

LAW OFFICE OF

HÉCTOR E. PIÑEIRO, P.C.

807 MAIN STREET
WORCESTER, MASSACHUSETTS 01610
(508) 770-0600

FAX (508) 770-1300
hector@pineirolegal.com

HÉCTOR E. PIÑEIRO

ROBERT A. SCOTT

NANCY CRUZ DE PIÑEIRO
Business Manager

CORRESPONDENT

MARÍA S. PIÑEIRO SOLER, L.L.M.
EDIFICIO PONCE DE LEÓN
161 PONCE DE LEÓN AVE., SUITE 302
SAN JUAN, PUERTO RICO 00918
TEL: (787) 250-8304
FAX (787) 758-4236

April 10, 2018

Honorable Joseph D. Early, Jr.
Worcester County District Attorney
225 Main Street, Room G301
Worcester, MA 01608

RE: *Exculpatory evidence under Brady v. Maryland and United States v. Giglio
unlawfully suppressed and withheld from defendants'*

Dear District Attorney Early:

I write to inform you of numerous and recurring instances of police misconduct resulting in denial of due process to defendants in criminal prosecutions by your office, and to respectfully urge you to review convictions whose integrity is suspect because evidence of the misconduct and other exculpatory evidence has been withheld from defendants.

Documentation is provided below of physical abuse, fabrication of evidence, staging of evidence, untruthful reporting, racial and ethnic bigotry, pursuit of baseless charges with full knowledge of their falsity, cash seized in execution of search warrants but not reported, searches of premises and persons (including strip searches and body cavity searches) without warrant or probable cause, and the deliberate suppression of exculpatory evidence in prosecutions. This has occurred in cases your office prosecuted, in some instances with actual knowledge of prosecutors of their failure to meet obligations under the *Brady* and *Giglio*.

Your office and you personally may not be aware of all the facts revealing the taint of police misconduct in numerous prosecutions, but the evidence is clear. The facts provided here come from rulings of court, transcripts of plea colloquia and other hearings, members of the criminal defense bar, and from civil actions involving police officers. It is my hope this information will help to convince you of the urgent need for action to restore and preserve the fairness and integrity of criminal justice in Worcester County. We have enumerated twelve cases. These cases are accompanied by a summary and an index and two volumes of paginated records containing a total of 749 pages.

Discovery obligations regarding exculpatory evidence¹

As you know the Due Process clause of the 14th Amendment requires the government to disclose to a criminal defendant any evidence “material either to guilt or to punishment.” *Brady v. Maryland*, 373 U.S. 83, 87 (1963). This disclosure obligation encompasses evidence useful to the defense in impeaching government witnesses even if the evidence is not inherently exculpatory. *Giglio v. United States*, 405 U.S. 150, 153 (1972); *Douglas v. Workman*, 560 F.3d 1156, 1172-73 (10th Cir. 2009)(“[N]o distinction is recognized between evidence that exculpates a defendant and ‘evidence that the defense might have used to impeach the [United States or government] witnesses by showing bias and interest.’” (quoting *United States v. Bagley*, 473 U.S. 667, 676 (1985)); *United States v. Abello-Silva*, 948 F.2d 1168, 1179 (10th Cir. 1991)(“Impeachment evidence merits the same constitutional treatment as exculpatory evidence.”). The Supreme Court has refined the *Brady* rule to make clear that a defendant’s request is not necessary to trigger the disclosure obligation. “Regardless of request, favorable evidence is material, and constitutional error results from its suppression by the government.” *Kyles v. Whitley*, 514 U.S. 419, 433 (1995)(quoting *United States v. Bagley*, 473 U.S. at 682); *Douglas v. Workman*, 560 F.3d at 1172 (“The government’s obligation to disclose exculpatory evidence does not turn on an accused’s request.”); *United States v. Summers*, 414 F.3d 1287, 1304 (10th Cir. 2005)(“[T]he prosecution has an affirmative duty to disclose exculpatory evidence clearly supporting a claim of innocence even without request.”) (quoting *United States v. Hykes* (D. N.M. April 11, 2016) Case No. 1:15-cr-04299-JB, Memorandum and Order).²

Brady requires disclosure of evidence that is both favorable to the accused, and “material either to guilt or to punishment.” *Brady*, 373 U.S. at 87. “Evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the

¹ Rule 14 (1)(A)Mass. R. Crim. P. provides for mandatory discovery: (A) Mandatory Discovery for the Defendant. The prosecution shall disclose to the defense, and permit the defense to discover, inspect and copy, each of the following items and information at or prior to the pretrial conference, provided it is relevant to the case and is in the possession, custody or control of the prosecutor, persons under the prosecutor's direction and control, or persons who have participated in investigating or evaluating the case and either regularly report to the prosecutor's office or have done so in the case: . . .(iii) Any facts of an exculpatory nature.

² Similarly, the current United States Attorneys’ Manual is instructive and requires prosecutors “to seek all exculpatory and impeachment information from. . . federal, state, and local law enforcement officers and other government officials participating in the investigation and prosecution of the criminal case against the defendant.” United States Attorneys’ Manual § 9-5-001(B)(2)(2014).

See also Local Rule 116.2 of the United States District Court For the District of Massachusetts, Including Amendments Through July 1, 2017 which contains the following Definition of Exculpatory Evidence:

(A) Definition. Exculpatory information is information that is material and favorable to the accused and includes, but is not necessarily limited to, information that tends to:

(1) cast doubt on defendant's guilt as to any essential element in any count in the indictment or information;

(2) cast doubt on the admissibility of evidence that the government anticipates using in its case-in-chief, that might be subject to a motion to suppress or exclude, which would, if allowed, be appealable pursuant to 18 U.S.C. § 3731;

(3) cast doubt on the credibility or accuracy of any evidence that the government anticipates offering in its case-in-chief; or

(4) diminish the degree of the defendant’s culpability or the defendant’s Offense Level under the United States Sentencing Guidelines.

proceeding would have been different.” *United States v. Bagley*, 473 U.S. at 682. See *United States v. Allen*, 603 F.3d 1202, 1215 (10th Cir. 2010). A “reasonable probability,” in turn, is a “probability sufficient to undermine confidence in the outcome.” *United States v. Bagley*, 473 U.S. at 682 (internal quotation marks omitted). The Tenth Circuit has noted that “[t]he mere possibility that evidence is exculpatory does not satisfy the constitutional materiality standard.” *United States v. Fleming*, 19 F.3d 1325, 1331 (10th Cir. 1994). The Tenth Circuit has also stated that evidence is material if it “might meaningfully alter a defendant’s choices before and during trial . . . including whether the defendant should testify.” *Case v. Hatch*, 731 F.3d 1015 (10th Cir. 2013)(quoting *United States v. Burke*, 571 F.3d 1048, 1054 (10th Cir. 2009))(internal quotation marks omitted). *Hykes*, supra at 13.³ The government bears the burden of producing exculpatory materials; and defendants have no obligation to point out that such materials exist. See *Kyles v. Whitley*, 514 U.S. at 437 (stating that the prosecution has an affirmative duty to disclose evidence, because “the prosecution, which alone can know what is undisclosed, must be assigned the consequent responsibility to gauge the likely net effect of all such evidence and make disclosures when the point of “reasonable probability is reached”).

In any given criminal case, when there is evidence to show an officer has tried to perpetrate a fraud on the court, that evidence must be provided to any defendant whose current prosecution or past conviction rests on the testimony of that officer. The evidence has impeachment value as to the officer’s character for truthfulness; it refutes the oath he takes as a witness.

Please consider the following twelve cases:

Ex. 1 *Commonwealth v. Allison Skerrett*, Worcester District Court, 1562CR8283.

Nature of the case: WPD Vice squad officers fabricated the circumstances of a suspect’s arrest in order to link him to possession of contraband (guns and drugs), but a surveillance video of the location revealed police lied. Specifically, Vice squad members claimed Mr. Skerrett was inside of his vehicle at the time of arrest when in fact a video shows him clearly on the sidewalk approximately 20-30’ away from his car and the officers. Skerrett also alleged that an officer who took his money did not account for the full amount of money that was confiscated. The DA’s office was fully aware of the import of the surveillance video and its implications at the time of the plea agreement.

Date of arrest: 10/8/15

Issues: Lying, submitting a false police report, missing money, warrantless search and lack of probable cause.

Department: Worcester Police Vice squad.

Officers involved per reports: Jeffrey Carlson, Lt. Michael Hanlon, Larry Williams, Dana Randall, Sgt. Matt Early, Terrence Gaffney, Terrence Cahill, and possibly Sgt. Carl Supernor.

³ See, G. L. c. 268, § 1 (criminal offense of perjury, which in this case applies to Officer Jeffrey Carlson’s swearing to false criminal charges and G. L. c. 268, § 6A (criminalizing false police reports))

Arresting officers: Jeff Carlson and Terrence Gaffney

Nature of charges: Drug Possession to distribute

Outcome of charges: Filed without charge or plea. Case terminated at the request of Commonwealth on 4/29/16 at the behest of Vice-squad officers.

Carlson's false Report: Det. Carlson reported that while riding with PO Larry Williams in an undercover car he received information from Sgt. Hanlon that Alison Skerrett was in a mini-van at Sazon Latino Rest on Chandler Street and that he was in possession of a firearm – Sgt. Hanlon told Carlson probable cause existed to stop and search Skerrett. The report stated “I am familiar with Skerrett and know that he has a history of violence and drug dealing. I know that Skerrett could not legally possess a firearm based on his history. **We proceeded to the area and I observed Skerrett seated in the operators seat of a Nissan mini-van, color gold, that was parked in front of the Sazon Latino restaurant on Chandler Street. P.O.'s Terrance Cahill, Terrance Gaffney, Williams, and I approached and stopped Skerrett, Miguel Vera dob -87, and Charlotte Vera dob -86. Skerrett was attempting to walk away from the van upon seeing our approach.**” (*Emphasis*).

Officer Carlson's submitted a false police report because the video demonstrates Skerrett was not seated in the operator's seat when police went to arrest him. Carlson's police report has never been corrected or supplemented. Although the report states he does not have a supervisor Lt Hanlon was a direct supervisor and so was Sgt. Supernor who upon information and belief was responsible to review for accuracy and sign the police reports submitted by Detectives Cahill, Gaffney, and Hanlon and Carlson.

Cahill's false report: Det. Cahill also prepared a report echoing the falsehoods of Carlson's report. Cahill wrote: “**The Mini Van was occupied by an Allison Skerrett D.O.B -86. P.O Carlson had received information that Skerrett was in possession of a firearm.**” He also wrote: “**The operator of the vehicle was placed under arrest by P.O Carlson for drug offenses.**”

Gaffney's report: Det. Gaffney and Carlson took Skerrett into custody inside of the Sazon Latino Restaurant. “We were working in a plain clothes capacity and in an unmarked police vehicle. As a result of information gathered, it was believed that a male known as Allison Skerrett (-86) was in possession of a firearm inside of a gold mini-van parked in-front of Sazon Latino Restaurant on Chandler St.”

A video surveillance recording contradicted the police: A video surveillance camera from a local restaurant demonstrated officers Carlson and Cahill falsely reported that Skerrett was inside the van when officers approached and arrested him. The video demonstrates Skerrett walking out the front door of the Sazon Latino restaurant as officers closed in on the vehicle. **Skerrett never got to the van before he was detained.** Also, Carlson reported he recovered \$3,561 in cash from Skerret once he was detained, but Skerrett alleges he took more. (*Emphasis*).

