

FST-CV-19-6039468-S : SUPERIOR COURT
: :
MARC D'AMELIO : JUDICIAL DISTRICT OF
: STAMFORD/NORWALK
v. : :
: AT STAMFORD
: :
CITY OF NORWALK, et al : JANUARY 11, 2019

MOTION TO STRIKE

Pursuant to Practice Book Section 10-39, et seq., the Defendant in the above-captioned matter, the City of Norwalk, hereby moves to strike the Plaintiff's First, Second, Fourth and Fifth Counts of his Complaint for the reason that said counts allege certain intentional actions that were committed by unnamed and unknown City of Norwalk employees and in that the City of Norwalk cannot be held liable for such intentional acts pursuant to CGS Section 52-557n(a)(2)(A) that provides as follows:

"(a) ... (2) Except as otherwise provided by law, a political subdivision of the state shall not be liable for damages to person or property caused by: (A) Acts or omissions of any employee, officer or agent which constitute criminal conduct, fraud, actual malice or wilful misconduct"

In addition, the Plaintiff's claim for attorney's fees and punitive damages against the City of Norwalk is not allowed. This claim must also be stricken.

The reasons for said Motion are more particularly set forth in the attached Memorandum of Law.

**ORAL ARGUMENT REQUESTED
TESTIMONY NOT REQUIRED**

**THE DEFENDANT,
CITY OF NORWALK**

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CERTIFICATION

I certify that a copy of this document was or will be immediately mailed or delivered electronically or non-electronically on January 11, 2019 to all attorneys and self-represented parties on record and that written consent for electronic delivery was received or will immediately be receiving electronic delivery.

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MEMORANDUM OF LAW IN SUPPORT OF MOTION TO STRIKE

I. Factual Background and Context:

The Plaintiff brings this action alleging that certain “political enemies” of his within the Norwalk Police Department intentionally released police reports that pertained to his prior arrest on DUI and Risk of Injury to a Minor charges that should have been erased pursuant to the Erasure Laws of Connecticut (CGS Section 54-142a).

In the last election cycle (2018) the Plaintiff ran to unseat long-time incumbent and Senate Majority Leader Bob Duff for the 25th District seat in the Connecticut Senate. He lost by a tally of 63.2 percent vs. 36.8 percent of the vote.

In the midst of the campaign, it seems that the Plaintiff was contacted by a local ‘blogger’/on-line media reporter and asked about his prior arrest record. It appears that this reporter (the co-defendant, Nancy Chapman) had been sent by anonymous parties a number of documents pertaining to this prior arrest. Upon information and belief these records included (a) a copy of the newspaper article that ran when he was originally

arrested in January 2014 (a copy of this article is attached hereto as Exhibit A¹), (b) a copy of the Court Transcript pertaining to the disposition of his charges through entry into a Pre-Trial Diversion program, and (c) a redacted copy of a police report. Prior to receiving these documents Ms. Chapman was contacted by two of her 'readers' who informed her of Mr. D'Amelio's prior arrest history (see 'Nancy on Norwalk' (hereinafter "NoN") article "D'Amelio attorney says arrest expunged; threatens lawsuit" a copy of which is attached hereto as Exhibit "B").

It seems that Ms. Chapman also requested to receive a copy of the police report from the Norwalk Police Department as well. It seems that a copy of a "heavily redacted" police report was turned over to Ms. Chapman (to hold in addition to the more legible copy of the police report that she had previously received from an anonymous source).

According to the Police Chief (Kulhawik) this heavily redacted (and virtually useless) copy was sent to Chapman "in error" (see Par. 10 of the Plaintiff's Complaint). In fact, Norwalk Police Chief Kulhawik had asked Ms. Chapman to return the report – a request that was refused by Chapman (see NoN Article, Exhibit B – "*On Sept. 10, Norwalk Police Chief Thomas Kulhawik advised that the report was released in error, and asked that it be returned. NoN declined*").

