenter but I'm also a builder.

2 Q. I understand your position on that. I'm
3 just trying to get the record clear that when you
4 identified yourself to the police officers in
5 terms of what you were doing, you told them that
6 you were a journalist doing a story, correct?

7 A. Yes. But I did follow up, if you're
8 going in that capacity, I did follow-up with "I'm
9 filming," so I did clarify I'm filming video. I
10 did say that later on.

11 Q. Right. But you never used the term
12 "photojournalist," did you?

13 A. Well, no. I wouldn't consider myself a
14 photo journalist, I'm an videographer.

15 Q. And did you tell them you were a
16 professional videographer?

17 A. No.

18 Q. You simply said you were a journalist
19 getting material for a story?

20 A. Correct.

21 Q. And the story, as you said before, which
22 you didn't tell the police officers, is that it
23 was about First Amendment audit, correct?

24 A. Correct.

25 MR. MENGACCI: Just a couple more

JA-381

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JA-382**C E R T I F I C A T E**

I hereby certify that I am a Licensed Shorthand Reporter and Notary Public, in and for the State of Connecticut, duly commissioned and qualified to administer oaths.

I further certify that KEITH MASSIMINO was by me duly sworn/affirmed remotely, and thereupon testified as appears in the foregoing deposition; that said deposition was taken by me stenographically and reduced to writing under my direction by computer-aided transcription; that the foregoing is a true and accurate record of the testimony given on April 28, 2022, to the best of my ability.

I further certify that I am neither of counsel nor attorney to any of the parties to said suit, nor of any counsel in said suit, nor am I financially interested in the outcome of said cause.

Witness my hand and notarial seal this _____ day of _____, 2022.

Donna Oliver
Notary Public/Court Reporter

My Commission expires: April 30, 2023

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EXHIBIT A

Complaint Exhibit 1, Doc. #3

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EXHIBIT 2

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UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

KEITH MASSIMINO
Plaintiff

:
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:
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:
:
:

NO: 3:21-cv-01132 (RNC)

VS.

MATTHEW BENOIT AND
FRANK LAONE
Defendants

JUNE 17, 2022

AFFIDAVIT OF MATTHEW BENOIT

I, **Matthew Benoit**, being duly sworn, hereby depose and state as follows:

1. I am over the age of eighteen (18) years and believe in and understand the obligations of an oath.

2. I am currently employed by the City of Waterbury Police Department and have been for fourteen (14) years. I became a Sergeant on June 12, 2018.

3. On October 30, 2018 I was working as a Patrol Supervisor on the 3:30 p.m. to 11:30 p.m. shift.

4. On October 30, 2018, at approximately 6:00 p.m. as I was exiting the bathroom of the police department lower level and exit to the garage, I observed an individual, later identified as Keith Massimino, videotaping gas pumps located in the garage area under the Waterbury Police Department building as well as exterior surveillance cameras, the exterior of the Youth Division and marked and unmarked police vehicles located in the garage including undercover vehicles.

JA-386

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5. I observed him for several minutes and continued my surveillance of Massimino's conduct by getting into my marked police vehicle and driving around the Waterbury Police Department a couple of times.

6. I continued to observe him as he videotaped the department's gas pumps, youth division, surveillance cameras, our daily operations, and various entry and exit points of the police department building.

7. I clearly observed him as he had his camcorder viewing apparatus directed toward the surveillance cameras.

8. My impression was that he was casing the police department for the purpose of engaging in some criminal activity and it was clear to me that he was videotaping areas of potential danger to persons and property.

9. At that time, I was aware of numerous attacks in recent years of officers and police stations, including the targeting and assassinations of police officers across the country including a Texas officer who was assassinated in 2015 while pumping gas.

10. The manner in which he was videotaping was suspicious and alarming and I was concerned that he was casing the police department for some potential criminal act ranging anywhere from criminal mischief up to assault or homicide.

11. Mr. Massimino was wearing a jacket and I was unable to determine whether he may be in possession of a concealed weapon.

12. As I continued to observe Massimino, I told Sergeant Frank Laone, who was on duty as the desk sergeant at that time, to view the surveillance cameras to observe Mr. Massimino's actions as well.

13. Sergeant Laone thereafter came outside to further investigate and Sergeant Laone and I approached Mr. Massimino who continued recording with his camcorder.

14. We asked Mr. Massimino what he was doing to which he replied that he was a journalist and was filming content for a story.

15. Mr. Massimino was asked several times for credentials to prove he was a photographer or member of the media. He was also asked to provide photo identification several times, but continuously refused.

16. Mr. Massimino stated several times that “he knows his rights and did not need to show identification,” but Sergeant Laone said to him that we have “reasonable suspicion” to detain him and for him to provide identification based upon his suspicious activities including his videotaping of sensitive areas of the building and our safety concerns, but he again refused to produce media credentials or any form of identification.

17. In my fourteen years of police experience, I have not seen anyone clearly recording the daily operations of the police department as Mr. Massimino was doing.

18. In my experience, all media personnel with whom the police department interacts, on and around police property, always provide media credentials.

19. Our level of suspicion was raised when Mr. Massimino, who identified himself as a journalist, refused to provide any credentials and/or identification to substantiate his claim as a journalist or member of the media.

20. Prior to my encounter with Mr. Massimino, I had no prior contact with him and did not know who he was and I had no way to verify his claim that he was a journalist getting content for a story without some form of identification.

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21. Had Mr. Massimino identified himself, we would have continued our investigation by checking about him through NCIC, COLLECT in-house for warrants, protective orders, past arrests, background checks and other past history which would have been very helpful in alleviating the situation and documenting what he was doing.

22. After Mr. Massimino was arrested and identified, the background investigation noted in ¶21 was performed and no information was found to suggest that Mr. Massimino was a threat and in fact confirmed that he was a professional videographer.

23. Had Mr. Massimino produced identification as requested, the background check would have been undertaken and Mr. Massimino would not have been arrested.

24. Because our level of suspicion was thus heightened by Mr. Massimino's refusal to produce identification or otherwise identify himself, we placed him under arrest for interfering and hindering our investigation in violation of Conn. Gen. Stat. §53a-167a.

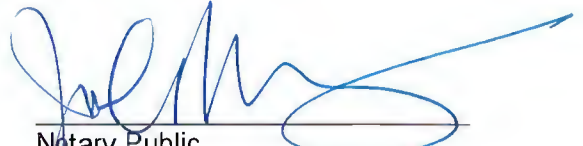
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Matthew Benoit

STATE OF CONNECTICUT)
) ss: Waterbury
COUNTY OF NEW HAVEN)

Subscribed and sworn to before me this 15th day of June, 2022.


Notary Public
Commissioner of the Superior Court

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EXHIBIT 3

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**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

KEITH MASSIMINO
Plaintiff

VS.

MATTHEW BENOIT AND
FRANK LAONE
Defendants

:
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:
:
:
:
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:
:

NO: 3:21-cv-01132 (RNC)

JUNE 17, 2022

AFFIDAVIT OF FRANK LAONE

I, **Frank Laone**, being duly sworn, hereby depose and state as follows:

1. I am over the age of eighteen (18) years and believe in and understand the obligations of an oath.
2. I am currently employed by the City of Waterbury Police Department and have been for 17 years. My current position is a Sergeant.
3. On October 30, 2018, I was working as the Desk Sergeant on the 2:00 p.m. to 10:00 p.m. shift and was in charge of security for the Waterbury Police Department, the booking of arrested individuals and the oversight of 3-4 booking officers and was the only desk sergeant on duty that afternoon and evening.
4. On that date there were a couple of surveillance cameras located on the exterior of the police department building to which I had access to view as necessary.

JA-392

Case 3:21-cv-01132-RNC Document 40-6 Filed 06/17/22 Page 3 of 7

5. At approximately 6:00 p.m. on October 30, 2018, Sergeant Matthew Benoit told me to look at the video cameras to observe a male individual later identified as Keith Massimino.

6. At Sergeant Benoit's request I viewed the camera on the North Elm/East Main Street side of the Waterbury Police Department building at which time I observed the male individual videotaping as he was moving around the building.

7. I observed him videotaping the gas pump area, where there were marked and unmarked police vehicles, including undercover vehicles, the surveillance cameras and the Youth Division entrance/exit door area.

8. The Youth Division offices are comprised of school resource officers, a few detectives that handle juvenile matters, and any arrested juveniles who are processed in that office.

9. The Youth Division exterior glass is blacked out to protect the identity of the juveniles who are arrested as the identity of juveniles is confidential by statute as well as victims who are interviewed in that office.

10. Mr. Massimino's actions in videotaping surveillance cameras, gas pumps, marked and unmarked and undercover vehicles as well as the Youth Division office caused me to be very suspicious of his activities.

11. Before this incident with Mr. Massimino, I was aware that in recent years there have been attacks on officers, including an incident involving a Texas officer who was

assassinated while putting gas in his vehicle in 2015. These attacks included the targeting and assassinations of police officers across the country.

12. The manner in which Massimino was videotaping was suspicious and alarming, as it appeared that he was possibly casing the police department for some potential criminal act leading from anything from criminal mischief up to assault or homicide.

13. Mr. Massimino was wearing a jacket and I was unable to determine whether he may be in possession of a concealed weapon.

14. The Waterbury Police Department is not a public building with the exception of the lobby area located on East Main Street. Access to the public is not allowed without permission except in the lobby area.

15. Since I was in charge of the security of the police department building and had a duty to investigate and protect the civilian employees and sworn personnel inside the police station, I went outside to inquire of the male individual as to what he was doing in order to confirm or refute my suspicions.

16. I, along with Sergeant Benoit, approached Mr. Massimino to inquire what he was doing and he replied that he was a journalist and was filming content for a story.

17. In my 17 years as a Waterbury Police Officer, I have never met a journalist that shows up and starts filming, as was done by Mr. Massimino, without first notifying someone at the front desk of the Waterbury police department.

18. Journalists and media usually show up in some sort of marked vehicle and if they happen to come in their personal car, they usually walk into the front door to the front desk and identify themselves, for whom they are employed or working and tell the desk sergeant that they were planning on filming something at or near the police station.

19. I asked Mr. Massimino several times for identification or credentials to substantiate his claim that he was a journalist and he continually refused.

20. I told Mr. Massimino I had concerns with safety issues and did not know, for example, if he was planning to blow up the building or engage in a shooting.

21. Mr. Massimino was filming a number of secure areas of the building for which I was reasonably suspicious of his activity and when he continually refused to provide any journalist credentials or other form of identification, my suspicions were heightened that Massimino was possibly engaging in or planning to engage in some form of criminal activity that could involve injury to persons and/or property.

22. Prior to my encounter with Mr. Massimino, I had no prior contact with him and did not know who he was and had no way to verify his claim that he was a journalist getting content for a story without some form of identification.

23. Had Mr. Massimino identified himself, we would have continued our investigation by checking about him through NCIC, COLLECT in-house for warrants, protective orders, past arrests, background checks and other past history which would have been very helpful in alleviating the situation and documenting what he was doing.

