

IN THE COUNTY COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA IN AND FOR HILLSBOROUGH COUNTY
CRIMINAL JUSTICE DIVISION

STATE OF FLORIDA

CASE NO: 2011-CM-003078

VS

DIVISION: E

MICHAEL VINCENT LAURATO

FILED
2/25/11 2:53 PM '11

NOTICE OF TERMINATION OF PROSECUTION

TO THE CLERK OF THE COURT:

Having reviewed the charge(s) contained in the Criminal Report Affidavit and/or Notice to Appear, the State Attorney's Office informs you that the charges contained therein is dismissed and prosecution is terminated as of this date and that the defendant need not appear for any further proceedings in this matter.

This notice is also your authority to inform the Sheriff's Department to release the bond if bond has been posted.

I HEREBY CERTIFY that a copy of the foregoing Notice of Termination of Prosecution has been furnished to the Clerk of the Court, this 25th day of Feb., 2011.

RESPECTFULLY SUBMITTED,

MARK A. OBER
STATE ATTORNEY

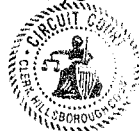


ASSISTANT STATE ATTORNEY
FLORIDA BAR# 72196


HDG

*Released
2/13/11*

STATE OF FLORIDA
COUNTY OF HILLSBOROUGH
THIS IS TO CERTIFY THAT THE FOREGOING IS A TRUE
AND CORRECT COPY OF THE DOCUMENT ON FILE IN
MY OFFICE. WITNESSED BY MY HAND AND OFFICIAL SEAL
THIS 28th OF March 2011



PAT FRANK, CLERK
BY Betty Parker
DEPUTY CLERK

① 

IN THE COUNTY COURT OF THE 13TH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CRIMINAL DIVISION

STATE OF FLORIDA,

Plaintiff,

v.

Case No.: 11-CM-003078

Division: E

MICHAEL VINCENT LAURATO,

Defendant.

FILED
CLERK OF COUNTY COURT
HILLSBOROUGH COUNTY, FLA
COUNTY CRIMINAL

FILED
11/23/28 AM 10:23

FILED

MOTION TO DISMISS

COMES NOW, the Defendant, MICHAEL VINCENT LAURATO, by and through his undersigned counsel, and pursuant to Florida Rule of Criminal Procedure 3.190(c)(4), and moves to dismiss the charges filed against him for Disorderly Conduct. The State cannot make out a prima facie case against the Defendant for Disorderly Conduct for the following reasons:

1. The State has charged the Defendant with Breach of the Peace; Disorderly Conduct, pursuant to Florida Statute 877.03, resulting from an alleged incident that occurred on February 13, 2011.

2. Florida Statute 877.03 Breach of the Peace; Disorderly Conduct provides that: "Whoever commits such acts as are of a nature to corrupt the public morals, or

outrage the sense of public decency, or affect the peace and quiet of persons who may witness them, or engages in brawling or fighting, or engages in such conduct as to constitute a breach of the peace or disorderly conduct, shall be guilty of a misdemeanor of the second degree."

3. However, even assuming all allegations of the police officers and witnesses to be true, the State cannot establish a prima facie case of breach of the peace or disorderly conduct, against this Defendant.

4. The State alleges that on February 13, 2011, at approximately 4:48 am, within the "Green Room" restaurant located within the Seminole Hard Rock Casino, the Defendant was asked to leave the restaurant by the manager, the Defendant refused to leave, and the Defendant yelled loudly across the restaurant which was filled with customers, "You stupid mother fucker get me your boss I'm not leaving".

5. The witness alleges that customers began to stop eating and turn to watch the Defendant, and alleges that casino security trespassed the Defendant from the property and told Defendant he had to leave.

6. The witnesses allege that Defendant continued to sit at the table and when SPD asked him where he was parked, to escort him to his vehicle, Defendant yelled "I don't have to answer any of your questions" and continued

to stand in the restaurant which caused customers to stop again and look at Defendant due to his actions.

7. Defendant denies these allegations, and asserts that the casino's videotape surveillance will clearly evidence the falsity of the allegations; however, even assuming all of the witnesses' allegations to be true, the Defendant's alleged statements and conduct do not constitute disorderly conduct and/or breach of peace, and thus the State cannot establish the elements of the offense, as a matter of law.

8. Based on the allegations set forth in the arrest affidavit, the State cannot make out a prima facie case of Breach of the Peace; Disorderly Conduct.

WHEREFORE, the Defendant respectfully requests that this Honorable Court dismiss the charge filed against him for Breach of the Peace; Disorderly Conduct, for the reasons set forth herein.

MEMORANDUM OF LAW IN SUPPPORT OF MOTION TO DISMISS

The Second DCA ruled on a nearly identical fact pattern in the case of Smith v. State, 967 So.2d 937 (2 DCA 2007) and held that disorderly conduct is not made out as a matter of law under the facts alleged in this case. This decision is controlling on this court and requires dismissal.

