

THE LAW OFFICE OF  
**ANDREA FLYNN MOGENSEN, P.A.**  
200 S. WASHINGTON BLVD. - SUITE 7 - SARASOTA, FLORIDA 34236

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TELEPHONE: 941-955-1066    ANDREA@SARASOTACRIMINALLAWYER.COM    FACSIMILE: 941-866-7323

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**PRESS RELEASE**

**March 30, 2012**

**Contact: Andrea Flynn Mogensen (941) 955-1066 or [andrea@sarasotacriminallawyer.com](mailto:andrea@sarasotacriminallawyer.com)**

Steve Horrigan is pleased with the decision of the State Attorney yesterday to drop the criminal charges brought by the North Port Police Department stemming from his unlawful arrest on January 25th. We were confident that Mr. Horrigan did not violate any criminal laws when he used his cell phone to video and audio tape North Port police officers conducting a routine traffic stop. The State Attorney's decision validates that Mr. Horrigan did nothing wrong and was falsely arrested.

While we applaud the State Attorney's decision, we are still waiting for justice to be done. Today, my office notified the City of North Port of the intent to file a lawsuit related to the violation of Mr. Horrigan's clearly established constitutional rights. Also, we have notified the State Attorney of the fact that North Port Officer Casselli, when he brought these false and malicious charges, made statements under oath that were obviously untrue and constitute perjury. We expect the State Attorney to vigorously investigate that matter and make the appropriate decision as the law requires.

Mr. Horrigan wants to thank all of those who supported him since this incident occurred. He also wants to remind all citizens that they have a clear constitutional right to video and audiotape police officers in a public setting where they have no reasonable expectation of privacy. In this case, the taping showed that Mr. Horrigan complied with all laws. The officers were the ones who broke the law and then made false statements under oath to charge Mr. Horrigan with a crime.

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March 30, 2011

**ORIGINAL VIA CERTIFIED MAIL**

Commissioner Tom Jones  
Chair, City Commission  
City of North Port  
4970 City Hall Boulevard  
North Port, FL 34286

Re:    Claim of Stephen Horrigan

Dear Commissioner Jones:

This letter shall serve as the required notice under section 768.28(6), Fla. Stat., that Stephen Horrigan, Date of Birth 10/20/1954, Place of Birth: Buffalo, New York, files a claim for monetary damages based upon a false arrest, retaliation for the exercise of First Amendment rights, and malicious prosecution arising from an incident that occurred on or about January 25, 2012. *See* North Port Police Department Case No. 12-01-1732. *State v. Horrigan*, Case No. 2012 CF 001253-NC, 12<sup>th</sup> Judicial Circuit, Sarasota County, Florida. Pursuant to § 768.28(6)(c), Fla. Stat., notice is given that there are no adjudicated penalties, fines, fees owed by Mr. Horrigan to any court or tribunal.

Sergeant Anthony Sirianni and Officer Ralph Casselli falsely arrested Mr. Horrigan for obstruction of justice as a direct result of Mr. Horrigan's exercise of his First Amendment rights on a public sidewalk. Sergeant Sirianni and Officer Casselli knew that by arresting Mr. Horrigan and preparing and filing a probable cause affidavit that a criminal prosecution would be initiated against Mr. Horrigan. Mr. Horrigan was subsequently cleared of all charges when the State Attorney refused to go forward with the prosecution and explained in writing the lack of probable cause to arrest Mr. Horrigan. A copy of the State Attorney's notice and memo declining the charges is attached hereto.

Commissioner Tom Jones  
March 30, 2012  
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Mr. Horrigan was wrongly arrested, incarcerated for nearly 20 hours, charged with a serious felony, and subjected to much ridicule and embarrassment. No later than six months from this date, this office will initiate litigation for civil rights and pendent state law claims against the City, Sergeant Sirianni, Officer Casselli, and any other employees responsible for the damages suffered by Mr. Horrigan as a result of the above events. This office will seek a judgment in excess of \$200,000 for the above claims.

By this letter, the City is hereby given notice that this office is seeking all public records relating to this matter. For purposes of this request, the term "records" shall have the statutory definition set forth in section 119.011(11), Fla. Stat. Even if you contend that certain records in the possession of the City are not public records subject to inspection under § 119.07, Fla. Stat., the City has a duty not to dispose, alter or otherwise destroy such records pursuant to § 119.07(1)(h) and (i).

Additionally, this claim letter is a condition precedent to litigation that will be filed pursuant to the statutory provisions, and should be construed as notice that we will file discovery requests seeking certain records pursuant to that claim. Through discovery requests, we expect to obtain from the City a number of documents and things, including files stored on the City's computers and computer storage media. As part of our initial discovery efforts, we intend to serve the City and its agents with interrogatories and additional requests for documents and things.

Accordingly, this office requests that the City preserve and not destroy, conceal or alter any paper or electronic files and other data generated by or stored on the City's computers and storage media (e.g., hard disks, floppy disks, back-up tapes), or any other electronic data such as voice mail. As you know, the City's failure to comply with this notice can result in sanctions being imposed by the court for spoliation of evidence or potential evidence.