The officers in question prepared false reports regarding Skerrett's location at the time of arrest because placing him behind the wheel of the van would demonstrate his knowledge and possession of contraband found in the van. See Exhibit 1 with criminal complaint, police report, and criminal docket with disposition, and video. I have enclosed five still images from the surveillance video which show Gaffney and Carlson following Mr. Skerrett into the restaurant rather than detaining him at the vehicle.

Affidavit Attorney Hennessey

Enclosed is the affidavit of Attorney Joseph Hennessey Skerrett's defense counsel who obtained the video from the restaurant. The affidavit observes that after disclosure of the video none of the police reports containing false information were corrected.

Colloquium 4/29/2016 – the DA's office told the Court the Worcester Police wanted to terminate the case after the surveillance video uncovered an attempted fraud on the court

Attorney Hennessey brought a motion to suppress based on the lies of police revealed by the video. The transcript of a sidebar colloquium at the motion hearing shows police and prosecutor made no effort to contest the plain evidence of misrepresentation.

To the Court: *MR. GUERRA: They'd [the Worcester Police] like to see the matter end today. I did explain to them that I am asking for a guilty filed just to be done with it, and the defense counsel to continue without a finding for a day. The officers indicated to me, you know, they'd like the matter to be ended today. That's the reason for the –*

MR. HENNESSEY: He's got a very lengthy record. Your Honor, the reason for my asking for a continuance without a finding is one, I believe I have a very good triable case. I don't want to place the officers in the position because, um, I believe I have a motion to suppress that could reflect on their credibility of the police officers. There's a video that I've obtained from one of the businesses. That would be supportive of my client's motion to suppress.

THE COURT: So is this an issue for the cops? Is that it?

MR. GUERRA: I don't know, but I was – my conversation was that the Worcester Police were -- would like to see it ended.

THE COURT: Assault to murder. He has a very impressive record, and not in a good way. (Indiscernible) step on their -- step on themselves here a little bit?

THE COURT: I'm getting close to retirement, don't -- you can't upset me like this. Filed without a change of plea for one month. I will do it over your objection. If he doesn't like that then he can go to trial and test out his -- test out his strength. Okay. All right.

MR. HENNESSEY: Thank you very much.

Skerrett's affidavit: Skerrett alleged police filed a false reports and stole some of his money because he refused to give Det. Carlson the password to his iPhone. Consistent with the video, Skerrett alleged that he saw officers approaching his van as he came out of the restaurant. According to Skerrett he had \$6,200, not the \$3,561 officer Carlson alleged to have found and confiscated. Skerrett's stated "The police officer with the blond hair took my money out of my pocket four times and put it back in my pocket three times. The last time he took my money he said 'I am taking your money you rookie because you won't give me the password for your cell phone.'⁴ I had money from my grandfather, I sold my motorcycle and my wife's pay check. My girls' pay check was a thousand something." Ex. 1

The District Attorney's office knew the officers prepared false police reports but it continues to rely on and vouch for the truthfulness of these officers in numerous criminal prosecutions. The impeachment value of this evidence is considerable. The Worcester's DA's office knew the video unequivocally demonstrated that officer Carlson, et al, lied in his application for a criminal complaint and that other officers submitted false reports. Yet the DA's office has not provided or disclosed this video and reports to criminal defense lawyers in Worcester County.

Ex. 2 *Commonwealth v. Hernan Ortiz*, Worcester District Court, 142CR007820

Nature of the case Detectives while attempting to arrest a third party searched a man's home without a warrant after pointing their weapons at Hernan Ortiz. Once they gained entry into his apartment they found contraband which they arranged (staged) and photographed in order to portray it as having been in plain view, but apparently did not realize that their photographer had been shooting pictures from the beginning which fully documented the attempted deception.

Date of arrest: 8/26/2014

Issues: Lying, false police reports, searching an apartment without a warrant, staging of evidence, missing money police recovered in a drug raid, warrantless search and lack of probable cause, failing to document that weapons were drawn and pointed at Mr. Ortiz from the outside of the building and allegedly using monies confiscated by police buy lunch for police personnel.

Department: Worcester Police Vice squad, DEA Drug Task Force

Worcester police officers involved per reports: Jeffrey Carlson, Kellen Smith, Dana Randall, Sgt. Matthew Early, Michael Hanlon, Cortis. The other following Vice Squad officers were present as well: Carl Supernor, Thomas Bishop, Steven Bonczek, James Guittar, Terry Cahill, Mike Ryder, Pat Moran, Michael Brunstetter.

Federal Agents involved per reports: DEA SA, Eric J. Henderson, TFOs Gould, Dunajski, Bausch (Walpole PD) Garry Morris (WPD), Britt, Gibbon and David M. DiTullio acting GS

Arresting officers: Kellen Smith and Jeff Carlson

⁴ Officer Carlson's report confirms he confiscated Skerrett's phone.

Nature of charges: Drug Possession Class E, Cocaine trafficking, conspiracy to violate drug law, false name, drug possess to distribute Class D

Outcome of charges: All charges were dismissed on March 30, 2015 after the Commonwealth indicted Hernan Ortiz. On April 8, 2016, Judge Wrenn granted a motion to suppress citing Commonwealth v. Canning, 471 Mass. 351, 352 (2015) because after the passage of the act for humanitarian medical use of marihuana Officer Kellen Smith's affidavit was devoid of any language, observations or other evidence that would allow a direct finding of quantity or even circumstantial finding of quantity.

Facts: On 8/26/2014 DEA/TDS agents and members of the Worcester Police Vice Squad were looking to arrest Derek Reyes in connection with an ongoing drug investigation. In their reports officers stated they followed Reyes to 27 Lyon Street in Worcester, a four-unit apartment building. Hernan Ortiz lived on the first floor. Ortiz had no association with Derek Reyes. According to WPD Det. Kellen Smith police followed Reyes to 27 Lyon Street and saw him enter into the building.

Ortiz's Affidavit:

According to Ortiz at approximately 9:00 am, he was awakened by police banging on the door to his apartment. An Ortiz recognized as Jeffrey Carlson shoved a window mounted air conditioner out of the window and onto the bedroom floor and displayed a gun as he tried to enter through the window. This critical information does not appear in any police reports, i.e., DEA/TDS, or in WPD reports.⁵ Ortiz was told "Open the door Police DEA" but he demanded that the officer produce a search warrant. See Affidavit of Hernan Ortiz, enclosed at Exhibit # 2. Ortiz told them: "I'll open the door but if the warrant is not for me I am not giving you permission to search the apartment." Ortiz states the agents told him "Ok." But when he opened the door the officers pushed him in and one of them grabbed him and asked him for the guns. Ortiz responded "I don't have any guns maybe you have the wrong apartment there are four apartments in this building." A DEA agent who had a photo of Reyes said "that's not Derek Reyes." *Id.* After a half hour the two DEA agents left. The police had a warrant, but it was not for Ortiz. They asked him to sign a consent form to search and he refused. They took Mr. Ortiz from the apartment as a WPD gang unit officer went inside for a few minutes and to the kitchen. Ortiz alleges he was kept in the driveway of at the building his apartment until 4 pm., about the same time that the police obtained a warrant to search Ortiz' apartment. According to Ortiz he had \$20,500 in cash stored in his freezer and \$5,000 in cash in his pocket. An officer told him they would be having lunch at his expense, and "[t]hey bought 2 trays of water, a big box of coffee, and sandwiches they were asking each other what do you want."

The police did not find or arrest Derek Reyes at 27 Lyons Street. Ortiz alleges they showed him a paper he could not read and claimed it was a warrant, handcuffed him and told him he was under arrest for trafficking cocaine because just then they had found 240 gms of cocaine.

⁵ Because pointing a gun at a suspect is a use of force or police were duty bound to report it. We have photos that prove the air conditioning unit was pushed in and landed in Ortiz's bedroom floor.

Kellen Smith's false statement:

Kellen Smith wrote in a report that when Ortiz opened the apartment door there was evidence of illegal drugs in plain view. He wrote that "SA Ditullio and I were also able to observe from the **threshold of the apartment what appeared to be packaging material which was on top of the refrigerator** along with a quantity of a green leafy like vegetable like substance immediately recognized through our training and experience as Marijuana within Torres' AKA Ortiz' residence." Ortiz had less than a gram of marijuana in the apartment, an amount was so small that it would not have amounted to an arrestable offense, and in any event as photos of the scene show it was not in plain view and there was no "packaging material."

Time stamped police photos taken in the apartment show that the apartment was searched without a warrant, contraband was found and the scene was then staged to create a fictional justification for the search. They arranged "packaging material" on the refrigerator next to the Marihuana to create a pretext to a "protective sweep" of the apartment which, they falsely claimed revealed more incriminating evidence in plain view sufficient to justify an application for search warrant.

Staging of evidence to bootstrap probable cause and K. Smith's false report:

Kellen Smith falsely wrote at (page 9 of 14 Para. S): "Officer K. Smith observed and **subsequently seized plastic sandwich bags (packaging material) and a plastic bag containing suspected Marijuana, in plain view in the area referred to as the kitchen of the target residence.**" This was a lie. Time stamped photos of the apartment taken by the police conclusively demonstrate the staging of evidence, i.e. that the initial photographs taken at 4:53 pm did not have the "seized plastic sandwich bags (packaging material)... in plain view..."

See, e.g.:

Photo 1 shows the air conditioning unit that was pushed in by Det. Carlson (taken at 4:50 pm)

Photo 2 is one of the initial photos taken by police which shows two things: police could not have seen the marijuana from the front door as they claimed but more importantly there are no other sandwich bags or containers that Smith alleged to have observed from the front door. (photo taken at 4:53 pm)

Photo 3 Glad top container in bedroom drawer that was later on manipulated and moved to the top of the refrigerator (photo taken at 5:02 pm)

Photo 4 Photo of Toilet tank where drugs were found taken at 5:11 pm.

Photo 5 shows photo from the top of the refrigerator and the open freezer where police found money. Police did not report they found cash money in Ortiz's pocket. This photo does not show the Glad top container that appears there later (photo taken at 5:13)

Photo 6 shows a small marihuana bag (not weighing 2 gms as alleged by K. Smith) and the Glad top container (photo taken at 5:35 pm)

Photo 7 close up of refrigerator with the staged Glad top container that was originally photographed in the bedroom (see photo 3). (This photograph was taken at 5:35pm)

Kellen Smith stated in a supplemental narrative (page 8 of 14 at Para. B): “TFO G[arry] Morris found and subsequently seized a digital scale, bearing a white powder like residue (suspected cocaine), a box of sandwich bags (packaging material) and a cut corner bags (used packaging material) from the top dresser drawer in the area referred to as “the front Bedroom” of the target residence.”

The materials that TFO Morris found on the top dresser (a Glad Fold Top empty box-see below photo) was moved, manipulated, staged and placed from Ortiz’s bedroom to the top of his refrigerator to create the impression that police had additional probable cause to procure a search warrant.

Affidavit Attorney Hennessey

I have also enclosed an affidavit by Attorney Joseph Hennessey who was Mr. Ortiz’s defense counsel. He obtained the photographs listed above from ADA Farrell. Aff. at ¶¶ 5-6. Attorney Hennessey scheduled a motion to suppress based on *Franks v. Delaware*. Id. at ¶ 16. Attorney Hennessey was informed before the hearing by ADA Farrell that the Ortiz case was analogous to *Comm. v. Canning*, 471 Mass. 341 (2015), where officers had cause to believe a person possessed marijuana but no cause to believe he possessed it in violation of law, and so the Honorable Daniel Wrenn dismissed the case was dismissed without a Franks Hearing. Attorney Hennessey opined that the warrant application and police reports contained false statements and that evidence in the case was “staged.” Id. ¶¶ at 31-34.