As stated in this news article, Ms. Chapman's reporting on the story was "based entirely on the report that arrived by mail, which has far fewer redactions than the report

¹ Note: this copy of the Article was received from the Norwalk Public Library that keeps copies of the newspaper, The Hour, on file. This news article is open and accessible to any member of the general public.

provided by the Norwalk Police” (emphasis added) (see NoN Article attached as Exhibit “B”).

It is essential and important to note that the NoN Article (Exhibit “B”) ran on October 9, 2018. However, almost two (2) weeks prior a newspaper article ran in the local newspaper, The Hour, on September 28, 2018 (see copy of The Hour article attached as Exhibit “C”). It appears that the Plaintiff’s campaign sought to seize the initiative and change the narrative by redirecting the focus of any adverse publicity away from his arrest record and toward allegations to be levied against the Duff campaign for ‘dirty tricksterism’. This article described and detailed the Plaintiff’s prior history with the law.

It should be noted that there is no guarantee that Ms. Chapman would ever have filed her story had the Plaintiff himself not blown the whistle on himself by reaching out to the Hour newspaper in order to deflect attention and decry the actions of the ‘Duff Campaign’. Thus, it appears that the Plaintiff has not suffered any harm from the accidental release of a heavily redacted and useless police report (not relied on by Ms. Chapman) given that it was the Plaintiff and his campaign that actually were responsible for ‘letting the cat out of the bag’ re: his past history with the Police Department.

II. Nature of the Plaintiff’s Claims Against the City of Norwalk:

The Plaintiff alleges that certain (unnamed) “political enemies” of his “within the Norwalk Police Department” were responsible for the release of the police report (see Complaint Par.12). The Plaintiff further alleges that the acts of these unnamed employees

of the Police Department were done intentionally (see. Par. 11 – “Said reports were not released in error”).

Thus, in the First Count the Plaintiff alleges that the City of Norwalk is liable to him in that certain of its employees within the Police Department intentionally violated CGS Section 54-142a by releasing a copy of “an un-redacted copy of the police report” to NoN.² In the Second Count it is alleged that the City is liable for the release, by certain unnamed employees, of the redacted copy of the Police Report.

In the Fourth Count the Plaintiff alleges that he was caused to suffer the negligent infliction of emotional distress. However, it is alleged that this emotional distress was the byproduct, once more, of the intentional acts of these alleged political operatives clandestinely conducting political attacks from within the bowels of the Department. Thus, this claim too is based on the alleged intentional acts of City employees.

Finally, in the Fifth Count, the Plaintiff alleges that the City intentionally inflicted emotional distress upon him. In this count it is alleged that the “Norwalk Police Department’s action of releasing the police reports...was intended to cause the Plaintiff to suffer severe emotional distress, in violation of Connecticut law” (see Par. 40)³.

² Note: there is absolutely no evidence that there was ever an unredacted copy of the report ever released. In fact, Ms. Chapman states to the contrary in her article, Exhibit “B”).
³ It should be noted that while in the Fourth Count the infliction of the emotional distress was a negligence caused result of the release of the records, and that in the Fifth Count the infliction of the emotional distress was the result of an intent to cause this harm, in both instances the underlying act is alleged to have been the intentional release of the police records.

III. Law and Argument:

A. Standard on a Motion to Strike

The purpose of a motion to strike is to challenge the legal sufficiency of the allegations of a complaint for failure to state a claim on which relief can be granted. Practice Book § 10–39. The motion admits all facts that are well pleaded; *Mingachos v. CBS, Inc.*, 196 Conn. 91, 108, 491 A.2d 368 (1985); but does not admit legal conclusions or the truth or accuracy of opinions. *Maloney v. Conroy*, 208 Conn. 392, 394, 545 A.2d 1059 (1988). On a motion to strike, the trial court's inquiry is to ascertain whether the allegations in each count, if proven, would state a claim on which relief could be granted. Practice Book § 10–39(a). A motion to strike is properly granted if the complaint alleges mere conclusions of law that are not supported by the facts alleged. *Novamatrix Medical Systems, Inc. v. BOC Group, Inc.*, 224 Conn. 210, 215, 618 A.2d 25 (1992).