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24. After Mr. Massimino was arrested and identified, the background investigation noted in ¶23 was performed and no information was found to suggest that Mr. Massimino was a threat and was in fact a professional videographer.

25. Had Mr. Massimino produced identification as requested, the background check would have been undertaken and Mr. Massimino would not have been arrested and been.

26. Because our level of suspicion was thus heightened by Mr. Massimino's refusal to produce identification or otherwise identify himself, we placed him under arrest for interfering and hindering our investigation in violation of Conn. Gen. Stat. §53a-167a.

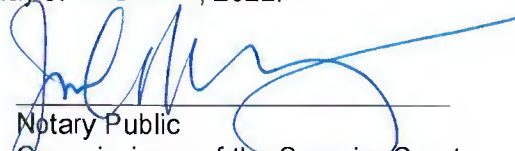
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Frank Laone

STATE OF CONNECTICUT)
) ss: Waterbury
COUNTY OF NEW HAVEN)

Subscribed and sworn to before me this 15th day of June, 2022.


Notary Public
Commissioner of the Superior Court

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EXHIBIT 4

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1

NO: U04WCR18-0454704S : SUPERIOR COURT
STATE OF CONNECTICUT : G.A. 4
v. : AT WATERBURY, CONNECTICUT
KEITH MASSIMINO JUNE 6, 2019

BEFORE THE HONORABLE JOSEPH B. SCHWARTZ, JUDGE

A P P E A R A N C E S:

Representing the State of Connecticut:

SENIOR ASSISTANT STATE'S ATTORNEY CATHERINE AUSTIN
400 Grand Street
Waterbury, Connecticut 06702

Representing the Defendant:

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Recorded By:
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1 THE COURT: Good morning.

2 We're here today on State versus Massimino and the
3 defendant's motion to dismiss. Just a couple
4 housekeeping things before we proceed.

5 On the motion, the two DVDs, I have one CD that
6 says Exhibit 3. I've reviewed it and it appears to be
7 the surveillance video which is Exhibit 2 as well as
8 the Goggle Earth images. Am I correct? Or are there
9 two separate CDs? Either party know?

10 ATTY. SASTRE: Thanks, your Honor. Joseph Sastre
11 by the way for the defendant, Keith Massimino who's to
12 my right.

13 It is my understanding those are the exhibits. I
14 think what might have happened is after the initial
15 filing there was then some sharing back and forth of
16 the CDs and maybe they got merged together. I don't
17 know if you're holding the ones that I personally made
18 but those do sound like the expected exhibits all
19 saved.

20 THE COURT: There's no actual video of the subject
21 incident?

22 ATTY. SASTRE: I believe that there does exist
23 some but I have not seen --

24 THE COURT: But not attached to the motion or
25 objection or supplemental motion?

26 ATTY. SASTRE: No. But I would imagine that some
27 exists but through discovery still have not seen any of

1 them.

2 THE COURT: Understood.

3 With that being said, I'll hear from Attorney
4 Sastre first.

5 ATTY. SASTRE: Thanks, your Honor.

6 I appreciate the opportunity to pre-try the case
7 over the phone to try to hash out exactly what the
8 expectations of today's argument are. And I think that
9 we've now landed on this as your Honor put it, subject
10 matter jurisdiction hearing, which I conceptualize as a
11 conversation about the hypothetical circumstances that
12 my client is supposed to be alleged to have
13 participated in. And therefore, legality of his stop
14 and subsequent arrest.

15 The vehicle to arriving at those hypothetical
16 circumstances, in my view, is the bill of particulars
17 which we did seek. I'm not totally satisfied with
18 because I don't think that it's particular enough in
19 and of itself to have this conversation, but I do think
20 that in combination with the police report which was
21 attached as an exhibit, as well to the motion to
22 dismiss, which hasn't been amended or in any way
23 objected to so far by the state. I think that the
24 combination gives your Honor a pretty good idea of what
25 is alleged to have happened.

26 The first amendment protects the right to observe
27 receive information from any source by means within the

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1 law. It also gives people the right to speak and
2 sometimes more importantly, a right not to speak.

3 In order to prevail in its case against
4 Mr. Massimino, the state would need to show that
5 Mr. Massimino was in a place that a passerby could not
6 be or that there was a content neutral restriction in
7 place at the time he was there doing what he was
8 alleged to have been doing, whatever exactly that is.

9 The state does not suggest that Mr. Massimino was
10 in anyplace that he could not legally be nor do they
11 suggest that photographing is prohibited on the
12 sidewalks in front of the Waterbury police station. At
13 best, the state argues that photographing ought to be
14 prohibited there but it is not. And so the charges
15 against Mr. Massimino must be dismissed because
16 stopping him from photographing was unlawful under
17 Terry.

18 Further, because nothing in Terry versus Ohio
19 entitles the police to demand that the detained person
20 start answering questions, their arrest of
21 Mr. Massimino for refusing to do so was an illegal one.

22 In November, the defendant moved for a bill of
23 particulars under Practice Book section 41-20, 21, 22.
24 One was filed with the state as now part of the court's
25 record. It's dated November 13, 2018. Though the
26 defendant was dissatisfied with it and moved to have it
27 amended with facts in greater detail citing Williams

1 and suggesting that the bill was not particular enough
2 because it does not state how the defendant resisted,
3 obstructed, or hindered the police. Judge Doyle denied
4 the defendant's request suggesting that the bill was
5 sufficient.

6 In it then, is the state's only grounds for
7 reasonable and articulable suspicion, which is that the
8 defendant was outside the police station filming. The
9 defendant's motion to dismiss addresses that
10 particularized fact because that is the operation of
11 the request for a bill of particulars accoupled with
12 the arresting officer's arrest report which has not
13 been amended. The court can and should accept this
14 fact for the purpose of the motion to dismiss that the
15 defendant was stopped simply for photographing a public
16 building from a public sidewalk.

17 Because the defendant argues that even if the
18 police had reasonable and articulable suspicion to stop
19 him, that he was under no obligation to assist the
20 police with their investigation of him and because the
21 combination of the bill of particulars and the
22 arresting officer's report say that he was arrested
23 under 53a-167a for exactly that. This court has all
24 that it needs to decide that there is insufficient
25 cause to send this case to trial.

26 To the extent that the state wants the case to
27 proceed to trial so that it can explain the arresting

1 police officer's reliance on an incident that was in
2 the news from a few years ago concerning the death of a
3 Texas police officer, such testimony would be
4 irrelevant at trial because it would go only to the
5 subjective mindset of the police officer but it's only
6 the objective facts of his observation of
7 Mr. Massimino's actions prior to arrest that mattered.
8 The principal is spelled out in Mr. Massimino's brief
9 and is well supported by case law. To allow the police
10 to justify their actions retroactively by mounting
11 subjective reasoning and conjecture is essentially to
12 have no standard of police conduct whatsoever. Since
13 there's always ample time after making the decision to
14 pull a car over, after making an arrest, after firing a
15 weapon to justify their actions and virtually no way to
16 tell if the operative reasoning was present in the mind
17 of the police officer at the moment he made the
18 decision or on the other hand if it was dreamt up a
19 minute a week or even a year after the fact.

20 Mr. Massimino was stopped for using a
21 constitutional right, that being his first amendment
22 right to receive and record information. He was
23 arrested for observing another right, his first
24 amendment right not to the talk. There is no stop and
25 ID law in Connecticut except for Connecticut General
26 Statutes 14-217, the one that pertains to drivers upon
27 the roadways.

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1 Mr. Massimino submitted to the Terry stop despite
2 the fact that he disagreed with the legitimacy of it.
3 He didn't run. He didn't fight. He didn't refuse to
4 allow the police to pat frisk him. When asked to
5 identify himself, he declined and that was his right
6 and that is what he was arrested for, although not
7 required.

8 As the arresting police officer's report states
9 Mr. Massimino did tell the police what it was that he
10 was up to, that being that he was filming a
11 documentary. No where in Terry did the Supreme Court
12 prescribe an obligation to identify oneself to a police
13 officer yet the state holds Terry up against Massimino
14 as if it did.

15 In the state's brief and opposition to
16 Mr. Massimino's motion to dismiss, the state mentions a
17 case called State versus Silva in which a driver was
18 arrested for failing to produce her driver's license
19 after she was ordered to stop her car by some
20 Bridgeport police officers who witnessed her operating
21 the vehicle in an unsafe manner in reverse, violation
22 of Connecticut General Statutes 14-243 and also driving
23 a car without a front license plate, violation of
24 Connecticut General Statutes 14-18. She did stop
25 initially but then argued with the police, used some
26 profanity, refused to present her driver's license, and
27 then drove off. Unsafe backing, driving without a

front license plate, are both violations of Connecticut's motor vehicle laws and legitimate grounds for a stop and for citations. When driving a vehicle upon the roadway, drivers are required to have and carry a driver's license under Connecticut General Statutes 14-223 and when stopped, are required to present their driver's license to the police under Connecticut General Statutes 14-217. Of course the constitution requires the driver to have been legitimately stopped for a motor vehicle violation, that police aren't permitted to just pull people over randomly.

The state holds Silva up as if the State Supreme Court has proscribed an obligation to be friendly to the police just because the Supreme Court couldn't fight the urge to include some of Ms. Silva's flowery words to the police in its opinion. Taking off during a legitimate motor vehicle stop without presenting one's license is a violation of 14-217, and therefore, also of the resisting arrest, hindering a police officer statute as a Supreme Court has construed.

Ms. Silva deserved her charges, Mr. Massimino did not. Mr. Massimino does not either adopt defendant Silva's arguments as his case is easily distinguished from hers. As the Supreme Court pointed out in Silva both she and Paul Aloï argued that because refusal to present their identification is legal under 14-217, it

1 is somehow not also illegal under 53a-167a.

2 It was a good argument since 14-217 is more
3 specifically worded than 53a-167a but all the same,
4 it's not an argument that Mr. Massimino is making.

5 Mr. Massimino's argument is that because he was
6 not pulled over while driving a car, that 14-217 does
7 not arise, so the police had no right to demand that he
8 produce his ID, and therefore, the state's motor
9 vehicle stop and ID statute was not triggered at the
10 time of the seizure.

11 Mr. Massimino distinguishes his case from Aloi's
12 in that he wasn't accused or suspected of trespassing.
13 Mr. Massimino further argues that the police did not
14 have reasonable and articulable suspicion that he
15 committed a crime, so that his seizure was illegal and
16 that Terry versus Ohio has not authorized the police to
17 demand a suspect to identify himself only to submit to
18 a stop and to a frisk if and only if officer's safety
19 is reasonably in question.

20 Terry does not operate as a stop and ID statute.
21 If it did then six states wouldn't have gone through
22 the trouble of including one on their books. If Terry
23 was effectively a stop and ID statute, then there
24 wouldn't be perennial debate in Connecticut's
25 legislature about getting one on the books to allow the
26 police to demand a pistol permit from people openly
27 carrying guns in public. For the past several years

1 that exact bill has come up for debate and as of
2 midnight last night, was not brought forward for a
3 vote, still not the law.