Ex. 3 *Commonwealth v. Juan Roman Rivera*, 1362CR010854 and *Commonwealth v. Juan Roman Rivera*, 1362CR010854 ⁶

Nature of the case On December 18, 2013 Vice squad and gang unit detectives who had been granted a (knock) search warrant to a Hacker Court apartment in Worcester broke the door to the apartment without knocking, beat and strip searched a number of individuals they arrested beat and strip search an individual whose name did not appear in police reports. Another individual claimed police failed to report hundreds of dollars they confiscated from him and that police racially taunted them.

Date of arrest: 12/18/2013, Execution of search warrant/drugs

Issues: Lying, untruthful reports, excessive force with injuries, warrantless strip search, names of injured parties missing from police narrative reports, submitting a false report, missing money, use of racial epithets and taunting and failing to submit necessary police reports

Police Department: Worcester Police Vice squad and gang unit

⁶ Jonathan Hardy, Adam McNeil.

Officers involved per reports: Sgt. Carl Supernor, Sgt. Steve Roche, Terrence Cahill, John Morrissey, Terrence Gaffney, Robert O'Rourke, Steve Bonczek, Neftali Batista, Ignacio Garcia, James Guittar. There may be other officers present as well.

Arresting officers: Cahill and Gaffney

Nature of charges: Drug Possession to distribute class B, resisting arrest

Outcome of charges: Full dismissal of all charges 3/2/15

Juan Roman Rivera's Federal Complaint: Rivera v. City of Worcester, et al, Case 4:17-cv-40029-TSH, Filed March 16, 2017. Rivera alleged in a federal complaint that police broke the door to a friend's apartment without announcing themselves as their warrant required, that officer Cahill knocked him to the ground and hit him in the face, nose, forehead and mouth and Sgt. Supernor kned him in the groin. The complaint alleges that officers Robert O'Rourke and Steve Bonczek unlawfully strip searched and abused Rivera in a bathroom and others present also got this treatment. Rivera was bleeding when he was ordered to show his genitals and rectum and was threatened with more beating if he did not oblige. *Id.* at ¶¶ 39-40. He also alleges that the name of a person present in the apartment who was strip searched was not disclosed in the police reports. See, Index at **Exhibit # 3.**

Affidavit of Jonathan Hardy Mr. Hardy alleged police seized \$1,096 from him but that instead police only reported confiscating \$496.00. Hardy stated "When I said I had more then (sic) that they said 'that's all we counted.'" Aff. at ¶ 3. Hardy alleges other males were beaten by police and Jeffy Chevare was hit 3 times while handcuffed. Hardy, an African American, also alleges he was the subject of racially derogatory comments. "You niggah want to play? then now it's over."

Police report: the police report from this raid is enclosed. It states \$496 was confiscated from Hardy. A supplemental report prepared by Det. Robert O'Rourke suggests he and Steve Bonczek strip searched Rivera. See police report at page 13/16. Officer Cahill, who used force on and injured Rivera did not prepare an incident report, and other officers shed no light on how Rivera was injured.

Gaffney's account: Gaffney wrote that "Officer Cahill pursued Rivera as I pursued McNeil into the kitchen area repeatedly telling him to get on the (sic) round." (Page 8 of 16)

Batista's account: Batista wrote that "Juan Rivera refused officer Cahill's commands to put his hands behind his back and had to be physically put his hands behind him. Reference Officer Cahill's supplemental report for further details." But officer Cahill did not prepare any report at all as he was required to do. (Report at page 7 of 16).

Moreover, no officer reported any injuries to any of the arrestees.

Rivera's booking video: the booking video shows a bump in Mr. Rivera's head but he refused to state details of what happened to him except that his injuries occurred during the arrest.

Ambulance and Hospital records: After booking at the WPD Rivera was transported by ambulance to a hospital. An EMT wrote in his report, "Pt states that several hours ago he was assaulted by another man who struck him in the head three times with his fists. Pt states he was struck in the upper lip, nose and forehead." At the hospital Rivera was diagnosed with a 3 x 3 cm hematoma, with contusions to the head and forehead and a nasal injury.

Ruling on Motion to Suppress by Judge D'Angelo. All defendants brought motions to suppress. On December 22, 2014 Judge D'Angelo granted the motion to suppress in favor of Mr. Rivera and others, stating "Since the police would not have lawfully been present in 3 Hacker Court, aside from the search warrant, all evidence derived from the entire search of 3 Hacker Court on December 13, 2013 is suppressed." Judge D'Angelo opined "In this case, based on the violations of the entire affidavit, along with the hope that this decision will deter such violations in the future, the Court finds suppression is necessary." See Exhibit # 3.

Ex. 4. *Commonwealth v. Carl S. Johnson* 1462CR007909

Nature of the case On August 28, 2014 Mr. Johnson was dragged from his car, arrested and subjected to strip and body cavity searches without cause or warrant by members of the Worcester police vice squad in the back of a police wagon. Johnson also alleges that police without a warrant took his home keys and drove to his apartment three-quarters (¾) of a mile away and searched without a warrant which they justified or described in their reports as a "protective sweep." During a motion to dismiss a District Court Judge commented after the granted the motion to dismiss in favor of Mr. Johnson "**There is this thing called the Constitution,**" a District Court judge commented as he dismissed all charges. "**Maybe they [police] should read it.**" (*Emphasis*).

Date of arrest: 8/28/2014

Nature of charges: Cocaine, Distribute.

Issues: Lying, false police reports, searching an apartment without a warrant and lying that they were conducting a "protective sweep" while searching his apartment almost a mile away from where he was arrested. He also alleges an illegal/warrantless strip and cavity search and that police made of fun of him during the strip and cavity search.⁷

Department: Worcester Police Vice squad.

Worcester police officers named in police reports: Lt. Carl Supernor, Patrick Moran, Steve Bonczek, Terrence Cahill, Michael Ryder and former detective Mary Brabbs

Outcome of charges: All charges were dismissed by Judge Despatopolous March 18, 2015.

⁷ The strip search and cavity search violated the Worcester police department strip search policy and state and federal law.

Judge Despatopolous' dismissal of charges: During a March 18, 2015 hearing Judge Despatopolous dismissed the charges against Johnson after learning he had been arrested on the street, strip searched, and his home had then been searched without a warrant. The Honorable Judge commented that "there is this thing called the Constitution, maybe they [police] should read it." (Audio included).

Johnson's Federal Complaint, Johnson v. Lt. Superior, Patrick Moran, Terrence Cahill, Steven Bonczek, City of Worcester, Case No. 4:17-cv-40103- USDCT-Mass. Filed 7/4/2017. Johnson alleges he was stopped and arrested without probable cause on August 29, 2014. Mr. Johnson alleges that he was stopped after an alleged drug transaction and was stopped on Dewey Street in Worcester. He was told "Get the fuck out of the car." Johnson alleges that officer Moran prepared a false police report claiming when he stopped him he had \$40.00 of cash in his hand. Complaint at ¶ 23-30. He also alleges he was placed in the back of a police wagon and was stripped searched and subjected to a cavity search while his co-defendant, Mr. Threats watched and vice squad members laughed and ridiculed him. Id. at ¶ 31-46. Johnson further alleges that police took his apartment keys without a warrant and searched his apartment for a significant period of time alleging they were conducting a "protective sweep" of his 982 Main Street apartment located .9 miles away from the where he was arrested- on Dewey Street, Worcester. Id. at ¶ 52-56. When police arrived to Johnson's 982 Main Street apartment they came in contact with his son, who told police his father was not inside of the apartment and no one was in the apartment. Id. 55-61.

Pat Moran's false report He "asked Kipko [Johnson's son'] if anyone else was inside the apartment. He stated he was not sure." According to Officer Moran, "at this point P.O. Terrence Cahill knocked on the door and waited and received no response from within. He then used the key taken from Johnson to open the apartment door to perform a protective sweep. There were no other people inside the apartment but there was a television on inside. Officers then exited the apartment and secured it with the keys." Based on Kipko Johnson's account Moran's report contained false information. Mr. Johnson did not suggest anyone might be in the apartment. Instead he informed the officers he had just come out of his father's apartment and no one was inside. Mr. Johnson was held outdoors for approximately more than 30 minutes while officers searched Mr. Johnson's apartment. (*Emphasis*).

See Exhibit # 4.

Supernor's Role: Although none of these reports are signed by a supervisor, the police record indicates the supervising officer when Mr. Johnson was arrested was Sgt. Carl Supernor.

Ex. 5 *Commonwealth v. Jose Burgos-Martinez* 1362CR005609

Nature of the case: Mr. Jose Burgos-Martinez (“Burgos-Martinez”), alleges he was assaulted by members of the gang unit while they executed a search warrant in his Oread Street apartment as a result of a search warrant that targeted his son, Juan Burgos. Burgos-Martinez alleges he and his son were assaulted before being arrested and after being placed in handcuffs. All criminal charges were dropped against Mr. Burgos-Martinez in 2018 only to be refilled again by through a criminal complaint by Sgt. Steve Roche. The Commonwealth continued to prosecute Burgos-Martinez for the unlawful possession of a gun (he had license to carry) and for drug offenses despite the fact that his son admitted the gun and drugs were his and served time for it.

Date of arrest: 7/10/2013

Nature of charges and outcome of the case: Drug, possession to Distrib, resist arrest, firearm use in felony, cocaine trafficking, firearm store improp. All of these charges were dismissed and the resisting charges were dismissed by Judge McGill on January 5, 2018. Sgt. Roche maliciously refiled a new criminal complaint charging Mr. Burgos again with resisting arrest and with “assault” charges.⁸

Issues: Lying, false police reports, excessive force, and malicious prosecution. Beating of two individuals while handcuffed, not preparing police required police reports until years later

Department: Worcester Police gang unit

Worcester police officers involved per reports: Gary Morris, Michael Tarckini, William Escobar, Terrence Gaffney, Neftali Batista, Thomas J. Duffy, Ignacio Garcia, Christopher Panarello, Sgt. Steve Roche

Burgos’ Federal Complaint, Jose Burgos Martinez v. City of Worcester, Chief Gemme, Detective Sgt. Steve Roche, Michael Tarckini, William Escobar, Gary Morris, Terrence Gaffney, Neftali Batista, Thomas J. Duffy, Ignacio Garcia, Christopher Panarello. Case No. 4:16-cv-40128- USDCT-Mass. Filed September 9, 2016. See

Burgos alleges that on July 10, 2013 he was assaulted by police officers during the execution of a no-knock search warrant of his apartment. The police had targeted his son Juan Burgos who had recently moved to live with his father and was the subject of a criminal investigation. Complaint at ¶ 1, 95. Burgos alleged that when he got to his apartment he was unaware police were executing a search warrant. *Id.* at 113. He was initially told he could not come in, but subsequently he overheard Sgt. Roche informing another officer to let Mr. Burgos in – it was then that Sgt. Roche grabbed him by the neck and battered him after screaming at him: “Fuck you I have been looking for you for a long time motherfucker.” *Id.* at ¶¶ 114-118. Once he was handcuffed and dragged inside of his son bedroom and beat him some more even with a heavy metallic object causing bruises. *Id.* at ¶ 123. When one of the officer yelled at Sgt. Roche to

⁸ Although Mr. Burgos’s address and registry information showed he had moved from his previous address five years ago, Sgt. Roche summonsed him to an addressed that was 5 years old and he did not receive the necessary notice to contest the new criminal complaint issued against him.

stop, Sgt. Roche said “I am going to kick his ass, motherfucker.” Id. at ¶ 127. When his son, Juan Burgos who was arrested and brought inside of the apartment, “Sgt. Roche repeatedly slapped him in the face.” Id. at ¶134. In the complaint, Mr. Burgos alleges that Sgt. Roche maliciously damaged his property and told him “I’m going to take piss in the fish tank and give you the water to drink.” Id. at 136. He maliciously charged him with a number of other criminal offenses. See, Exhibit # 5.

