



ANTHONY D. GULLUNI
DISTRICT ATTORNEY

COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE DISTRICT ATTORNEY
HAMPDEN DISTRICT

HALL OF JUSTICE
50 STATE STREET
SPRINGFIELD, MASSACHUSETTS 01102-0559

SUPERIOR COURT
TEL: 413-747-1000
FAX: 413-781-4745

SPRINGFIELD DISTRICT COURT
TEL: 413-747-1001
FAX: 413-747-5628

Findings and Determinations Relative to Criminal Charges

April 8, 2015, Island Pond Road Assault

Facts

In the early morning hours of April 8, 2015, police responded to a 911 call reporting a disturbance in the vicinity of 70 Island Pond Road, Springfield. The caller stated that a man was down but she couldn't see what had happened. The call came in at 2:04 a.m. and units were immediately dispatched.

Upon arrival, officers found four men in the area behind 50 Island Pond Road. One man was on the ground and being helped up by the others. All appeared to have cuts, bruises and some torn or disheveled clothing. The four men told the responding officers that they were beaten and struck by assailants who used fists and unidentified items that rendered one of the men unable to move his legs. When the men fell to the ground, they were kicked and punched about their bodies and head. They attempted to defend themselves, but were overwhelmed by the larger group. Paramedics who arrived simultaneous with the police observed the injured men and briefly treated two. None of the injured parties wanted to be transported to the hospital, according to statements given by the responding paramedics.

Officers at the scene attempted to obtain details of the assault from the four men. The men described their attackers as white males between the ages of 25 and 45 of varying heights. The four men believed their assailants to be "off duty" police officers who had been inside Nathan Bills earlier in the evening and had engaged in a verbal altercation with one of the four men. Officers were told the assailants had left the scene running north on Island Pond Road. Two officers drove in the direction that the assailants were reported to have gone, but they saw no one and returned a short time later. The officers who remained with the victims obtained their identification and spoke with each of the men individually. One of the men was considered to be disorderly and was placed in a cruiser, but never arrested. The other three men said that they did not wish to go to the hospital and were brought to their vehicle and allowed to leave.

On May 7, 2015, Mr. Herman Cumby came to the Springfield Police Department to file a formal complaint against the department's responding officers and report his belief that the assailants that night were off-duty police officers. Police Commissioner John Barbieri assigned Mr. Cumby's complaint to Captain Trent Duda of the Major Crimes Unit for further investigation.

On July 9, 2015, after multiple attempts to reach Mr. Cumby by letter and phone call, Captain Duda met with Mr. Cumby and his attorney. This meeting resulted in Captain Duda amending his investigation to include possible charges of assault and battery causing serious bodily injury and assault and battery, based on the knowledge of Mr. Cumby's injuries from the incident in question.

On August 14, 2015, Captain Duda filed his completed report on the investigation to Commissioner Barbieri and reported his findings shortly thereafter to Hampden District Attorney Anthony D. Gulluni. The District Attorney accepted the matter for review and began a separate inquiry into possible criminal charges against members of the Springfield Police Department who were suspected of being involved in the assault of Mr. Cumby and his friends. The District Attorney's review included information provided by Captain Larry Brown of the Internal Investigation Unit of the Springfield Police Department. Captain Brown and the Internal Investigation Unit conducted a separate investigation from the Major Crimes Unit and their completed report was provided to the District Attorney on July 26, 2016 by the City of Springfield Law Department.

In order to complete the investigation into the allegations, the District Attorney's review included the following: Special Report to the Commissioner by the Major Crime Unit, Special Report to the Commissioner from the Internal Investigations Unit, Bank of America surveillance video, Springfield Police recorded dispatch line audio, Springfield Police department roll call and dispatch logs, video statements by three of the victims, statements of a cab driver and bar manager, victims' medical records, AMR pre-hospital care reports and dispatch logs, and various photographs.

Three of the four victims were also interviewed separately by the First Assistant District Attorney and investigator of the Hampden District Attorney's Office.

Legal Issues

Whether the Commonwealth is able to meet its burden of proof and charge one or more individuals with the commission of an assault and battery causing serious bodily injury to Mr. Herman Cumby.