4 So Silva does nothing for the state's case and
5 actually it strengthens Mr. Massimino's argument. It
6 seems that the state would have this court believe that
7 Ms. Silva was arrested for telling the police to buzz
8 off or otherwise telling them how she felt about them.
9 Those colorful facts are laid out in the Supreme Court
10 opinion but the opinion is clear that her refusal to
11 produce her driver's license after being legitimately
12 stopped for a multitude of observed driving and motor
13 vehicle regulatory violations is what earned her her
14 53a-167 charge. Her disrespect of the motor vehicle
15 laws and her disrespect for the police is what the
16 Supreme Court upheld her conviction on.

17 Mr. Massimino on the other hand, really only
18 accused of disrespecting the police as the state
19 doesn't have 14-217 to rely on in his case and no
20 unsafe backing or missing license plate to legitimize
21 the initial stop. Nor does it have a stop and ID
22 statute to rely on either. And even if a stop and ID
23 law were on the books, Hibal (phonetic) versus the
24 Sixth Judicial Court of Nevada would still require
25 reasonable and articulable suspicion of a crime and not
26 just subjective or speculative suspicion of a person
27 generally.

1 Mr. Massimino wasn't trespassing, so the Aloi
2 exception to Williams isn't implicated here.
3 Mr. Massimino was photographing, photographing is not a
4 crime and is a constitutionally protected activity.
5 Our own legislature has taken note of the need to
6 protect memorialization. In 2015 the general assembly
7 expressly forbade police employees from interfering
8 with any person taking a photograph or digital still or
9 video image of such peace officer or another peace
10 officer acting in the performance of such peace
11 officer's duty. This is Connecticut General Statute
12 52-571j(b). Giving anyone interfering with a private
13 right -- excuse me.

14 Giving anyone interfered with a private right
15 action against the government, agencies, employer of
16 the person preventing the photography. That's
17 precisely what occurred here. And now the state's
18 attorney's office has thrown its hat into the ring by
19 maintaining the charges against Mr. Massimino by
20 keeping his private property for as long as they did,
21 by viewing the contents of his camera. Its answer why
22 52-571j doesn't sink the state's ship, because the
23 state doesn't think it should. The state claims there
24 are exceptions to 52-571j but it doesn't say which one
25 applies here.

26 It merely states that it thinks it ought to be
27 entitled to an exception. In sum, the state argues

1 that the rules that Mr. Massimino should follow and the
2 laws he ought to be tried on are the ones that the
3 state thinks ought to exist instead of the ones that
4 actually exist. This is not the rule of law. It's
5 something closer to marshal law.

6 To be clear, Mr. Massimino does not contend that
7 52-571j is axiomatic of his defense, his grounds to
8 dismiss but rather illustrate his grounds. The police
9 have no greater expectation of privacy in that which
10 they leave exposed to passers by at the police station
11 then they would while performing a DUI checkpoint,
12 conducting a traffic stop, investigating a bank
13 robbery, or simply taking a lunch break in a public
14 park.

15 Police cannot turn legal and constitutionally
16 protected activity into reasonable and articulable
17 suspicion nor can they legitimize prior restraint with
18 post hoc arguments like that a person might unwittingly
19 photograph a confidential informant or an undercover
20 police officer leaving the station. The laws clear.
21 Mr. Massimino is as free to photograph what he sees
22 while walking by the police station as any person is to
23 take casual observation of it, to make a mental note of
24 it, to jot down in their diary what they saw, or to
25 stop and sketch it with pen and paper. Not only should
26 he have been free to do this without the interference
27 of the police on the night he was arrested but there's

1 a law on our books specifically crafted to prevent the
2 police from interfering with his right to do it.

3 The state has failed to allege an illegal act
4 against Mr. Massimino. The charge against him must be
5 dismissed. To the extent that the state seems to find
6 some concession from the defense and the defenses
7 discussion of State versus Aloï within its filed motion
8 to dismiss, the state either misconstrues the defense's
9 points on that case or else the defense was merely
10 in-artful in presenting them. Aloï does not support
11 the state maintaining charges against Mr. Massimino and
12 neither does that case sanction the treatment of
13 Mr. Massimino received from the Waterbury police.

14 Aloï presents an unusual and limited fact pattern,
15 in that Mr. Aloï was stopped on suspicion of
16 trespassing. Mr. Aloï was on property subject to a
17 Terry stop because he was in a place he should not be
18 doing something he was not permitted to do. By the
19 looks of it he was messing around with a fire truck.
20 No person believes that he's free to climb upon a fire
21 truck and sabotage its ability to make -- to run or
22 make siren noises which appears to be what Mr. Aloï was
23 doing. He was believed to be the same person who had
24 just recently been caught doing the very same thing in
25 the very same place and had been issued a trespass
26 order under the peculiar process of Connecticut's
27 criminal trespass statute.

1 The difference between Mr. Massimino's case and a
2 trespassing scenario is that the fellow that is
3 trespassing is either going to be taken into custodial
4 arrest on suspicion of being Paul Aloï or else detained
5 until his identity can be ascertained with or without
6 the trespasser's cooperation, since the police
7 officer's duty is to either arrest the trespasser or
8 else issue a trespass order against him which he cannot
9 do until the trespasser's identity can be ascertained.

10 Although we don't agree with the court on the
11 point refusing to identify oneself when seized for
12 trespassing seems to be to the Supreme Court anyway --
13 a tantamount to refusing to submit to a pat frisk when
14 you're seized under suspicion of attempted armed
15 robbery. That was of course the case in Terry versus
16 Ohio.

17 Let us assume for argument's sake that Officer
18 Benoit's suspicion of Mr. Massimino was on par with
19 what Mr. Terry was suspected of, an imminent armed
20 assault. Well, Mr. Terry was made to submit to a pat
21 frisk. They found a gun on him. He was prosecuted for
22 having it since it was contraband. Mr. Massimino
23 submitted to a pat frisk. He was found to be possessed
24 of neither bomb nor gun. Keith submitted to operating,
25 excuse me --

26 Keith submitted to and cooperated with the Terry
27 search to the full extent that the police had the

1 authority to require him to do so. The charge must be
2 dismissed because Mr. Massimino is not accused of
3 refusing to lend any cooperation that the police were
4 authorized under the laws to require of him.

5 It's worth noting at this point, the Waterbury
6 Police didn't issue Mr. Massimino a trespass order or
7 file a trespassing charge against him and neither has
8 the prosecutor despite that the defendant asked for a
9 bill of particulars in November and then renewed it at
10 the beginning of this year.

11 In response, instead of changing or dropping the
12 charge against Mr. Massimino, the state's attorney
13 doubled down on the obstructing a police officer
14 charge. It appears that both the Waterbury Police and
15 the state's attorney's office correctly understand that
16 Mr. Massimino was not trespassing when he was stopped.
17 And on that fact alone, Mr. Massimino's case is
18 distinguished from Mr. Alois's.

19 This brings us back to the Williams case. Under
20 Williams since the resisting statute is by its black
21 letter prescribing any conduct that might hinder a
22 police investigation, and such a law necessarily
23 encompasses conduct that is constitutionally protected
24 for example, remaining silent hinders a police
25 investigation just as much as refusing to a warrantless
26 search would. Mr. Massimino would have to have
27 physically resisted arrest including dashing away from

1 the police as the defendant in State versus Silva did
2 or else threatening the police. Since he is alleged to
3 have done neither and because there isn't even a whiff
4 of trespassing in this case, the charges against
5 Mr. Massimino must be dismissed.

6 THE COURT: Thank you. Few questions.

7 The constitutional issues were well briefed and I
8 understand your arguments in regards to those issues.
9 One of the arguments that the state had in response to
10 your original motion to dismiss was you didn't state
11 specifically which sections of Practice Book Section
12 41-8 you were moving on to dismiss the case. So you
13 filed a supplement to the motion to dismiss in which
14 you outlined three sections in 41-8 that you were
15 moving to dismiss under.

16 The first one was 41a(5) insufficiency of evidence
17 or cause to justify the bringing or continuing of such
18 information or placing defendant on trial.

19 And it suggests to me that the majority of your
20 constitutional issues really go to that argument. And
21 another way of putting that argument would be that
22 there's not probable cause to justify the arrest and
23 continuing this action and thus there's insufficiency
24 of evidence or cause to justify continuing. Is the
25 court correct in phrasing it that way?

26 ATTY. SASTRE: I think so, yes.

27 THE COURT: And just to be clear, this was an

1 on-site arrest and no probable cause finding was ever
2 made by this court, is that correct?

3 ATTY. SASTRE: That is also correct.

4 THE COURT: Okay.

5 All right. And then looking at the probable cause
6 for continuing this action, the court's going to look
7 to the elements of the charge here, interference with
8 an officer with your constitutional arguments in mind.
9 And there's three elements of that cause of action.

10 One is that the defendant obstructed, resisted,
11 hindered, or endangered, in this case a peace officer.
12 And would it be your contention that that element is
13 not satisfied because of the constitutional issues that
14 you raise that he didn't obstruct, resist, hinder, or
15 endangered a peace officer because he essentially did
16 nothing wrong under the constitution. Is that another
17 way of phrasing it?

18 ATTY. SASTRE: I think so, your Honor. The way
19 that I would phrase it is that that element has been
20 sharpened by Williams Aloï and I guess Silva as well.
21 So since they were, the court was sharpening that
22 element of the statute through a constitutional lens
23 and because a hypothetical fails to that constitutional
24 gloss that would be my contention.

25 THE COURT: And then going to the second argument
26 that the officer was in the performance of his duties,
27 while this incident occurred, you would argue that his

1 actions fell outside the performance of his duties as a
2 peace officer given all the issues you've raised?

3 ATTY. SASTRE: Right. Because Mr. Massimino
4 wasn't seen doing anything that was prohibited or
5 outlawed, he had no duty to interfere with what
6 Mr. Massimino was doing.

7 THE COURT: And then going to the third element
8 that the defendant intended to interfere with the
9 performance of those duties, you would argue that
10 there's nothing in the incident report or anything else
11 that you've attached to your motion to suggest that he
12 intended to interfere with the performance of those
13 duties, is that your contention?

14 ATTY. SASTRE: Right. And again, sharpened, well,
15 I guess shaped really by Terry versus Ohio what is
16 required and what would be required would be simply to
17 submit. So stay in place. You know I guess, keep your
18 hands out of your pockets. Let them pat you down. He
19 did those things.

20 THE COURT: Okay.

21 ATTY. SASTRE: He's not required to identify
22 himself and even from the police report it seems that
23 he, to some extent, did identify himself as some sort
24 of journalist and said he was making a documentary
25 film. I think he went beyond what was required of him.

