

COURT RULING:

On June 1, 2012 I retained an attorney willing to represent my case. The attorney filed a motion for a new trial based on new evidence and successfully was granted a court date of August 21, 2012.

On August 17, 2012, my attorney notified me he had to reschedule because of another hearing he had and told me my new date would be on September 25, 2012. He had also told me the witness would be summonsed to court to testify.

Between the date of the summons and the court date of September 25, 2012, about one week's time span, my attorney received several phone calls from the witness's father, a former Massachusetts State Trooper. The father informed my attorney of several excuses of why she would not be able to appear in court as the summons required. They contained excuses such as; she was going on vacation, had to go have surgery, then didn't need surgery but had to go to the doctors. To which my attorney responded that documented proof would have to be provided; whether it be airline reservations or a doctor's note stating her inability to show for the court date. During those communications the father also **tried to intimidate my attorney by telling him, "why don't you drop the case and let it go, would be in your best interest not to go forward with it, I'm going to call the DA."**

September 25, 2012 court date:

I appeared in Orleans District Court with high hopes, after all there must have been enough merit for the judge, assigned to the case, to grant me a new court date based upon the motion that was filed. We were then notified that the witness was unable to appear. Upon hearing the case, the judge asked, "Is the witness present?" My attorney responded, "No!" I was told first by her that she was "going to be on vacation," then I was told that she had a doctor's appointment today and would be sending documentation to the court. Because of this, my attorney felt the only thing he could do at this time was to request a continuance until October, when she would be summonsed again. The judge asked, "What makes you think she will appear then, when she didn't appear today?" The judge then asked, "Was she officially summonsed and served to be here today?" The attorney responded, "Yes in hand!" The judge then questioned the reason for the motion. My attorney responded "the motion was to do with an affidavit in which she recants allegations she made in a number of statements." My attorney continued to explain that her many reasons for not appearing seem to "indicate that she simply does not want to appear in court."

The judge asked again "was she served in hand to be here today? Return of service?" **The judge quickly stated, "I can issue a bench warrant."** My attorney again stated that given the fact that she claims to have a doctor's appointment, even though I'm not sure I believe her, I would request a continuance.

The judge questioned how many cases she was a witness to? My attorney answered “she was the complaining witness in all three cases. (The docket numbers were given and recorded).

The judge asked” what is the theory of the motion?” My attorney responded that prior to the tendering of the plea, she had made threatening statements, in the hall, to convince Mr. Flores not to go any further, using her father, a retired State Trooper, as the intimidating factor. He then continued that he was also contacted by her father in an attempt to convince him to not go forward with this motion.

The ADA said, “Your honor this case is 12 years old and had two motions and an appeal which were all denied.” She then stated **“If in fact she is to appear in October, I request that she has counsel appointed because I believe she is going to perjure herself.”**

Once again my attorney said, “If she is concerned about giving false statements, that’s fine. But I believe she’s just trying to avoid coming in. Let’s give her the benefit of the doubt and if she doesn’t show up for the next court date, I’ll definitely request the court to issue the bench warrant.” The judge responded, “Okay.”

The judge agreed and granted a continuance for the new court date on October 23, 2012, with the witness to be summons for a second time. My attorney agreed to have another summons issued.

October 23, 2012 court date:

My attorney and I returned to the Orleans District Court with high hopes, once again. After all, the judge had stated he would “Issue the bench warrant” if she did not appear. My attorney was notified by the witness’s father once again that his daughter wasn’t going to appear due to hysterectomy surgery on October 10, 2012. My attorney notified the judge that apparently there were medical issues, specifically a recent surgery, and that was why the witness wasn’t present. At that time, documentation had not yet been received; but requested another continuance date for December 11, 2012.

The ADA once again claimed that the case had been an older case and had two motions and an appeal and all were denied. As far as she was concerned it had been waived. He had stole items and assaulted the victim. She accused the defendant of simply “wanting his gun permits back” as the reason for pursuing this matter for such a long period of time. I have proof that counsel was notified with this certified mailing receipt. She had stated the issues had already been previously heard, to which my attorney quickly responded “the issues were not previously raised.” He brought up the post conviction attorney’s lack of questioning the complaining witness as to the validity of her recanting her statement on a notarized affidavit.

The judge throws his arms in the air, leans back in his chair and says, “Stop, you’re assuming that I’ll believe what she has to say.... My attorney said “It was notarized in front of a notary!” The judge said, “OOH, so I guess that makes it true then? He then commented, “Do you think I just fell off the turnip truck?” His demeanor became agitated. “I’ve never seen a false affidavit before, have you?” he directed to my attorney.

My attorney responded, “Yes” to him, receiving a sharp response from the judge stating, “I bet you have, I don’t mean that personally (in an undertone and with apology).” At this point, my attorney tried to explain to the judge the circumstances regarding her retraction claiming that she did willingly sign the affidavit in front of a notary. “Great that’s wonderful,” the judge responded with a laugh. My attorney shrugged off the comment and continued with the evidence that the complaining witness had confirmed the facts of the retraction made on the affidavit to the private investigator, thus making it twice the complaining witness said the event never happened.