Whether the Commonwealth can meet its burden of proof and charge one or more individuals with the commission of an assault and battery against Mr. Herman Cumby, Mr. Jozelle Ligon, Mr. Jackie Ligon, and/or Mr. Michael Cintron.

Whether the Commonwealth can meet its burden of proof and charge one or more individuals with the commission of an assault and battery with a dangerous weapon (baton) against Mr. Herman Cumby.

Whether the Commonwealth can meet its burden of proof and charge one or more individuals with the commission of an assault and battery with a dangerous weapon (Taser) against Mr. Jackie Ligon.

Whether the Commonwealth can meet its burden of proof and charge one or more individuals with the commission of an assault and battery with a dangerous weapon (shod foot) against Mr. Herman Cumby, Mr. Jozelle Ligon, Mr. Jackie Ligon, and/or Mr. Michael Cintron.

Analysis

The victims in this matter all reported being assaulted in a parking lot in the area of Island Pond Road and Warehouse Street in Springfield. Mr. Herman Cumby suffered serious injuries from the assault, including a fractured/dislocated ankle and four damaged front teeth. He also suffered numerous cuts and bruises. After a medical assessment by paramedics at the scene, Mr. Cumby declined transport to a hospital. He did receive treatment at Baystate Medical Center on April 8, 2015. He continues to need medical treatment for the injury to his ankle as well as additional dental work. Mr. Jackie Ligon suffered temporary immobility as a result of being struck with something cold and sharp, according to his description. He was hit and kicked in his torso, head, and face while immobile on the ground. He also suffered numerous cuts and bruises. After a medical assessment from paramedics, Mr. Jackie Ligon declined transport to a hospital that night. Mr. Jozelle Ligon and Michael Cintron had visible cuts and bruising but did not seek medical assistance at the scene. Mr. Jozelle Ligon sought medical treatment on April 8, 2015 at Baystate Wing Hospital in Palmer for injuries that he described as coming from being struck by an “unknown object”.

An assault and battery is the intentional and unjustified use of force upon the person of another, however slight, or the intentional doing of a wanton or grossly negligent act causing personal

injury to another. Commonwealth v. Bianco, 390 Mass. 254, 263 (1983). The injuries suffered by all three of the victims are clear. The physical assaults committed by several members of the large crowd were intentional and unjustified. The victims describe being pushed, struck with fists, and kicked by their assailants. Although questioning by the investigating officers did not focus on the type of footwear worn by the attackers, the testimony of the victims and their confirmed injuries would sufficiently sustain our burden on the charge of assault and battery with a dangerous weapon, shod foot.

A review of the evidence gathered by the Major Crimes Unit and Internal Investigation Unit of the Springfield Police Department reveals that identifying the assailants was problematic for the victims. Several members of the Springfield Police Department spoke to the victims on the night of the incident. According to each officer at the scene, the victims were consistent in their description of the incident and their attackers. The description of the assailants given by the victims that night was “white males between the ages of 25-45” who were believed to be “off duty or rookie police officers”. The knowledge that they were off duty officers came from a comment made to the victims by a bar employee during a verbal altercation inside the bar earlier in the evening. On-duty patrol officers who responded to the earlier incident confirmed the presence of off-duty officers Daniel Billingsley, Melissa Rodriguez, Anthony Cicero, and Christian Cicero at Nathan Bill’s at around 1:15 a.m. These four identified off-duty officers were not seen by any of the responding officers when they arrived at the scene approximately 50 minutes later. Responding officers were told that the assailants had fled the scene in a northerly direction down Island Pond Road, which resulted in two of the patrol officers driving in search of the described assailants. No suspects were located.