In Smith, the Defendant visited a bank to secure a loan and was informed by the assistant manager that he did not qualify for the loan. Id. In response, Smith used profanity directed at the bank and at the assistant manager, and accused the assistant manager of stealing his pen. Id. The assistant manager told Smith she would have to stop cursing or he would have to leave the bank, and Smith requested that the assistant manager call the police. Id. While waiting for the police to arrive, Smith continued to curse loudly and the assistant manager stood between Smith and the customers standing in line to see the bank's tellers. Id. The bank was relatively busy, and the customers could hear Smith's verbal abuse of the assistant manager. Id. The assistant manager testified that "there were a lot of comments made afterwards on the language that was used." Id. When the police arrived, Smith continued to curse and directed his comments at the police officer. According to the officer, Smith was "very loud and very obnoxious." Id. The officer testified that she gave Smith the options either to leave the area or to be arrested. Id. According to her report he responded in very vulgar and threatening terms, and refused to leave the area. Id. The Court found that the evidence did not support the conviction for disorderly conduct for Smith's actions and

words inside or outside the bank. Id. There was no evidence that witnesses responded to defendant's words in any particular manner or that anyone in the area was actually incited to engage in an immediate breach of the peace, but were merely either curious or annoyed. Id.

Our case is nearly identical to Smith. There is no evidence that any of the restaurant patrons reacted in any particular manner or were incited to engage in an immediate breach of the peace. The Courts have consistently held that "unenanced speech alone will not support a conviction for disorderly conduct." A.S.C. v. State, 14 So.3d 1118 (5 DCA 2009). A conviction for disorderly conduct, based upon a defendant speaking loudly and profanely, cannot be upheld in absence of evidence that a defendant was trying to incite a crowd or that a crowd gathered and presented a safety risk. Id. The First Amendment protects the use of profanities and offensive speech; a defendant cannot be punished simply for asserting his right to free speech. W.L. v. State, 769 So.2d 1132 (3 DCA 2000).

In our case, even taking all of the State's allegations to be true, the Defendant was simply exercising his right of free speech, which is protected by the First Amendment. There is no evidence that witnesses responded to Defendant's words or conduct in any particular manner or

that anyone in the area was actually incited to engage in an immediate breach of the peace, but were merely either curious or annoyed. Therefore, the State cannot make out a prima facie case of Breach of the Peace; Disorderly Conduct.

The Second District has been particularly circumspect about charges arising under this particular statute. In C.N. v. Florida, 49 So.3d 831 (Fla. 2d DCA 2010), the Second District Court of Appeal dismissed a charge of disorderly conduct, again, on facts very similar to the facts alleged, here. The defendant, in that case, was in a crowd of teenagers that spilled into the streets after a dance. Id. The police had received a number of complaints about the crowd, involving noise, property damage, and fighting in the area. Id. Officers were dispatched to break up the crowd. Id. The defendant was observed shouting and using foul language and the police feared that the defendant's actions might incite fights. Id. The officers instructed the defendant to leave the scene, but the defendant failed to leave and instead sarcastically "rolled her eyes," ignoring the officers instructions to leave or face arrest. Id. The defendant did not move and was taken into custody for disorderly conduct. Id. The Second District found that the state could not prove the

case for disorderly conduct under these facts and dismissed the charge. *Id.* If the facts of that case are legally insufficient to make out a charge of disorderly conduct, the facts of this case are, *a fortiori*, legally insufficient and dismissal is required.

Again, in C.H.C. v. State, 988 So.2d 1145 (Fla. 2d DCA 2008), the Second District refused to extend the reach of the disorderly conduct statute to cases similar to the defendant's here. There, the officers encountered a defendant surrounded by a large group of people, walking in a circle clinching his fists and yelling profanities. *Id.* The defendant then began screaming and yelling at the deputies on the scene. *Id.* The deputy then ordered the defendant to "come over here," at which point the defendant ran from the scene and continued to flee even though the deputy yelled "Police, stop." *Id.* The Second District held that these facts did not constitute disorderly conduct under the statute. *Id.*

Throughout the state's appellate districts, Florida courts have consistently and uniformly held that situations identical to the alleged circumstances of this case, are legally insufficient to make out a *prima facie* case of disorderly conduct in violation of the applicable statute. For example, in A.S.C. v. State, 14 So.3d 1118 (Fla. 5th

DCA), the Fifth District dismissed a disorderly conduct charge, where a defendant used loud, profane, and offensive language in a public setting.

Similarly, in W.L. v. State, 769 SO.2d 1132 (Fla. 3d DCA), the Third District dismissed a disorderly conduct charge, where a defendant, who was in a crowd of 15 to 20 people, yelled out a series of profanities to officers conducting a narcotics investigation. Noting that no member of the crowd threatened the officers and no safety concern arose, the court held the disorderly conduct charge conduct not stand. Id.

