

COMMONWEALTH OF PENNSYLVANIA



COUNTY OF NORTHAMPTON

NICHOLAS E. ENGLESSION,
ESQUIRE
MAGISTERIAL DISTRICT JUDGE
Magisterial District 03-2-11
1214 Stefko Blvd.
Bethlehem, Pa. 18017-6624

CITY OF BETHLEHEM
WARDS 5, 15, 16 AND 17
FREEMANSBURG BOROUGH

OFFICE:
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November 29, 2019

Jermaine Greene, Court Administrator
Northampton County Courthouse
669 Washington St., Easton PA 18042

RE: Bethlehem Police Complaint

Mr. Greene:

On Tuesday, November 26, 2019, you called me and related the following:

1. The Bethlehem Police Department has lodged a complaint against me.
2. The allegation is that I accused an unnamed officer of being a racist.
3. You asked me to respond in writing to the allegations.

I immediately began to write my response, and then paused for a moment, because I had questions. I then sent you, on Wednesday, November 26, 2019, an email, stating as follows:

"Yesterday you called me and stated that "The Bethlehem Police Department" lodged a complaint against me for accusing an unnamed officer of being a racist. You stated that the officer in question claims that I shouted at him. You stated that you would like a written response from me. It is my understanding that your request was made at the behest of President Judge Koury.

In my court people accused of wrongdoing are entitled to written documentation setting forth the details of the complaint against them.

Kindly afford me the same courtesy by supplying me with:

1. copies of any documentation in support of this claim, as well as
2. the names of any officers or civilians present at the time of the alleged incident,
and

3. the name of the individual (e.g., was it the Chief of Police, the FOP, or the actual officer making the complaint) who actually lodged the complaint with your office.

Upon receipt of the same, I will be happy to respond in writing as you requested."

I'm glad I did that because what you reported to me does not match up exactly with what I received. The most glaring difference is that the statements of both officers clearly acknowledge that I made it clear to [REDACTED] that I in fact WAS NOT accusing him of being a racist.

It is Chief DiLuzio, who was not present at the meeting, and who added facts of his own to the complaint, despite the fact that he attached the actual statements of the officers present, who claims I called [REDACTED] racist.

By way of background:

On or about September 11, 2019, [REDACTED] charged defendant [REDACTED] a resident of the City of Bethlehem, with "rolling through" a stop sign and possession of a small amount of Marijuana. The preliminary hearing was scheduled for October 28, 2019, in my court.

Immediately prior to the hearing, and while the defendant was present, someone called my office and reported that [REDACTED] had suddenly taken ill and was not able to attend the hearing. At that point, I explained to [REDACTED] that I could re-schedule the hearing until such time as [REDACTED] was available, or he could waive the charge into court and possibly apply for the ARD program for first time offenders. After determining that he was not likely qualified for ARD, I explained to him that he would have to either go to trial or plead guilty. He expressed a willingness to take responsibility for his actions and offered to plead guilty before me, at which point I instructed my staff to prepare the necessary paperwork and payment plan.

While we were waiting for the paperwork, [REDACTED], a mild-mannered, humble, quiet, and respectful man who spoke English with some difficulty, related, to the best of my recollection, the following:

On the day in question, [REDACTED] was driving on the South Side of Bethlehem, in my district, when he noticed a police officer pull behind him and begin following him. He claims he had done nothing wrong and had committed no traffic violation. However, based upon past experience, he sensed that he was nonetheless going to be stopped by the officer, so he pulled his vehicle over. As an aside, in my experience, Bethlehem police consistently act in a manner that is lawful and respectful to citizens, including those with limited English proficiency. However, I have heard numerous reports by Hispanics of being treated in a less than respectful manner by police, so it is understandable why [REDACTED] pulled over to see what the officer wanted, even if he did not feel he had committed any traffic violations.