26 THE COURT: Okay. So that would go to the first
27 section of 41-8 that you were moving on.

1 The second was the claim that the law defines in
2 the offense charged is unconstitutional or otherwise
3 invalid. I'll note that State versus Williams 205
4 Conn. 456, 1987 made a finding that 53a-167a is not
5 unconstitutionally vague. Care to expand on your
6 argument as to why you think it is unconstitutional or
7 otherwise invalid outside of the argument that you made
8 in your brief that it's overly broad. Is that
9 essentially, notwithstanding Williams, you still feel
10 that the statute is broad given what other cases have
11 said in regards to the statute that, yes, it's
12 interpreted to be broad, however, it's still not
13 unconstitutionally vague.

14 ATTY. SASTRE: Sure. Thanks, your Honor.

15 The Williams court noted that being a state court
16 not a federal court they were able to essentially red
17 pen the statute and bring it into constitutional muster
18 that way. By opining that only because this is a state
19 statute it's not overbroad. If we were in federal land
20 it would be unconstitutionally overbroad because we
21 wouldn't be able to construe it from the bench.

22 Once that statute is construed from the bench, it
23 is as if it has been rewritten. So what is
24 unconstitutional is for the police or for the state's
25 attorney to charge the offense as if none of that has
26 ever happened. Once the appellate and the Supreme
27 Court have opined about the constitutional breath of

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1 the language, those entities are now under an
2 obligation to follow those as if they're in the statute
3 itself. It's a problem with this judicial gloss that
4 we have in the state is that this is a constant issue.
5 This is 30 something year old precedent that constantly
6 comes back up.

7 THE COURT: So then you would argue that any time
8 someone is charged under 53a-167a they would have an
9 argument that the statute is either unconstitutional or
10 too broad to enforce, would that be your claim?

11 ATTY. SASTRE: No. I would say that it would be
12 limited to situations where the facts as alleged would
13 fall outside of the scope that Williams has allowed.

14 THE COURT: And then going to your third reason to
15 dismiss this case, subsection nine which just says any
16 other grounds. Outside of the issues raised in your
17 brief, specifically that it's fundamentally unjust to
18 go forward with the trial. Any other specific
19 arguments you want to put on the record in regards to
20 that? You don't have to be redundant. I understand
21 the general argument that you have.

22 ATTY. SASTRE: As long as the general argument
23 that your Honor understands is that what I have been
24 saying since the date of our arraignment is that the
25 state is going to constantly move the ball on us.
26 We've been trying to get them to narrow down, just give
27 us the allegations. We've come back to court to try to

1 get them to sharpen that. We think it's what's fair.
2 I think to do otherwise, is essentially trial by
3 surprise. You're under arrest you'll find out what it
4 is after we pick a jury. It gets close to that when
5 you say we're don't really know what the allegations
6 are. It seemed from the start, at the arraignment, it
7 seemed like the state's attorney was trying to suggest,
8 well, maybe he was inside the parking garage. And so I
9 was very vocal from the start. Well, was he seen
10 inside the parking garage or not? And that's what I
11 see happening here is that we're going to go to trial
12 only to find out that the allegations are something
13 other than what's in the police report and what's in
14 the bill of particulars.

15 I don't think that it's fair to even have my
16 client at this point arguing this motion with the bill
17 of particulars in the state that it is. But your
18 Honor's heard my argument that if we couple it, I
19 guess, with the police report and treat it fairly, I
20 think that it spells out a set of allegations that fall
21 below the threshold.

22 THE COURT: All right. Thank you very much.

23 ATTY. SASTRE: Thank you, your Honor.

24 ATTY. BRANNELLY: Good morning your Honor.

25 THE COURT: Good morning.

26 ATTY. BRANNELLY: As the state has submitted in
27 its written objection, the state objects to this motion

1 being heard by the court. It is the state's contention
2 that the motion to dismiss cannot be decided without a
3 full trial with respect to the facts presented at the
4 time of the arrest, that is the opportunity for the
5 police officers who were involved in the incident to
6 come before the court, to testify, and rather the
7 defense to have an opportunity to cross examine those
8 witnesses as to their beliefs and what the defense may
9 argue as their conjured beliefs after the fact.

10 There was a bill of particulars submitted and
11 although counsel may be unhappy with its content, Judge
12 Doyle denied his motion for a more specific bill of
13 particulars, saying the bill of particulars that was
14 filed was sufficient.

15 With respect to the incident, Mr. Massimino was at
16 the police department filming with a video camera. The
17 police officers came out to speak with Mr. Massimino
18 with respect to his asking him his name. Now
19 Mr. Massimino refused to give his name and counsel
20 relies on the fact that there is a Connecticut General
21 Statute that allows individuals to videotape incidents
22 that occur.

23 The state does not dispute that except for the
24 fact that a police department, although a public
25 building, is much greater than a public building. A
26 police department is a place where crimes are
27 investigated, where victims come to report crimes,

1 where confidential informants come to work with police,
2 where complainants with respect to major felonies
3 whether it be manslaughter, assault in the first
4 degree, assault in the second degree, sexual assault in
5 its various degrees go to the police department to make
6 their complaint.

7 I especially note individuals who are the
8 complainants with respect to a sexual assault and to an
9 incident involving domestic violence. Both of those
10 individuals or those categories the statute provides
11 confidentiality with respect to those individuals and
12 as to their identity.

13 In questioning Mr. Massimino for his name, I
14 believe the police officers had the right to ask him
15 his name in view of the exceptions that appear in that
16 statute which is to protect witnesses, which is to
17 protect public safety, and with respect to the
18 investigation of crimes. If Mr. Massimino had simply
19 given his name, the officers can then determine whether
20 or not he is associated with any of the crimes that are
21 under investigation with respect to the police
22 department at that point in time. And if he wasn't,
23 then they could simply go on his way. And yet arguably
24 if in the future something were to occur to a
25 complainant, a victim, a cooperating witness, a
26 confidential informant they would have the name of the
27 individual that was videotaping outside the police

1 department just as a point of reference to go back and
2 see if, in fact, there was any connection with that
3 videotaping and the danger that the individual was
4 placed in.

5 THE COURT: Just a quick question. Those are good
6 arguments. And I know 52-571j is a relatively new
7 statute. Are you aware of any cases and the court is
8 not, are you aware of any cases as to how those issues
9 butt up against any constitutional issues that the
10 defense might have in regards to how the general
11 protect public safety exception 52-571j(c)2 how that
12 butts up against any constitutional issues or arguments
13 that the defense may have. I'm not aware of any.

14 ATTY. BRANNELLY: I am not, your Honor. Although,
15 I did as the court pointed out it's a relatively recent
16 law that was passed and I don't believe it has been
17 tested in the courts as of yet.

18 And if I can have a moment to gather my thoughts.

19 THE COURT: Sorry to interrupt.

20 ATTY. BRANNELLY: Even at the time of arrest,
21 Mr. Massimino indicated to the police that he meant no
22 ill will. That there was no evil intent on his part in
23 this videotaping. If Mr. Massimino had simply given
24 his name to the police officers it could be lodged and
25 Mr. Massimino would be on his way. But his failure to
26 give his name is what led to his arrest.

27 And as counsel points out, after arrest

1 Mr. Massimino did cooperate with the police but the
2 instance -- the interfering charge reflects not with
3 his videotaping, not with the activity, with the
4 request to give his name and having failed to give his
5 name, it raises the suspicion of the police officer
6 with respect to his intent with respect to the
7 videotaping and to the nature of the investigations
8 that are conducted by the police department and those
9 individuals that I have listed who might be put at risk
10 by having videotape.

11 The court is most familiar with handling cases of
12 a domestic violence and accusations made by defendants
13 that a complainant is cooperating with the police
14 through her detriment or to his detriment and to have
15 the videotape of an individual indicating that, in
16 fact, you are at the police department making that
17 complaint, only solidifies the defendant's claim that,
18 in fact, the complainant who may be the victim of
19 domestic violence who may suffer from domestic violence
20 syndrome, is present and cooperating with the police.

21 Finally, your Honor, the court has to view the
22 evidence at this point in time most favorable to the
23 State of Connecticut. And I would ask that the court
24 view that evidence in its favor and deny the motion to
25 dismiss and grant the state's objection to it.

26 THE COURT: All right. Thank you.

27 ATTY. SASTRE: Your Honor, I've already

1 illustrated to the court that the rights record statute
2 is not axiomatic of our claim today. It just simply
3 illustrates that a right exists. It's a civil statute.
4 We're not here to argue whether Mr. Massimino has the
5 right to sue the Waterbury Police Department. We
6 mention it merely to suggest that there is that right.
7 The legislature tries to preserve that right. The
8 state is arguing that a refusal to talk to the police
9 itself is reasonable and articulable suspicion. That's
10 totally unconstitutional.

11 For the state to argue that, oh, well, if you told
12 us your name and we found that you're a known terrorist
13 we can take you into custody. So therefore, not
14 telling us your name is somehow illegal. Well, that's
15 like the police officer who says to the driver how much
16 have you had to drink tonight? You're not under an
17 obligation to answer that. Sure. The police have the
18 right to ask questions. I could be walking to my car
19 after this and a police officer can come up to me and
20 ask me my name, no law against it. Doesn't mean that I
21 have to tell him who I am.

22 The state 's attorney wants to illustrate or
23 suggest that my client could be there trying to take a
24 picture of a confidential informant or victim of a
25 domestic crime, that's what Sally ports, tinted windows
26 are for. When Mr. Massimino was arrested in front of
27 the police station, for instance, they put him in a

1 police car and drove him around the back into a Sally
2 port, closed the door behind him, take him out of the
3 car. The police have many ways to conduct confidential
4 operations without simply sending the person through
5 the front door of the police station shielding
6 themselves with their jacket. That's not how it's
7 done.

8 And besides the point, the state's rights don't
9 start at, well, we're concerned. My client's rights
10 don't end where the state's attorney or the police
11 officer can make some sort of subjective claim that oh
12 I have some concern here. It doesn't work that way.
13 What the state is asking again is to have a trial so
14 that the police can come in here and explain how well
15 founded their subjective police are. They're still
16 subjective police. They're irrelevant. We're here to
17 argue a hypothetical. We can agree to the hypothetical
18 that Mr. Massimino was on the sidewalk, that
19 Mr. Massimino submitted to the pat frisk, that
20 Mr. Massimino didn't tell him his name until after he
21 was arrested. That doesn't make any of that illegal.

22 And I think that, your Honor has everything that
23 he needs to decide that there isn't sufficient cause to
24 send this case to trial. The only other outcome I can
25 possibly see is your Honor asking the state to sharpen
26 their bill of particulars if what they're saying is
27 predictably. The particular circumstances still

1 haven't come to light, well that's why I asked for a
2 bill of particulars twice. Because we are supposed to
3 come here and be able to test the sufficiency of the
4 allegation, the sufficiency of the allegation itself
5 and not prove the allegation, so that my client doesn't
6 have to sit with charges against him on the judicial
7 website for another two years before the trial. So he
8 doesn't have to pay thousand of dollars to mount a
9 defense for a trial when we're going to go to trial and
10 find out that the only beliefs that the police officers
11 have, are subjective ones that aren't included in their
12 police report that are relevant to the decision to
13 arrest.