B. A Plaintiff May Not Hold the City Liable for the Alleged Intentional Wrongful Acts of Its Employees

In this case, the Plaintiff intends to hold the City of Norwalk liable for the intentional acts of certain of its unnamed/unidentified employees (allegedly, “the plaintiff’s political enemies within the Norwalk Police Department”).

Connecticut General Statutes Section 52-557n(a)(2)(A) provides as follows:

“(a)(2) Except as otherwise provided by law, a political subdivision of the state shall not be liable for damages to person or property caused by: (A) Acts or omissions of any employee, officer or agent which constitute criminal conduct, fraud, actual malice or wilful misconduct”

“Section 52-557n(a)(2)(A) expressly provides that a political subdivision of the state shall not be liable for acts or omissions of its employees that constitute criminal conduct, fraud, actual malice or wilful misconduct .There is no dispute that the town is a political subdivision, and our Supreme Court has held that the term wilfulness is synonymous with intentional. (Internal citation omitted; internal quotation marks omitted.)”, *Gerrish v. Hammick*, No. CV166070583S, 2018 WL 3060082, at *5.

“A municipality may not be held liable for the intentional acts of its employees pursuant to § 52-557n(a)(2)(A) ...’ *Martin v. Westport*, 108 Conn.App. 710, 730, 950 A.2d 19 (2008)”, *Gerrish v. Hammick*, No. CV166070583S, 2018 WL 3060082, at *5.

“In *Pane v. Danbury*, 267 Conn. 669, 685–86, 841 A.2d 684 (2004), the Connecticut Supreme Court upheld a trial court's decision to grant a motion for summary judgment in favor of the city on an intentional infliction of emotional distress claim because it concluded that the city could not be liable for the intentional act of its employee under § 52–557n(a)(2)(A)”, *Metallo v. Torrington Bd. of Educ.*, No. LLICV095007012S, 2010 WL 2573931, at *6.

As noted above, when the Police Chief attempted to explain that the criminal record was released ‘in error’, the Plaintiff went to great pains to take a contrary position. In fact, the Plaintiff has specifically plead that the report(s) “were not released in error” (Par. 11). It seems that this claim (the improper and intentional release of a report that should have

been erased pursuant to CGS Section 54-14a) is most akin to the defamation claim that the Plaintiff has leveled against Chapman⁴.

It is quite clear that a municipality cannot be held liable for the defamatory statement of one of its employees or any of their willful torts.

In the case of *Metallo v. Torrington Board of Education*, supra, the Plaintiff alleged, inter alia, that an employee of the Board of Education (the Superintendent) made defamatory and false accusations⁵ against him in a meeting with others present. It was further alleged that the Superintendent leaked various allegations and innuendos about the Plaintiff's conduct and interactions with another principal that were picked up in the press and various media outlets.

After the Plaintiff was terminated by the Board, he brought an action against the Board and the Superintendent alleging defamation among other claims.

It was held that the Board's Motion to Strike as to the defamation claim was to be granted. It was agreed that a claim of defamation alleges an intentional tort. The Plaintiff argued, however, that the provisions of CGS Section 52-557n(a)(2)(A) were not intended to exempt a municipality from the wanton acts of one of its employees⁶. In dismissing this argument, the Court held as follows:

⁴ In a defamation claim the Defendant is accused of intentionally making a false statement. In the Plaintiff's 'wrongful record release' claim, it is alleged that political operatives within the Department intentionally released information that should have been erased and therefore continuing to keep them on the books as if not expunged - which would be akin to fostering and delivering a false statement.

⁵ It was alleged that the Plaintiff, a school principal, was having an affair with another principal and engaging in other "dishonest and unprofessional behavior".

⁶ The Plaintiff argued that the Common Law exemption prevailed over or was not changed by the Statute.