In order to avoid spoliation, the City will need to preserve and make available the data requested on the original storage media, or on exact copies of that media (sometimes referred to as images copies or evidentiary copies). Do not reuse any media to provide this data. Electronic documents and the storage media on which they reside contain relevant, discoverable information beyond that which may be found in printed documents. Therefore, even where a paper copy exists, we seek all documents in their electronic form, along with information about those documents contained on the media. We also seek paper print outs of only those documents that contain unique information after they were printed out (such as paper documents containing handwriting, signatures, marginalia, drawings, annotations, highlighting and redactions) along with any paper documents for which no corresponding electronic files exist.

Commissioner Tom Jones  
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Our discovery requests will ask for certain data on the hard disks, floppy disks and back-up media used in your clients' computers, some of which data are not readily available to an ordinary computer user such as "deleted" files and "file fragments". As you may know, although users may "erase" or "delete" a file, all that is really erased is a reference to that file in a table on the hard disk. A "deleted file" can be as intact on the disk as any active file you would see in a directory listing.

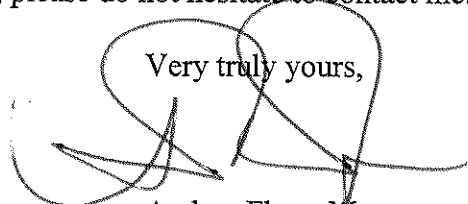
Please be aware that courts have made it clear that all information available on electronic storage media is discoverable, whether it is readily readable (active) or deleted but recoverable. *See, e.g., Martino v. Wal-Mart Stores, Inc.*, 835 So.2d 1251, 1257 (Fla. 4th DCA 2003), *approved*, 908 So.2d 342 (Fla. 2005); *see also Gayer v. Fine Line Const. & Elec., Inc.*, 970 So.2d 424, 426 (Fla. 4th DCA 2007).

Accordingly, the City is also required to preserve and not destroy all passwords, decryption procedures including software to decrypt the files, network access codes, I.D. names, manuals, tutorials, written instructions, decompression or reconstruction software, and any and all other information and things necessary to access, view and, if necessary, reconstruct the electronic data we are requesting through discovery.

In order to assure that the City's obligations to preserve documents and things will be met, please forward a copy of this letter to all persons and entities with custodial responsibility for the items referenced in this letter.

If you have any questions, please do not hesitate to contact me.

Very truly yours,



Andrea Flynn Mogensen

cc: Florida Dep't Financial Services  
City Commission  
City Attorney Rob Robinson  
City Manager Jonathan Lewis  
City Clerk, Helen Raimbeau  
Police Chief Kevin Vespia

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT  
IN AND FOR SARASOTA COUNTY, FLORIDA

STATE OF FLORIDA,  
Plaintiff,

vs.

STEPHEN PHILLIPS HARRIGAN,  
Defendant.

NOTICE OF CASE ACTION

Court Case No.: 2012CF001253NC  
Agency No.: NPPD 12-01-1732  
SAO No.: 12CF001708AS  
Arrest Date: 01/25/2012  
Arrest Charge(s): RESISTING, OBSTRUCTING OR OPPOSING AN OFFICER WITHOUT VIOLENCE; INTERCEPTION OF WIRE OR ORAL COMMUNICATION

STATE FILING CHARGE(S) :        YES   X   NO  
\*\*\*\*\*

CHARGE: RESISTING, OBSTRUCTING OR OPPOSING AN OFFICER WITHOUT VIOLENCE  
ACTION TAKEN: Declined, no further action will be taken.


This document has been provided to the Clerk of the Court and all proper authorities.

This Notice of Case Action applies only to the offense(s) listed for the arrest date stated above.

This action is taken without prejudice to the right of the State of Florida to resume prosecution on this matter at a future date.

ENTERED this 29TH day of March, 2012.

EARL MORELAND  
STATE ATTORNEY  
TWELFTH JUDICIAL CIRCUIT

BY:   
ERIC WERBECK  
Assistant State Attorney  
2071 Ringling Blvd 4th FL  
Sarasota, FL 34237  
(941) 861-4447  
Florida Bar #0057917

cc: ANDREA F MOGENSEN (DEFENSE ATTORNEY)

**STATE ATTORNEY'S OFFICE  
TWELFTH JUDICIAL CIRCUIT OF FLORIDA**

**INTERDEPARTMENTAL MEMORANDUM**

TO: NORTH PORT POLICE DEPARTMENT  
ATTENTION: OFC. CASSELLI, #200; SGT. SIRIANNI, #55;  
RECORDS/CID  
FROM: ERIC WERBECK  
RE: STEPHEN PHILLIPS HARRIGAN  
CHARGE: RESISTING, OBSTRUCTING OR OPPOSING AN OFFICER  
WITHOUT VIOLENCE; INTERCEPTION OF WIRE OR ORAL COMMUNICATION  
AGENCY #: 12-01-1732 ARREST DATE: 01/25/2012

