

1 IN THE CIRCUIT COURT OF THE 12TH JUDICIAL CIRCUIT
2 IN AND FOR THE COUNTY OF SARASOTA, FLORIDA

3
4 State of Florida

Case # 12CF001253NC

5 V.

6 Stephen Phillips Horrigan
7
8

9 MOTION FOR HEARING : A PLEA FOR RELIEF FROM PRIOR RESTRAINT

10
11 ITEMS TO BE RETURNED: 1) HUAWEI M835 SMARTPHONE, Battery, and Secure Data non-
12 volatile memory card (sd memory card)
13

14
15 The City of North Port through the North Port Police Department seized my smartphone,
16 conceals and refuses to return this item in violation of my protections under the
17 First Amendment to the United States Constitution and Article I, Section 4 of the
18 State of Florida Constitution. The Government of the City of North Port has violated
19 my right to be free from prior restraint by preventing me from publishing a video clip
20 that is contained on the smartphone by illegally seizing and concealing the recording
21 device and media without warrant, thereby restraining my ability to publish material
22 protected by the freedom of the press, freedom of assembly and freedom of speech. The
23 Defendant operates a web-site newsgathering "blog" and is dues paying member of the
24 National Press Photographers Association. While the Defendant believes that members of
25 a professional press have no greater rights under the First Amendment, this Defendant
26 enjoys no less right. *Nixon v. Warner Communications, Inc., 435 U. S. 589 (1978)*
27

28 This case concerns videotaping police in a public place, in performance of their
29 public duties while standing on a public sidewalk. The crime scene (traffic stop) was
30 not closed to the public, bystanders being present. The Defendant was lawfully present
31 and had license to be present at all times at or on a public forum. The time was
32 between 6 and 8 pm on Jan. 25, 2012 and the manner was recording with a smartphone

1 camera never closer than 40 feet and the place was on a public street and sidewalk on
2 the corner of Biscayne Dr and Herbison St in North Port, FL. And such, the Defendant
3 asserts that there were no limitations as to time, place and manner to make such
4 recordings.

5
6 In *Smith v. City of Cumming*, GA 212 F 3d 1332, 1333 (11th Cir. 2000) in May 31st, 2000,
7 the court said that citizens have a First Amendment right to videotape police in
8 performance of their public duties only limited by the time, place and manner
9 restrictions. The Fourth Amendment guarantees "the right of the people to be secure
10 in their persons, houses, papers, and effects, against unreasonable searches and
11 seizures." U.S. Const. Amend IV. The Fourth Amendment "traditionally has been deemed
12 to protect "private citizens' "personal effects(s)". The interests animating the
13 Fourth Amendment's prohibition against unreasonable searches and seizures are
14 heightened when the property at issue is also protected by the First Amendment. The
15 Supreme Court has held that Fourth Amendment limitations on law enforcement officers'
16 authority to seize individuals' property must be "scrupulously observed" when the item
17 seized contains information protected by the First Amendment and "the basis for the
18 seizure is disapproval of the message contained therein." *Walter v. United States*, 447
19 *U.S.* 649.655 (1980). This requirement that government officials closely adhere to the
20 strictures of the warrant requirement when the item to be seized is protected by the
21 First Amendment recognizes the "the Bill of Rights was fashioned against the
22 background of knowledge that unrestricted power of search and seizure could also be an
23 instrument for stifling liberty of expression." First Amendment concerns "require that
24 the Fourth amendment be applied with 'scrupulous exactitude." *Maryland v. Macon*, 472
25 *U.S.* 46, 468 (1985).

26
27 Also the City of North Port is violating the State of Florida Constitution which
28 states Article I SECTION 4. Freedom of speech and press.—every person may speak, write
29 and publish sentiments on all subjects but shall be responsible for the abuse of that
30 right. No law shall be passed to restrain or abridge the liberty of speech or of the
31 press. In all criminal prosecutions and civil actions for defamation the truth may be
32 given in evidence. If the matter charged as defamatory is true and was published with

1 good motives, the party shall be acquitted or exonerated. The Florida Constitution is
2 clear that "the truth may be given in evidence." What could be truer than a
3 video/audio recording of the event that the Defendant is charged with violating a law?
4 The Florida Constitution states that "No law shall be passed to restrain the liberty
5 of speech or of the press." By seizing and concealing my media, the City of North Port
6 is restraining my liberty of speech and of the press.

7
8 Freedom of the Press is a natural right

9 Going back to the 18th Century, William Blackstone wrote:

10 "The liberty of the press is indeed essential to the nature of a free state; but this
11 consists in laying no *previous* restraints upon publications, and not in freedom from
12 censure for criminal matter when published. Every free man has an undoubted right to
13 lay what sentiments he pleases before the public; to forbid this, is to destroy the
14 freedom of the press; but if he publishes what is improper, mischievous or illegal, he
15 must take the consequences of his own temerity." If the Government believes that what
16 the Defendant did was mischievous or illegal, they certainly would not want to
17 restrain the publication of the video/audio of this event.