In his encounter with the police officer (██████████) it appears that ██████████ called in to see if there were any warrants outstanding for ██████████. It appears that there was an immigration related warrant for a man with a similar name, so a conversation took place between ██████████ and ██████████ regarding this issue. ██████████ assured ██████████ that he was Puerto Rican, and an American citizen, and could produce both a driver's license as well as a Social security card. Evidently, ██████████ was informed that the subject of the immigration warrant had certain identifying marks, to wit, a tattoo on the underside of his left forearm. ██████████ sleeve was raised to expose his forearm, and there was no such tattoo on his arm.

During this interaction, ██████████ had some type of tobacco product in his mouth and was periodically spitting tobacco juice into a cup.

At some point, ██████████ began rifling through the Defendant's vehicle and found two partially burned marijuana cigarettes under the front seat. According to ██████████ probable cause affidavit, he obtained the consent of ██████████ to search the vehicle. According to ██████████, no such consent was sought; rather ██████████ just began to conduct a vehicle search.

At this point I should point out that I reviewed ██████████ Affidavit of probable Cause. While it does state that he obtained a consent to search, it provides no factual basis for requesting it. It is not uncommon for a mere traffic stop to turn into a drug possession charge, but I do not recall ever seeing one where the officer did not allege in his affidavit that he either observed the smell of burnt or fresh marijuana, or observed drug paraphernalia in open view, or observed furtive or suspicious movements by the detainee, or had a conversation with the detainee which suggested that the detainee was hiding something or otherwise potentially engaged in criminal conduct. Here, ██████████ stopped a driver for a traffic violation, yet by his own admission, found it necessary to search the vehicle without articulating any basis for doing so.

Despite the fact that the defendant did not have the identifying scar on his forearm, the officer asked him to turn around, and then, to ██████████ surprise, abruptly grabbed his arms, pulled them forcefully behind his back and cuffed him so tightly as to cause pain. ██████████ was then transported to police headquarters, where further attempts to identify ██████████ revealed that he was not in fact the subject of the Immigration warrant.

At this point he was told he was free to go. ██████████ then asked ██████████ about transporting him back to the south side, where his vehicle was parked more or less in the middle of the street, so that he would not get ticketed. ██████████ said "We don't do that; you're on your own." Upon observing this conversation, another officer instructed ██████████ to transport ██████████ back to his vehicle,

I have been a member of the Bar for forty years, seventeen of them as a prosecutor. I know better than to believe everything a defendant tells me. This does not mean defendants always lie; it just means that their statements must be viewed with suspicion. In this case, the Defendant did not

report the alleged abuse by [REDACTED] until after he took responsibility for his charges and was signing the necessary guilty plea paperwork, so he had no motive to make up the story in order to avoid culpability.

Secondly, in my court I treat everyone with respect. I do not talk down to people, and I try to advise them of their options going forward. And I listen. In this case, I believe [REDACTED] felt comfortable enough in my presence to trust that I was not in a mind to harm him, and that I could be trusted with this information.

Third, judging from [REDACTED] demeanor, he had no anger or resentment in his tone, did not look to have his charges lessened by his claim, was quiet, passive, and respectful. To me, these were added indicia of trustworthiness.

Finally, there was so much detail in [REDACTED] report that it differed from the typical blanket denials of people who are guilty but looking for a way to blame someone else for their predicament.

I served as a prosecutor in this county for 17 years, much of that time serving the Bethlehem police department, and I have a certain affinity to the officers I deal with on a daily basis, and I want to be sure they are doing the best job they can do for our community. If they make mistakes at hearings, I sometimes pull them aside and attempt to advise them on best practices for future matters. I am very accommodating to officer's schedules, attempting to schedule hearings in such a way as not to disturb their sleep, depending on their assigned shift times. I also am accommodating to officers when they are running late or have some other issue. Also, my office does a service to the Bethlehem Police to contact the officers when they are late for a hearing. It is my understanding other judges do not do this, and simply dismiss charges when the officer does not appear.

In my entire career as a lawyer and a prosecutor, I have never reported a police officer to his superiors for misconduct, and never embarrassed a police officer in court for making a mistake.

With all of that in mind, I resolved to discuss the matter [REDACTED] informally.