At this point the ADA interjected that the “private investigator had contacted the witness extensively and that she was afraid of the private investigator and the defendant.” This in fact was not the case.

The judge then moved on to questioning the basis of the motion. My attorney began to explain that one of the bases of the motion is the signed affidavit in which she recants that one of the events the defendant had been charged with never did occur.

The judge made a statement about, “Rules having to do with that....” But never went into it. All of a sudden the attitude of the judge became tenser. He stated, “This was a plea, so was he lying too when he admitted it?”

My attorney tried to explain that at the time the green sheet was presented to me, the court appointed attorney did not explain the sheet before it was signed. In addition, before the first plea was tendered the complaining witness had made threatening statements to me in the hallway using her father’s career, a retired state trooper, to intimidate me into a guilty plea. The attorney stated, “I tend to believe Mr. Flores as the witness had recanted the information on two separate occasions.”

The judge then appeared to loose all cool. “He admitted it!!!!.....”
“He was threatened, your honor,” said my attorney. The judge did not care to hear anymore, yelling in a deep voice, “Well, he knew!!!!!! Motion Denied.”

He then spent moments shuffling papers on the bench. The judge then stated, “Motion has had all the hearing it’s going to have.” He moved to the other 2 topics, at which time he was told that this one motion covered all 3 cases, with the same complaining witness in all of them.

My attorney confirmed that “twice she confirms this didn’t happen. If the denial was true, the trial counsel would’ve brought her in. This at least deserves a hearing.”

The Judge responded with much hostility, “This is your hearing, where’s your witness?”

My attorney quickly on the defensive stated, “I served her, I’m just That on the last court date when you were willing to issue the bench warrant, I wanted to be fair to this woman, if she’s really sick. I don’t want the court to bring in a person who’s having these issues.”

Now the judge changed his tone calmly stated, “Okay. I’ll give you one date, after that there’s no more, for any reason.” But immediately went hostile after finishing that statement, “This is nor a trial, it’s a post trial motion on a case your client plead guilty to and your argument is that someone else was telling the story?”

My attorney responded, “I’ve been here two times, her not showing up is why this motion has not been heard. She has been served twice.”

The judge said, “One date.”

All of a sudden the ADA interjected that “she has had very serious surgery a week ago. I have a certificate of mailing that the defense was notified. Her father is here today. She’s very scared of the defendant and the private investigator keeps contacting her.

The judge went off, “She’s scared of him?”

The ADA responded, “Yes, very scared.”

Without hesitation the judge’s willingness to allow another continuance soon became “ALL MOTIONS DENIED.”

My attorney questioned, “Why is she afraid?”

The judge said, “I got convictions here” as he waved a folder. “Has he threatened her?”

My attorney responded, “Not in one way.”

The judge did not want to here anything. He simply stated, “She’s scared of him, MOTION DENIED, MOTION DENIED, NOT GOING TO HARASS THIS WOMAN ANY LONGER, CASE IS DISPOSED OF.”

My attorney says, “He has not talked to her at all. She has reached out to my client and has not received any return conversation. The private investigator contacted her once to discuss the affidavit and once to serve her with the summons.”

The judge still wanting to hear nothing, the defense said, “That’s not why her father’s here.”

My attorney responded, “Her father had called (me) and tried to convince me not to continue with the motion or bring her daughter in, which I don’t think is appropriate. Her father is a former Massachusetts State Trooper and it’s not his position. He thought he could intimidate me to not go any further.”

The judge answered quite upset, “He’s trying to protect his daughter from being harassed.”

My attorney, defending himself said, “I’m not harassing anybody, I filed legally. She didn’t have to sign that affidavit, but she did willingly.”

The judge ended, “MOTION DENIED.”

I think it’s very sad that the due process of law wasn’t followed and false accusations were made that day in court. There were several people in the court room, except for her father who had a smile on his face, that were in shock by the unprofessional, unethical behavior of the presiding judge. We were all in shock at how his willingness to issue the bench warrant immediately upon her not appearing the first date was quickly replaced by his nonchalant, belligerent, hostile attitude **and denial of a continuance to have my witness present because the ADA claims she is scared.**

No evidence was presented. The judge never asked for proof that she had tried to contact the defendant. He never asked to question the private investigator as to the number of times he was in contact with her and what occurred during those meetings.

My attorney was humiliated and we were made out to be the villains in this case. The police reports lack any evidence or facts to prove that those crimes were committed. She recanted her story twice. There are no pictures of anything broken, no medical reports of the supposed injuries inflicted, nothing but her word. In addition, I was charged with a crime that didn’t have anything to do with my case, it’s been on my record for 16 years. The reason why I plead guilty was because of a threat made to me by her stating, “You better plead guilty because my father is a cop and could make your life miserable.”