A similar result was reached by the Third District in Fields v. State, 24 So.3d 636, (Fla. 3d DCA 2009). In that case, the defendant was yelling profanities in a bank doorway, even though people coming out of the bank overheard the defendant and stopped to watch the defendant. The court held that the mere fact that the crowd gathered out of curiosity or annoyance to observe the defendant's behavior was legally insufficient to prove disorderly conduct. Id.

In this case, the best evidence—although disputed—is that the defendant used loud profanity in a public place and initially refused to leave and that the people already present took momentary notice of the Defendant.

Ardyn V. Cuchel

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Attorneys for Defendant

11

IN THE COUNTY COURT OF THE 13TH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CRIMINAL DIVISION

STATE OF FLORIDA,

Plaintiff,

v.

Case No.: 11-CM-003078

Division: E

MICHAEL VINCENT LAURATO,

Defendant.

_____ /

CLERK OF COUNTY COURT
HILLSBOROUGH COUNTY, FL
COUNTY CRIMINAL

FEB 28 AM 10:23

FILED

NOTICE OF HEARING

COMES NOW, the Defendant, MICHAEL VINCENT LAURATO, by and through his undersigned counsel, and hereby gives notice that on **March 16, 2011, at 9:00am** or as soon thereafter as possible, the undersigned will call for hearing upon **Defendant's MOTION TO DISMISS**, in the above styled cause before the Honorable Lawrence Lefler at the Edgecomb Courthouse, 801 East Twiggs Street, Annex, Courtroom 21, Tampa, Florida.

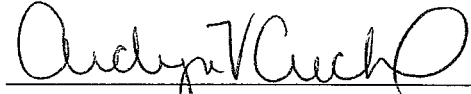
Please be governed accordingly.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT a true and correct copy of the foregoing has been provided via U.S. mail to: The State Attorney's Office, Misdemeanor Division, 419 N. Pierce

12

Street, Tampa, Florida 33602, on this 24th day of February,
2011.



ARDYN V. CUCHEL, ESQ.
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(813)258-4625 Fax
Attorneys for Defendant

CRIMINAL REPORT AFFIDAVIT / NOTICE TO APPEAR

1662844

COURT CASE/ J.F. ID # 11-3078 SAO # E3-10 OBTS # 296 50384

AGENCY REPORT # 2011-00713 AGENCY NAME SEMINOLE PD ORI # 0063400

LOCATION OF OFFENSE 5223 ORIENT RD, TAMPA, FL 33610 DATE OF OFFENSE 02/13/2011 TIME OF OFFENSE 04:48

WITHIN: TAMPA [] PLANT CITY [] TEMPLE TERRACE [] UNINCORPORATED AREA [X] SUPPLEMENTAL CRA ATTACHED []

COURT: TAMPA COURT [X] PLANT CITY CT []

LOCATION OF ARREST 5223 ORIENT RD. TAMPA, FLORIDA 33610 DATE OF ARREST 02/13/2011 TIME OF ARREST 04:57

BOOKING # 11007481 SOID # 691721 WEAPON TYPE WEAPON SEIZED Yes [] No [X]

ARREST [X] Probable Cause [X] Adult [X] Juvenile [] Fugitive Warrant [] Delinquency [] VOP/VOCC [] Dependency [] Warrant [] Felony [] Juvenile Pickup [X] Misdemeanor [] Traffic MISD [] Direct File/SAO [] Traffic FEL [] Review [] Ordinance [] Warrant [] Pickup [] Summons [] Other [] Juvenile Pickup [] NOTICE TO APPEAR: [] Arresting officer [] Booking supervising officer

NAME LAURATO MICHAEL VINCENT ALIAS

RACE: W-White I-American Indian/Alaskan Native HW-Hispanic White HB-Hispanic Black B-Black O-Oriental/Asian Race W SEX M D.O.B. 01/30/1973 COMPLEXION MED BUILD Large HEIGHT 510 WEIGHT 270 COLOR: EYES BROW HAIR BRO

LOCAL ADDRESS (Street, Apt. #, City, State, Zip) Ph #: Permanent Address (Street, Apt. #, City, State, Zip) 3710 W LEONA ST, TAMPA, FL 33629 Ph #: (000) 000-0000

Business Address (Street, Apt. #, City, State, Zip) REFUSED, REFUSED Ph #: (000) 000-0000

Driver's License No. L630558730300 State FL SS # 594-14-6261 PLACE OF BIRTH UNKNOWN DOC #

Gang Member: Yes [] No [X] Gang Name SCARS, MARKS, TATTOOS, UNIQUE FEATURES (Loc., Type, Desc) unknown

