

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

WALTHAM DISTRICT COURT
NO. 07-027

COMMONWEALTH

V.

MARILYN P. DEVANEY

MOTION TO DISMISS FOR VINDICTIVE PROSECUTION

Now comes the defendant, Marilyn Devaney, and seeks to dismiss this complaint for prosecutorial misconduct and selective and vindictive prosecution on the part of the police. ¹

In support thereof, the defendant states the following:

1. On April 12, 2007 Officers R. Williams and Michel responded to Sally's Beauty Supply in Waltham, Mass. An employee, Adrianna Latif alleged that approximately a half hour earlier, Marilyn Devaney, a customer had "thrown a bag" across a counter and it "hit Latif in the chest". She was not injured. The officer reported that the bag was not of substantial weight and did not appear to pose serious injury." There was no security tape which might have resolved these issues. Officer Williams concluded his report by stating that "Both parties were advised that Show of Cause hearing may be requested. At this

¹ The defendant avers that the animus stems from the Waltham Police Department, not the District Attorney, however, the Commonwealth is one entity and the police are part of the prosecution.

time, it is not possible to make a determination whether the bag actually struck Latif or the counter." His approving officer was Officer T. King.

2. The incident was listed in the police blotter as "A & B/past".
3. A lawyer for Mrs. Devaney called the Waltham Police Department the next day and requested any police report on this incident. There was none at the time. She continued to request it daily. She was not able to obtain a copy.
4. The next week, Detective Smith was assigned to follow up on "a possible Assault and battery/Dangerous Weapon". There is no approving officer listed on this report. He contacted the store, made several attempts to contact Ms. Latif and finally spoke to her by telephone. Suddenly, Ms. Latif recalled that Mrs. Devaney talked about working for the governor and the State, pointed to her car with a state logo the license plate.² Suddenly, Ms. Latif was certain that Mrs. Devaney intended to hit her.
5. Officer Smith printed his report on April 25, 2007 at 12:52:40 EDT. Although it is stated "not for public release", Fox 25 news was at Sally Beauty Supply by 4 pm that afternoon filming the store and Ms. Latif. The police reports are now available on the internet.
6. Mrs. Devaney is a Watertown council member as well as a governor's councilor. She is controversial and both well-liked and well-disliked. The second police report now includes statements that make it appear that Mrs. Devaney was attempting to abuse her authority as an elected official. This could cause her to be impeached, lose her employment and her pension. It

² By inserting Mrs. Devaney's job into the investigation, she runs the risk of termination and loss of her pension. Of course, there was no mention of this in the first police report.

appears that this second report is part of a political agenda that the Waltham Police are assisting in.

7. Cases of alleged assault and battery, as described in the first police report are simply not "reinvestigated". A show cause hearing on a simple assault and battery may very well have resulted in a clerk disposing of the matter in a way that worked best for all parties as well as the Court. Instead, the charge was upgraded to a felony and no show cause hearing occurred.
8. The Waltham Police list all calls made to the police department on the internet in a document entitled Police Blotter for each month, beginning in April, 2007. The defendant obtained police reports of 30 "A & B/past" calls for April, May, June and July 2007 which are attached herein.
9. 11 police reports on these calls resulted in the police officer recommending that the parties seek criminal complaints themselves.
10. 2 police reports on these calls resulted in the police officer obtaining a summons for a show cause hearing, where there was serious bodily injury.
11. 1 police reports were investigated by a detective, involving child abuse and the report indicated there would be a follow up by a detective.
12. The conclusion to be drawn from this sample is that out of 31 reports of similar events, only Mrs. Devaney's case was selected for further investigation by a detective and an upgrade to a felony.
13. The defendant seeks an evidentiary hearing as to why this case was reinvestigated and charges upgraded to a felony.

MARILY DEVANEY
MARILYN DEVANEY
By her attorneys:

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May 1, 2008

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AFFIDAVIT OF COUNSEL IN SUPPORT OF MOTION TO DISMISS

I, Janice Bassil state the following to be true:

1. I am counsel of record for Marilyn Devaney in this matter.
2. I have been a defense counsel for almost thirty years. I began my career at the Massachusetts Defenders Committee and I have continued to practice criminal law in private practice. I have represented individual defendants in at least a thousand criminal cases. I have represented individuals on charges from misdemeanors to first degree murder.
3. I cannot recall a single case in which I represented a client on a minor misdemeanor charge which became a felony after investigation by a detective and particularly after an officer recommended that the parties seek complaints through the court.
4. I cannot recall a single case in which a minor incident such as occurred here became a felony charge.

5. I have never had a case in which a report by a police officer was completed by approximately 1 p.m. and entitled not for public release and the media were at the scene of the alleged crime within 2 hours.
6. I have a reasonable belief that the defendant was singled out for disparate treatment by the Waltham Police based on her notoriety as a local politician.

The above is true to the best of my knowledge and belief. Signed under the pains and penalties of perjury this 30th day of April, 2008.

Janice Bassil