Interrogation of Jose Burgos: Jose Burgos was interrogated by police. During the interrogation which the DA’s office has, Mr. Burgos explained to Tarckini that when he entered the apartment he found police in his apartment and he grabbed by the neck, “put me to the floor punch up my face. My ribs and everything, I say what’s going on...” During the video recorded interrogation the following exchange occurred between Jose Burgos and Det. Tarckini:

Burgos-Martinez: “I got charge for that because it’s my house?”

Tarckini: “Yes, it’s your house. You live in it, right? You’re supposed to be in control.”

Burgos-Martinez: “What I got to do?... anyway you guys don’t believe me...I got to tell you.”

Tarckini: “We believe you. I didn’t say I didn’t believe you. I don’t think your lying to us...I don’t think that at all.”⁹

Interrogation of Juan Burgos: Juan Burgos was interrogated by officer Tarckini and Escobar and told them he wanted to clear his father’s name. See interrogation attached to police report (page 12-13 of 22).

False report prepared by Det. Gary Morris¹⁰

Det. Morris prepared a false police report in which he gave the following fictionalized account of the incident:

“While clearing the apartment for other individuals an older Hispanic Male (later identified as Jose Burgos DOB xx/xx/62) came running through the rear open door and aggressively came at Sgt. Roche screaming, "What the fuck are you doing in my house, you fucking broke into my house", "Get the Fuck Out". He then came at Sgt Roche and he felt like he was going to assault him. Sgt. Roche then grabbed onto Jose Burgos and they began to wrestle back and forth in the hallway leading to the bedroom. At this point people were still clearing the apartment along with myself I then ran into the bedroom and observed them wrestling on the bed. I then assisted in placing Jose Burgos into custody.”

Neftali Batista’s false report: Juan Burgos was beaten by Batista and by Sgt. Roche.

Batista explained the arrest of Juan Burgos in the following manner:

“Once the entry was made we were advised that the target of the search warrant Juan Burgos... had jumped out his bedroom window and fled. The area was checked and Mr. Burgos was subsequently found by the undersigned officer hiding in the rear porch of 40 Oread St. Mr. Burgos was subsequently taken back to his apartment.

⁹ And yet Mr. Burgos Martinez has been court involved in this case since 2013.

¹⁰ No police report was prepared by Sgt. Roche until 2018 as required by WPD policies.

Sgt. Roche's statement of facts report prepared 1/18/2018: On July 10th at approximately 1758 hrs. myself and other members of the Worcester police gang unit executed a search warrant at 56 oread st apt#1. While conducting the search Jose Burgos came to the back door. The door was open. Burgos starting (sic) yelling you broke in my house. Get out of my house. I identified myself as a Police officer. My Police badge was displayed on the outside of my clothing on a chain around my neck. I told Burgos we had a search warrant and to wait outside. Burgos immediately charged at me with his hands raised in a threatening manner. At this point I was placed in fear of being struck by Burgos. I grabbed his arms to prevent him from striking me. While trying to prevent him from hitting me I told him he was under arrest and to stop resisting. Burgos refused my commands. Officer Morris had to assist me in controlling and placing Burgos in handcuffs. Burgos cocked his arms & continued prevent me from placing him under arrest.'

Ex. 6 Federal complaint *Jose L. Ortiz v. City of Worcester, Detectives Steve Roche, Michael A. Tarckini, Matthew Early, Steve Bonczek*, CA No. 4:15-cv40037, filed February 22, 2015.

Date of incident: March 8, 2014.

Nature of the case: Mr. Ortiz a livery driver was confused by police with being a member of drug ring and was struck and assaulted with a loaded gun by Sgt. Roche during the execution of a search warrant at 1069 West Boylston Street, Worcester, MA. Sgt. Roche lied alleging Mr. Ortiz impaled himself on his gun: "At this point I extended my weapon towards the male and for a second time said Police let me see your hands. The male then quickly turned towards me striking his left eye lid on my weapon. This caused a small cut on his eye lid." Two other co-defendants' were beaten as well, one of them while in handcuffs when police forced him to do warrantless cavity search.

Issues: Lying, false police reports, excessive force assault with a deadly weapon and ethnic bias and prejudice towards ethnic minorities. Another individual arrested and convicted was also beaten. Drug proceeds were used to buy lunch for the police officers that raided 1069 West Boylston Street in Worcester. Warrantless strip and cavity search of one of the co-defendants' who was beaten while handcuffed by police in the back of a patrol wagon. Police also searched the vehicle of Mr. Ortiz without a warrant even though he was not part of the criminal probe.

Department: Worcester Police Vice Squad with assistance from gang unit and the Massachusetts State Police ("MSP").

Worcester police officers involved per reports at 1069 West Boylston Street: Sgt. Steve Roche, Michael Tarckini, Sgt. Matthew Early, Jeffrey Carlson, Pat Harrington, Robert O'Rourke, Steve Bonczek, Larry Williams, officer Jose Ortiz and officer Angel Miranda who came after the arrest to translate.

Other officers at 17 Shelby Street: Sgt. Carl Supernor, Michael Ryder and others

Ortiz's Federal Complaint, Jose L. Ortiz v. City of Worcester, Detectives Steve Roche, Michael A. Tarckini, Matthew Early, Steve Bonczek, CA No. 4:15-cv40037, filed February 22, 2015.

Ortiz alleges he was intentionally hit with a gun by Sgt. Roche with the muzzle of his gun as he waited for his livery ride. Complaint at ¶ 54-61. He alleges he was also assaulted by Det. Tarckini who denied touching Mr. Ortiz. Id. at 61-67. A portion of the interactions between Sgt. Roche, and Det. Tarckini are caught in a Mass State Police surveillance pole camera. Ortiz was taken to the hospital in an ambulance and treated for a 2 cm wide laceration measuring 1.6 cm to 2.5 cm in length. Mr. Ortiz' emergency room records memorialize the following medical history: "punched in the face by a police officer with a gun." In the hospital he was diagnosed with a small periorbital soft tissue contusion with fluid in the left maxillary area. See Exhibit # 6.

Police reports: We have enclosed 20 pages of the police reports that cover both warrants Served on March 8, 2014 on Shelby Street and West Boylston Street. Id.

Deposition transcript of Ortiz:

In excerpts of Mr. Ortiz's deposition he described the actions of Sgt. Roche and Tarckini when he was hit with a gun, "He was yelling at me and the only thing I could do was raise my hands I can't do anything else." Unlike Sgt. Roche's false testimony that Mr. Ortiz was reaching to grab a black object on the passenger seat Ortiz alleged: "No, I did not do that [reach for an object] nothing, no." "He pushed [the gun] like that towards me, with the end of the gun where the bullet comes out." Trans. 88-96. "He threw the gun at me." Id. 97. When he was assaulted with the gun he was wearing his seatbelt. Id. at 100. After he was pulled out of the car he was thrown on the ground and later on brought inside of the apartment. Id. at 103. Another arrestee, Garcia-Tobar asked that his handcuffs be loosened and police said "fuck that Dominican guy, fuck him." Id. at 109. (Deposition Transcript enclosed at Ex. 6).

Sgt. Roche's false report

Sgt. Roche prepared the following false report knowingly, "At this point I extended my weapon towards the male and for a second time said Police let me see your hands. The male then quickly turned towards me striking his left eye lid on my weapon. This caused a small cut on his eye lid." (See police report 20). Roche prepared a false report knowingly.

Deposition of Jeremiah Coffey

Mr. Coffey, a Caucasian male was arrested and charged with multiple drug violations and was deposed after he was sentenced in the case. He testified that when police entered he had to cover his dog on the ground to prevent police from shooting him. Id. at 20. He witnessed when police brought Ortiz into his apartment and threw him on the ground while bleeding from his head Id. at 40-41. Although Sgt. Roche insisted that Mr. Ortiz who was not charged as part of this drug ring must have been involved by virtue of being "Dominican" Mr. Coffey heard when Sgt. Roche's supervisor instructed him over the radio to "cut him [Ortiz] loose" from the case. Id. at 41. Coffey overheard when Sgt. Roche told his supervisor that Ortiz sustained injuries "He got hurt. He wouldn't listen." Id. at 42, 58, 60. He overheard Sgt. Roche inform Sgt. Early "He said, "When we pulled up, he wasn't listening." He said "He got hit." Coffey overheard Sgt. Early

asked, “Why did you even arrest him?” He [Roche] said: “Well he thought he was part of the case because he’s driven them before.” He goes, [Roche] “He’s been in a cab with him on a few occasions.” He said [Sgt. Early]: “Yeah, he wasn’t part of the case.” And he asked what hospital he went to.” Id. at 60. See also 107. Coffey testified he was willing to do the deposition “Because I felt bad for the kid that got hit. He had nothing to do with the case.” Ex. 6.

Ethnically derogatory statements: Mr. Coffey was told by an officer wearing flame tattoos, Jeffrey Carlson “about how could I deal with these guys and my parents must be proud. Early was there that whole time.” Id. at 95-97. That officer, according to Mr. Coffey, described the crew as “dirty Dominicans.” Id. at 94, 95, 101,142. Coffey testified “He [flamed tattoo officer] asked me if my mother was proud that I was working for the Dominicans.” Id. at 142-143. See also pages 37-38.

Police used seized cash from drug bust to buy lunch for the search crew:

According to Jeremiah Coffey, police used money that they confiscated at his house to buy lunch from Steve’s Pizza, “Because they told me they were going to do that. They looked for the number; they called Steve’s Pizza from my house and left all their trash there.” They told him “You’re going to buy us our lunch today.” And he thanked me for it. Id. at 115, 139.

Police admitted to Coffey his codefendant Kiesiner was beaten by police:

Coffey testified that one of his codefendants from 17 Shelby Street was beaten as well and Kiesiner had a swollen cheek. Id. at 110-113. Coffey was told by police how could he be friends with Kiesiner, “We couldn’t find the drugs on him.” He said, “We stripped him down and the bags in his ass and he expected me to get them out of there.” Id. at 114. Kiesiner also told Coffey that after police discovered drugs he was hit.

Affidavit of Jonathan Keisiner

Mr. Kiesiner and the police reports show he was arrested and stripped searched at Shaw’s supermarket. See Affidavit. He was searched by officer Robert O’Rourke who initially found nothing on him after he pat frisked him. O’Rourke told another officer “it must be in my ass.” He was subjected to a warrantless strip and cavity search in the back of a police wagon. Id. Kiesiner said: “*At this time one of the officers put his fingers in the crack of my butt. They slammed me into the plexi glass in the front of the patty wagon. After that they handed me my clothes and told me to dress. Once dressed one of the officers punched me in my face with a closed fist on the right side cheek area. I was also smacked in the back of my head with an open hand. Once I exited the patty wagon with those two officers one took my sunglasses and stepped on them. They told me I was going to jail for a long time. They told me they had already arrested my boy Jerry, Andy and all the other Dominicans.*”

Exhibit # 6.