IF JUVENILE: School Name Mother/Guardian N/A Address Father/Guardian Address

Released To: JAC [] Parent [] Guardian [] Other Relationship [] Other []

Co-Defendant (Last, First, Middle) Sex: Race: DOB: Arrested [] At Large [] Capias/Warrant Requested [] Felony [] Misdemeanor [] Juvenile []

Co-Defendant (Last, First, Middle) N/A Sex: Race: DOB: Arrested [] At Large [] Capias/Warrant Requested [] Felony [] Misdemeanor [] Juvenile []

Table with columns: STATUTE (subsec.) / ORD #, DV, CP, CHARGE STATUS, BOND SET, CHARGE, TRAFFIC CITATION #, DRUG ACT/TYPE. Row 1: 877.03, N, N, M, N, DISORDERLY CONDUCT, BREACH OF PEACE (2ND DEG. MISD)

CHARGE STATUS: F-Felony M-Misdemeanor T-Traffic O-Ordinance FT-Felony Traffic DV-Domestic Violence CP-Child Present ACTIVITY: N-N/A P-Possess S-Sell B-Buy T-Traffic R-Smuggle D-Deliver E-Use K-Dispense/Distribute M-Manufacture/Produce/Cultivate Z-Other Type: N-N/A A-Amphetamine B-Barbiturate C-Cocaine E-Heroin H-Hallucinogen M-Marijuana O-Opium/Deriv. P-Paraphernalia/Equipment S-Synthetic U-Unknown Z-Other

A LIST OF TANGIBLE EVIDENCE (If none, write "None") (Evidence List must be provided for all NOTICES TO APPEAR)

Table with columns: DESCRIPTION/AMOUNT PER UNIT, RECOVERED BY, GIVEN TO, PRESENT LOCATION

Mandatory Appearance in Court [] You need not appear in Court, but must comply with instructions on Reverse Side. [X]

COURT INFORMATION: You must appear in County Court at the: COURTHOUSE TOWER ANNEX, 801 E. TWIGGS STREET [] COUNTY OFFICE BUILDING, MICHIGAN & REYNOLDS STREET [] (Corner of Jefferson & Twiggs Street), TAMPA, FLORIDA 33602 PLANT CITY, FLORIDA 33566

Division COURTROOM # ON ,20 , AT a.m. [] p.m. []

I agree to appear at the time and place designated above to answer for the offense(s) charged or to pay the fine subscribed. I understand that if I willfully fail to appear before the Court as required by the Notice to Appear, I may be held in contempt of Court and a warrant for my arrest shall be issued. You may also be charged with the crime of Failure to Appear, F.S. 843.15. I certify that my address as listed above is correct and I further understand that I have a continuing duty to advise the Court of any changes in my address as set forth above.

Signature of Defendant/Juvenile Parent or Guardian (if Juvenile)

CLERK OF COURT COPY CLERK OF COURT COPY CLERK OF COURT COPY

ADMINISTRATION DEFENDANT/DEPENDENT CODEFF(S) CHARGE(S) EVIDENCE NOTICE TO APPEAR

2011 FEB 14 11:19 AM FILED

14

AGENCY REPORT # 2011-00713

AGENCY ME SEMINOLE PD

State facts to establish probable cause that a crime was committed by the defendant or that the child is dependant

On February 13, 2011, at approximately 4:48 A.M. within the "Green Room" restaurant located within the Seminole Hard Rock Casino located at 5223 Orient Road Tampa, Florida, within Hillsborough County, the defendant, Michael Laurato, was asked to leave the restaurant by the manager, Meredith Rhoades, the defendant refused to leave and as Rhoades began to walk away to contact her boss and casino security the defendant yelled loudly across the restaurant which was filled with customers, "You stupid mother fucker get me your boss I`m not leaving." Rhoades advised customers began to stop eating and turning to watch the defendant. Casino security trespassed the defendant from the casino property and SPD told the defendant he had to leave. The defendant continued to sit at the table and when SPD asked the defendant where he parked to escort the defendant to his vehicle the defendant yelled, "I don`t have to answer any of your questions" and continued to stand in the restaurant which caused customers to stop again to look at the defendant due to his actions.

The defendant was identified by his Florida Driver`s License.