“(T)he common-law exemption for wanton acts directly conflicts with the plain text of 52–557n(a)(2)(A), which states that municipalities are not liable for the wilful acts or omissions of their employees. Consequently, consistent with *O’Connor* (v. Board of Education, 90 Conn.App. 59, 877 A.2d 860 (2005)) the legislature intended to override the common-law exemption for wanton and wilful acts when it drafted 52–557n(a)(2)(A). The court grants the motion to strike count one as the plaintiff has alleged that O’Brien engaged in intentional acts for which the board cannot be held liable under § 52–557n(a)(2)(A)”, *Metallo v. Torrington Bd. of Educ.*, No. LLICV095007012S, 2010 WL 2573931, at *6.

In this case the Plaintiff clearly alleges that the City of Norwalk should be held liable for the intentional, willful and wanton acts of one or more of its employees. This is particularly true given the fact that the Plaintiff has failed to name who these “political enemies” are, what authority (if any) they have within the Department and whether or not they were acting within their authority as employees of the Norwalk Police Department.

C. The City May Not Be Held Liable for Punitive or Exemplary Damages (Attorney’s Fees)

It is well established in Connecticut (and elsewhere) that a municipality may not be held liable for punitive damages, attorney’s fees or otherwise for ‘exemplary damages’⁷

“In the overwhelming majority of jurisdictions which have considered [whether a municipality is liable for punitive damages], it is now firmly established that exemplary or punitive damages are not recoverable unless expressly authorized by statute or through statutory construction.... In denying punitive or exemplary damages, most courts have reasoned that while the public is benefitted by the exaction of such damages against a malicious, willful or reckless wrongdoer, the benefit does not follow when the public itself is

⁷ Punitive damages in Connecticut are limited to attorney’s fees less taxable costs, see *Avery v. Medina*, 151 Conn. App. 433, 449 (2014).

penalized for the acts of its agents over which it is able to exercise but little direct control.”
18 E. McQuillin, *Municipal Corporations* (3d Ed. Rev.1993) § 53.18.10. *City of Hartford v. Int'l Ass'n of Firefighters, Local 760*, 49 Conn. App. 805, 817–18 (1998).

In this case, at the end of each Count (even those involving the City of Norwalk) the Plaintiff seeks to be rewarded with “punitive damages” and “attorney’s fees”, etc. He cannot recover these off of the City of Norwalk. This is against public policy.

IV. Conclusion

It is evident that the City of Norwalk cannot be held liable for the alleged acts of one or more of its employees that amount to acts involving ‘criminal conduct, fraud, actual malice or willful misconduct’.

It should be mentioned that it is further quite clear that the disclosure of any police reports was not a deciding factor in the election for the 25th District Senate Seat. Given the fact that the margin of victory for Sen. Majority Leader Duff was 63.2 vs. 36.8 it is clear that D’Amelio was not a ‘hanging chad’ away from an Election Day victory. It has further been stated that the reporter, Chapman, did not rely at all on the report that was released by the Norwalk Police Department.

Finally, the Plaintiff’s claim for punitive damages and attorney’s fees (a/k/a “exemplary damages”) must be stricken as well.

**THE DEFENDANT,
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CERTIFICATION

I certify that a copy of this document was or will be immediately mailed or delivered electronically or non-electronically on January 11, 2019 to all attorneys and self-represented parties on record and that written consent for electronic delivery was received or will immediately be receiving electronic delivery.

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 /S/
M. Jeffrey Spahr

EXHIBIT "A"

The Sunday Hour

The Independent Voice of The Community For 142 Years | Edition 12 Vol. 143 |

TODAY
H 46 I, 32

Mostly sunny, with a W wind from 13 to 17 mph. Clear at night. SW wind from 0 to 10 mph. Partly A2

Today's Drawing: Victoria Rupas, Grade 1, All Saints Catholic School.



\$2.00

See SAH 11 Page A8

Police: Man drove drunk with 9-year-old in car

By STEVE ROBAR
Hear Staff Writer

NORWALK — A 45-year-old city man was arrested early Saturday morning for driving around South Main Street drunk with his 9-year-old daughter in the front seat and three complete strangers that he'd picked up from a bridge in the backseat, police said.