The judge made inappropriate comments during the courtroom proceeding and violated my Sixth Amendment right to have a witness present for cross examination to prove my innocence.

According to the September 25, 2012 court hearing CD recording, the ADA states, “If in fact she is to appear in October, I request that she has counsel appointed because I believe she is going to perjure herself.”

Important Questions:

1) If, in fact, she is telling the truth, why is it that two court officers (the ADA and the previous judge) have both stated that they fear she would commit perjury if required to appear in court to testify? In addition, why did she recant her story twice, once to a notary public and once to a private investigator, who also just happens to be a former police officer?

2) What good is a legal summons to appear in court if there are no consequences for not appearing on the date and time specified? Wouldn't a no show immediately result in a bench warrant or/and a continuance date?

3) How can anyone get out of going to court because they have a doctor's note and the case just gets wiped out?

4) The case has to do with the witness who is a grown adult, why is her father able to speak on her behalf? How can anyone just walk into a court and come up with a reason why someone else isn't there?

5) If she is in fact so in fear, why did she send me an email on June 17, 2012 and call me on September 17, 2012? (Proof of both these attempts is available.)

6) Why would her friend call on June 24, 2012 and leave a threatening message on my cell phone to call the police, if my private investigator contacts her again? (Proof available)

7) If she is in fear, why doesn't she have an active restraining order on me? Why haven't there been any other incidents in the past 16 years? If she is telling the truth, there shouldn't be any problems for her to show up in court with her father, the former state trooper.

8) The ADA claims she's in fear of me. If this is so true, then why would she in the year 2004, drive her vehicle to meet me at the Cape Cod Five Bank in Yarmouth, to have an affidavit signed and notarized that stated, "The incident that occurred on December 5, 2000 involving Larry Flores did not entail assault & battery with a dangerous weapon (door)" ?

9) How can the court prove if a plea colloquy was given in December 2000, if they have no transcript, tape, or record? The results of the 2004 court hearing were based solely on memory from four years prior, which had NO proof I received a plea colloquy from the judge. **In the 2004 transcript**, The judge stated, Now, I cannot say to you as an officer of the court or as a judge of the court that I specifically told Larry all those things on this occasion, because frankly I don't know. I don't know whether I did or didn't, but I do know that's my usual custom."

10) Why was the October 23, 2012 official audio recorded courtroom proceeding tampered with, bias and prejudicial statements by the judge during this court room procedure were deleted from the recording by the court? Five witnesses will testify what they heard at the hearing. (Tampering with Evidence)

Memorandum and Order

I received a copy of a memorandum and order the judge had written on October 26, 2012, which is different from his ruling in the courtroom on October 23, 2012. In this letter the judge explains his ruling utilizing FALSE information. The correct information can be proved with documents. The judge states, “He relies upon police reports when making decisions.” Yet police reports only reflect supposed events from the victim, not sworn statements. In addition, I was never questioned by the police as to my side of the events when the supposed abuse took place.

In regards to the notarized affidavit, the judge makes it seem that a sworn statement made and signed in front of a notary is completely irrelevant. **“The statement is not an affidavit. While the signature is notarized, it is an acknowledgement only and does not recite that the statement is sworn.”** The judge refuses to believe the notarized affidavit by the witness is true.

The judge states, **“The defendant alleges ineffective assistance of council, which is so blatantly false.”** He also makes a defamatory comment insinuating I must be utterly illiterate, threatens me with a perjury complaint and threatens my attorney of professional conduct.

The judge wrote the defendant requested a continuance to produce the witness to testify. **She is reportedly in the hospital but the ADA reports her father was present to report she did not want to appear and was intimidated by the defendant. I denied the continuance.** Neither my attorney, nor the ADA stated she was in the hospital. She was legally summonsed twice and did not appear either time. The judge never verified the reason for her absence. This witness holds all testimony to prove my innocence! He closes the letter by stating, **“NO FURTHER MOTION FOR NEW TRIAL IS TO BE ACCEPTED FOR FILING WITH OUT PRIOR REVIEW AND APPROVAL BY A JUDGE.”**

Interestingly, this judge was reprimanded on August 31, 2012 by the State Judicial Oversight Committee, for repeatedly engaging in conduct while sitting in the court room that failed to follow well-established procedural requirements, specifically his failing to engage criminal defendants in legally sufficient plea colloquies. This judge was also a former police union attorney and the father of the witness is a former Massachusetts State Trooper, what influence did this have on the decision of this case?

The father of the witness being present in the court room was a determining factor of the motion being denied and the bench warrant not being issued! The witness failed to show at both court hearings with no repercussions by the judge. It is quite evident she avoided appearing in court, because she knew she would commit perjury.

I've been fighting for my rights for the past 16 years at a cost of \$45,000 in legal fees. The ADA claims I'm pursuing this because I want a gun permit. I've devoted all this time and money for one reason, to prove my innocence. If certain individuals feel I'm being dishonest, I would be more than willing to take a polygraph test.