Bonczek’s false report

None of Bonczek’s reports reference Keisiner’s strip search or assault but during a deposition he was the scene but “I don’t recall the specifics of the incident, but I was there.” He testified he did not recall if he was in the back of the wagon searching Keisiner but he testified he did not think he did. He also testified that if he was outside of the wagon when Keisiner’s pants were

removed “I would probably be able to hear.” He testified “No strip search or cavity search was done.” When he was asked if Keisiner was punched or slapped he said “Not that I know of.”¹¹

O’Rourke’s false report:

Detective O’Rourke notified Sgt. Roche after checking Keisiner and discovering an “object” in his pants. O’Rourke asked for a patrol wagon “so I could search Keisner more thoroughly. I removed from the pants of Keisner and a rolled up napking was observed in his underwear. The object was retrieved.” See report at page 11. In his report Det. O’Rourke stated “I was sent to Shaw’s supermarket with Sgt. Steve Roche, P.O. Bonczek and P.O. Patrick Harrington. Jonathan Kiesiner was coming from this location to deliver heroin....”

Williams’ false report

Detective Williams report demonstrates he was present when Kiesiner was arrested and strip searched. His report is silent on any use of force, except that officers searched him and discovered 47 knotted baggies in his pants. See report at page 7.

Sgt. Roche false deposition testimony: A portion of Sgt. Roche’s deposition that his counsel released in federal court is enclosed. He testified that while he pointed his gun at Mr. Ortiz, Mr. Ortiz turned his head to the left and impacted his gun, “That’s what happened, sir.” Trans. at 97. He described the impact between his gun and Ortiz’s face as a “scrape” Id. at 101-102. Id.

Ethnically bias expressed by Sgt. Roche: At his deposition Sgt. Roche expressed the following opinion: “**The fact that, in my experience, Dominican drug dealers, it’s a closed system so everybody that works within that organization, they’re all trusted and known. They do that to alleviate the fact of inserting an undercover police officer as such a livery driver who would have intricate knowledge of the coming and going of heroin suppliers and that what I base that on, sir.**” (*Emphasis*). See Id.

Despite the fact Mr. Ortiz has not been charged in this case or ever with drug offenses, Sgt. Roche believes to this day he was involved with this group solely because of his ethnic background. For example, Sgt. Roche testified:

Q: And when you say no, what do you mean by that?

A: [Roche]: I based that on the fact that he [Ortiz] was a regular driver for the heroin distribution ring. He has ties to members of that ring. He has family members who have been arrested for heroin. They’re not just going to contact some person they don’t trust and trust them to deliver large amounts of heroin on a regular basis, that’s what I base that on. Q: What evidence to you have that my client was aware that heroin –A: My 30 years of experience.” Id. at 59-60.

Video Surveillance from Mass State Police Pole Camera:

A video surveillance of the incident is enclosed. The video surveillance shows when Sgt. Roche and Tarckini approached Mr. Ortiz’s livery with guns drawn.

¹¹ Although Sgt. Roche’s report is silent on his interactions with Keisiner, in a deposition he testified that went to Shaw’s Supermarket were Keisiner was arrested. Roche testified that Keisiner was “searched at the scene.” And he also testified “I was the scene, I wasn’t in the wagon” but that he would have probably been outside of the wagon.

We have also included a video segment of an interaction between Sgt. Early and Sgt. Roche. At approximately 25 seconds in the video Sgt. Roche demonstrates what he did with his gun to Sgt. Early which is inconsistent with his account that Mr. Ortiz impaled himself on his gun.¹²

Still photos from pole video surveillance camera

These still photos show when Sgt. Roche and Tarckini approach Mr. Ortiz's vehicle. They also show when Sgt. Roche demonstrated his actions when he struck Mr. Ortiz in the head with his gun that are inconsistent with what he wrote in the police report.

Photos of injuries:

Color photographs of Mr. Ortiz's eye laceration taken at UMass Memorial Medical Center.
Exhibit # 6.

Ex. 7 *Commonwealth v. Luke Deptula*, Worcester District Court 1462CR002641

Date of arrest: March 31, 2014

Nature of the case: Luke Deptula was arrested on March 31, 2014 by members of the Vice Squad. Mr. Deptula alleges that while waiting to have his car serviced a vice squad officers choked him when police falsely claimed that he had swallowed drugs and that he was then punched four times in the face by Det. Jeffrey Carlson after he was handcuffed to "dislodge" the drugs he was purportedly swallowing. Other officers from the Vice Squad were present and countenanced this officer's conduct. Mr. Deptula also alleges that as he was transported by officer Kellen Smith after his arrest with another police officer to his apartment he was assaulted and threatened by Kellen Smith.

Nature of charges: Drug possession to distribute (dismissed req Commonwealth), Conspiracy to violate drug law (dismissed at Comm. request w/o preju), Drug violation school zone (dismissed at Comm request w/o preju), cocaine trafficking (dismissed), Drug Poss to distribute Class B (60 days HOC deemed served), Drug Poss Class B (dismissed request of Comm w/o preju), Witness/juror/police intimidation dismissed on request of Commonwealth w/o prejudice August 24, 2016.

Outcome of charges: See above.

Issues: Lying, false police reports, excessive force, threats, intimidation, coercion

Department: Worcester Police Vice squad.

Worcester police officers involved per reports: Det. James Bates, Jeffrey Carlson, Kellen Smith, Sgt. Matthew Early, Dana Randall, Larry Williams. Other officers that may have been present: officer O'Malley, Michael Hanlon.

¹² Sgt. Roche has testified "I can't say for sure. I don't know" when questioned whether he was demonstrating to Sgt. Early what he did with his gun to Mr. Ortiz. Sgt. Early testified "I don't know he said he had it out. I don't recall if he showed me that he did."

Deptula's Federal Complaint, Deptula v. James Bates, Kellen Smith, Sgt. Matthew Early, Dana Randall, Larry Williams and City of Worcester., Case No. 4:17-cv-40055- USDCT-Mass. Filed May 2, 2017. See Exhibit # 7.

Deptula alleges that while waiting to have his car serviced vice squad officers who ran towards him choked him and believing that he had swallowed drugs he was punched four times in the face. He alleges that Bates dressed as civilian ran towards him grabbed him by the throat and began to wrestle him. Complaint at ¶ 29-31. He was placed in handcuffed and surrounded by Jeff Carlson, Randall, Williams and possibly Sgt. Early. He alleges no contraband was found on him when arrested at West Boylston Street and that he was also approached by Kellen Smith. Deptula alleges that when Deptula asked Smith "what the hell is going on" he heard one of the officers that searched him tell Smith "there is nothing here." Deptula alleges heard Bates respond "that's because he ate something." He also alleges he was already in handcuffs. According to Deptula, Jeffrey Carlson came from Deptula's side and asked him "You ate them all you fucking pussy?" According to Deptula Det. Carlson punched him twice in the area of his right ear. Deptula was stunned, he stumbled and yelled "Did he just hit me?" According to Deptula, Det. Bates while in the presence of other codefendants replied "No, nobody hit you buddy." According to Deptula, Bates straightened Deptula whose chest was resting on the hood of his car and while in front of the hood of the car Carlson punched Deptula again on the same spot he had punched him seconds earlier. Deptula alleges he yelled in response "What the hell are you doing... why did you punch me on my face?" Complaint at ¶¶ 33-43. Deptula alleges he was hit four times in the face with a closed fist.

Mr. Deptula also alleged that while being taken to his apartment for the execution of a search warrant in a vehicle by Kellen Smith while accompanied by another vice squad officer, he complained of having been assaulted. Kellen Smith violently turned around, closed his fist, and swung his arm in Deptula's direction and that Smith said: "Good, do you want me to punch you know?"

Carlson's false report : "Deptula stopped at a gas station at 598 West Boylston and exited the Maxima while speaking on the cell phone. P.O. Jim Bates and I approached and startled Deptula. He pulled his fake thumb off and I observed him place multiple, small, light colored items into his mouth. Based on my experience and the information learned through the investigation, I believed Deptula was attempting to ingest pills. P.O. Bates grabbed the phone from Deptula and I forced him onto the hood of the Maxima. I then delivered two open hand palm strikes to the right side of his face in an effort to dislodge the evidence. Deptula was chewing and swallowing the pills causing a white chalky substance to be visible on his lips and tongue. We placed Deptula into handcuffs and I asked him if he wanted medical attention, he declined." ¹³

Ex. 8 *Commonwealth v. Adalberto Ruiz* Worcester District Court, 1262CR004277

Three plainclothes officers pounced on and beat Adalberto Ruiz without identifying themselves, later falsely claiming in a State Police arrest report that their badges were showing and that Ruiz had swallowed contraband as they approached him. Video of the incident shows Ruiz was not trying to swallow anything, never threatened or resisted the officers before they

¹³ Bates who choked Deptula did not prepare a required police report.

assaulted him, and the only image of a badge in the video is one that an officer produced after the arrest. Ruiz was held in Jail from June 4, 2012 until July 2, 2012.

Date of arrest: June 4, 2012

Nature of charges: Firearm carry without a license, firearm carry loaded, firearm serial number, disorderly conduct, resisting arrest, disturbing the peace.

Outcome of charges: Nolle Prosequi on all counts. The DA's office was aware of the existence of the tape. The DA's office nolle prosequi Mr. Ruiz's case because the video surveillance from Price Choppers was exculpatory as it impugned the police story. The judge that approved the nolle prosequi was Judge Despatopolous on March 18, 2013.

Issues: Lying, false police reports, excessive force, threats, intimidation, coercion, unprofessional conduct, alleged inappropriate relationship between informant and MSP affiant

Department: Mass State Police Worcester Police Vice squad officer

Police officers involved per reports: Det. James Nason, Det Nieves, Det. Jeffrey Carlson, Trooper James Healy, Sgt Matt Early and others, Sgt. James Devlin

Ruiz' Federal Complaint, Ruiz v. MSP Nason, Nieves, Carlson & City of Worcester, Case No. 4:15-cv-40076- USDCT-Mass. Filed June 2, 2015.

In his complaint Ruiz alleges that on June 4, 2012 police assaulted him without probable cause and made a story about the circumstances of his arrest. The confidential informant told the affiant of the search warrant, MSP Trooper Healy she had seen a gun at Tammy Muse's apartment on 34 Lockwood Street, Worcester and that the gun had been given to Ms. Muse by Mr. Ruiz. The MSP searched Muse's apartment. She was charged with possessing a gun w/o a license and plead guilty to the charges. She did not implicate Mr. Ruiz.

Trooper Nason was required to prepare a police report but didn't. Instead a false narrative was prepared by Trooper Healy who was not present when Ruiz was arrested at Price Choppers where he worked in the dairy department. Trooper Healy's report recounted a false narrative that Nason, Nieves, and Carlson approached Ruiz "to have conversation about the ongoing investigation, Ruiz removed the package from his pocket and swallowed it, a struggle ensued and Ruiz was taken into custody for disturbing the peace, disorderly person, resisting arrest, possession of firearm and ammunition w/out permit and was transported to Worcester PD for booking." Plaintiff alleges in his federal complaint that Ruiz was attacked by police, that police did not identify themselves to him until after he was handcuffed, that he was punched and abused and that a video surveillance demonstrates Ruiz never attempted to swallow any drugs. Complaint at ¶¶ 34-63.

Ruiz alleges he suffered injuries (and reported them at the police station) and alleges he eventually underwent shoulder surgery for a Grade III left AC joint separation. Complaint at ¶¶ 64-72.

Healy's false police report: Nieves, Nason and Carlson approached Ruiz "to have conversation about the ongoing investigation, Ruiz removed the package from his pocket and swallowed it, a struggle ensued and Ruiz was taken into custody for disturbing the peace, disorderly person, resisting arrest, possession of firearm and ammunition w/out permit and was transported to Worcester PD for booking."

Search warrant: Enclosed.