Detective D'Amelio allegedly told officers that he was driving around South Norwalk with his daughter, knocking out his windows from Madigan Sun when in an effort to reach his daughter a lesson on helping the less fortunate.

D'Amelio, of 11 Ellen St., was charged with operation while under the influence, risk of injury to a minor, failure to drive in proper lane and restricted turn violation. He was held on \$25,000 bond and given a court date of Jan. 23.

Police began following D'Amelio's black BMW after spotting the car making an illegal U-turn near the intersection of South Main and Raymond streets at 2:20 a.m.

The car began weaving

See DUI Page A8

WWW.THEHOUR.COM

DUI arrest in Norwalk

From Page A1

southbound on South Main Street, swerving numerous times into the northbound lane and, at one point, almost hitting the curb in the northbound lane, police said.

D'Amelio's vehicle was stopped at the intersection of South Main and Grove streets, police said. He immediately exited his vehicle and was told to get back in the car, according to police.

When an officer approached the vehicle, he noticed that a 9-year-old child was sitting in the front passenger seat, and three men, including a man who was not spaced parole for a shooting incident, was sitting in the backseat, police said.

D'Amelio explained that he had picked the men up at a corner store and was giving them a ride during his mission to bond out cash in South Norwalk and teach his daughter a lesson about helping the needy, according to police.

All three strangers were processed for warrants and released from the scene, police said. The 9-year-old was placed in a vehicle to keep warm during the investigation, police said.

D'Amelio filled all three child safety seats and was taken into custody, police said. His blood alcohol level was unavailable from police.

The 9-year-old was taken to her home, and her mother was notified about the incident, police said.

Police also notified the state Department of Children and Families about D'Amelio's arrest.

EXHIBIT

A

tabbies

EXHIBIT "B"

NANCY ON NORWALK

D'Amelio attorney says arrest expunged; threatens lawsuit

By Nancy Chapman

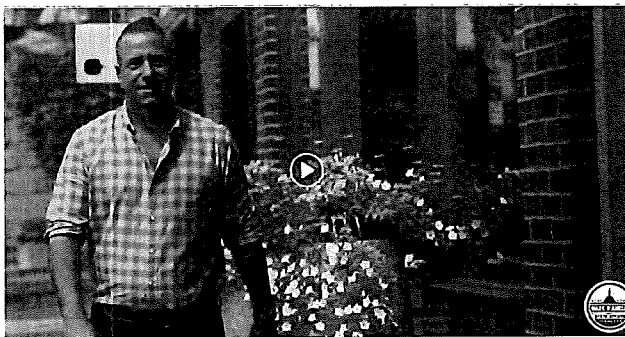
5:15 AM EST
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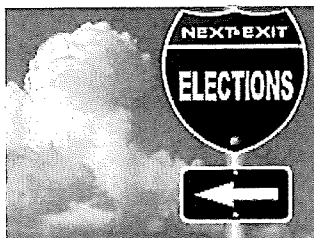
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Republican District 25 State Senate candidate Marc D'Amelio, in a promotional video.

NORWALK, Conn. - Republican State Senate candidate Marc D'Amelio says a 2014 arrest has



The election is Nov. 6.

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contends publication of his arrest is injurious to his reputation, and his attorney has threatened to sue NancyOnNorwalk if it reports the incident.

NancyOnNorwalk has obtained a copy of the police report, which alleges that D'Amelio drove under the influence with his 9-year-old daughter in the front seat and states that he was charged with risk of injury to a minor and driving under the influence. NoN also has obtained a transcript for a court hearing in which D'Amelio was granted Accelerated Rehabilitation, a diversionary program for first-time offenders which can lead to expungement of charges.