14 THE COURT: All right. Thank you. Anything else?

15 ATTY. BRANNELLY: No, thank you, your Honor.

16 THE COURT: If you give me about 15 minutes or so,
17 I think I can rule from the bench on this motion. So
18 why don't we take a 15-minute recess or so and we'll
19 come back.

20 (Whereupon, there was a recess.)

21 THE COURT: In response to the defendant's motion
22 to dismiss, I'm going to issue a ruling and I'll just
23 start with some preliminary procedural issues.

24 Defendant has filed a motion to dismiss pursuant
25 to Connecticut Practice Book Section 41-8. He's
26 outlined three sections in which he's moved to dismiss
27 this matter. It's 41-8(5), insufficiency of evidence

1 or cause to justify the bringing or continuing of such
2 information or the placing of the defendant on trial.

3 Two. 41-8(8) claiming that the law defining the
4 offense charged in this case interference with an
5 officer under 53a-167a, is unconstitutional or
6 otherwise invalid and --

7 Three. 41-8(9) any other grounds.

8 A motion to dismiss properly attacks the
9 jurisdiction of the court essentially ascertaining that
10 the state cannot as a matter of law and facts state a
11 cause of action that should be heard by the court.

12 In determining whether a motion to dismiss shall
13 be granted, the facts must be considered in the light
14 most favorable to the state.

15 Going to claim one first, defense has confirmed
16 that no warrant was issued in this case for the arrest
17 of the defendant and no probable cause finding has been
18 made up until this point regarding the arrest of the
19 defendant. Where a motion to dismiss information
20 against an accused is made prior to trial only probable
21 cause sufficient to justify the continued prosecution
22 need be established. That's State v. Howell, 98 Conn.
23 App. 369 (2006).

24 The probable cause determination is simply the
25 analysis of the probabilities. The determination is
26 not a technical one but is informed by the factual and
27 practical considerations of everyday life in which

1 reasonable and prudent persons not legal technicians
2 act. The existence of probable cause does not turn on
3 whether defendant could have been convicted on the same
4 available evidence.

5 Furthermore, proof of probable cause requires less
6 than proof by a preponderance of the evidence.

7 State v. Brown, 279 Conn. 493 (2006). It is well
8 settled that in testing the amount of evidence that
9 supports probable cause it is not the personal
10 knowledge of the arresting officer but the collective
11 knowledge of the law enforcement organization at the
12 time of the arrest that must be considered.

13 Therefore, the allegations in the affidavit may
14 represent the collective knowledge of any other police
15 officers who may have participated in the
16 investigation. That's State v. Batts, 281 Conn. 682
17 (2007).

18 The state may rely on, among other things,
19 information contained in police reports which, if
20 proven, is sufficient to establish the crime charged.
21 State v. Kinchen, 243 Conn. 690 (1998).

22 So with all of that in mind, looking at the first
23 claim 41-8(5), we go to the charge at hand, that's
24 interference with an officer. 53a-167a(a) states, a
25 person is guilty of interfering with an officer when
26 such person obstructs, resists, hinders, or endangers
27 any peace officer in the performance of such peace

1 officer's duties. I alluded to this earlier. There
2 are three elements to that crime.

3 One, is defendant obstructed, resisted, hindered,
4 or endangered a peace officer.

5 Two is the officer was in the performance of his
6 duties.

7 And three, the defendant intended to interfere
8 with the performance of those duties. State v. Wilson,
9 17 Conn. App. 104 (1988).

10 Going to element one first. State v. Aloï, 280
11 Conn. 824 (2007) which both parties referenced in their
12 briefs, states that element one has a broad scope. By
13 using those words it's apparent the legislature
14 intended to prohibit any act which would amount to
15 meddling in or hampering the activities of the police
16 and the performance of those duties. The defendant's
17 act, however, do not have to be wholly or partially
18 successful, nor must it be such as defeat or delay of
19 the performance of the duty in which the officer is
20 then engaged. The purpose of this statute which had
21 its origins in common law is to enforce orderly
22 behavior and the important mission of preserving the
23 peace. Any act that is intended to thwart that purpose
24 is in violation of the statute. And that's State v.
25 Beckenbach 1 Conn. App. 669 (1984) which was reversed
26 on other grounds but it was cited in the Aloï decision.

27 And so with that in mind, looking at the

1 allegations in the police report in a light most
2 favorable to the state as well as any exhibits that
3 were attached to defendant's motion in a light most
4 favorable to the state, I find that probable cause does
5 exist to satisfy element one because the actions of the
6 defendant amounted to obstructing, resisting,
7 hindering, and or endangering a police officer.

8 Going to element two that the officer was in the
9 performance of his duties, that being element two of
10 the crime charged. The phrase in the performance of
11 his official duties, means that the officer must have
12 been acting within the scope of what he is employed to
13 do. A police officer has the duty to enforce the laws
14 and preserve the peace whether he's acting in the
15 performance of his duties must be determined under a
16 good faith belief that he is carrying out that duty and
17 his actions are reasonably designed to that end. And
18 that's State versus Wearing 98 Conn. App. 350, 2006.

19 The test is whether the police officer is acting
20 within that compass or is engaging in a personal frolic
21 of his own. State v. Wearing, 98 Conn. App. 350
22 (2006).

23 In a prosecution for interference with an officer
24 the question of whether the police officer was, in
25 fact, acting in the performance of his official duties
26 constitutes a factual question for the jury to
27 determine on the basis of all circumstances of the case

1 and under appropriate instructions from the court. And
2 that's State v. Nelson 144 Conn. App. 678 (2013).

3 So looking at the allegations in the police report
4 in the light most favorable to the state, as well as
5 any exhibits attached, the defendant's motion to
6 dismiss in that same light, I find that the officer was
7 acting in a good faith belief, that he was carrying out
8 his duty, and that his actions were reasonably designed
9 to that end. Therefore, I find probable cause that he
10 was acting in the performance of his duties and as a
11 result, element two of this charge has been satisfied.

12 As far as element three, that the defendant
13 intended to interfere with the performance of those
14 duties, the statute governing the offense of
15 interfering with an officer requires the state prove
16 that the defendant had a specific intent to interfere
17 with an officer. And that's State v. Colon 117 Conn.
18 App. 150 (2009).

19 The question of intent is purely a question of
20 fact. Intent may be and usually is referred from the
21 defendant's verbal and physical conduct. Intent may
22 also be inferred from the surrounding circumstances.
23 And that's State v. Duncan 96 Conn. App. 533 cert.
24 denied 280 Conn. 912 (2006).

25 So in this case given that intent is a factual
26 issue and looking at the facts in a light most
27 favorable to the state, I'll find that probable cause

1 exists to satisfy element three and that factual issue
2 can ultimately be resolved at trial.

3 So in sum, when looking at all the facts in the
4 light most favorable to the state. I'll find that
5 probable cause does exist to satisfy all three elements
6 of the charge of interference with an officer and thus,
7 defendant's claim to dismiss this case pursuant to
8 Practice Book Section 41-8(5), is denied.

9 Going to the other two claims, the second one was
10 under 41-8(8) claiming that the law defining the
11 offense charged in this case, 53a-167a is
12 unconstitutional or otherwise valid. As I stated
13 earlier, the law in Connecticut is still State v.
14 Williams 205 Conn. 456 (1987), which is still good law
15 in Connecticut. That case, notwithstanding the
16 defendant's argument, still holds that 53a-167a is not
17 unconstitutionally vague. So based upon that, I'll
18 make a finding that there is not sufficient grounds
19 pursuant to 41-8(8) to dismiss this case.

20 The third claim is under 41-8(9) which is kind of
21 a catchall provision, which claims that there are other
22 grounds to dismiss this case and notwithstanding the
23 defendant's arguments, I'll find that there are no
24 other sufficient grounds to dismiss this matter.

25 So for all of those reasons, the motion to dismiss
26 is denied.

27 * * * * *

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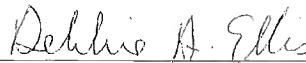
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3 NO: U04WCR18-0454704S : SUPERIOR COURT
4 STATE OF CONNECTICUT : G.A. 4
5 v. : AT WATERBURY, CONNECTICUT
6 KEITH MASSIMINO JUNE 6, 2019
7
8

9 C E R T I F I C A T I O N
10

11 I hereby certify the foregoing excerpt are a true and
12 correct transcription of the audio recording of the
13 above-referenced case, heard in Superior Court, G.A. 4 of
14 Waterbury, Connecticut before the Honorable Joseph B.
15 Schwartz, Judge, on June 6, 2019.
16

17 Dated this 25th day of June, 2019 in Waterbury,
18 Connecticut.
19
20

21
22 

23 Debbie A. Ellis
24 Court Recording Monitor
25
26
27

JA-433

Case 3:21-cv-01132-RNC Document 40-7 Filed 06/17/22 Page 37 of 37

36

1
2 NO: U04WCR18-0454704S : SUPERIOR COURT
3 STATE OF CONNECTICUT : G.A. 4
4 v. : AT WATERBURY, CONNECTICUT
5 KEITH MASSIMINO JUNE 6, 2019

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E L E C T R O N I C
C E R T I F I C A T I O N

I hereby certify the the electronic version is a true and correct transcription of the audio recording of the above-referenced case, heard in Superior Court, G.A. 4 of Waterbury, Connecticut before the Honorable Joseph B. Schwartz, Judge, on June 6, 2019.

Dated this 10th day of February, 2021 in Waterbury, Connecticut.

Debbie A. Ellis
Court Recording Monitor

JA-434

Case 3:21-cv-01132-RNC Document 41 Filed 06/24/22 Page 1 of 6

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

KEITH MASSIMINO
Plaintiff

NO: 3:21-cv-01132 (RNC)

VS.

MATTHEW BENOIT AND
FRANK LAONE
Defendants

JUNE 24, 2022

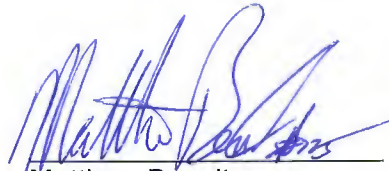
SUPPLEMENTAL
AFFIDAVIT OF MATTHEW BENOIT

I, **Matthew Benoit**, being duly sworn, hereby depose and state as follows:

25. On October 30, 2018, at approximately 6:30 p.m. I prepared the Case Report, number 18-00103981 attached hereto as Exhibit A, concerning this incident which was made in the ordinary course of my duties as a police officer. It was the regular course of my duties to make and complete the Case Report and the Case Report was made immediately after the incident.

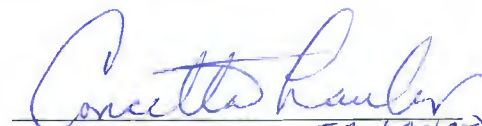
JA-435

Case 3:21-cv-01132-RNC Document 41 Filed 06/24/22 Page 2 of 6


Matthew Benoit

STATE OF CONNECTICUT)
) ss: Waterbury
COUNTY OF NEW HAVEN)

Subscribed and sworn to before me this 24 day of JUNE, 2022.