18
19 The First Amendment was designed to foreclose in America the establishment of any
20 system of prior restraint on the pattern of the English censorship system. Indeed, it
21 was argued in some quarters that this was the sole purpose of the First Amendment and
22 that, following Blackstone, it was not intended to embrace subsequent punishment of
23 publications. The United States Supreme Court finally settled this issue in the 20th
24 Century in favor of the broader interpretation of the First Amendment. But the
25 doctrine that no previous restraint of publication could stand against the First
26 Amendment was never challenged. Thus, the concept was elevated to the status of
27 constitutional principle.

28
29 Defendant has the Right of Freedom from Prior Restraint

30 One of the fundamental rights guaranteed by the First Amendment to the U.S.
31 Constitution is the freedom from prior restraint. Prior restraint prohibits government
32 from banning expression of ideas prior to their publication. *NEAR V. MINNESOTA*, 283 U.S.
697, 51 S. Ct. 625, 75 L. Ed. 1357 (1931) The Court, in a 5 to 4 opinion by Chief

1 Justice Hughes, found that "the chief purpose" of the First Amendment being to prevent
2 prior restraints. . *Bantam Books v. Sullivan*, 372 U.S. 58, 70 (1963), the Supreme
3 Court said that "Government thus carries a heavy burden of showing justification for
4 the imposition of such a restraint.' In the case, *New York Times Co. v. United States*
5 403 U.S. 713 (1971) formulated the principle that the concept of prior restraint is
6 largely unconstitutional. The case also put forth the opinion that it is the duty of
7 the government to satisfy an extreme explanation in order to satisfy usage of prior
8 restraint against the press. In *Nebraska Press Assn. v. Stuart* 427 U.S. 539 (1976),
9 the Court said that "the thread running through all these cases is that prior
10 restraints on speech and publication are the most serious and the least tolerable
11 infringement on First Amendment rights. In one Federal case with similar facts and
12 circumstances, *Robinson v. Fetterman*, 378 F. Supp. 2d 534 (E.D. Pa. 2005), the court
13 held that the officers' confiscation of the video tape upon Robinson's arrest was
14 tantamount to a prior restraint in further contravention of the First Amendment.

15
16 By seizing and impounding my recording device and media prior to publication, the City
17 of North Port through their police department has banned the expression of my ideas (a
18 video clip of police activity) prior to its publication. The government of the City of
19 North Port seeks to stifle the expression of these ideas because of their disapproval
20 of the message contained therein. The City of North Port must immediately answer to
21 this charge and provide a legal basis for this prior restraint. In *Bartnicki v. Vopper*
22 (200 F.3d 109) Justice Stevens wrote that there is a heavy presumption against prior
23 restraint of truthful information and constitutional balances tipped in favor of
24 publication of matters of public importance when weighted against privacy. In a
25 pronouncement even more fitting for police officers than union negotiators, the Court
26 wrote: "[o]ne of the costs associated with participation in public affairs is an
27 attendant loss of privacy." Because the issue of prior restraint is of great public
28 significance, the Defendant asks this court to schedule a hearing immediately.

29
30
31 Judge Fredrick DeFuria was assigned to this case on January 26th, 2012. The Defendant's
32 knowledge is that North Port Police Department has not applied for a search warrant
from this court or any judge within the 12th Circuit of Florida or the 11th Circuit of

1 the United States nor has afforded the Defendant any notice about such warrant.
2 Warrantless seizures are only permitted if an officer has probable cause to believe
3 that the property "holds contraband or evidence of a crime: and "the exigencies of the
4 circumstances demand it or some other recognized exception to the warrant requirement
5 is present. *United States v. Place*, 462 U.S. 696, 701 (1983). Even then, officers may
6 not search the property without first obtaining a warrant.

7
8 I plead that this court orders the North Port Police Department to immediately return
9 item being illegally seized to Stephen Phillips Horrigan 4960 S Biscayne Rd #101,
10 North Port, FL 34287. Phone # 941-840-7039 and email address: shorrigan@yahoo.com and
11 fax number 877-640-9022.

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18 Stephen P. Horrigan
19 Defendant Pro-Se
20 4960 S Biscayne Dr 101
21 North Port, FL 34287
22 941-840-7039
23 Dated: _____

24 Copy of Motion Hand Delivered To:

25 Office of the State Attorney for the 12th District
26 South County Courthouse
27 4000 South Ta Miami Trail
28 Venice, FL 34293-5028

29 The City of North Port
30 4970 City Hall Boulevard
31 North Port, FL 34286
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