The arrest

Officer Garret Kruger wrote in the Jan. 11, 2014 report that he and another officer observed a black BMW parked on the corner of Raymond and South Main Streets; the vehicle made a U-turn on South Main Street and headed south, crossing into the northbound lane five times and once almost striking the opposite curb.

The officers stopped the BMW at about 2:30 a.m., and D'Amelio "jumped out" and walked toward their patrol car, according to the report. He was told to get back in the car, and officers observed his 9-year-old daughter in the front seat, and three men in the back.

Driving under the influence with a child in the car is considered Risk of Injury to a

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Kruger wrote. D'Amelio also said the three passengers were strangers he had met at a corner store and offered a ride home.

D'Amelio agreed to take Standardized Field Sobriety tests. He told officers that he had Parkinson's Disease, which would inhibit some of his physical movements, according to the report. D'Amelio could not perform many of the requirements of the test and at 3:23 a.m. blew a .1178 on his first breath test. A second test at 3:44 a.m. showed .1165, Kruger wrote.

Connecticut State Statute specifies that adults are driving under the influence of alcohol if blood alcohol level is .08 or higher.

Kruger's 2014 report states that a report of child abuse and neglect was filed with the Department of Children and Families (DCF).

One of the three men in the back seat was on parole and had been "arrested numerous times for narcotics and was arrested on August 25, 2005 for a shooting," Kruger wrote.

The state judicial website shows that two of the three men in the backseat have been convicted for multiple offenses.

One of the men has nine convictions on charges that include assault third degree and possession of narcotics, and a December 2013 burglary charge. The other has six convictions, including charges of selling narcotics and larceny.

[Redevelopment Agency hearing on Norwalk Center plan draws critical crowd](#) January 9, 2019

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had a report and intended to write a story.

"I have never been convicted of a crime, and you know what's going on right now," he said. "I do not have a police record, and have not been convicted of a crime. This is what you know it is. It's 'the Senate Majority Leader knows he's vulnerable,' and it is what it is. I'll stand by what I said. I do not have a police record. They want to dig things up."

Duff did not respond to an email asking about D'Amelio's allegation.

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D'Amelio's lawyer responds

Attorney Mark Sherman contacted NoN on Sept. 7 and said the arrest and charges were dismissed, erased and expunged in March 2016. He argued that publication therefore constituted libel. By law, publication of true statements is not libel.

On Sept. 25, NoN emailed D'Amelio and Sherman, advised that NoN planned to post a story Monday, and asked if D'Amelio and/or Sherman wanted to comment verbally or send a statement.

On Sept. 27, Sherman sent this email:

"On behalf of Marc D'Amelio, I'm providing the following response-w/ the hyper-link:

Mark Sherman, D'Amelio's Stamford criminal lawyer, confirmed that all charges against Mr. D'Amelio were dismissed and expunged by the Norwalk Superior Court. "The fact that

investigation, which we've asked the Connecticut State Police to handle.”

Expungement “is a court-ordered process in which the legal record of an arrest or a criminal conviction is ‘sealed,’ or erased in the eyes of the law,” according to criminal.findlaw.com.

Source of the report

Before NancyOnNorwalk received any documents, two readers contacted NoN and said the public should know of D'Amelio's arrest.

Shortly thereafter, NoN received by mail an envelope with a copy of the arrest report. The envelope, which had no return address, also contained a Jan. 12, 2014, news article from the Hour about the arrest, which tells the same story as the arrest report.

NoN also contacted the Norwalk Police Department and arranged to pick up a copy of the arrest report. The copy provided by Norwalk Police was heavily redacted, with nearly all mentions of driving under the influence blacked out. On Sept. 10, Norwalk Police Chief Thomas Kulhawik advised that the report was released in error, and asked that it be returned. NoN declined.

The reporting in this story is based entirely on the report which arrived by mail, which has far fewer redactions than the report provided by Norwalk Police.

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The court transcript

D'Amelio's wife, Heidi, was present in the court when D'Amelio was granted Accelerated Rehabilitation, the transcript obtained by NoN shows. DCF was not.

Heidi D'Amelio had no objection to the AR, the transcript states.

