

COMMONWEALTH OF MASSACHUSETTS

WORCESTER DISTRICT COURT
Complaint No. 0762CR1852

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COMMONWEALTH,))
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Complainant,))
))
vs.))
))
LAWRENCE D. CIRIGNANO,))
))
Defendant.))
_____)

Opposition of Defendant Cirignano
To Commonwealth's Motion to Continue Trial

Defendant Lawrence D. Cirignano hereby opposes the Commonwealth's Motion to Continue Trial Until After Show-Cause Hearing on Victim (the "Motion").

Background

This is a case in which Defendant Lawrence Cirignano was part of a permitted rally entitled "Let the People Vote" which took place at the Worcester City Hall Plaza on Saturday, December 16, 2006. The rally was held in favor or urging the Massachusetts legislature to permit a then –pending constitutional amendment to limit marriage to a man and a woman to proceed to a state - wide vote. Opposing groups appeared, including Massachusetts Equality (of which Complainant Ms. Sarah Loy was a supporter), and the Worcester Police Department (WPD) told the non-permitted groups to stay back and maintain a buffer between themselves and the permitted group. Ms. Loy intruded into the space of the permitted group and stood near the podium, while a speaker was speaking to

the rally, holding a sign opposing the message of the permitted rally. The Commonwealth alleges that Mr. Cirignano approached Ms. Loy and then pushed her down. Mr. Cirignano has been charged with misdemeanor battery and violation of civil rights. His trial is scheduled to start on October 15, 2007.

Now, the person who obtained the permit for the rally, Ms. Shari Worthington, has filed a complaint application against Ms. Loy alleging that Ms. Loy violated the Massachusetts criminal statute prohibiting interfering with or disturbing a lawful public assembly, namely, G. L. c. 272, § 40 (the "Public Assembly Statute."). The hearing on the complaint application has been scheduled for October 29".

The Commonwealth has now filed the Motion seeking postponement of the trial scheduled for October 15th on the ground that Ms. Loy, one of the Commonwealth's witnesses, does not want to waive her right against self-incrimination and therefore does not want to testify against Mr. Cirignano while the complaint application, or any resulting complaint, is pending against her.

Argument

As grounds in support of his opposition the Defendant states as follows:

1. The Commonwealth says it has a number of witnesses who claim that the Defendant committed the acts with which he is charged, and the Commonwealth can proceed on their testimony.

In the Police Report in this case, there are at least three other witnesses besides the Complainant Ms. Sarah Loy who say they saw the Defendant commit the act with he is charged, that is, pushing the Complainant to the ground. Those witnesses names, as stated in the Police Report, are Richard Nangle, Rev. Aaron Payson, and Christopher

Robarge. According to the Police Report, Mr. Nangle said “[h]e saw this male push a female.” Rev. Payson is reported as saying, “[a]nd then Cirignano pushed her with two hands Christopher Robarge is reported as saying, “he witnessed two hands being placed on Loy’s shoulders and Loy being pushed backwards.” Defendant knows of no reason why these witnesses are not available to testify in support of the charges against the Defendant.

Moreover, since this is not a case where any "bodily injury" is claimed under the Civil Rights Statute, *G. L. c. 256, § 37*, or any "serious bodily injury" is claimed under the Assault and Battery Statute, *G. L. c. 265, § 13A*, Complainant Ms. Loy will not be a necessary witness to testify on those subjects.

2. The Commonwealth does not know when the application for criminal complaint against Complainant Ms. Loy will be resolved, which appears to have substantial merit.

The Commonwealth says essentially in support of the Motion, that the complaint application against Ms. Loy for violating the Public Assembly Statute has "little merit" and therefore suggests that it will be resolved quickly in favor of Ms. Loy.

The Commonwealth says that the complaint application has little merit for the sole reason that Justice Ricciardone July 2007 Decision denying Defendant Cirignano’s Motion to Dismiss Civil Rights Charge also somehow disposes of the charge in the complaint application that Ms. Loy violated the Public Assembly Statute. Yet, the only holding in the Decision was that Complainant Ms. Loy was in the exercise of the right of speech when she physically intruded on the rally and stood near the podium holding a sign stating a message contrary to that of the rally.

