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Appellant/Plaintiff proceeding pro se

UNITED STATES COURT OF APPEALS
for the THIRD CIRCUIT

DAVID MILLER ,	)	
Appellant	)	
v.	)	Appellate Docket No. 15-2033
	)	
M. BRADY , in his official and	)	REQUEST FOR
individual capacities;	)	EN BANC HEARING
A. MANTZ, in his official and	)	
individual capacities;	)	
C. BONNER , in his official and	)	
individual capacities;	)	
D. QUINTERO, in her official and	)	
individual capacities;	)	
F. LARKIN , in his official and	)	
individual capacities;	)	
SEASIDE PARK BOROUGH	)	

ON APPEAL FROM UNITED STATES DISTRICT COURT
DISRICT OF NEW JERSEY
District Case Number 3-14-cv-04310

I express CERTAIN KNOWLEDGE, based on a reasoned and studied judgment as well as upon tangible evidence, that the panel decision is contrary to decisions of the United States Court of Appeals for the Third Circuit or the Supreme Court of the United States, and that consideration by the full court is necessary to secure and maintain uniformity of decisions in this court, *i.e.*, the panel's decision is characterized by demonstrable prejudice and the deliberate omission of **relevant highly tangible evidence** that relates to the establishment of a legal element and that therefore represents a **reversible error**.

PRELIMINARY STATEMENT

Deliberate Cover Up By The Panel

Of Evidence That Establishes A Legal Element

This litigation is pursuant to 42 USC § 1983 and relates to the violation of 18 USC § 241; accordingly, demonstrable retaliation because of exercising a Constitutional right is a required legal element. The panel's opinion (hereinafter OPINION) in this case **blatantly omitted mention** that Appellant was charged on 1 September 2012 with second degree eluding; the OPINION also **omits mention** that Appellant was **acquitted by a jury**

of that criminal charge that is associated with a **ten year prison sentence**. The attempt via police perjury to imprison Appellant, who is a registered nurse and was en route to his place of employment at the time of his 1 September 2012 arrest, could not have been motivated by any other reason than because of his prominent effort to expose public corruption via a sign that was displayed on his truck that was **legally parked** along the main road that passed through the small town of Seaside Park.

The attempt to imprison Appellant via **easily-proven** police perjury demonstrated below was an **irrefutable manifestation** of retaliation that, because of **absolute omission** by the OPINION represented a **reversible error**.

The Panel blatantly omitted mention of the second degree eluding charge, and claimed that no evidence whatsoever of retaliation was presented by Appellant; however, the OPINION'S omission of the charge of second degree eluding **was not an honest mistake** as demonstrated below.

Seaside Park municipal code 25-624E was used as a pretext to suppress Appellant's free speech regarding a sign that was **attached to his truck (see A10)**, and states *"The placement of any sign on public property or within any public right-of-way is prohibited without approval by resolution of the*

governing body"; the perverted interpretation of this code restricts all unauthorized signs to private property, **and is blatantly unconstitutional** according to a United States Supreme Court (SCOTUS) decision in *Hague v. CIO*, 307 U.S. 515-516 (1939). Nevertheless a judge from Monmouth Beach, NJ upheld in February 2012 the unconstitutional interpretation of Seaside Park code 25-624E that Appellant was alleged to have violated because of the sign on his truck that was legally parked in front of his home; in so doing the Monmouth Beach municipal judge knowingly violated 18 USC § 241 242 by suppressing Appellant's exercise of free speech regarding the sign attached to his truck. The ruling by the Monmouth Beach municipal judge cannot be attributed to honest judicial discretion, and is particularly heinous in consideration that the suppression of free speech that is directed toward the exposure of public corruption is arguably the most egregious example of free speech suppression.

Appellant resides in Seaside Park, NJ, and subsequent to the Monmouth Beach appearance an attempt was again made by Seaside Park authorities to suppress his free speech regarding the sign on his truck. This litigation has demonstrated the pervasive corruption that infects New Jersey at all levels of state government, and Appellant made the difficult decision to peacefully resist blatant governmental efforts to suppress his free speech that was

directed toward exposing public corruption, accordingly Appellant ignored repeated summonses from the local court to present and defend his exercise of free speech that was protected by a landmark SCOTUS decision in *Hague v. CIO*. There can be no credible argument that **victims of color of law abuse** are required to defend themselves in court. There can be no credible argument for Appellant's presence before the Seaside Park municipal judge regarding the color of law abuse/alleged violation of code 25-624E other than to either **pay a fine for exercising free speech** or be ordered **to refrain from such exercise both of which were realized by Appellant in the Monmouth Beach municipal court in February 2012.** Because of Appellant's refusal to appear in Seaside Park municipal court regarding the blatant color of law abuse associated with his alleged violation of Seaside Park code 25-624E his driver's license was suspended on **31 August 2012** (see A14-15).