The aggravating circumstances were the presence of the 9-year-old in the car, Attorney Donna Krusinski is quoted as saying, and Wenzel replied that D'Amelio was looking at a C-class felony with the possibility of a 10-year sentence.

"If I may remind the Court, he pled to a reckless. Your Honor vacated it," Sherman is quoted as saying. "He did do a year probation on the reckless before. Your Honor vacated it based on changes in the law, which we're very grateful to."

"It's a difficult set of circumstances," Wenzel is quoted as saying. "Obviously you've got to make your top priority the safety and welfare of your children and you need to make better decisions."

"Biggest mistake of my life, sir," D'Amelio replied.

"Well I'm hoping that's the case and I'm hoping that from this point on you can use it as a way to learn," Wenzel replied.

"Everyone got lucky that time, okay?... let's go with a nine-month period of AR on this new matter. That will bring us to March 25, 2016."

D'Amelio court transcript 15-0626

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damage him, and said that Republicans believed that Common Council member Doug Stern (D-At Large) had provided the court transcript.

NancyOnNorwalk did not receive the transcript from Stern, a Democrat who is running for Judge of Probate.

The transcript, first provided to NoN on Sept. 17, is available to the public by request. NoN contributor Harold Cobin went to the Norwalk courthouse on Oct. 2 and asked for records concerning D'Amelio. Cobin provided the clerk with D'Amelio's name, birth date and address. The clerk said nothing came up in the computer because it was too old, and when he told her he wanted a transcript she sent him to the court reporter's office, Cobin said.

"I showed her D'Amelio's name on my notepad and she asked me who I was," Cobin wrote in an email. "I said I was a reporter and she asked me to wait outside while she made a phone call. Then she called me back in and had me fill out a form to request a transcript."

The transcript obtained by Cobin is identical to the one provided to NancyOnNorwalk on Sept. 17.

An open secret

Rumors of D'Amelio's arrest were rampant in Fall 2017 when D'Amelio was running for the Board of Education. NancyOnNorwalk

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D'Amelio's race for Board of Education was unsuccessful; he placed fifth in the race for four seats amid a Democratic landslide.

D'Amelio announced in January that he would take on Duff, then quickly withdrew, then in April resumed the campaign.

Republican Town Committee Chair Mark Suda, who is also a Norwalk Police Officer, declined a request for comment.

NancyOnNorwalk has received reports of Facebook users mentioning the incident, and D'Amelio replying that the comments were libelous. "Whoa there. Let me get this straight. You have lawyers going after people on this page, a Facebook page for the Norwalk Community, for things they said against you?" a commenter wrote to D'Amelio.

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D'Amelio blames Democrats after drunken-driving arrest surfaces

By Robert Koch Published 7:18 pm EDT, Friday, September 28, 2018

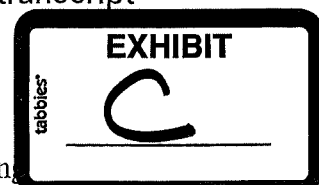


Marc D'Amelio

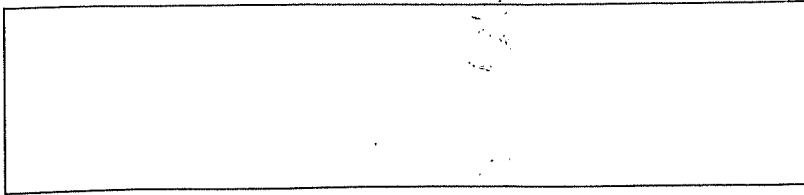
NORWALK — A Republican running for the state Senate believes politics are behind the recent release of a police report and court document detailing his drunken-driving arrest nearly five years ago.

Marc D'Amelio, who is running for the 25th District seat, said police improperly released their report of the incident after he had successfully completed an accelerated rehabilitation program. He suspects Democrats are behind the release of the report and also of a court transcript regarding his request to participate in the program.