Notary Public - CONCETTA LAUBER
Commissioner of the Superior Court
MY COMM. EXP. 4-30-2023

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EXHIBIT A

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Waterbury Police Department

255 East Main, Waterbury, CT 06702
(203) 574-8911

Page 1 of 3

CASE/INCIDENT REPORT

SUPPLEMENTARY ☐

OFS NO 18001039981	DAY 3	INCIDENT DATE 10/30/2018 10/30/2018	TIME 18:04	DATE OF RPT 10/30/2018	TIME OF RPT 19:30	TYPE OF INCIDENT SUSPICIOUS ACTIVITY	INCIDENT CT 25	INVESTIGATING OFFICER Sergeant Benoit, Matthew	BADGE NO 775
DIVISION		DIVISION NO		REFERENCE DIVISION		REFERENCE DIVISION NO	CASE X-REFERENCE	UNIT ID	
Patrol								S4B	BENOIT775
DATE TYPED	10/30/2018	TIME TYPED	19:30						
STREET NO	00255	STREET NAME AND TYPE E MAIN ST WATERBURY		APARTMENT NO/LOCATION		INTERSECTING STREET NAME AND TYPE		STATUS Cleared by Arrest	TOWN CD T-151
OFFENSE Discordancy Conduct		LOCAL X-REF CODE 90C	IBR CODE 90C	ATT/COMP Completed	OFFENSE DESCRIPTION Government/Public Building				
STATUS CODE C-COMPLAINANT V=VICTIM A=ARRESTEE J=JUVENILE H=OTHER M=MISSING W=WITNESS O=OFFENDER D=DRIVER S=SUSPECT P=POLICE OFFICER T=TOT		STATUS NAME	SEX RACE	D.O.B.	TELEPHONE	ADDRESS	CP STATE & NO.		
A.O.	Massimino, Keith P	M	W	09/11/1994	Hom	(203) 843 - 7666	39 Calhoun Rd Wallingford CT	CT 217710795	
ARRESTEE NAME	Massimino, Keith P	CHARGES 53a-167a	INTERFERE WITH OFFICER/RESISTING						BOND \$
				DNTS	COURT DATE			1	11/08/2018

On 10/30/18 at approximately 1804 hours, I was exiting the lower level parking garage of Police headquarters (255 E. Main St).

This garage is where marked and unmarked police vehicles are parked along with Officer's and civilian employee's personal vehicles. I then observed a white male walking near the entrance to the parking garage who was holding a video camera. This individual was later identified as Keith Massimino (9/11/94). I continued to observe as it appeared to me Massimino was video taping the vehicles in the garage along with the gas pump. The garage and gas pump area are not secured and can easily be accessed by the public which poses a serious safety risk to police officers and civilian employees. It should be noted that recently there have been several acts of terrorism directed at government buildings some of which involved pipe bombs. I kept watching Massimino as he continued to video tape the gas pump area and the entry and exit points of the police station. Massimino's actions were very alarming to me because several police officers have been targeted and assassinated across the country, including a Texas Officer who was assassinated while pumping gas in 2015.

THE UNDERSIGNED, AN INVESTIGATOR HAVING BEEN DULY SWORN, DEPOSES AND SAYS THAT I AM THE WRITER OF THE ATTACHED POLICE REPORT PERTAINING TO THIS INCIDENT NUMBER. THAT THE INFORMATION CONTAINED THEREIN WAS SECURED AS A RESULT OF (1) MY PERSONAL OBSERVATION AND KNOWLEDGE; OR (2) INFORMATION RELAYED TO ME BY OTHER MEMBERS OF MY POLICE DEPARTMENT OR OF ANOTHER POLICE DEPARTMENT; OR (3) INFORMATION SECURED BY MYSELF OR ANOTHER MEMBER OF A POLICE DEPARTMENT FROM THE PERSON OR PERSONS NAMED OR IDENTIFIED THEREIN AS INDICATED IN THE ATTACHED REPORT. THAT THE REPORT IS AN ACCURATE STATEMENT OF THE INFORMATION SO RECEIVED BY ME.

INVESTIGATOR SIGNATURE: /SGT. Matthew Benoit	INVESTIGATOR I.D.# 775	SIGNED DATE: 10/30/2018	SUPERVISOR SIGNATURE /LT. Robert M Epps	SUPERVISOR I.D.# 538
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Case 3:21-cv-01132-RNC Document 41 Filed 06/24/22 Page 5 of 6

1800103981 Cont.

Waterbury Police Department
255 East Main, Waterbury CT 06702
(203) 574-6911

Page 2 of 3

CASE/INCIDENT REPORTSUPPLEMENTARY ☐

OFFS NO 1800103981	DAY 3	INCIDENT DATE 10/30/2018	TIME 18:04	DATE OF RPT 10/30/2018	TIME OF RPT 19:30	TYPE OF INCIDENT SUSPICIOUS ACTIVITY	INCIDENT ON 25	INVESTIGATING OFFICER Sergeant Benoit, Matthew	BADGE NO 775
DIVISION		DIVISION NO		REFERENCE DIVISION		REFERENCE DIVISION NO	CASE X-REFERENCE	UNIT ID	TPYST
Patrol								S4B	BOENO775
DATE TYPED		DATE TYPED		DATE TYPED		DATE TYPED		DATE TYPED	DATE TYPED
10/30/2018		10/30/2018		10/30/2018		10/30/2018		10/30/2018	10/30/2018
STREET NO 00255	STREET NAME AND TYPE E MAIN ST WATERBURY	APARTMENT NO/LOCATION		INTERSECTING STREET NAME AND TYPE		STATUS Cleared by Arrest		TOWN CD T151	

I then alerted Sgt. Laone of Massimino's actions, who came outside to further investigate. I continued to observe Massimino walk up N. Elm St. as he proceeded to video the location and angles of exterior surveillance cameras on the police station. Massimino also appeared to be video taping police officers and civilian employees who were entering the police station. Massimino's actions made me believe that he was recording the daily operations of the police department, including the area around the unsecured gas pump, which poses a safety threat to both our police officers and civilian personnel. In my ten years of police experience I have not seen anyone clearly recording the daily operations of a police department like Massimino. All media personnel who the police department interacts with on and around police property always provide media credentials.

Sgt. Laone and I then approached Massimino as he continued the video tape the front entrance of the police station. We then asked Massimino what he was doing at which point he stated he was filming a documentary. Massimino was asked several times for credentials to prove he was a photographer or a member of the media. Massimino was also asked to provide photo identification multiple times, but also refused to do so. Massimino stated several times that "he knows his rights, and did not need to show identification." Sgt. Laone explained that we had reasonable suspicion to detain and identify him based on the above mentioned activity. We gave Massimino another opportunity to produce credentials or identification, he refused again. Due to the safety risk he may pose if let go for his suspicious activity, and the fact he refused to comply with our legal request for identification, Massimino was arrested for interfering with our investigation (C.G.S. 53a-167a). Massimino was transported by Ofc. Polaco and Guisto to the salypport for processing. No media credentials or photo identification cards were located on Massimino search incident to his arrest. Massimino then gave Ofc. Polaco and booking Officers his name and date of birth. The Cannon handheld camera (serial#782844001384) was seized and turned in

THE UNDERSIGNED, AN INVESTIGATOR HAVING BEEN DULY SWORN, DEPOSES AND SAYS THAT I AM THE WRITER OF THE ATTACHED POLICE REPORT PERTAINING TO THIS INCIDENT NUMBER THAT THE INFORMATION CONTAINED THEREIN WAS SECURED AS A RESULT OF (1) MY PERSONAL OBSERVATION AND KNOWLEDGE; OR (2) INFORMATION RELAYED TO ME BY OTHER MEMBERS OF MY POLICE DEPARTMENT OR OF ANOTHER POLICE DEPARTMENT OR (3) INFORMATION SECURED BY MYSELF OR ANOTHER MEMBER OF A POLICE DEPARTMENT FROM THE PERSON OR PERSONS NAMED OR IDENTIFIED THEREIN, AS INDICATED IN THE ATTACHED REPORT. THAT THE REPORT IS AN ACCURATE STATEMENT OF THE INFORMATION SO RECEIVED BY ME.

INVESTIGATOR SIGNATURE: /SGT. Matthew Benoit/	INVESTIGATOR I.D.#: 775	SIGNED DATE: 10/30/2018	SUPERVISOR SIGNATURE /LT. Robert M. Epps/	SUPERVISOR I.D.#: 538
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JA-439

Case 3:21-cv-01132-RNC Document 41 Filed 06/24/22 Page 6 of 6

1800103981 Cont.

Waterbury Police Department
 255 East Main, Waterbury CT 06702
 (203) 574-6911

Page 3 of 3

CASE/INCIDENT REPORTSUPPLEMENTARY ☐

CFS NO 1800103981	DAY 3	INCIDENT DATE 10/30/2018	TIME 18:04	DATE OF RPT 10/30/2018	TIME OF RPT 19:30	TYPE OF INCIDENT SUSPICIOUS ACTIVITY	INCIDENT CD 25	INVESTIGATING OFFICER Sergeant Benoit, Matthew	BADGE NO 775
DIVISION Patrol	DIVISION NO 10/30/2018		REFERENCE DIVISION	REFERENCE DIVISION NO	CASE X-REFERENCE	UNIT ID S4B	TYPIST BENOI775	DATE TYPED 10/30/2018	TIME TYPED 19:30
STREET NO 00255	STREET NAME AND TYPE E MAIN ST. WATERBURY		APARTMENT NO/LOCATION		INTERSECTING STREET NAME AND TYPE		STATUS Cleared by Arrest		TOWN CD T151

as evidence at police headquarters. City and state evidence forms were completed and submitted.

THE UNDERSIGNED, AN INVESTIGATOR HAVING BEEN DULY SWORN, DEPOSES AND SAYS THAT: I AM THE WRITER OF THE ATTACHED POLICE REPORT PERTAINING TO THIS INCIDENT NUMBER, THAT THE INFORMATION CONTAINED THEREIN WAS SECURED AS A RESULT OF (1) MY PERSONAL OBSERVATION AND KNOWLEDGE, OR (2) INFORMATION RELAYED TO ME BY OTHER MEMBERS OF MY POLICE DEPARTMENT OR OF ANOTHER POLICE DEPARTMENT OR (3) INFORMATION SECURED BY MYSELF OR ANOTHER MEMBER OF A POLICE DEPARTMENT FROM THE PERSON OR PERSONS NAMED OR IDENTIFIED THEREIN, AS INDICATED IN THE ATTACHED REPORT. THAT THE REPORT IS AN ACCURATE STATEMENT OF THE INFORMATION SO RECEIVED BY ME.			
INVESTIGATOR SIGNATURE: <i>/SGT. Matthew Benoit/</i>	INVESTIGATOR I.D.#: 775	SIGNED DATE: 10/30/2018	SUPERVISOR SIGNATURE <i>/LT. Robert M Epps/</i>
			SUPERVISOR I.D.#: 538

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Case 3:21-cv-01132-RNC Document 42 Filed 06/24/22 Page 1 of 2

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

KEITH MASSIMINO
Plaintiff

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NO: 3:21-cv-01132 (RNC)

VS.

