

**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
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

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

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)

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)

DEFENDANTS, MATTHEW BENOIT AND
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BY: /s/ Joseph A. Mengacci

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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

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