In January 2012 Appellant was arrested while en route to work at **1030PM** by Seaside Park policeman Brady (and another policeman) who were lying in wait for Appellant after a warrant was issued for his arrest for failure to appear in Seaside Park municipal court regarding the alleged violation of code 25-624E; this arrest resulted in the Monmouth Beach appearance mentioned above in February 2012. The reason for the change of venue from

Seaside Park is unknown to Appellant, however it is suggested that the sign initially displayed on Appellant's truck shown on A12 several days after his arrest in January 2012 may have precipitated that action. The sign shown on A12 that was prominently displayed on the main road that passed through Seaside Park states

Seaside Park Police
knowingly aid corrupt judge
Arrest whistleblower in
retaliation for exposing
public corruption
whistleblowerRN.com

Although no warrant had been issued for Appellant's arrest he was again arrested by Brady who was lying in wait in the same vehicle with another policeman also at **1030PM** on 1 September 2012; this was the day after the unlawful suspension of his driver's license. Brady submitted a report associated with the 1 September arrest shown on A28-29 of Appellant's appendix that:

-made no mention that Appellant's license was suspended at the time of the arrest;

-claimed that he initially attempted to stop Appellant because he failed to yield to pedestrians the existence of whom are denied by Appellant;

-alleged and described in detail how Appellant committed 18 moving violations all denied by Appellant;

-and claimed that Appellant **nearly killed or seriously injured numerous** cross walking pedestrians who were part of **three separate groups**, also denied by Appellant.

At the time of the 1 September arrest the police report on A28-29 states that a sign was attached to Appellant's truck (see line 4/ A28); this double-sided sign is represented by the photographs shown on A30 and A12, and states

Judge Frank Buczynski
County Superior Court
Deceiving liar-Criminal
Appointed and Controlled
by Political Boss
whistleblowerRN.com

Seaside Park Police
knowingly aid corrupt judge
Arrest whistleblower in
retaliation for exposing
public corruption
whistleblowerRN.com

Appellant claims that the police report shown on A28-29 and the **police testimony before a jury** at a criminal trial that were associated with the second degree eluding charge were perjured. The evidence of police perjury regarding the alleged second degree eluding was prominently highlighted in Appellant's brief on pages 23-24.

The police report associated with the 1 September arrest shown on A28-29 claimed that **three separate groups** of numerous pedestrians **entered crosswalks at night when an emergency vehicle with activated emergency lights and siren (closely following Appellant's truck that was proceeding at 25 MPH) was almost upon them forcing them to jump out of the way**. It is suggested that the arguably fantastic scenarios that are associated with the cross walking pedestrians in the police report is the reason for Appellant's **acquittal of second degree eluding** by a jury.

It should be noted that the Monmouth Beach appearance resulted from Appellant's first lifetime arrest (Appellant is 61 years old) in January 2012. The January 2012 arrest was the direct result of Appellant's exercise of free speech regarding the sign attached to his truck, and he at that time accepted the reality that the local police were willing and knowing participants in the suppression of free speech. And because of the suppression of free speech by the Monmouth Beach judge Appellant hopelessly accepted the reality that free speech can be suppressed by a demonstrably and pervasively corrupt state and municipal governments; Appellant's brief included demonstrable evidence of public corruption that extended from the municipal level to the New Jersey Supreme Court. Therefore while en route to work on 1

September 2012 upon receiving a signal to stop for no apparent legitimate reason except that his license was suspended (note: Appellant received advanced notice of suspension prior to 1 September, see A14-15) Appellant recognized intended arrest and political harassment, slowly reversed direction, and at a speed of 25 MPH returned ¾ mile to his home where he awaited arrest in his truck.

The New Jersey legal elements associated with perjury include the statement that *"Under the law of the State of New Jersey, a defendant cannot be found guilty of perjury solely on the testimony of one witness. In this State we have adopted the test that the oath of a single witness must be supported by proof of corroborating testimony* ***or circumstances of such character as to clearly overcome the oath of the defendant and legal presumption of his innocence***". It defies reality to claim that three separate groups of numerous pedestrians, none of whom are identified and one of whom was pushing a stroller according to the police report, would casually step into a crosswalk at night **immediately in front** of an approaching emergency vehicle (with activated emergency lights and siren, see police report on A28-29) thereby risking serious injury or death.

A **demonstrable attempt to falsely** imprison Appellant for alleged second degree eluding, on the day following the suspension of his driver's license

for no other possible reason than because of his effort to expose public corruption **is not "pure conjecture"** as might be claimed by the OPINION but is rather **irrefutable retaliation**. The overwhelming evidence of egregious perjury of course destroys the credibility of the police regarding their version of events on 1 September 2012.

After prominently detailing easily proven police perjury in his brief on pages 23-24 Appellant stated in bold letters the following at the bottom of page 24:

"Yet despite evidence easily demonstrating perjury that was designed to falsely imprison an innocent man for up to ten years the OPINION (*of the District Court*) states that the police acted "in good faith, reasonable, and pursuant to court orders or warrants issued" .