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Judgement requested against defendant for agency investigative cost per Florida Statute 938.27: \$

\$178.00

OFFICER Jo Nuckles
I.D. # 091 Dist. & Squad Tampa patrol
(Please Print The Above Information)

POLICE REPORT WRITTEN: Yes No
OFFICER C Cooper I.D. # 254 Dist. & Squad Patrol

SWORN TO AND SUBSCRIBED BEFORE ME THIS
13 DAY OF Feb, 2011

I SWEAR THAT THE ABOVE STATEMENTS ARE CORRECT TO THE BEST OF MY KNOWLEDGE. FOR NOTICES TO APPEAR, I ALSO CERTIFY THAT A COMPLETE LIST OF WITNESSES AND EVIDENCE KNOW TO ME IS ATTACHED

NAME/Title of Person Authorized to Administer Oath
[Signature]

AFFIANT, Signature Officer C Cooper
AFFIANT, Print/Type Name Officer C Cooper #254

(15)

NOTE: The WHITE COPY of VICTIM'S/WITNESSES goes to the Clerk's Office ONLY on Notices To Appear. In all other cases, it should be removed. The Jail or JAC personnel will determine this for all defendants turned over to them. In all Notices To Appear issued by the Arresting Officer, the Arresting Officer should leave the WHITE copy of VICTIM'S/WITNESSES attached.

IN THE COUNTY COURT OF THE 13TH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CRIMINAL DIVISION

3/15
8:3
3/16
NOTP

STATE OF FLORIDA,

Plaintiff,

v.

Case No.: 11-CM-003078

Division: E

2011 FEB 25 AM 9:02

FILED

MICHAEL VINCENT LAURATO,

Defendant.

NOTICE OF APPEARANCE, WRITTEN PLEA OF NOT GUILTY, WAIVER OF
ARRAIGNMENT AND REQUEST FOR DISPOSITION DATE

NOTICE IS HEREBY GIVEN to this Honorable Court and all parties hereto, that the undersigned will be counsel for and on behalf of MICHAEL VINCENT LAURATO, the Defendant in the above-styled cause, and requests that copies of all pleadings, notices, correspondence, etc. be furnished to her in accordance therewith. All defenses regarding jurisdictional issues are reserved and preserved.

The Defendant, MICHAEL VINCENT LAURATO, by and through his undersigned counsel, and pursuant to Fla. R. Crim. P. 3.160 and 3.170(a), hereby waives arraignment and enters hIS Written Plea of Not Guilty to all charges herein.

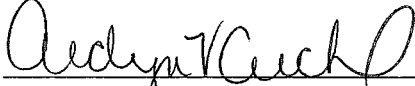
The Defendant further requests that a disposition date be set in this case.

(17)

Rep

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT a true and correct copy of the foregoing has been provided via U.S. mail to: The State Attorney's Office, Misdemeanor Division, 419 N. Pierce Street, Tampa, Florida 33602, on this 23rd day of February, 2011.


ARDYN V. CUCHEL, ESQ.
Florida Bar No.: 0713759
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Tampa, Florida 33606
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(813)258-4625 Fax
Attorneys for Defendant

IN THE COUNTY COURT OF THE 13TH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CRIMINAL DIVISION

STATE OF FLORIDA,

Plaintiff,

v.

Case No.: 11-CM-003078

Division: E

MICHAEL VINCENT LAURATO,

Defendant.

_____ /

NOTICE OF DISCOVERY

Defendant, pursuant to Fla. R. Crim. P. 3.220, files this written demand for discovery and the State Attorney shall disclose within fifteen (15) days from demand hereof to defense counsel and permit him to inspect, copy, test or photograph the following information within the State's possession or control, or which may be reduced to such possession or control:

1. The names and addresses of all persons known to the State Attorney, or any investigator of the State Attorney, to have information which may be relevant to the offense charged and to any defense with respect thereto.

2. The statements of any person whose names are furnished in compliance with the preceding paragraph, to include police reports and investigator reports or notes

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pertaining to any such statements of interview of such persons, and including written statements made by said persons and signed or otherwise adopted or approved by said persons, or on stenograph, mechanical, electrical, or other recording, or a transcript thereof, or which is substantially a verbatim recital of an oral statement made by said persons to an officer or agent of the State and recorded contemporaneously with the making of such oral statement.

3. Any written or recorded statements and the substance of any oral statements made by the Defendant and known to the prosecutor, or which should be known to the prosecutor, together with the name and address of each witness to the statement.

4. Any written or recorded statement and the substance of any oral statements made by any co-defendant or alleged accomplice of the trial if to be a joint one.

5. Those portions of recorded grand jury minutes that contain testimony of the accused or relate to testimony or statements of the accused.

6. Any tangible papers or objects, which were obtained or belonged to the Defendant.

7. Whether the State or any investigator for the State Attorney or any Federal Agency has any material or

information, which has been provided by a confidential informer.

8. Whether there has been any electronic surveillance, including wiretapping, by State or Federal authorities of the premises of the accused, or of conversations to which the Defendant was a party, and any documents relating thereto.

9. Whether there has been any search and seizure and any documents relating thereto.

10. Reports of statements of experts made in connection with the case or the Defendant, including results of physical or mental examinations and of scientific tests, experiments, or comparisons.

11. Any tangible papers or objects which the prosecutor intends to use, or which the prosecutor has examined in connection with the case, whether or not the prosecutor intends to use the latter in connection with any hearing or the trial and which were not obtained from or belongings of the Defendant.