Ruiz's testimony: Ruiz testified he was tackled by police and was repeatedly punched. Trans. 88-92. Police did not identify themselves to him, Id. at 109-110, 170-171. During the arrest he defecated on himself and Det. Carlson called him a "cunt." Id. at 117 -122. He was not swallowing anything and police did not identify themselves to him. Id. at 105. Ruiz's truck lawfully parked at Price Choppers and it was towed away and searched because \$800 dollars had been taken from his truck. Trans. at 145-148. There was warrant issued by the Court to do so.

Video Surveillance from Price Choppers: The video does not show any of the officers displaying their police badges until after the arrest; 2) the video shows Ruiz did not put his hand to his mouth in an attempt to swallow drugs as alleged by police; and 3) the video also shows detective Nason punching Ruiz in the face in front of the service desk when the police report simply describes the arrest as "a struggle ensued and Ruiz was taken into custody."

Transcript of Caitlyn Millet: Ms. Millett appears in the video behind the service desk. testified she did not hear police identify themselves as police officers. She began screaming and trying to call her supervisor over the intercom and contemplated calling 911 as she thought Ruiz' assailants were likely robbers. Ex. 4, deposition transcript, at 22:4-24, 23:1-11-23, 39:2-22. See also 73:16-24, 1-4, 74:4-24, 75:8-18, 76:4-15. Millet testified she did not observe Ruiz putting anything in his mouth. Id. at 76:23-24, 77:1-2. When asked if she thought the officers acted professionally Millet testified she did not know and said "I thought he [Ruiz] was getting attacked by people." Id. at 77:3-13.

Transcript of Tammy Muse: Ms. Muse testified on 2/24/2017 that after she was arrested and on Lockwood Street, one of the officers told her to say the gun "was Al's and she would not be arrested. Trans. 2/24/2017 at 83, 85-86. Ms. Muse was told by police as they search her apartment that Ruiz had been sent to the hospital and was injured. Id. at 86. Muse was told they kicked his ass. Id. at 121. Muse knew that Trooper Healy and the informant, Ms. Snow who is listed as a reliable confidential informant in the search warrant were friends and that Ms. Snow characterized to her the relationship between her and Trooper Healy as a physical relationship. Id. at 89-90, "She [Snow] was insinuating they were having sex." Id. at 90. (see transcript excerpts and 2nd transcript excerpts dated 3/9/17). In the second transcript Muse testified police told her they kicked Ruiz's ass. Id. at 169. She also heard police say that Ruiz had swallowed something. Id. at 170. She testified that Trooper Healy was named as a reference in a resume of Ms. Snow that she was asked to edit for Ms. Snow. Id. at 173. Ms. Snow admitted to Muse she told on her. Id. at 249.

Testimony of Jeffrey Carlson: We have provided excerpts of Carlson’s deposition. Jeffrey Carlson testified he did not see Trooper Nason punch Mr. Ruiz but later on he learned that Trooper Nason swung at Mr. Ruiz. Trans. at 85. Jeffrey Carlson did not go along with Trooper Nason’s story regarding whether Mr. Ruiz swallowing drugs. Carlson testified he did not ask Trooper Nason if Mr. Ruiz swallowed anything. Id. at 88- 89. Trooper Nason told him about it but is not something that he witnessed. Id. at 91. Jeffrey Carlson denied calling Mr. Ruiz a “cunt” when other people heard him doing so. Id. at 94-95.

Trooper Nason’s testimony: Trooper Nason claimed he identified himself as soon as he came in contact with Mr. Ruiz, a fact disputed by Ruiz and Ms. Millett. Trans at 52. Trooper Nason testified (falsely) that Ruiz brought his right hand towards his mouth. Id. at 58. Even when the video of the store does not show this event Trooper Nason insisted it happened. See, e.g., Q: Oh, I’ve watched the video, I am asking you if from reviewing the video that you reviewed this week if you could see him putting something in his mouth? A. No. Trans. at 58-60. Nason testified “I don’t know if he swallowed something. I don’t know what happened when he put his hand to his mouth. Did he spit it out? Did he throw it across the grocery store. I don’t know.” Id. at 60. Even though Mr. Ruiz’s truck was lawfully parked in the parking lot of Price Choppers and no one had obtained a search warrant for and his truck was towed by the MSP. Id at 132-135, 143.

Trooper Nason testified he struck Mr. Ruiz in the face: Q: What technique did you—so did you use a punch? A: A punch? Q: Yes. A: I’d call it a striking technique where it stunned him enough so he went to the ground, yes. Q: What striking technique did you use to stun him and bring him to the ground? A: I used my hand. Q: Show me what you did with your hand? A: I don’t remember. Q: Like a Karate chop? A: No, you use the base of your hand to strike him to stun him to fall to the ground. Q: Did you use a palm heel strike to stun him? A: You can review the video, I mean. Id. at 65-66. Q: Did you hit him hard or did you, you know give him like a baby palm heel strike? A: I don’t remember. Id. at 67. And had the store manager allowed they would have also used a K9 to search Mr. Ruiz’s locker. Id. at 133. Trooper Nason testified that Trooper Healy was the investigating an arresting officer but that testimony is false.¹⁴ The arresting officers were Nason and Carlson. Id. at 14. Nason testified untruthfully when claimed state troopers are not required to prepare to document the force they use. Trans. 16. Nason testified “It’s discretionary. I advised my immediate supervisor and then the supervisor of the unit (Sgt. Sampson and Capt. Francis Leahy) of the incident that occurred and I wasn’t advised to prepare any type of reports.” Id. 16.¹⁵

Booking Video: Even though Ruiz was supposedly arrested by the MSP, Ruiz was booked and processed at the WPD. Ruiz is shown on the video holding his left shoulder and grimacing in

¹⁴ Trooper Healy testified he was not present when Ruiz was arrested.

¹⁵ Use of force reports are not discretionary at the MSP and Trooper Nason’s is not exempted by the rules: See, e.g., Dept. of State Police General Order UOF-05 effective January 19, 1999 “Policy: Every reportable incident regarding the Use of Force shall be recorded on the SP376 Use of Force report and reviewed.” “Reportable incident: The involved officer(s) shall submit Use of Force report (SP376) in addition to any other report required (when):

- A firearm is discharged outside of a training range specifically designated for that purpose;
- A striking technique is used;
- OC spray is used;
- The Use of Force did cause or is reported to have caused injury or death to another or
- Any weapon is used. (*Emphasis supplied*).

pain. Ruiz asked the booking officer during the booking “Do I have a black eye?” Ruiz also told the booking officer “My left shoulder, my eye is...somebody socked me in the face on the ground twisted my arm, my left shoulder.”

Still photographs from video surveillance have been enclosed.

Ruling Judge Hillman on Trooper Healy’s conspiracy claim regarding excessive force

On February 28, 2018 the Honorable Timothy S. Hillman rejected a motion filed by Trooper Healy for summary judgment on a civil conspiracy claim Mr. Ruiz brought against him, Trooper Nason, Nieves and Jeffrey Carlson reasoning “Upon review of the record, including Trooper Healy’s affidavit, I find sufficient facts for a reasonable factfinder to conclude that a conspiracy to violate the Plaintiff’s rights existed and that Healy was a part of the conspiracy.” See **Exhibit # 8.**

Ex. 9 *Commonwealth v. Grace Katana*, Worcester District Court, 1662CR001276

Nature of the case: Grace Katana was arrested and charged with a shooting on February 19, 2016 after he was accused by Jose Batista of shooting at him. Within a minute of the shooting, Jose Batista was stopped and frisked by Gang unit officer Tom Duffy. One of the officers that came in contact with Batista, Jesus Candelaria, testified that Mr. Batista was a potential shooting suspect but that Tom Duffy a colleague of former gang unit officer Neftali Batista allowed him to leave and ordered a cab to pick him up. A loaded gun and an ammunition clip was found next to where police located Batista. Batista was charged a month later with being the shooter and remained at large for a year. The Police and possibly the DA’s office failed to turn over highly relevant exculpatory evidence to Katana. When police arrested Katana one of the arresting officers punched him and later lied about it in a court proceeding. Immediately after being arrested police told Katana they wanted somebody else. The police and DA’s office maintained Katana was the shooter when there was no good faith basis to support that allegation.

Date of arrest: February 24, 2016

Nature of charges: Assault to Murder, Armed (Nolle Prosequi), Firearm Discharge within 500 Ft. Building (Nolle Prosequi), Firearm carry without license (Nolle Prosequi),

Outcome of charges: Nolle prosequi on all charges on May 18, 2016. Mr. Katana was wrongfully incarcerated from February 24, 2016 through March 3, 2016.

Issues: Lying, failure to provide to defendant exculpatory evidence, false police reports, excessive force, threats, intimidation, coercion, abuse of process. Police failed to turn exculpatory evidence it had access to and the DA’s office blindly insisted on prosecuting Katana despite a dearth of evidence of his involvement.

Department/unit: Worcester Police gang unit.

Worcester police officers involved per reports: Brian Piskator, Sgt. Steve Roche, Thomas J. Duffy, Jesus Candelaria and others.

Police report prepared by officer Jesus Candelaria: On February 20, 2016 at approximately 0215 hours Officer Candelaria responded to four shots fired in the area of 8 Harrison Street, Worcester, MA that have been identified by the spot shooter system. In his incident report, officer Candelaria stated that as he responded to the call he was flagged down by gang unit officer Tom Duffy who had been drinking at the Banner bar. Officer Duffy told Candelaria he was off duty and pointed to the back of the 112 Green Street building where he had identified a Spanish male – which officer Candelaria identified as having been involved in a fight earlier on Water Street. Candelaria reported he also recognized Grace Katana “who may have been involved in the fight.” The male, Jose Batista DOB: 3/21/84 appeared nervous, had scratches on his face and told Candelaria “he was being chased by Providence St gang members and that he was shot at by Grace Katana.” As officer Candelaria went on to investigate and talk to another group of males on Water and Pond Street he returned back to the rear of 112 Green Street to “speak with the victim, but the victim [Jose Batista] was gone also from the scene. At the feet were Mr. Batista was standing Officer Duffy and myself found a gun magazine with at least one bullet that I could see in it. Towards the rear door we located four spent and a live bullet...I advised him [Sgt. Lewis] where Mr. Batista was standing and requested we check the roof the building for the firearm...CSU was able to get on the roof and locate a black semi-automatic firearm. The evidence was collected and catalogued...112 Green Street (The Banner) has a camera facing the driveway where Mr. Batista was standing.” In a separate report, officer Chabot stated: “I was informed by Sgt. Lewis that a handgun was on the roof of a shed that was behind 112 Green st, supposedly thrown there by one of a group of individuals that had been observed by Duffy. See Candelaria report.” See **Exhibit # 9.**

Report of Lt. David Doherty: “When Candelaria returned to the rear of 112 Green Street to continue speaking with Batista he discovered that Batista was gone and could not be located. In the immediate area where Batista had been found Officer Candelaria and Officer Thomas Duffy did locate a loaded 9mm Glock Magazine. Only feet away they did locate a number of spent 9mm cartridge casings and one live 9mm cartridge. A further search of the area by the Officers Lugo-Gardner and Lorente and CSU Chabot located a loaded 9mm Glock handgun atop the roof of a shed attached to the rear of 112 Green Street.

Inferences drawn from Candelaria’s and Doherty’s report: Reading between the lines of Candelaria’s report, he thought that Jose Batista was a potential suspect to the shooting given the close proximity between him and the firearm and that Batista was gone from the scene. Omitted from the report were two critical pieces of information: Jose Batista was the brother of gang unit officer Neftali Batista a colleague of officer Tom Duffy. Officer Duffy called a cab to send Batista home without any police questioning or intervention. No one at the WPD engaged in any follow-up to interview, or made any efforts locate and talk to Mr. Batista who without a doubt was the lead suspect to the shooting.