After Mr. Cumby’s May 7, 2015 complaint to the Springfield Police Department in which he alleged that the assailants in his attack were off-duty police officers, detectives from both the Internal Investigations Unit and the Major Crimes Unit made numerous attempts to contact Mr. Cumby by phone call, certified letters, and direct contact at his home and other known addresses. On June 23, 2015, Mr. Cumby responds to a telephone call from Sgt. Jeffrey Martucci. On July 9, 2015, Mr. Cumby and his attorney come to the Springfield Police Department where Mr. Cumby is interviewed in the presence of his attorney. The interview is videotaped. Mr. Cumby described the initial incident inside Nathan Bill’s and the events that led to his group being asked to leave the bar. He described the attack as beginning near Rocky’s and that it involved 12-15 people, all white, all young, and all male. He is shown 1,985 pictures of white males between the ages of 21 and 30. Included in these 1,985 photographs are pictures of Springfield Police officers who fit the description given by Mr. Cumby. Mr. Cumby is unable to identify anyone. He is then shown 658 pictures of only Springfield Police officers. Included in the 658 photographs are pictures of the off-duty officers identified as being present at Nathan Bill’s on the night of the incident. Mr. Cumby is unable to identify anyone from that set of photographs. He identifies an officer who “looks familiar” and who is later discovered to have been working but assigned elsewhere and was not at Nathan Bill’s at any time on April 7th-April 8th. During

the videotaped interview, Mr. Cumby acknowledges being hit from behind and being immediately rendered unconscious. He stated that he never saw anyone or any weapons. Mr. Cumby also acknowledges having consumed a couple of alcoholic drinks and being concerned about operating his vehicle.

Mr. Cumby was subsequently interviewed by police officers assigned to the Internal Investigations Unit on three occasions: May 25, 2015, July 30, 2015, and September 17, 2015. None of these interviews are videotaped. On May 25, Mr. Cumby gives a detailed verbal statement to Sgt. William Andrew. Sgt. Andrew summarizes the statement in his report. There is no signed statement by Mr. Cumby or an acknowledgment that he reviewed and approved of the officer's report. In Sgt. Andrew's report, Mr. Cumby describes the evening leading up to the assault and the assault itself. He describes people he believes were involved or who were present. Based on Mr. Cumby's descriptions, he is asked to view 264 photographs of police officers. He admits to having a hard time picking anyone and says he is "not good with faces". On July 30, he was shown 18 photographs of male police officers and he identified seven as being present at Nathan Bill's, or in the parking lot, or both. Of the seven men identified, five had confirmed alibis. Of the remaining two, one was Officer Daniel Billingsley, who was also identified by on-duty officers who responded to the scene at 1:15 a.m. Mr. Cumby did not identify Officer Billingsley as an assailant, only and specifically as just present. The last officer identified by Mr. Cumby was never seen by on-duty officers at the scene and was also not identified by Mr. Cumby as an assailant. On September 17, Mr. Cumby viewed a third photographic array consisting of six male police officers and was unable to identify any of the officers as being present that night.

On July 17, 2015 Mr. Cumby brought his two cousins, Jackie and Jozelle Ligon, to the Springfield Police Department to be interviewed regarding the incident at Nathan Bill's and the later assault. Detectives assigned to the Major Crimes Unit interviewed the two men separately. The facts detailing what leads up to the men being asked to leave the bar is mostly consistent with Mr. Cumby's earlier statement. They all describe their attackers as males, mostly white males, and that the group surrounding them was approximately 8-12 in number. Both men were asked to view photographs in order to identify the assailants.

On July 17, 2015, after viewing 1,188 pictures, Jackie Ligon identified Officer Daniel Billingsley with an 80%-90% certainty as being present in the parking lot during the altercation and as being the person with whom he had a verbal altercation inside of the bar. Jackie Ligon also described an individual who was a Latino, white, or Italian male with a heavy moustache who appeared to be in his late-forties who had a weapon in his coat. Therefore, he viewed 1,981 photographs of Latino males and identified one of those with a 40%-50% certainty as this individual. This person was not a police officer and was not at Nathan Bills on April 8th. When shown photographs of only Springfield Police officers, which included the off-duty officers identified as present at Nathan Bill's, Jackie Ligon could only identify two officers who he

described as responding officers and not assailants. Of those two officers, one was in fact on-duty and responded to the scene, the other officer worked a different shift and did not respond to the scene on the night in question.