MATTHEW BENOIT AND
FRANK LAONE
Defendants

JUNE 24, 2022

**DEFENDANTS, MATTHEW BENOIT AND FRANK LAONE'S
SUPPLEMENTAL RULE 56a(1) STATEMENT OF FACTS**

83. On October 30, 2018, at approximately 6:30 p.m. Sergeant Matthew Benoit prepared the Case Report, number 18-00103981, concerning this incident which was made in the ordinary course of my duties as a police officer. It was the regular course of Benoit's duties to make and complete the Case Report and the Case Report was made immediately after the incident. (Supplemental Benoit Affidavit ¶25)

DEFENDANTS, MATTHEW BENOIT AND
FRANK LAONE

BY: /s/ Joseph A. Mengacci

Joseph A. Mengacci
Federal Bar Number: ct05394
Office of Corporation Counsel
235 Grand Street, 3rd Floor
Waterbury, CT 06702
Phone: (203) 574-6731
Fax: (203) 574-8340
jmengacci@waterburyct.org

JA-441

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CERTIFICATE OF SERVICE

I hereby certify that on the above date a copy of the foregoing, was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing. Parties may access this filing through the Court's system.

BY: /s/ Joseph A. Mengacci
Joseph A. Mengacci
Federal Bar Number: ct05394

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UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

KEITH MASSIMINO
Plaintiff

:
:
:
:
:
:
:
:
:

NO: 3:21-cv-01132 (RNC)

VS.

MATTHEW BENOIT AND
FRANK LAONE
Defendants

JULY 8, 2022

DEFENDANTS, MATTHEW BENOIT AND FRANK LAONE'S
RULE 56(a)2 STATEMENT OF FACTS IN OPPOSITION
TO SUMMARY JUDGMENT

Pursuant to Local Rule 56(a)2, the Defendants respond to the Plaintiff's Statement of

Undisputed Material Facts as follows:

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted.
5. Admitted.
6. Admitted.
7. Admitted.
8. Admitted.
9. Admitted.
10. Admitted.
11. Admitted.

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12. Admitted.
13. Admitted.
14. Admitted.
15. Admitted.
16. Admitted.
17. Admitted.
18. Admitted.
19. Admitted.
20. Admitted.
21. Admitted.
22. Admitted.
23. Admitted.
24. Admitted.
25. Admitted.
26. Admitted.
27. Admitted.
28. Admitted.
29. Admitted.
30. Admitted.
31. Admitted.
32. Admitted.
33. Admitted.

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34. Admitted.

35. Admitted.

36. Admitted.

37. Admitted.

38. Admitted.

39. Admitted.

40. Admitted.

41. Admitted.

42. Admitted.

43. Admitted.

44. Admitted.

45. Admitted.

46. Admitted.

47. Admitted.

48. So much of Paragraph 48 that states, "Laone asked Massimino 'how do we know you're not planning on blowing up the building?,'" is admitted. The statement, "chuckling" is denied. (Video at 7:20)

49. Admitted.

50. Admitted.

51. Admitted.

52. Admitted.

53. Admitted.

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54. Admitted.

55. Admitted.

56. Admitted.

57. Admitted.

58. Admitted.

59. Admitted.

60. Admitted.

61. Admitted.

62. It is admitted that Keith Massimino underwent the booking process inside the police station, but he was arrested outside the Waterbury Police Department on East Main Street in Waterbury after Mr. Massimino identified himself as a journalist and declined to produce journalist credentials or otherwise identify himself, he was then placed under arrest, his camera was taken and placed in the pouch so it would not get damaged. (Video 8:58:8; Laone deposition page 39:4-8; and Benoit deposition page 31:41-32.)

63. This statement is not an undisputed fact, but a conclusion of law. Further the Defendants have set forth in their Motion for Summary Judgment, and Rule 56(a)1 Statement of Facts, undisputed facts which go to the legal issue of probable cause.

64. Admitted.

65. Admitted.

66. Admitted.

67. Admitted.

68. Admitted.

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69. Admitted.

70. Admitted.

71. Admitted.

72. Denied. The date of dismissal was May 21, 2021. (Transcript of Hearing, Plaintiff's Exhibit 9, pages 2-3)

DEFENDANTS, MATTHEW BENOIT AND
FRANK LAONE

BY: /s/ Joseph A. Mengacci

Joseph A. Mengacci

Federal Bar Number: ct05394

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CERTIFICATE OF SERVICE

I hereby certify that on the above date a copy of the foregoing, was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing. Parties may access this filing through the Court's system.

BY: /s/ Joseph A. Mengacci

Joseph A. Mengacci

Federal Bar Number: ct05394

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UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

KEITH MASSIMINO,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Case No. 3:21-cv-01132 (RNC)
	:	
MATTHEW BENOIT AND FRANK LAONE,	:	
	:	
Defendants.	:	

RULING AND ORDER

Plaintiff Keith Massimino brings this suit under 42 U.S.C. § 1983 against Waterbury Police Sergeants Matthew Benoit and Frank Laone in their individual capacities for alleged violations of his First and Fourth Amendment rights. In October 2018, the plaintiff was making a video recording of the Waterbury police station for the purpose of conducting a "First Amendment" audit. He planned to upload the video to his YouTube page, which he maintained under the name "Northeast Auditor." The defendants, unaware of the plaintiff's identity or purpose, saw him videotaping the Police Department building, approached him, and asked for his identification, which he repeatedly declined to provide. They then arrested him for misdemeanor interference under CONN. GEN. STAT. § 53a-167a. The parties have filed cross-motions for summary judgment. For reasons stated below, plaintiff's motion is denied and defendants' motion is granted.

I.

Summary judgment is warranted when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). When evaluating a summary judgment motion, a court reviews all the record evidence in the light most favorable to the non-moving party and determines whether the non-moving party has met its burden to present evidence that would permit a jury to return a verdict in its favor. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 252 & 255 (1986). Conclusory allegations, conjecture, and speculation are insufficient to create a genuine dispute of material fact. Shannon v. N.Y.C Transit Auth., 332 F. 3d 95, 99 (2d Cir. 2003).

II.

A. Count One: First Amendment

In count one, plaintiff alleges that the defendants violated his rights under the First Amendment by interfering with his videotaping of the police station. Defendants seek summary judgment on this count based on qualified immunity.

Qualified immunity “balances two important interests – the need to hold public officials accountable when they exercise power irresponsibly and the need to shield officials from harassment, distraction, and liability when they perform their duties reasonably.” Pearson v. Callahan, 555 U.S. 223, 231

(2009). The defense “shields government officials from claims for money damages unless a plaintiff adduces facts showing that ‘(1) the official violated a statutory or constitutional right, and (2) the right was “clearly established” at the time of the challenged conduct.’” Mara v. Rilling, 921 F. 3d 48, 68 (2d Cir. 2019) (quoting Ashcroft v. al-Kidd, 563 U.S. 731, 735 (2011)). A finding for the defendant on either prong is dispositive and a district court may consider them in any order. Mara, 921 F. 3d at 68.

In determining whether a right was clearly established at the relevant time, it is necessary to consider the “particularized” right at issue. See Anderson, 483 U.S. at 640; al-Kidd, 563 U.S. at 742 (“We have repeatedly told courts . . . not to define clearly established law at a high level of generality.”). For a right to be “clearly established,” “[t]he contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right.” Anderson v. Creighton, 483 U.S. 635, 640 (1987). Ordinarily, for a federal right to be clearly established in Connecticut, it must have been previously recognized by the Second Circuit or the Supreme Court. But a right may be clearly established, even in the absence of controlling appellate authority, by virtue of “a robust ‘consensus of cases of persuasive authority.’” Ashcroft v. al-

Kidd, 563 U.S. 731, 742 (2011) (quoting Wilson v. Layne, 526 U.S. 603, 617 (1999)).

Plaintiff contends that his right to make a video recording of the police station in October 2018 was clearly established by circuit court rulings outside the Second Circuit. See Glik v. Cunniffe, 655 F. 3d 78, 85 (1st Cir. 2011); Fields v. City of Philadelphia, 862 F. 3d 353, 360 (3d Cir. 2017); Turner v. Driver, 848 F. 3d 678, 688 (5th Cir. 2017); ACLU of Ill. v. Alvarez, 679 F. 3d 583, 597-98 (7th Cir. 2012); Fordyce v. City of Seattle, 55 F. 3d 436, 439 (9th Cir. 1995); Irizarry v. Yehia, 38 F. 4th 1282, 1294 (10th Cir. 2022); see also Smith v. City of Cumming, 212 F. 3d 1332, 1333 (11th Cir. 2000). In 2015, a district court in this Circuit stated that “the right to record police activity in public, at least in the case of a journalist who is otherwise unconnected to the events recorded, was ‘clearly established’” by 2011. Higginbotham v. City of New York, 105 F. Supp. 3d 369, 380 (S.D.N.Y. 2015).

All but one of the cases on which plaintiff relies involved the right to make a video recording of police officers performing their duties in public spaces. See, e.g., Glik, 655 F. 3d at 79 (recognizing “a constitutionally protected right to videotape police carrying out their duties in public”). In contrast, this case involves making a videotape of nonpublic spaces. See Summary of Undisputed Material Facts, ECF 44-1, at

¶ 70 (uncontested that the Waterbury Police Department building's interior is nonpublic because "[a]ccess to the public is not allowed without permission except in the lobby area").

The scope of plaintiff's videotaping of the police station encompassed the entry to the offices of the Youth Division, where officers conduct victim interviews and process juveniles, who are entitled by statute to confidentiality. Id. at ¶¶ 64-65. In addition, it encompassed other entry and exit points, surveillance cameras, and an underground garage with gas tanks and undercover vehicles. Id. at ¶ 65. The rulings on which plaintiff relies do not address one's right to videotape sensitive, nonpublic areas of a police station that similarly implicate privacy rights of juveniles and witnesses as well as legitimate concerns for station security and officer safety.

Plaintiff cites one case recognizing a right to videotape a police station, Turner v. Lieutenant Driver, 848 F. 3d 678 (5th Cir. 2017). Like the plaintiff here, Mr. Turner videotaped a police station from a public sidewalk and subsequently refused to provide officers with identification. Id. at 683. The Fifth Circuit stated that "a First Amendment right to record the police does exist, subject only to reasonable time, place, and manner restrictions." Id. at 688. However, it affirmed the district court's ruling that the defendants were entitled to qualified immunity because this right was not clearly

established at the relevant time.