Much of what the officers reported in their statements is true. When [REDACTED] came in subsequently for a hearing, he was with another officer. I asked to speak with him privately, but had no objection to speaking in the presence of the other officer. In fact, I thought it would be a good idea to have a witness present so [REDACTED] would not feel intimidated or put upon by my request to speak with him. No one from my staff informed [REDACTED] I wanted to speak with him. He was sitting in the front lobby with [REDACTED] and I asked if I could speak with him privately in the private office adjoining the lobby.

In the first instance, I reminded him of [REDACTED] and assured him that I took care of the matter in a manner that he would find satisfactory.

Both officers indicated in their statements that I stated that this was a difficult conversation to have. This is true. It was difficult because I had to walk a fine line between having the officer think he had done something wrong on the one hand, and completely ignoring and failing to address what might turn out to be a significant problem for the officer, for the department, and for the city, on the other hand, because even [REDACTED] was not guilty of profiling [REDACTED] a perception in the community that Hispanic American citizens were being profiled by the police could lead to citizen resentment of the police, failure of citizens to trust the police and cooperate with them in investigations, as well as potential lawsuits against the city for civil rights violations. The infamous Hirko case comes to mind. In that matter, I was personally acquainted with the officers involved and believed them to be blameless, yet the plaintiff obtained a multimillion dollar verdict against the City which I believe is still being paid for by the taxpayers.

In the conversation, I related [REDACTED] what the defendant had told me. I made it clear that I did not necessarily believe what was said, but wanted him to know what was said. I then pointed out that there are approximately 12 million undocumented people in this country, and while I would not discourage any law enforcement officer from taking action on an immigration issue when it is warranted, the primary responsibility of the police is to enforce local laws, keep the peace, and protect the community. I explained to him that there are people in our city – and in my judicial district – who are non-English speaking American citizens, and I wanted to ensure that we are not harassing American citizens with citizenship investigations.

I did advise [REDACTED] not everyone who does not speak English is an illegal immigrant. I never used the word "hassled". I also did not tell him that he needs to have "better checks and balances" when arresting someone. It is not an expression that I use. But I did state that since there a number of Puerto Ricans in this community, it is important to be sensitive to the fact that they are American citizens, and that it was my hope that we are not unnecessarily harassing lawful citizens just because of their inability to speak English as well as the rest of us do.

Having practiced law for 40 years, I can assure you that I chose my words carefully, and was not speaking off the cuff. I was prepared to have this conversation the next time I saw [REDACTED] and knew exactly what words I intended to use when addressing him. I was fully in control of myself and my words and did not raise my voice to him.

I can acknowledge that [REDACTED] may have felt intimidated by having a judge pull them aside for such a conversation. If they would have spoken with their colleagues they would have been assured that I was attempting to act in the officer's best interests and had no intention of making trouble [REDACTED], but rather wished to protect him from getting himself into trouble, protect the department from having its reputation tarnished by allegations of police misconduct, and protecting the city from potential legal liability.

By the same token, police officers need to be aware of the potentially intimidating nature of a stop, particularly when the detainee is an uneducated, powerless individual with a poor command of the English language, and the effect their behavior may have on the public.

At this point in time, it is my observation that the Bethlehem Police treat all citizens with respect, and I was concerned that if the incident as reported was true, it could tend not only to tarnish the public image of the department, but also expose the city to legal action if racial profiling is actually taking place. This was my purpose in having the conversation with [REDACTED]

To be clear, if I had already concluded [REDACTED] acted improperly or unlawfully, I would not have pulled him aside for a private conversation; I would have reported him to the authorities. Also, if I had already concluded that [REDACTED] was a racist, there would have been no point of informing him of that behind closed doors, where no one else would know. Who would benefit from me making such an accusation if there was no one there to hear it? Again, I would have reported him to the authorities. My goal was to advise [REDACTED] that he should be aware of the effect of his behavior on the people he serves, and that just in case there was any element of truth in what [REDACTED] said about the incident, I would hope that we would have no further such incident in the future. There are a great number [REDACTED] in Bethlehem, and I wanted to make clear the policy of my court and to nip in the bud any potentially inappropriate police behavior so that it might not spread like a cancer [REDACTED], who might come to think that such behavior is acceptable.