Why Batista was the prime shooting suspect and Candelaria’s testimony: Candelaria knew that Jose Batista was the brother of gang unit officer Neftali Batista. Id. at 53. This critical piece of information was not included in Candelaria’s report. ADA Westerman’s only witness to Mr. Katana’s dangerousness hearing was officer Piskator. Officer Candelaria was called by Katana’s defense counsel. When Katana’s counsel called officer Candelaria to the stand, the DA’s office objected and demanded an “offer of proof.” ADA Westerman told the court that

calling officer Candelaria had been “quite revealing” and that he was concerned about a “discovery expedition.” Trans. at 72-73. Officer Candelaria admitted he knew Jose Batista from Plumley Village, was aware he had a violent background and was officer Neftali’s Batista’s brother. Id. at 76-77. Officer Candelaria testified he was alerted to the shooting and first saw Batista next to gang unit officer Thomas Duffy next to the driveway of the Banner. Id. at 84. The DA’s office objected to Office Candelaria’s testimony because Candelaria viewed Mr. Batista as a suspect from the get go. On direct exam Candelaria testified: Q [Attorney Cashman]: Is it fair that Mr. Batista is a suspect as well as possession of this firearm? A: Possibly. Id. at 103.

Officer Candelaria testified that when he returned from Water St. back to Harrison St. Batista was no longer there, Officer Duffy did not tell him what happened to him except that, “I think he [Duffy] - - I asked – actually, he said he put him in a cab and sent him home.” Id. at 89. No written statements were taken of Mr. Batista. Mr. Candelaria who was aware there was video surveillance cameras at the Banner testified he made no efforts to secure any such video. Id. at 94.

The DA’s office Objected to Katana’s lawyer request for the court to issue a bench warrant against the shooter: For inexplicable reasons ADA Westerman – who knew Batista was a strong potential suspect objected to the issuance of a bench warrant. Mr. Cashman told the Court he needed the bench warrant because “frankly all the facts point in fact that he’s is the one firing the gun.” Id. at 7. But ADA Westerman demurred, “Mr. Cashman’s response to the Court’s revealed the true reasons for why he wants Batista here because he wants to cross examine him on issues of this case, and that’s not why we’re before the Court to determine whether Mr. Katana poses danger to the community, not to cross examine witnesses and to somehow conduct a fishing expedition for discovery purposes on this case.” See **Exhibit # 9**.

Surveillance video from the Banner Bar exonerated Katana and pointed in Batista’s direction:

We have enclosed the surveillance video showing Mr. Batista in the car port of the Banner bar holding two objects in his each hand, a cell phone and a gun. This video shows gang unit officer Thomas Duffy pat frisking Mr. Batista and yet ADA Westerman did not bother calling officer Duffy to the stand. Duffy was the second individual who came in contact with Mr. Batista immediately after the shooting and pat frisked him but this video was not provided to Mr. Katana’s lawyer until after his dangerousness hearing which resulted in the imposition of \$25,000 bail. Trans. at 133. A report from officer John Morrissey states he was not able to retrieve the video from the Banner until March 2, 2016.

Katana’s girlfriend testified at the Dangerousness hearing she saw Batista holding a gun:

At the hearing Ms. Rosa testified that Katana had an altercation with Batista and in the middle of a fight Batista “pulls a gun out.” Id. at 107. Ms. Rosa also provided a strong alibi that she and others stayed with Katana on the night in question and that they did not drive to Harrison and Green Street. The cross examination of this witness by ADA Westerman was revealing and the presence of Sgt. Roche and Piskator throughout the hearing was equally revealing given they

were not the officers in charge of Katana's investigation.¹⁶ Ms. Rosa testified that police officers did not make any efforts to talk to her. Id. at 123.

Katana's arrest and officer Brian Piskator's testimony: On the flimsiest of evidence Brian Piskator also a gang unit colleague of Neftali Batista procured an warrant arrest for Mr. Katana who was picked up on February 24, 2016. See Katana's criminal docket.

Transcript of Katana's dangerous hearing: Officer Piskator testified he sought an arrest warrant against Mr. Katana. Trans. of Dangerousness Hearing 3/1/2016 at page 62. However, Lt. Doherty identified as the person in charge of the shooting as officer Jesus Candelaria. Id. at 63. Brian Piskator arrested Grace Katana at his house. He arrested him with Sgt. Roche. Piskator struck Katana in front of his apartment as he placed him inside of a police vehicle. A video of his arrest shows Katana was compliant. Katana should have been transported to the WPD in a in a police wagon and not by Sgt. Roche and officer Piskator. At Katana's dangerousness hearing he testified untruthfully about whether or not he struck Katana's during the arrest. Still photographs of Katana's arrest have been enclosed obtained from a surveillance video.

What happened to Katana when he got the police station: Although there are no reports of how Katana was transported to the police station he was picked up by Brian Piskator and by Sgt. Roche on February 24, 2016 and transported in the back of a police vehicle. A video surveillance from his apartment complex captured the arrest of Katana by Piskator and Roche and demonstrates Katana was compliant. After he was handcuffed and while in the process of being brought into the back of the police vehicle Piskator punched Katana in the face without legal justification as he pushed him into the interior of the undercover police vehicle. Piskator was specifically asked during his testimony at Mr. Katana's March 1, 2016 dangerousness hearing if he had struck Katana during the arrest and he responded he had not. Trans. at 60:9-12. His testimony was untruthful. No one told Katana why he was under arrest. When Katana got to the police department he was brought into an interrogation room by Piskator and Sgt. Roche. In the interrogation room Katana requested a lawyer and the officers became upset at him for requesting one. Katana was told he was facing "career criminal charges." Sgt. Roche and Piskator explained to Katana that if they helped him in another case they could help him out. Sgt. Roche told Katana "You are not who we want."

The Commonwealth and police fail to turn exculpatory evidence of video or reports of video to Katana's lawyer until much later.

Katana's lawyer was unaware during his dangerousness hearing that officer John Morrissey and Det. Pero had checked with the White Eagles bar and discovered that a video surveillance camera next to the site of the shooting showed no suspects in it. The February 23,

¹⁶ Lt. David Doherty testified officer Jesus Candelaria was the officer in charge of the shooting investigation. Id. at 63:5-13. Indeed Lt. Doherty testified in Mr. Katana's dangerousness hearing that he considered Mr. Batista a suspect. Q: Okay, So what you're saying is you believe Mr. Batista may have had the firearm that was found on his person? A: It's a possibility. Id. at 66. Lt. Doherty also testified that no one from his division had made any efforts to locate Mr. Batista. Id. at 70. Lt. Doherty testified as of March 1, 2016 there were no forensic testing that tied Katana to the shooting or the gun and magazines police found behind the Banner Bar & Grille. Id. at 71.

2016 Morrissey report was not given to Katana's lawyer by the DA's office. It was potentially exculpatory. Neither did Katana's lawyer learn that on February 22 John Morrissey had canvassed the area and discovered that the Banner Bar & Grill had surveillance cameras that its staff could produce as early as February 27th. (See Morrissey's report in Mr. Batista's criminal docket). For inexplicable reasons Morrissey did not pick up the Banner video until March 2, 2016 a day after his dangerousness hearing.

On March 1st the Court held Katana on a \$25,000 bail. Sometime on March 2nd ADA Westerman was provided a copy of the Banner video from February 19th that implicated Batista and showed him with a black object on his right hand seconds after Batista's shooting.

The DA's Office continued to insist Katana's was a suspect even after the emergence of the Banner video: A Copy of a March 3, 2016 court hearing is also enclosed. On March 3, 2016 Katana's lawyers asked the court to release Katana forthwith. While the entire transcript could not be retrieved the District Attorney's office while agreeing to bail reduction from \$25,000 to personal recognizance continued to insist that the charges "are still alive. His record speaks for itself, Judge." The judge declined to order GPS monitoring. See Transcript at 3-4.

A criminal complaint issued against Batista: On March 9, 2016, an arrest warrant was issued against Batista. It took a full year before his arrest. The supplemental police reports are also attached. The criminal complaint shows Batista remained on warrant status until March of 2017.

Ex. 10 Search warrant Alex Lora, 1162SW138

Nature of the case:

On April 8, 2011 WPD Vice squad members obtained a search warrant for the apartment of Jimmie Cotto located at 73 Fairfax Road, Apt. 1R in Worcester, MA. The return was signed by Vice officer Michael Ryder. During the execution of the warrant Alex Lora who was visiting Cotto was stripped search, punched in the face and had a large chunk of hair pulled from the back of his hair.

Date of arrest/detention: April 8, 2011

Nature of charges: No charges were filed against Alex Lora and other individuals who were subjects of a drug raid.

Issues: Lying, excessive use of force, illegal strip search.

Department/unit: Worcester Police Vice squad.

Worcester police officers involved per reports: Lt. Carl Supernor, Patrick Moran, Jon Kachadorian, Robert O'Rourke, Michael Ryder, James Guittar, Terrence Cahill, Thomas Bishop and Mary Brabbs.

Lora's Federal Complaint, Alex Lora v. Patrick Moran, Jon Kachadorian & City of Worcester, Case No. 3:13-40131-TSH Filed July 24, 2014

In his complaint Lora alleges that he was in an apartment on 74 Fairfax Street that belonged to a Jimmie Cotto when it was raided by police. In his complaint Lora was only able to identify three officers, Patrick, Moran and Jon Kachadorian. Although the search warrant did not allow police to enter the apartment without announcing themselves, Lora alleged police kicked the door to the apartment with guns drawn. Id. at 9. Lora alleged that after he was handcuffed he was escorted to the bathroom by Pat Moran for purposes of conducting a strip search. After removing one handcuff, Lora alleged he told the two officers strip searching him "I know the routine" and it was then that Moran struck him without provocation with such force that he fell over the toilet landing on the floor. Id. at 10-12. According to the complaint, "Still without provocation Moran then struck the Plaintiff several more times in the face and ribs with his fist and struck him in the stomach with his knee, all the while he attempted to cover up to protect himself." Id. at 13. According to the complaint "Moran then picked the plaintiff up from the floor by pulling his hair with such force and violence that the Plaintiff's hair was ripped from his scalp, leaving a large contusion on the back of his head." Id. at ¶ 15. According to the complaint despite causing significant damages to the apartment the police found no contraband.

In 2015 the City of Worcester paid Lora \$36,000 to settle his claim of police abuse and for the strip search.

Photos of Lora's injuries and the destruction caused by police to the apartment are enclosed. **Exhibit # 10**.

Ex. 11 Search Warrant of Heriberto Muniz, 0862SW 340

Nature of the case: On October 7, 2008 the WPD Gang unit executed a search warrant at 85 Lamartine Street, Worcester. During the execution of the search warrant, Heriberto Muniz was assaulted hit with a gun in the head and had his fibula broken. Muniz was not arrested by police.

Date of incident: October 7, 2008

Nature of charges: No charges filed against Muniz in connection with the execution of a search warrant at 85 Lamartine Street, Worcester, MA but police charged Luis A. Martinez.

Charges in Commonwealth v. Luis Martinez 0862CR009586: Class A Drug Possession to Distribute.

Outcome of charges: guilty plea January 26, 2010.

Issues: Heriberto Martinez was beaten with a gun in the head and had his left fibula broken by police during the execution of a search warrant. Martinez was not arrested. This case involves issues of false testimony/false reports, warrantless strip search, threats and intimidation.

Department/unit: Worcester Police gang unit.

Worcester police officers involved according to police reports: Gary Morris, James Carmody, Sgt. Steve Roche, Chris Panarello, retired officer Carmelo Oquendo, Neftali Batista, Tom Duffy, Nathan Reando and officer Tatum.