12. Any material information within the State's possession or control or which to the knowledge of the State may be reduced to such possession or control, which tends to negate the guilt of the Defendant as to the offense charged or which might mitigate; Defendant requests


and moves for the provision of exculpatory evidence as provided by the decisions in Brady v. Maryland, 88 S. Ct. 1194 and Williams v. Dutton, 400 F.2d 797 (5th Cir.1968), cert. den'd 21, L.Ed 2d 799.

13. The arrest and conviction records of those persons whose names are provided in accordance with paragraph (1), along with the arrest and conviction record of the Defendant, if any. Also, such criminal history records of those names in response to paragraph (1) above as are now in possession of the State of Florida or its agents. State v. Coney, 294 So.2d 82 (Fla.1974).

WHEREFORE, the Defendant moves that the Court grant such requests above to be not otherwise provided as a matter of course by the Florida Rules of Criminal Procedure.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT a true and correct copy of the foregoing has been provided via U.S. mail to: The State Attorney's Office, Misdemeanor Division, 419 N. Pierce Street, Tampa, Florida 33602, on this 23rd day of February, 2011.


ARDYN V. CUCHEL, ESQ.
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Attorneys for Defendant

IN THE COUNTY COURT OF THE 13TH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CRIMINAL DIVISION

STATE OF FLORIDA,

Plaintiff,

v.

Case No.: 11-CM-003078
Division: E

MICHAEL VINCENT LAURATO,

Defendant.

_____ /

NOTICE OF HEARING

COMES NOW, the Defendant, MICHAEL VINCENT LAURATO, by and through his undersigned counsel, and hereby gives notice that on **March 16, 2011, at 9:00am** or as soon thereafter as possible, the undersigned will call for hearing upon **Defendant's MOTION TO PRESERVE AND COMPEL PRODUCTION OF EXCULPATORY EVIDENCE**, in the above styled cause before the Honorable Lawrence Lefler at the Edgecomb Courthouse, 801 East Twiggs Street, Annex, Courtroom 21, Tampa, Florida.

Please be governed accordingly.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT a true and correct copy of the foregoing has been provided via U.S. mail to: The State Attorney's Office, Misdemeanor Division, 419 N. Pierce

FILED
2011 FEB 25 AM 9:02

24

9

Street, Tampa, Florida 33602, on this 23rd day of February,
2011.



ARDYN V. CUCHEL, ESQ.
Florida Bar No.: 0713759
The Law Office of
Ardyn V. Cuchel, P.A.
1902 W. Cass Street
Tampa, Florida 33606
(813)253-3051 Phone
(813)258-4625 Fax
Attorneys for Defendant

IN THE COUNTY COURT OF THE 13TH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CRIMINAL DIVISION

STATE OF FLORIDA,

Plaintiff,

v.

Case No.: 11-CM-003078

Division: E

MICHAEL VINCENT LAURATO,

Defendant.

_____ /

MOTION TO PRESERVE AND COMPEL PRODUCTION
OF EXCULPATORY EVIDENCE

COMES NOW, the Defendant, MICHAEL VINCENT LAURATO, by and through his undersigned counsel, and moves this Court to enter an Order requiring the State to preserve and disclose to the Defendant the videotape of the events leading up to the Defendant's arrest and the arrest itself which is within both the possession and knowledge of the state. This motion is brought under the provisions of the Fourteenth Amendment to the United States Constitution, as interpreted by the United States Supreme Court in *Brady v. Maryland*, 83 S. Ct. 1194 (1963), and subsequent decisions, and Fla. R. Crim. P. 3.220(b)(4).

This motion requests that the State disclose to the Defendant all exculpatory evidence that is in its

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2011 FEB 25 AM 9:02
The County Court of Hillsborough County, Florida

possession or within in its knowledge. Specifically, this motion requests that the State disclose and provide a copy of the following specific favorable information and material:

1. The videotape (audio and visual) of events leading up to the arrest and the actual arrest of the Defendant on February 13, 2011 in the Green Room Restaurant at the Seminole Hard Rock Casino, which is in the present possession of the Seminole Tribe Police Department.

The area and conduct of all parties leading up to the Defendant's arrest have been captured on video surveillance. The contents of the videotape are completely exculpatory and demonstrate that the Defendant was neither loud, nor disorderly and completely contradict the allegations of criminal report affidavit.

Pursuant to F.S. 285.16, the State of Florida has assumed jurisdiction over all criminal offenses between Indians and other persons that arise within Indian Reservation and officers of the Seminole Tribe Police Department is considered a law enforcement agency for purposes of Florida law. Accordingly, the exculpatory videotape of the incident and arrest is properly considered to be within the constructive possession of the State and

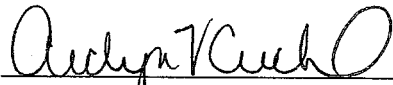
subject to immediate disclosure under Brady and its progeny.