CLERK #: 2012CF001253NC

CASE #:12CF001708AS

This office has made the following decision concerning the charges against the above-named defendant:

( + ) **No Action** will be taken on the charge(s) listed above.  
(See Comments below)

COMMENT SECTION: Officers initiated a roadside traffic stop of individuals known to be armed. Several officers were on scene, including five patrol cars (later four). The defendant started video taping this encounter from the outside lane (opposite the traffic stop) of a divided highway in North Port. The defendant was on foot. At the start of the video, there are a number of officers at the subject car's door indicative of the officers speaking with the car's occupants. Audio is not heard in relation to the conversation between the car's occupants and the officers. The first audible recording is an officer approaching the defendant asking him to stand out of the roadway and across the intersection. During this encounter, the defendant acknowledges taping the officer, and the officer is heard telling the defendant "you can take video or pictures if you really feel necessary... it's a free world.. but I'm concerned for your safety to be honest." The defendant initially complies and moves down the street. The only further audio recorded is the conversation between the officer and the defendant himself. The defendant then moves down the roadway as directed, and continues to video tape. Subsequently, the defendant moves across the street (to the same side as the traffic stop) and onto the sidewalk beyond the intersection. Still, no audio is heard pertaining to the traffic stop or LEO conversations. The defendant is standing approximately 15-20 feet behind the last police vehicle, which is parked behind another police vehicle, which is parked behind the subjects of the traffic stop. The defendant is then approached and asked his name. The defendant gives his name and date of birth. He is then asked for his

Drivers License, which he does not provide. He refuses to answer further questions and is arrested for interception of communications and obstruction.

To prove the crime of interception of oral communications, it must be shown that oral communication was intercepted and that there was an expectation of privacy. See *Migut v. Flynn*, 2005 WL 1130373 (11<sup>th</sup> Cir. 2011). Florida Statute § 934.02(2) defines "oral communications" as "any oral communication uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation."

In this case, unknown to the officers at the time of the stop, no audio regarding the traffic stop, be it conversation between officers and those detained or conversations between fellow officers, is audible on the recording seized from the defendant. That being the case, we must determine whether the recording his own conversation between himself and the officer constitutes a violation of the statute. The key question here is whether the State can prove the officer had a reasonable expectation of privacy given the circumstances, which is "an intensely fact-specific inquiry." See *Migut* at 267, *supra*. Given the nature and method of operation of the recording device (a cell phone held with arm extended between the defendant and the officer), as well as the location of the encounter (roadside with traffic at times with voices raised), the State would be unable to prove the officer enjoyed an expectation of privacy with the defendant. Therefore, that charge is declined.

The second count is resisting, obstructing, or opposing an officer without violence. Florida Statutes § 843.02 requires (1) an officer be engaged in the lawful execution of a legal duty and (2) that the defendant's action constituted obstruction or resistance of that lawful duty. The legal duty at issue here is making an arrest or conducting an investigation related to a traffic stop. Provided the first prong is met, the State must prove the defendant's conduct obstructed that legal duty. In *D.A.W. v. State*, 945 So. 2d 624 (Fla. 2d DCA 2002), the defendant stood between 15-30 feet away from an arrest location, "harassing...making threats...and antagonizing" the individual being arrested. The defendant in *D.A.W.* was told to leave several times, but he did not. Similar to our case, there was no indication the defendant threatened harm to the officer, tried to convince others to harm the officer, or planned to come any closer than his distance of 15-30 feet. Citing *H.A.P. v. State*, the court concluded that *D.A.W.*'s mere presence at a distance of fifteen to thirty feet away was not impeding the officer's arrest of his suspect. 945 So. 2d 624, 627 (Fla. 2d DCA 2006). When obstruction is not based on words, the statute operates to "proscribe only acts or conduct that operate to physically oppose an officer in the performance of lawful duties." *Wilkerson v. State*, 556 So. 2d 453, 455-56 (Fla. 1st DCA 1990).

In this case, the defendant moved from the roadway and down the street when requested. Subsequent to that, the defendant then remained at least 15-30 feet from the back of the patrol vehicles, which were at least two car lengths behind the vehicle subject to the traffic stop. At no time did the defendant communicate with the subjects being arrested, incite other civilians on the scene, nor did he verbally threaten the officers.

Officer safety is recognized as an important issue to be considered regarding the detention of individuals during traffic stop situations, and well-established case law recognizes an officer's need to take certain precautions for his or her own safety. In this case, officers were put in a potentially dangerous situation in having to divert their attention away from detained individuals to investigate the defendant's actions and determine his intentions. However, based on the totality of circumstances, it does not appear that the State can prove beyond a reasonable doubt that the officer's duties were obstructed by the defendant's conduct. Therefore, this charge is declined.

  
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ERIC WERBECK  
Assistant State Attorney

  
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ART JACKMAN  
Division Chief

Date

3/29/12

Should there be any questions concerning this matter, please contact the Assistant State Attorney named in the "FROM" portion of this memorandum.