Statement of facts prepared by officer Gary Morris:

“On 10/8/08 at approx. 1300hrs. I executed a search warrant with several officers at 85 Lamartine St. As a result of the warrant Luis Martinez was found to be in possession of 5 half gram bas of heroin. He was placed into custody and transported to the station for processing. Martinez was charged will illegal possession Class A sub with intent to distribute.”

Muniz’s Federal Complaint Heriberto Muniz gang unit officers Carmody, Oquendo and Does. *Muniz v. City of Worcester, et al*, USDCT-MA, Case No. 4:09-cv-11950, Doc. 1, 11/3/09. Muniz alleged that gang unit officers some of which he could not identify raided a repair garage on Lamartine Street looking for drugs on October 8, 2008. Muniz alleged police did not identify themselves as police pistol whipped him repeatedly on his head with the butt of the gun him and badly lacerated his left earlobe and fracturing his fibula. Id. at ¶ 13-19. Muniz also alleged he was stripped searched, that police using a gloved hand searched between his genital area and buttocks –that he was taunted by police, and when a police Sgt. (Roche) ordered that officer to release him he was told “Don’t get stupid now. Don’t get stupid with us” in Muniz’ ear. Id. at ¶ 33-45. **Exhibit # 11.**

Mr. Muniz’ deposition November 3, 2010: Mr. Muniz’s testified during a November 3, 2010, an officer put a gun against his head and told him: “Get on the floor, mother fucker.” Muniz then felt someone hitting him real hard approximately 3 times on his left ear with a metal which he recognized to be a gun. Id. 81:21-23, 87:20-24, 88:4-24, 89:1-8, 91:5-8, 92:6-21, 94:17-18. Muniz testified he was kicked as well, Id. at 98:6-15, See also pages 81-116, 129-133. When his handcuffs were released by an officer he was told “Don’t behave like a brut (stupid) now.” Id. at 127:5-8. Muniz testified when the ambulance arrived one of the officers wanted to clean the blood from him and that he saw and heard a Sgt. “his name is Steve Roche.” Id. at 126:4-24. Muniz testified he was punched all over his body and face. Id. at 81-116, 129-133. Muniz testified he was punched in the face by Carmody, and that another officer instructed Carmody to “Fuck him up.” Id. at 142-144. Officer Roche instructed the officers to ... “Let him go” because they found no contraband on him. Id. at 126. Muniz testified about his first encounter with Carmody (unrelated to this arrest), “The first time that I first stumbled upon him was the time that they took me out of the car that he beat me up.” Id. at 148. Muniz testified several officers participated in the beating and others did not intervene. Id. at 85-100. He suffered a fractured fibula on his left leg when it was twisted. Id. at 95-100. Muniz testified after the beating Carmody brought him into an office, closed the door, put gloves on, made him take his clothe off, pulled his jeans down “He started checking my private parts, and he became aware that I didn’t have anything on me.” Id. at 105, 119.

Deposition of James Carmody November 5, 2010/Disciplinary complaints against him: Officer Carmody testified that during one of his previous encounters with Mr. Muniz it they participated in another violent attack on Mr. Muniz. Id. at 142-143. Officer Carmody testified he had been the subject of eight (8) prior disciplinary complaints. He testified he was

accompanied by officers Tom Duffy, Panarello, Oquendo, Batista. The person in charge of that raid was Sgt. Roche. Id. at 57. Carmody testified Muniz's injuries occurred "by constantly dragging his face back and forth trying to get away from us." Id. at 78. (Muniz was never charged with resisting arrest). Carmody claimed that he did not see Muniz's injury to his ear. Id. at 79. He also falsely claimed that Muniz head hit the engine block on the way down "and that could possibly account for his ear injury."

Color photos of Muniz's injuries Heriberto Muniz photographs following his police encounter with members of the gang unit on October 8, 2008. Exhibit # 11.

On July 1, 2011 Muniz entered into a settlement agreement with the City for \$40,000.00 and no one in the WPD was ever disciplined as a result of Muniz's allegations.

Ex. 12 *Commonwealth v. Kenneth Brooks, Jr., Worcester Superior Court WOCR2011-00208*

Date of incident: February 19, 2010

Nature of the case: Kenny Brooks, Jr. was arrested on February 19, 2010 and beaten by a group of gang unit officers. They described his injuries in the report as "minor injuries." Police also failed to disclose in their reports that they wanted to stop and arrest Brooks so that Brooks would turn on (or "to flip on") another person of higher interest and importance to them. Brooks' counsel learned later on that police staged and photographed evidence that was alleged to have been in originally in a completely different place than originally reported by police. This information would not have been known had the prosecuting DA not turned over this information to Brook's counsel. A trial exhibit suggested that the police misled the court and prepared false reports about the evidence. Brooks counsel noted in an affidavit that Gang unit officers Reando, Morris, and Panarello all testified there were cut corner baggies in the car consistent with "trafficking" and which the Commonwealth admitted into evidence. When that was opened at trial no corner cut baggies were found as it had been alleged by police.

Nature of charges: Brooks was charged with Class B Substance Possession, Drug Violation with 1000' of School zone, Class B Substance Distribute, Disorderly conduct, resisting, A&B Dangerous Weapon

Outcome of charges: Brooks was convicted assault dangerous weapon, possession of class B with intent to distribute, resisting arrest, negligent operation of a motor vehicle and school zone violation.

Issues: Brooks was targeted by members of the gang unit and the attempt to search and arrest was specifically motivated by an effort to arrest Brooks so that Brooks would cooperate with police to arrest another individual of interest to the police. Brooks was badly beaten. Police also staged evidence during the initial arrest.

Department/unit: Worcester Police gang unit.

Worcester police officers involved per reports: Gary Morris, James Carmody, Sgt. Steve Roche, Chris Panarello, Neftali Batista, Tom Duffy, Nathan Reando and officer Gaffney.

Incident report prepared by officer Nathan Reando:

Officer Reando prepared a report stating that on 2/19/10 he was patrolling in Kelly Square with Chris Panarello and Thomas Duffy. Officer Morris saw Kenneth Brooks driving and followed him to Honey Farms where he met his son at 66 Vernon Street. Reando stated police had received information from a confidential informant they had observed Brooks in possession of crack cocaine and distribution with the last few days. According to Reando, the informant told police Brooks was selling narcotics from his vehicle. According to Reando – Officer Morris observed Mr. Brooks handing an item to another individual (Brook's son). Officer Reando claimed Mr. Brooks who was also in the parking lot and that police had observed a drug transaction between father and son. Upon being approached by police, Brooks, Jr. put his vehicle in drive and accelerated and allegedly slammed against officer Morris's vehicle. A group of officers removed Brooks from his car and **“After a brief struggle inside the vehicle the undersigned officer along with Officer Duffy, were able to remove Kenneth Brooks, Jr. from his vehicle. As Kenneth Brooks Jr. was exiting his vehicle he fell to the ground with the undersigned officer and Officer Duffy landing on top of him. Kenneth Brooks Jr. continued to struggle with this officer and refused to place his hands behind his back.”** **“Prior to being placed into the patrol wagon an EA responded to the scene and treated Kenneth Brooks Jr. for some minor injuries he had received from falling to the ground during his arrest.”**

Officer Reando also reported that he observed Brooks while attempting to place a plastic bag containing a white powdery substance, into the center console, immediately recognizing this substance to be consistent with Class B Substance.... After searching Kenneth Brooks Jr's vehicle Officer Morris recovered a glass stem with a piece of Class B (crack Cocaine) inside a cigarette pack in the center console. Officer Morris also recovered from the front seat several plastic cut corner baggies, scissors, and a film canister with Class B residue in it. Officer Morris also recovered baggies and steel wool, which is used to smoke crack cocaine, from the trunk.” This information was false.

Daily Journal of Worcester police: The journal suggested was transported to Memorial Hospital for facial cuts.

Letter written by Brooks to the City of Worcester: Brooks (and his son) alleged that after he was removed from his car he was beaten, punched and kicked in the face and throughout his body. Brooks alleges that after police beat they posed for a photo op. Brooks alleged his son was re-arrested at the police station after asking Sgt. Roche for the whereabouts of his car.

Email from ADA Michael McCue to Attorney Ettenberg: On May 16, 2012 Worcester ADA McCue-- to his credit notified Attorney Ettenberg of two significant issues that had not been discussed in the reports or photographs that had been collected in evidence. “Officer Gary Morris told me that the photos of the cut corner baggies taken at the scene in the car's interior do not represent where he found them in the car. He collected the cut corner baggies from the passenger and driver side floor and put them collectively in a duct tape roll that officer Dan Fallon then photographed on the passenger seat. Those are the six plastic bags contained in drug

cert W10-00516.” ADA McCue also notified Attorney Ettenberg that Sgt. Steve Roche knew and grew up with Brooks and “He also told me that your client, who was the target of this investigation, was someone the Gang unit was targeting in the hopes of getting your client to provide information on a bigger target named Jerome Smith aka “Short Dog,” a member of the Vice Lords gang.”

ADA McCue wrote: “I have no intention into getting into the CI’s tip in this case and no intention into the fact the Gang Unit was looking to get your client to flip on Short Dog, but believe out of an abundance of caution that you should know this information.” “As with CI driven cases, I have to say something in my opening statement that suggests police were not randomly stopping your client.”

Affidavit of Brooks: His November 10, 2012 is enclosed.

Affidavit of Attorney Ettenberg: In this April 11, 2013 Affidavit Attorney Ettenberg-Brooks trial counsel discussed evidence he found in the Grand Jury minutes how evidence was staged to create probable cause and that during trial detectives Reando, Morris, and Panarello all testified there were cut corner baggies in the car consistent with trafficking and admitted as Exhibit 6. He testified that when Exhibit 6 was opened at trial no corner cut baggies were found as it had been alleged by police.

Photographs of Trial Evidence Ex. 6 These photographs have been enclosed as Exhibit # 12

In summary, fraudulent misconduct by an officer is exculpatory evidence -- not only in favor of the defendant in the case where it occurs but in favor of defendants in any other cases in which that officer has given evidence.

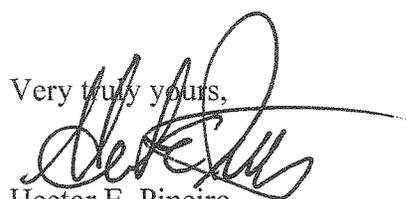
Therefore, I respectfully request that your office to do the following:

- 1) Fully investigate these twelve cases I am bringing to your attention;
- 2) Create a Brady list of law enforcement officers that have given false testimony in court proceedings or tampered with evidence and provide this list and supporting documentation to the Defense bar;
- 3) Dismiss with prejudice any pending prosecutions that depend on evidence from any officer known to have provided fraudulent evidence in that case or in any other case;
- 4) Vacate and dismiss with prejudice any convictions obtained based on evidence from any officer known to have provided fraudulent evidence in that case or in any other case;
- 5) As to any conviction or pending prosecution not vacated or dismissed that rests to any degree on evidence from an officer known to have been untruthful in that or any other case, inform defendants and their counsel of the exculpatory, impeachment related evidence regarding that officer.

I will forward additional documentation about other cases of the same nature and request that investigate and act on these cases as well.

Thank you for consideration.

Very truly yours,


Hector E. Pineiro

Enclosure

cc:

Hon. Maura T. Healey, Attorney General
Office of the Attorney General
McCormack Bldg.
One Ashburton Place
Boston, MA 02108

Hon. Andrew E. Lelling
U.S. Attorney, District of Mass.
Moakley Federal Courthouse
1 Courthouse Way, Suite 9200
Boston, MA 02210