The State, through its law enforcement agencies, has the initial, and immediate opportunity to investigate crime and secure any physical evidence relevant to its commission. The State in this case has a videotape of the actual events that transpired. The evidence is completely exculpatory and the Defendant has had no similar opportunity to obtain the evidence. Failing to secure, preserve, and disclose this exculpatory evidence restricts the Defendant's right to a fair trial.

WHEREFORE, the Defendant prays that this Court will enter its order requiring the state to secure, preserve, and disclose the videotape of the events leading up to the arrest and the arrest itself to the Defendant.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT a true and correct copy of the foregoing has been provided via U.S. mail to: The State Attorney's Office, Misdemeanor Division, 419 N. Pierce Street, Tampa, Florida 33602, on this 23rd day of February, 2011.


ARDYN V. CUCHEL, ESQ.
Florida Bar No.: 0713759
The Law Office of

Ardyn V. Cuchel, P.A.
1902 W. Cass Street
Tampa, Florida 33606
(813)253-3051 Phone
(813)258-4625 Fax
Attorneys for Defendant

IN THE COUNTY CRIMINAL COURT IN AND FOR
HILLSBOROUGH COUNTY, STATE OF FLORIDA
NOTICE OF HEARING

DIVISION: E
CASE NUMBER: **11-CM-003078**
HEARING TYPE: MOTION/PENDING CASE

*** F I L I N G C O P Y ***

YOU ARE HEREBY NOTIFIED THAT THE DEFENDANT (see party list at bottom) IS NOTICED TO APPEAR IN PERSON BEFORE THE HONORABLE LAWRENCE LEFLER JUDGE OF THE COUNTY CRIMINAL COURT OF HILLSBOROUGH COUNTY, FLORIDA. IN COURTROOM 21 2ND FLOOR, COURTHOUSE ANNEX 401 N JEFFERSON ST TAMPA, FL ON **MARCH 16, 2011** AT **9:00 AM**.

DEFENDANT: FAILURE TO APPEAR FOR THE ABOVE COURT DATE WILL RESULT IN AN ARREST WARRANT BEING ISSUED BY ORDER OF THE COURT.

BONDSMAN: ANY BONDS POSTED IN THIS MATTER WILL BE SUBJECT TO FORFEITURE.

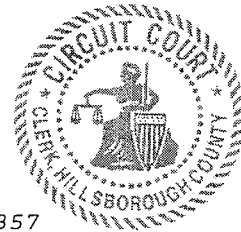
CERTIFICATE OF MAILING

AS DEPUTY CLERK OF THE CIRCUIT COURT I DO HEREBY CERTIFY THAT ON FEBRUARY 25, 2011, I MAILED A TRUE AND CORRECT COPY OF THIS NOTICE OF HEARING TO (see party list at bottom).

PAT FRANK
CLERK OF THE CIRCUIT AND COUNTY COURT

Deborah Martinez

DEBORAH MARTINEZ, DEPUTY CLERK
TAMPA (813) 276-8100 FELONY EXT.4307 MISDEMEANOR EXT.4357
PLANT CITY (813) 757-3918 OR 276-8100 EXT.4515



PARTY PARTY NAME, ADDRESS NOTICE WAS SENT TO -----*
D001 MICHAEL VINCENT LAURATO, 3710 W LEONA ST TAMPA FL 33629

(NAGLEJ)

IN THE COUNTY CRIMINAL COURT IN AND FOR
HILLSBOROUGH COUNTY, STATE OF FLORIDA
NOTICE OF HEARING

DIVISION: E
CASE NUMBER: **11-CM-003078**
HEARING TYPE: ARRAIGNMENT

*** F I L I N G C O P Y ***

YOU ARE HEREBY NOTIFIED THAT THE DEFENDANT (see party list at bottom) IS NOTICED TO APPEAR IN PERSON BEFORE THE HONORABLE LAWRENCE LEFLER JUDGE OF THE COUNTY CRIMINAL COURT OF HILLSBOROUGH COUNTY, FLORIDA. IN COURTROOM 21 2ND FLOOR, COURTHOUSE ANNEX 401 N JEFFERSON ST TAMPA, FL ON **MARCH 10, 2011** AT **8:30 AM**.


DEFENDANT: FAILURE TO APPEAR FOR THE ABOVE COURT DATE WILL RESULT IN AN ARREST WARRANT BEING ISSUED BY ORDER OF THE COURT.

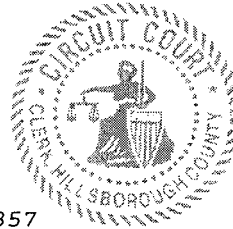
BONDSMAN: ANY BONDS POSTED IN THIS MATTER WILL BE SUBJECT TO FORFEITURE.