Contrary to what the Commonwealth claims in the Motion, it is inconceivable that Justice Ricciardone in the Decision could have ruled that the rally participants were without rights of speech and assembly, or were not an assembly of persons entitled to the protection of the Massachusetts statute criminalizing interference with an assembly of people, that is, the Public Assembly Statute. A quick review of the Decision reveals plainly that Justice Ricciardone does not address whether the rally participants still possessed rights of speech and assembly, or whether they were a lawful assembly, or whether Ms. Loy unlawfully disturbed or interfered with that assembly.

Nor could Justice Ricciardone have ruled that the rally participants were without rights of speech and assembly, or that they were not a lawful assembly entitled to protection of the Public Assembly Statute. The Public Assembly Statute covers and protects any assembly of people for a lawful purpose. *Commonwealth v. Porter*, 67 Mass. 476, 478, 481 (1854) (disturbing a temperance meeting; the SJC held, contrary to defendant's argument that the Public Assembly Statute was limited to meetings required by law, that the Statute applied to "all assemblies . . . if warranted by law").

The SJC in *Porter* further stated, at 477, that the right protected by the Public Assembly Statute derives from the constitutional right set forth in Article 19 of the Massachusetts Declaration of Rights. Article 19 provides that "The people have a right, in an orderly and peaceable manner, to assemble to consult upon the public good; give instructions to their representatives; and to request of the legislative body, by the way of addresses, petitions or remonstrances, redress of the wrongs done them, and of the grievances they suffer."

The SJC in *Porter*, at 481, further said that the temperance meeting in *Porter*, which concerned an actual petition on the subject of temperance to the legislature, was held in "strict conformity to the right secured by the constitution." The same is true with the Let the People Vote rally. The Let the People Vote rally was held to urge the legislature to vote on letting a proposed constitutional amendment proceed to a state – wide vote of the people. The conclusion is inescapable that the right of the participants in the Let the People Vote rally to be free from interference is protected under the Massachusetts Constitution.

Also, public assemblies or events holding a permit for the assembly or event from a municipal entity have a right under the First Amendment of the United States Constitution protecting them against unwanted intrusion. In *Hurley v. Irish – American Gay, Lesbian and Bisexual Group of Boston*, 515 U.S. 557, 559, 132 L. Ed. 2d 487, 115 S. Ct. 2338 (1995) the United States Supreme Court held that requiring a permitted parade-organizer to include a message in the parade that the organizer did not want to convey would violate the parade-organizer's free speech rights. The Supreme Court concluded that a permitted parade had a constitutional right to control the speech of its own parade.

In a subsequent federal appellate court decision, the United States Sixth Circuit Court of Appeals in *Sistrunk v. City of Strongsville*, 99 F. 3d 194, 196 (6th Cir. 1996), cert. denied, 520 U.S. 1251 (1997), citing extensively to *Hurly*, ruled that a permitted rally had a constitutional right to exclude intruders who wanted to hold up messages opposing the political candidate sponsoring the rally.

There are numerous cases holding that intrusions at permitted public assemblies are unlawful and violate the constitutional rights of the participants at the permitted events. *E.g.*, *Sanders v. United States*, 518 F. Supp. 728, 729-730 (D.D.C. 1981, *affd.* without opinion, 679 F. 2d 262 (D.C. Cir. 1982) (police had a constitutional right to arrest an intruder at a permitted event; court held that "[a] physical intrusion into another event for the purpose of interjecting one's own convictions or beliefs is by definition an interference, regardless of how substantial or insignificant it might appear"); *Schwitzgebel v. City of Strongsville*, 898 F. Supp. 1208, 1212-1213 (N.D. Ohio 1995) (intruders at permitted rally were properly removed by arrest; court held that "[w]ithout the defendants' implementation and enforcement of the permit system, the First Amendment rights of all citizens – including plaintiffs – could easily be lost in the noise."); *Startzell v. City of Philadelphia*, 2007 U.S. Dist. Lexis 4082, *9-11, 36, 39, 72-74 (E.D. Pa. 2007) (intruders at permitted gay pride street fair were properly removed by arrest; court held that "OutFest is an expressive, permitted event and the organizers of the event have a right to exclude those bearing contrary messages under Hurley.").