Sgt. Andrew of the Internal Investigations Unit interviewed Jackie Ligon on three separate occasions: June 4, 2015, August 1, 2015 and September 17, 2015. Jackie Ligon's initial statement to Sgt. Andrew described in detail the events of the evening in question. There are differences between his statement to the Internal Investigations detectives and his statement to Major Crimes Unit detectives. His statement to the Major Crimes Unit is videotaped and his statement to the Internal Investigations Unit is not. His statement to the Internal Investigations Unit is a summary from Sgt. Andrew and is not signed or reviewed by Jackie Ligon.

In his statement to detectives in the Major Crimes Unit on July 17, 2015, Jackie Ligon cannot identify any assailants despite reviewing thousands of photographs. He identifies Officer Daniel Billingsley with an 80-90% certainty as the person with whom he had a verbal altercation, but not as an assailant. He also cannot positively identify any weapons (other than footwear) as being used by the assailants. He states that he hears a "click", which sounded like an expandable baton, and he saw an older Latino male put something inside his jacket but could only see a "handle". However, when questioned by Sgt. Andrew of the Internal Investigations Unit on June 4, 2015, Jackie Ligon describes certain individuals as having weapons, and seeing the weapons used. He tells Sgt. Andrew he saw one assailant with an "expandable baton" and another with a "Taser or stun gun". He also names a particular officer as being the one who punches his brother Jozelle and describes a 6'5" or 6'4" male as pushing Jozelle. On this same date, Jackie Ligon views 264 pictures of Springfield Police officers and identifies five individuals, but never indicates how he knows them or how they are involved in this matter.

During his second interview with Internal Investigations on August 1, 2015, which is also unrecorded, Mr. Jackie Ligon is asked to view another array of 18 photographs of male police officers that was assembled by Sgt. Andrew in an attempt to identify involved parties. At this meeting, Jackie Ligon identifies Officer Daniel Billingsley as the individual who punched his brother. This identification contradicts his videotaped statement to Major Crimes detectives and his earlier verbal statement to Internal Investigations detectives. Jackie Ligon also identifies officers as being present at the scene who have confirmed alibis and could not have been at Nathan Bill's or Murphy's on the night in question.

At his third interview with Internal Investigations on September 17, 2015, also unrecorded, Jackie Ligon is asked to identify the officer he believed possessed the stun gun or taser. He is shown an array consisting of six police officers and he is unable to provide a positive identification. He chooses two photographs of two different officers and tells Sgt. Andrew that it is "definitely one of these two", but he cannot state which one with any degree of certainty.

Of the two remaining victims, Mr. Jozelle Ligon meets with detectives assigned to the Major Crimes Unit and provides a videotaped statement on July 17, 2015. He details an incident occurring inside the bar earlier in the night that is generally consistent with the statements of Mr. Cumby and Jackie Ligon. Of concern is Jozelle Ligon's belief that the assault happened approximately ten minutes after they had been asked to leave the bar, which would make the time of the assault closer to midnight than 2:00 a.m., as documented by surveillance video and the statements of all other witnesses. Jozelle Ligon describes an initial verbal aggressor as a "short, bald, off-duty cop" and then he is attacked by numerous people so he covered up to protect his face. Jozelle Ligon admits that he had been drinking prior to entering the bar and was "probably a little drunker than drunk" but he believed he could identify his assailant. After viewing 5,220 photographs, Jozelle Ligon identified one individual with a 50% certainty as his assailant. The individual was an unknown subject who, based on reasonable evidence, has not resided or been seen in the area since 2006. Attempts to reach this individual were unsuccessful. Jozelle Ligon also viewed photographs consisting of only Springfield Police officers and he was unable to identify anyone as being present on the night in question.