CERTIFICATE OF MAILING

AS DEPUTY CLERK OF THE CIRCUIT COURT I DO HEREBY CERTIFY THAT ON FEBRUARY 16, 2011, I MAILED A TRUE AND CORRECT COPY OF THIS NOTICE OF HEARING TO (see party list at bottom).

PAT FRANK
CLERK OF THE CIRCUIT AND COUNTY COURT


DEBORAH MARTINEZ, DEPUTY CLERK
TAMPA (813) 276-8100 FELONY EXT.4307 MISDEMEANOR EXT.4357
PLANT CITY (813) 757-3918 OR 276-8100 EXT.4515



PARTY PARTY NAME, ADDRESS NOTICE WAS SENT TO -----* (COURTNEYJI)
D001 MICHAEL VINCENT LAURATO, 3710 W LEONA ST TAMPA FL 33629

(31)

BOND RELEASE NOTICE

Circuit Criminal

County Criminal

Traffic

Date: 1 March 2011

To: SHERIFF OF HILLSBOROUGH COUNTY

PLEASE RELEASE THE BOND POSTED IN THE CASE OF THE STATE OF FLORIDA
vs Michael Vincent Laurato

Charged with Disorderly Contact
#B1100796 #250.00

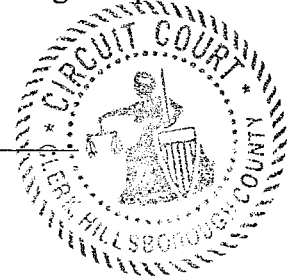
Case No./Citation No. 11-CM-003078

The above-referenced matter has been disposed of by the Court and the bond is no longer required.

PAT FRANK
Clerk of Circuit and County Courts

By: OC Damon
Deputy Clerk

COCR0006(Rev. 01-13-05)



Docketed 3-1-11 AD

Hillsborough County Sheriff's Office
CASH APPEARANCE BOND

Bond # B1100794

2-10
3

Defendant (LAST, FIRST, MIDDLE) MICHAEL VINCENT]
Race (DD) Sex (M) B.O.B. (01/30/73)

Booking # C110074811

Date (02/13/11)

Court Case # C1103078]

In the State of Florida, County of Hillsborough
I, LAURATO, MICHAEL VINCENT, Depositor,

have deposited with the Sheriff of Hillsborough County, the sum of 250.00 as a security for the appearance of
LAURATO, MICHAEL VINCENT, Defendant. The Defendant is charged with DISORDERLY CONDUCT (1).


FVA 87705 22 for which he/she was arrested by Officer COOPER, # 25404 SEWING AND RES P
This arrest occurred at 5275 ORIENT A.

FILED
2011 FEB 15 11 AM 9:08 03
CLERK OF COURT
HILLSBOROUGH COUNTY, FLORIDA

THE CLERK OF THE COURT WILL NOTIFY THE DEFENDANT OF THE SCHEDULED COURT DATE AND LOCATION.
County Criminal Court, 419 Pierce St., Room 190F, Tampa

1. THE DEFENDANT SHALL APPEAR FOR COURT TO ANSWER THE ABOVE CHARGE.
2. UPON ORDER OF THE COURT, THE MONIES SO DEPOSITED SHALL BE RETURNED TO THE DEPOSITOR ONLY.
3. INSTRUCTIONS FOR REFUND ARE PRINTED ON REVERSE SIDE OF DEPOSITOR'S COPY.
4. UPON THE DEFENDANT'S NON-APPEARANCE, THE MONIES WILL BE FORFEITED BY ORDER OF THE COURT.

This bond taken and approved by:
DAVID LEE, SHERIFF
HILLSBOROUGH COUNTY, FLORIDA


Deputy Sheriff's Signature
Name HILTON, RONALD
ABNH 7002

903.266, F.S., requiring that all cash bond forms prominently display a notice explaining that cash bonds are subject to forfeiture and withholding by the Clerk of the Court for the payment of court fees, court cost, and criminal penalties on behalf of the criminal defendant regardless of who posted the funds.

Defendant's Full Signature
Address: 3710 W LEDNA ST TAMPA FL 33629

Depositor's Full Signature
Name: LAURATO, MICHAEL VINCENT DOb: 01/30/73 Address: 3710 W LEDNA ST TAMPA FL 33629

Amount deposited: 250.00
Total Cash Amt: .00 Total Check Amt: 250.00 Check #: 439078

Same

| For Fiscal Use only: | | | |
|----------------------|------|-------------|----|
| Amount Released | Ct # | Received by | DN |
| Amount Released | Ct # | Received by | DN |
| Amount Released | Ct # | Received by | DN |

White - Fiscal Pink - Court Green - Jail Yellow - Depositor

33