<https://www.thehour.com/news/article/D-Amelio-blames-Democrats-after-drunken-driving>



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"Political bashing is alive and well in Norwalk, and no one is asking me about my opinion on the issues and what I plan to do," D'Amelio said.

"They're more interested in bashing me, my family and my reputation. I've already taken responsibility five years ago. We pay our debt."

D'Amelio is hoping to unseat Bob Duff, a Norwalk Democrat and state Senate majority leader, in the Nov. 6 election.

Asked Friday about the release of the report and court record, Duff said, "I had nothing to do with that. That's between him and the city."

Mayor Harry Rilling, a Democrat and the city's former police chief, said Friday that he had no idea when the records were released or who requested them.

"This is the first I'm hearing about this," Rilling said. "If they were released inappropriately, then we are going to have to find out why and who made the mistake."

D'Amelio was arrested Jan. 11, 2014, on South Main Street for driving drunk with his then 9-year-old daughter in the car in the front seat and three strangers whom he had picked up at a bodega in the back seat. He allegedly told officers he was driving around South Norwalk, handing out his winnings from Mohegan Sun casino, to teach his daughter a lesson on helping the less fortunate.

He applied for and was granted accelerated rehabilitation, which entailed maintaining a clean record for nine months. Afterwards, the charges were dismissed in Norwalk Superior Court.

At issue now, according to D'Amelio and his attorney, Mark Sherman, is the release of the police report and the court record to the news website Nancy on Norwalk.

Sherman related his concerns to Norwalk Police Chief Thomas Kulhawik, who responded in a Sept. 10 email that stated the information "was released in error."

"Our records systems checked through everything and found that the computer system had one charge still pending," Kulhawik wrote. "After reviewing your paperwork and reviewing the court info, they confirmed that after two years that charge was also dismissed, so the report was released in error. Our apologies for that."

Kulhawik said his department was examining its system to see what can be done to make sure "that this does not occur moving forward."

The police chief said he asked Chapman to return the report "as it was released in error and in essence should not exist. She refused the request," Kulhawik wrote in response to an inquiry by Hearst Connecticut Media.

As of 6 p.m. Friday, Nancy on Norwalk had not published a story on the issue.

Sherman has asked that an internal affairs investigation be conducted to determine whether and why an unredacted police report of the incident was released.

Kulhawik said Friday that the report had been redacted, "but one charge we had listed as guilty was also dismissed but mislabeled in our computer."

"As a result a redacted version was released, when in fact the report in its entirety should have been withheld," the police chief said. "It was human error in coding the dismissal when it was received from the court some time later."

Sherman, in a Sept. 7 email to Chapman, said the reports released to her were dismissed, erased and expunged on March 24, 2016. He attached a copy of Connecticut state statutes, which he said allows D'Amelio "to swear under oath that he's never been arrested, meaning that any new publication of an erased arrest is libelous."

Under state law, "any person who shall have been the subject of such an erasure shall be deemed to have never been arrested within the meaning of the general statutes with respect to the proceedings so erased and may swear under oath."

On Sept. 25, Chapman emailed D'Amelio, attaching a transcript of D'Amelio's court appearance as part of his accelerated rehabilitation request, and asked him to comment.

D'Amelio said he believes Democratic Councilman Douglas Stern, an attorney running for judge of probate in Norwalk Wilton Probate Court, requested and obtained the transcript.

Stern, asked Friday about the transcript, answered:

"I don't have that transcript," Stern said. "I really don't have a comment. It's public record. I was aware of the incident just hanging around the court house, but that's really all I have to say about it."

The Norwalk Superior Court reporter's office on Friday confirmed that a transcript involving the case was ordered. The office said it was not allowed to disclose who ordered it or when it was ordered.

D'Amelio, meanwhile, described the release of the records as "a witch hunt against me."

"I've made a mistake. It's in my past, and the only reason this is coming up now is because I'm the only candidate that's ever given Bob Duff a run," D'Amelio said. "He's never been challenged the way I've challenged him and he's up in arms."

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