On August 1, 2015, Sgt. Andrew of the Internal Investigations Unit interviewed Jozelle Ligon for the first time. This interview is not recorded and the witness does not give a signed statement of fact or an acknowledgement the report was reviewed and approved by the witness for accuracy. During this interview, Jozelle Ligon gives descriptions of individuals with whom he interacted and individuals who pushed his brother. Jozelle Ligon also describes the man who punched him, who the Internal Investigations Unit report identifies as Christian Cicero. This identification contradicts Jackie Ligon's identification of Daniel Billingsley as responsible for the same behavior, the punching of Jozelle Ligon, and also contradicts Jozelle Ligon's previous videotaped interview with Major Crimes. No photographic array is shown to Jozelle Ligon on August 1, 2015 and no identification process is described in the Internal Investigations Unit report.

Michael Cintron was the last victim to be interviewed. The interview was conducted by the Internal Investigation Unit on April 1, 2016. Mr. Cintron was never interviewed by Major Crimes Unit detectives.

Mr. Cintron provided his own hand written statement to the officer that detailed the events of the evening including physical descriptions of assailants and weapons. Sgt. Andrew compiled an array of thirty-three Springfield Police officers that included the officers identified through the Major Crimes Unit investigation. Mr. Cintron failed to identify an assailant, but did identify Officer Daniel Billingsley as being a bar employee who kicked them out of the bar and was present at the time of the assault. No other officers were identified.

Conclusion

This investigation and any criminal charges that could result from this investigation depend almost exclusively on a positive identification of the assailant(s). To date, no such identification has been made by any of the victims or any eyewitnesses.

In order to indict a person for a crime, the prosecution must present sufficient evidence to establish the identity of the accused and probable cause to arrest him. Commonwealth v. O'Dell, 392 Mass. 445, 450 (1984). That is, the prosecution must have sufficient evidence that the defendant is the person who committed the crime.

Because people have been wrongfully convicted based, in some cases, on mistaken identifications, courts throughout the country have revamped the rules allowing eyewitness identifications at trial. The Supreme Judicial Court of Massachusetts has made several recent rules that limit identification evidence at trial.


If a person who witnessed a crime has made a less than unequivocal, positive identification of the defendant before trial, the witness will be permitted to identify the defendant at trial *only* if there is *good reason* for the judge to allow the in-court identification. Commonwealth v. Collins, 470 Mass. 255, 261-62 (2014). Good reason is limited to cases in which the witness's ability to identify the defendant is not based only on her having witnessed the defendant during the commission of the crime. Trial judges have been instructed to require a high degree of certainty by the eyewitness for identification to be considered "unequivocal" and "positive".

Despite varying accounts of what occurred prior to the assault, who was present before and after the assault, and who committed the various assaults, it is undeniable that Mr. Herman Cumby, Mr. Jackie Ligon, Mr. Jozelle Ligon, and Mr. Michael Cintron were assaulted and beaten by several individuals on April 8, 2015. The men were beaten about their body and face by fists, shod feet, and quite possibly dangerous weapons. As a result, all of the men suffered visible injuries and Mr. Cumby suffered serious injury, as well.

However, it is also undeniable that the victims' admitted lack of recollection of the events and the assailants, inconsistent versions of the incident, their admitted alcohol consumption, and ultimately and most significantly, their lack of legally sound and positive identifications of those who committed a criminal offense, hamstring the Commonwealth from initiating a criminal complaint or indictment. The Massachusetts Supreme Judicial Court Rules of Professional Conduct, Rule 3.8, states that a "prosecutor in a criminal case shall refrain from prosecuting where the prosecutor lacks a good faith belief that probable cause to support the charge exists." While the victims' credibility and earnestness are not in question, the fact that their accounts and attempted identifications chart a tortuous course is inarguable. With this unavoidable reality, the standard of probable cause is not met. Moreover, should we look beyond the initial, modest

standards of probable cause, the estimable burdens of proof required to convict, which are designed to protect the principle that a person is innocent until proven guilty, would firmly stand in the way of a successful prosecution in this case. Therefore, with the evidence presently in the possession of this office, there is no probable cause to charge any person(s) with criminal offense(s) from the events on April 8, 2015. The criminal investigation as conducted by the Hampden District Attorney is, therefore, presently closed.

Submitted: February 2, 2017


Anthony D. Gulluni
Hampden District Attorney

Cc:
Commissioner John Barbieri
Springfield Police Department
130 Pearl Street
Springfield, MA 01105