The complaint application, a copy of which is attached as Exhibit "A", states in essence: the rally organizers, namely "Let the People Vote," had a duly issued Facility Permit from the City of Worcester to conduct their rally at the City Hall Plaza on the date and at the time that it took place; at the time of the rally the WPD separated Ms. Loy's group, Massachusetts Equality, from the permitted Let the People Vote rally and told the Massachusetts Equality group that they were to keep back and not obstruct the Let the People Vote rally; Ms. Loy entered into the space where the permitted rally was taking place and came up near the podium where a pro-rally speaker was then speaking; she

held up a sign over her head with a message contrary to that of the permitted event; rally members told her she could not stand there yet she continued to do so.

Moreover, according to the Police Report Ms. Loy:

held a one-sided sign that read, 'No Discrimination in the Constitution.' Loy initially stated that she was on the perimeter of the 'Right to Vote' group, feeling that her message was not being heard. At this point, Loy walked into through the crowd into the center area of the demonstration where the opposing side was gathered. Loy turned her back to the podium and guest speakers and faced outward toward Main Street . . .

At the Clerk-Magistrate's probable cause hearing in this case Ms. Loy testified that she walked through the rally participants and stood near the podium holding her sign up so that the rally participants could see it. Transcript, p. 16. She admits that she was told by rally participants that she was not allowed to stand there. Transcript, p. 16. According to the complaint application, there will be further testimony that Ms. Loy yelled at the rally participants who urged her to leave the rally site.

The standard for a complaint to issue for a misdemeanor in the District Court is "probable cause," defined as no more than "a 'reasonable belief that the accused has committed a crime.'" *Commonwealth v. Toland*, 2000 Mass. Super Lexis 137, *29 fn. 27 (Plyrn. Super. Ct. Apr. 1, 2000). See also G. L. c. 218, 35A (on a probable cause hearing in the district court, "[t]he court, or said officer thereof, may . . . cause process to be issued unless there is no probable cause to believe that the person who is the object of the complaint has committed the offense charged.")). Given the evidence in the Police Report, the admissions by Ms. Loy in that Report, and her testimony at the Clerk Magistrate's hearing, it seems at least that probable cause exists for the complaint application to be granted and for a complaint to issue.

The only possible open issue with respect to the complaint application against Ms. Loy is whether her conduct constituted a prohibited disturbance or interruption (of a public assembly). The SJC stated in *Commonwealth v. Porter*, 67 Mass. 476,480 (1854), “[a]s the law has not defined what shall be deemed an interruption and disturbance, it must be decided as a question of fact in each particular case . . .” Questions of fact are for juries to decide and therefore, contrary to the Commonwealth's position that the complaint application has little merit, instead it appears to have substantial merit and will be decided by a jury.

4. The rights of the Defendant to a speedy trial are paramount over the tactical considerations of the Commonwealth in maximizing its witnesses and proof.

Defendant Cirignano, pursuant to Mass. R. Crim. Pro. 36, is entitled to a speedy trial. In addition, the Standing Order of the District Court 3-04 provides that criminal trials case shall take place in a specified time. In fact, Justice Ricciardone, at the pre-trial conference in this matter specifically required a trial date by mid-October so as to comply with the time standards for trials as set forth in the Standing Order.

The Commonwealth's interest in maximizing its witnesses and proof cannot trump a defendant's interest in a speedy trial and the requirements of trials within specified times as set forth in Standing Order 3-04.

Conclusion

For the reasons stated, Defendant Lawrence Cirignano requests that the Commonwealth's Motion to Continue Trial be denied, and that the trial be held as ordered beginning on Monday, October 15,2007.

Respectfully submitted,

LAWRENCE D. CIRIGNANO,

By his attorneys,

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