Appellant exposed in his brief on page 24 (as stated above) the corruption of the District Court who covered up the charge of second degree eluding and the easily proven police perjury, **yet despite** the above statement on page 24 of Appellant's brief **the Panel also covered up** the second degree eluding charge and the associated, easily proven police perjury that is relevant to the establishment of a legal element.

CONCLUSION

The second degree eluding charge in this case was cited in a police report dated 1 September 2012 (line 67 /A29); in June 2014 a jury acquitted Appellant who was proceeding pro se of the second degree eluding charge.

The panel restricted mention of the events and alleged events of 1 September 2012 to page 3 of their OPINION, and **made no mention** of the second degree eluding charge (that was associated with a potential 10 year prison sentence) that resulted in Appellant's arrest with an assessment of a $50,000 bail. In contrast to the OPINION Appellant required four pages of his brief in order to address the second degree eluding charge (9-10, 23-24).

Page 3 of the OPINION did however address the alleged 18 moving violations against Appellant that were ruled upon by an Ocean County Superior Court judge (A18-27) that included 6 alleged failures to properly signal and 2 instances of alleged **speeding** at 30 MPH in a 25 MPH zone. A New Jersey Motor Vehicle Commission (hereinafter MVC) record shown on A16 demonstrates that Appellant committed 3 moving violations during the previous 40 years prior to 1 September 2012. The MVC record also shows that Appellant had not committed a moving violation in the 24 year period

prior to 1 September 2012. Appellant's first alleged moving violation in 24 years on 1 September 2012 occurred at **1030PM on the day following the suspension of his driver's license** and was **witnessed by two policemen** who were assigned to the same vehicle one of whom was Brady who arrested Appellant in January 2012 at **1030PM**. The coincidences that were associated with Appellant's first alleged violation in 24 years coupled to the irrefutable police perjury proven herein (associated with second degree eluding charge) indicate the level of police credibility regarding the aforementioned alleged 18 violations.

The retaliation associated with the second degree eluding charge establishes **both** of the required legal elements in this case. In *Gomez v. Toledo*, 446 U.S. 635 (1980) SCOTUS ruled that only two elements need to be pled in order to establish a cause of action under 42 USC § 1983. First, a plaintiff must specifically identify the Constitutional right of which he was deprived. Second, a plaintiff must demonstrate that the person who deprived him of that right acted under color of law. There can be no credible argument that *Gomez v. Toledo* does not intend *retaliation for exercising freedom of speech* to be actionable under 42 USC § 1983.

The evidence of irrefutable retaliation that is associated with the second degree eluding charge cannot be negated by a grossly prejudicial argument that Appellant should have pursued appeals of judicial rulings that denied his free speech; the demonstrable and pervasive atmosphere of corruption in New Jersey exposes the prejudice of such an argument.

The evidence of irrefutable retaliation also cannot be negated by an argument that Appellant should have yielded to the demonstrably corrupt intention of the Seaside Park police on 1 September 2012 when an attempt was made to stop him in order to further the violation of federal law 18 USC § 241 regarding the suspension of his driver's license.

At the time of Appellant's arrest on 1 September 2012 his signs had been prominently displayed on his truck along the main road in Seaside Park since April 2009 (see A9) at which time he was informed by the New Jersey Attorney General via the MVC that the display of such a sign was a First amendment right (A9).

It is grossly prejudicial to suggest that the issue regarding Appellant's right to exercise free speech, and the attack on that exercise was not well known by Seaside Park Borough especially after the display in January 2012 of the

sign shown on A12 (see page 6 above) that arguably prompted a change of venue to Monmouth Beach.

It is also prejudicial to suggest that legal authorities within Seaside Park, especially after repeated failures to appear in municipal court, a change of venue, and especially after the display of the sign shown on A12 (see page 6 above) were unaware of a landmark SCOTUS decision in *Hague v. CIO* that protected Appellant's free speech in this case.

As stated in Appellant's brief to the District Court defendants' conduct in this case violates "clearly established statutory or constitutional rights of which a reasonable person would have known" (*Harlow v. Fitzgerald*, 457 U.S. 800 (1982).

OPINIONS by corrupt courts are of course meaningless. The panel's OPINION in this case, not considering the blatant cover up of the second degree eluding charge, is characterized by demonstrable prejudice and omissions of relevant supported facts. Therefore Appellant requests a new panel selected on the basis of a reputation for honesty to review his appeal.

As stated above the District Court also completely omitted mention of the second degree eluding charge, and therefore also demonstrated his

corruption. The opinion by the District Court in this case is characterized by demonstrable lies, distortions, and omissions of relevant supported facts. Appellant cannot expect honest judicial action in New Jersey, and must be granted a change of venue.

I declare under penalty of perjury that the foregoing is true and correct.

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David A. Miller / Appellant