The Fifth Circuit's decision in Turner does not suffice to establish that plaintiff had a clearly established right to make a video recording of the Waterbury police station in 2018. The decision in Turner framed the right broadly as the "right to record the police." Id. at 687. This framing does not provide the degree of particularity required by the Supreme Court to find that a right is "clearly established." See al-Kidd, 563 U.S. at 742. Indeed, the Court in Turner did not address a right to videotape a police station, let alone a right to videotape nonpublic areas or sensitive areas like the ones at issue here.

No case law placed the right claimed here beyond debate in October 2018. Accordingly, defendants' motion for summary judgment on count one based on qualified immunity will be granted.

B. Count Two: Fourth Amendment Unreasonable Seizure

Count two alleges that the defendants violated plaintiff's rights under the Fourth Amendment by subjecting him to an investigative stop without reasonable suspicion and by arresting him without probable cause. Defendants contend that there was no such violation. I conclude that plaintiff has failed to raise a genuine issue of material fact with regard to either alleged violation.

"The Fourth Amendment protects against 'unreasonable . . . seizures' of persons." Mara, 921 F. 3d at 69 (quoting U.S. Const. amend. IV). A seizure occurs when, "in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave." United States v. Mendenhall, 446 U.S. 544, 554 (1980). An arrest requiring probable cause is a prototypical seizure, but the Fourth Amendment also covers "seizures that involve only a brief detention short of traditional arrest." United States v. Brignoni-Ponce, 422 U.S. 873, 878 (1975); see Terry v. Ohio, 392 U.S. 1 (1968).

1. The Investigative Detention

Plaintiff contends that officers seized him when they approached him on the sidewalk and asked for identification. Not all requests for identification are seizures. Hiibel v. Sixth Jud. Dist. Ct. of Nevada, Humboldt County, 542 U.S. 177, 185 (2004). To determine whether an interaction constituted a seizure, courts consider "all of the circumstances surrounding the incident," including the number of officers involved, their tone, and the presence or absence of a weapon. Mendenhall, 446 U.S. at 555.

The record reflects that when the defendants approached the plaintiff on the sidewalk, they said, "we need ID." At a later point in their interaction with the plaintiff, they asserted

that their demand for identification was "a lawful order." ECF 44-1 ¶¶ 95, 101. Construed most favorably to the plaintiff, the latter statement indicated that, as of that point in the encounter, compliance with the demand for identification had become compulsory.

To determine whether the officers' detention of the plaintiff for the purpose of obtaining his identification was supported by reasonable suspicion, it is necessary to "look at the 'totality of the circumstances' . . . to see whether the[y] . . . ha[d] a 'particularized and objective basis for suspecting legal wrongdoing.'" United States v. Arvizu, 534 U.S. 266, 273 (2002) (quoting Sokolow, 490 U.S. at 7).¹ Viewing the record most favorably to the plaintiff, I conclude that the officers' detention of the plaintiff was supported by reasonable suspicion.

The record shows the following. At the time the officers approached the plaintiff, he had been videotaping the Police Department building for more than six minutes from all angles, capturing sensitive areas of the building, as discussed above. ECF 44-1 ¶¶ 20, 38, 76, 91. The plaintiff's unusual behavior

¹ Though it is not settled law, the Second Circuit likely permits officers to have reasonable suspicion of generalized criminal activity rather than suspicion of a specific crime. See United States v. Santillan, 902 F. 3d 49, 57 (2d Cir. 2018) ("We conclude [that the factors establishing reasonable suspicion] were sufficient here to provide Officer Moreira, an experienced police officer trained in narcotics trafficking interdiction, with articulable and specific facts leading him to believe that the two men may have been involved in some type of criminal activity." (emphasis added)).

caused the officers to suspect that he might have an illicit purpose, especially in light of prior attacks on other police stations. Defendant Laone was in charge of the station's security and had a duty to protect officers and civilians in the building. ECF 44-1 ¶ 71. Accordingly, the officers approached the plaintiff and asked him what he was doing. Id. ¶ 48. Plaintiff responded that he was a journalist. But his behavior differed significantly from that of journalists with whom the officers had previously interacted. In the past, each time a journalist wanted to film the station, the police department was given prior notice and the journalist provided the police with press credentials. Id. ¶¶ 52, 73-74. Plaintiff declined to provide the defendants with credentials, declined to answer their follow-up questions about the type of story he was doing, did not disclose that he was conducting a First Amendment audit, and repeatedly refused to provide identification even after the officers expressed safety and security concerns. Id. ¶¶ 27, 49-50, 53, 75-76.

Given the limited information plaintiff provided and the ways his behavior differed from that of other journalists, a conscientious officer could reasonably suspect that criminal activity was afoot. The investigative detention of the plaintiff was therefore adequately supported by reasonable suspicion.

Even assuming the detention of the plaintiff was not supported by reasonable suspicion, the defendants are entitled to summary judgment based on qualified immunity because their conduct did not violate a clearly established right. No case on point decided by either the Supreme Court or the Second Circuit has been cited or found. In the absence of such authority, a reasonable officer could think that briefly detaining the plaintiff for further investigation did not violate the Fourth Amendment.

In Turner, the Fifth Circuit concluded that qualified immunity applied in similar circumstances. See Turner, 848 F. 3d 678 at 691 (“Even if we assume arguendo that [the officers] violated Turner’s Fourth Amendments [sic] rights by detaining him without reasonable suspicion, we cannot say that this detention was objectively unreasonable in light of clearly established law.”). The Court explained that although Turner was merely filming routine activities taking place at the police station, an objectively reasonable officer could have suspected that he was casing the station for an attack, stalking an officer, or otherwise preparing for criminal activity, and thus could have found his filming sufficiently suspicious to warrant questioning and brief detention. The same is true here. In fact, this is a stronger case for qualified immunity because the

plaintiff was filming sensitive areas of the police station rather than just routine activities.

Accordingly, the defendants' motion for summary judgment with regard to the investigative detention will be granted.

2. The Arrest

Plaintiff contends that the defendants violated the Fourth Amendment by arresting him without probable cause. "[P]robable cause to arrest exists when police officers have 'knowledge or reasonably trustworthy information of facts and circumstances that are sufficient to warrant a person of reasonable caution in the belief that the person to be arrested has committed or is committing a crime.'" Walczyk v. Rio, 496 F. 3d 139, 156 (2d Cir. 2007) (quoting Weyant v. Okst, 101 F. 3d 845, 852 (2d Cir. 1996)). The officers contend that they had probable cause to arrest plaintiff for misdemeanor interference as a matter of law.² Viewing the record most favorably to the plaintiff, I agree.

² Defendants also contend that plaintiff is collaterally estopped from arguing that probable cause was lacking because he made the same argument in support of a motion to dismiss the underlying criminal case and the argument was rejected. Under Connecticut law, a litigant is precluded from raising an issue in a subsequent action only if the issue was "fully and fairly litigated in the first action." Aetna Cas. & Sur. Co. v. Jones, 596 A. 2d 414, 421 (Conn. 1991)). "[U]nless the unsuccessful party in the prior litigation had the opportunity to seek appellate review, that issue has not been 'fully litigated' for the purposes of collateral estoppel." Weiss v. Weiss, 998 A. 2d 766, 782 n.20 (Conn. 2010). Plaintiff did not have an opportunity to seek appellate review of the trial court's ruling on probable cause, so collateral estoppel does not apply.

Defendants charged the plaintiff with violating CONN. GEN. STAT. § 53a-167a, which prohibits “interfering with an officer” by “obstruct[ing], resist[ing], hinder[ing], or endanger[ing]” an officer “in the performance of [the officer’s] duties.” Refusing to provide identification may violate § 53a-167a because it “is likely to impede or delay the progress of the police investigation, even when that refusal is peaceable.” State v. Aloï, 911 A. 2d 1086, 1093 (Conn. 2007). See e.g., State v. Silva, 939 A. 2d 581, 588 (Conn. 2008) (defendant violated § 53a-167a when she refused to provide identifying documents to police); Armstrong v. Martocchio, 3:18 CV 580 (RMS), 2021 WL 1723243, at *10 (D. Conn. Apr. 30, 2021) (there was probable cause to arrest plaintiff for violating § 53a-167a because she “refus[ed] to move her truck . . . , refus[ed] to identify herself when requested, and walk[ed] away from the defendant”).

It is undisputed that plaintiff repeatedly refused to provide the officers with identification even after they explained their safety and security concerns. Because such a refusal can be sufficient to violate § 53a-167a, a jury would have to find that the plaintiff was properly arrested for misdemeanor interference. The state court in the underlying criminal case reached the same conclusion when it denied a

motion to dismiss the criminal charge for lack of probable cause.

Even if the arrest lacked probable cause, the defendants are entitled to qualified immunity because they had at least “arguable probable cause” for the arrest. Zalaski v. City of Hartford, 723 F. 3d 382, 390 (2d Cir. 2013) (quoting Escalera v. Lunn, 361 F. 3d 737, 743 (2d Cir. 2004)). An arresting officer has arguable probable cause “if either (a) it was objectively reasonable for the officer to believe that probable cause existed, or (b) officers of reasonable competence could disagree on whether the probable cause test was met.” Washington v. Napolitano, 29 F. 4th 93, 105 (2d Cir. 2022) (quoting Zalaski, 723 F. 3d at 390). For the reasons set forth above, it was objectively reasonable for the officers to believe that probable cause existed to arrest the plaintiff for violating § 53a-167a. The state court’s finding of probable cause in the underlying criminal case after considering a counseled motion to dismiss underscores the appropriateness of qualified immunity.

Therefore, summary judgment will be granted to the defendants with regard to the claim based on the arrest.

C. Count Three: Fourth Amendment Malicious Prosecution

Plaintiff also brings a claim for malicious prosecution against defendant Benoit. “In order to prevail on a § 1983 claim against a state actor for malicious prosecution, a

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plaintiff must show a violation of his rights under the Fourth Amendment and establish the elements of a malicious prosecution claim under state law.” Fulton v. Robinson, 289 F. 3d 188, 195 (2d Cir. 2002) (internal citations omitted). The record does not permit a reasonable finding that Benoit violated the plaintiff’s rights under the Fourth Amendment. Therefore, summary judgment will be granted to defendant Benoit with regard to the malicious prosecution claim.

III.

Accordingly, plaintiff’s motion for summary judgment is denied and defendants’ motion for summary judgment is granted. The Clerk may enter judgment and close the file.

So ordered this 31st day of March 2025.

/RNC/
Robert N. Chatigny
United States District Judge

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**United States District Court
District of Connecticut**

Keith Massimino,
Plaintiff

No. 21-cv-1132

v.

April 28, 2025

Matthew Benoit and Frank Laone,
Defendants.

Notice of Appeal

Please take notice that plaintiff Keith Massimino appeals to the United States Court of Appeals for the Second Circuit from this Court's March 31, 2025 ruling on the parties' cross-motions for summary judgment [ECF # 58].

/s/ Dan Barrett

Dan Barrett
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