I take issue with Chief DiLuzio's statement that I "began questioning the officers". It was not my plan to conduct an investigation. I made it clear that I did not necessarily believe everything [REDACTED] told me, but I did believe that this defendant had a genuine impression that he was being mistreated because of his inability to speak English well.

If it was my intention to interrogate [REDACTED] I would have asked him why, after the Defendant demonstrated that he had a valid driver's license and a social security card, and did not possess the forearm tattoo of the suspect in the immigration warrant, he nonetheless felt it necessary to transport him to the police station. [REDACTED] is not a stranger or a foreigner. [REDACTED] knew he lived in Bethlehem and could have gone back and found him if it turned out the immigration warrant pertained to him. I did not ask.

I could also have asked [REDACTED] why, if it's true, he transported the defendant to the police station and, upon finding that the warrant did not pertain to him, did not have the decency to offer to transport him back to the south side to his vehicle. I did not ask.

I could also have asked him, if it's true, why he was chewing snuff or tobacco and spitting into a cup while he was interacting with a member of the public, I did not ask.

I could have asked him why he felt it necessary, without an articulation of probable cause, to search the defendant's vehicle, with or without his consent, for a mere traffic violation. I did not ask.

And finally, I could have asked whether the officer would have treated a non-Hispanic, white, college educated, English-speaking citizen the same way he treated [REDACTED]. But I did not.

November 29, 2019

Contrary to what you stated to me in our phone conversation, and what is stated by the two officers, at no time did I raise my voice at the officers. I have the utmost respect for our police officers. In 40 years as an attorney, I have never raised my voice to a Bethlehem Police officer, even on the rare occasion when I may have been angered by a situation. It is not my style, as anyone who knows me could attest. Secondly, I had no reason to raise my voice [REDACTED] because I had drawn no conclusion whatsoever about the incident; rather I merely wanted to warn him that this accusation was made and I would be concerned if that sort of thing was actually happening in Bethlehem.

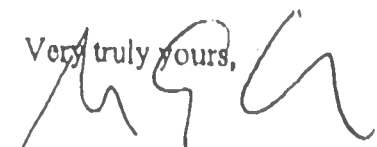
Based upon all of the foregoing, I take issue with DiLuzio's suggestion that my comments were unwarranted.

In discussing this matter with [REDACTED] I found him, both by his body language and his statements, to be inappropriately defensive, considering I was not accusing him of anything. In spite of his somewhat hostile and defensive demeanor, I accepted his denial and explanation and considered the matter settled and closed. Frankly I am shocked that the department has lodged a complaint against me in this matter as I believe it is unwarranted by the facts.

I would also point out that when I received a complaint of alleged racial profiling by a Bethlehem police officer, I did not report the matter to his superiors; I had the decency to have a private conversation with the officer in hopes that the matter would be discussed informally and amicably. It is unfortunate that Chief DiLuzio did not have the decency to accord me the same courtesy. I had hoped that [REDACTED] would accept my advice and statements in the spirit in which they were intended. Unfortunately, he went to the Chief, who apparently has chosen to attack me and make false accusations against me instead.

I have known Chief Diluzio since he was a young police officer at Lehigh University, some 40 years ago. As a prosecutor, I worked with him in Special Operations and assisted the department, on my own time, with the preparation and execution of search warrants. We have always had a cordial relationship, and have always had open dialogue between us. As a judge, I have been sensitive to the issues that affect the management of the police department, such as scheduling and otherwise accommodating officers' schedules.

Very truly yours,



Nicholas E. Englesson, Esquire
Magisterial District Judge

Enclosure

cc: Michael J. Koury, President Judge



GADFLY HAS REDACTED
38 ~~REDACTED~~ LINES OF TEXT
HERE THAT DO NOT
DIRECTLY BEAR ON
THE DISPUTES AT HAND -