

Legal News You Can Use
The Client Newsletter of The Law Offices of
David L. Moffitt & Associates
Fall 2006

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Moffitt Law Firm Uncovers And Proves Circuit Judge-Prosecutor-Police Perjury Conspiracy In 47 kg Drug Case

Just when we thought we didn't need another blow to our confidence in our legal system and our elected officials, along comes a case that has fundamentally changed the way our office views our system of justice. And not for the better.

The Bust. INKSTER, MI—9-8-05. Inkster police officers stop two vehicles leaving a bar and search them. In the trunk of the first car, they find 98 pounds of uncut cocaine. Nothing is found in the second car. Both drivers are arrested. Our client, driver of the second car, was charged with conspiracy to distribute cocaine with a reported street value of over 12 million dollars.

Constitutional protections against random search and seizure prohibit simply stopping a vehicle without an officer's having at least a reasonable suspicion of its current involvement in criminal activity.

Preliminary Exam Testimony Of Police And First Car Driver. At the preliminary examination in District Court, a pre-trial proceeding to determine if there is sufficient evidence to hold a defendant for trial in Circuit Court, the police revealed why they stopped the vehicles. They were tipped off to the bust by a confidential informant ["CI"] they met with on

many prior occasions, and relying upon his information, testified they staked out the bar and stopped the two cars.

They also testified, under oath, that they had *never* before the day of the arrest met with or spoken to the first car's driver, nor made any deal with him..

The driver of the first car similarly testified he had *never* spoken to or met the police before that day, but admitted that although his car actually had the drugs in it, he was released without charges that same day, and had made no deals with them.

Based upon this clear and seemingly straightforward testimony, the district court judge bound the case over for trial in Circuit Court.

Circuit Court Challenges To The Stop And Search. In Circuit Court, defense counsel asked for a "*Gates v Illinois*" hearing, challenging the legality of the stop of the vehicles in an effort to suppress the cocaine from introduction into evidence at trial, and claiming that the officers had only the word of an unnamed CI upon which to base their stop. Unless the actual existence of the CI is proved, and the reliability of his information to the police is established, the police could easily evade the constitutional protections against random stops by simply claiming in every case that an

imaginary CI had told them that the vehicle to be stopped had drugs in it..

In a *Gates* hearing, the trial judge personally questions the involved officers in secret, to avoid revealing the actual identity of the CI, reads the information given to the police by the CI, and often meets with and quizzes the CI to see if he really knew what he had claimed to have known and told. His information must have been current, *i.e.* not just that he saw the defendant with drugs “a month before,” and based upon his actual knowledge.

Circuit Judge Told CI's Identity And Declares Vehicle Was Legally Stopped. The trial judge, Wayne County Circuit Judge Mary Waterstone, came out of the closed *Gates* hearing, at which a record was made but which remained sealed, and announced that an actual CI indeed existed, that the CI's identity *had been* revealed to her, and that the CI's information to the police had been reliable enough for them to stop the vehicle.

Just before trial, on 9-6-05, the defense moved to dismiss the case, asserting that if the CI and the driver of the first car happened to be the *same* person, then the testimony of the police and driver of the first car at earlier proceedings would all be false, and there would thus have been no valid basis for the vehicle stop.

The judge impatiently repeated her finding that a CI “existed,” and told the defense on the record in doing so that “I have no reason to believe that the information testified to was not correct....”

Unknown to the defense, the prosecutor and the circuit judge *meanwhile* held a secret meeting two days later, on 9-8-05, at which a sealed record was made, to discuss that very challenge by defense counsel that the circuit judge had again just denied, and again on 9-19-05.

First Trial. The trial, handled by other counsel, began 9-12-05 and lasted 2 weeks. The client [driver of the second car] and the driver of a

truck accused of delivering the drugs to the bar before it was loaded into the first car, were the defendants. The police and the driver of the first car testified just as they did in preliminary proceedings; the police, that they were tipped off by a CI whom they had met with on various prior occasions, and the driver of the first car, that he didn't know that his vehicle contained drugs, that he had never met or spoken to the officers before in his life, and that he'd never made any deals with them.

The jury came back with its verdict: the truck driver was guilty, but they were “hung,” that is, unable to decide, whether the client was guilty or not. He would have to be re-tried.

Moffitt Law Firm Brought In As Specialist Mr. Moffitt, a former winner of the “Most Distinguished Brief To The Michigan Supreme Court” Award, was brought in as a technical specialist for the client to re-argue for dismissal, and to appeal if this was denied. He was soon convinced something was very wrong with the proceedings.

At the re-argument of the motion 3-17-06, Mr. Moffitt insisted that if the first car's driver and the CI were the same person, that all previous proceedings were perjured, and that the case must either be dismissed, not re-tried, or that all the first car's driver and the officers should be prohibited from testifying in the second trial.

Judge Waterstone tried to have the motion heard quietly at the bench, but Mr. Moffitt insisted it be heard out loud in open court. The prosecutor, chief of the Wayne County Prosecutor's drug unit, argued that the defense attorney in the first trial deliberately asked questions that were intended to elicit perjury or to improperly force the revelation of the identity of the CI, saying, “If they don't want any perjured testimony to come out, then they shouldn't ask those questions.” The courtroom exploded with

laughter.

The flustered judge, to the audible gasp of the assembled prosecutors, defense attorneys, and litigants in the court room, ruled that *no* questions that tended to elicit perjured testimony, that is, lies,

Emergency Appeal To COA Of Circuit Judges' "Hear No Evil" Decision. Mr. Moffitt filed an emergency appeal of the circuit judge's bizarre ruling to the Michigan Court of Appeals["COA"], because the trial was now less than two weeks away. Included was a separate motion specifically asking the COA to look at the sealed *Gates* hearing transcript, the hearing where the judge learned the identity of the CI, so the COA could see for itself if the first car driver was the same person as the CI, if all the prosecution witnesses had been lying, and if Judge Waterstone would have known it all along.

COA Decision: "We Prefer To Stick Our Heads In The Sand." On Friday 3-24-06, the COA decision was received. Believe it or not, *it refused* to read the perhaps 15 page *Gates* hearing transcript to see for itself if the defense had been right all along, denied the appeal, and allowed the re-trial to proceed.

The Prosecution Blinks. Incredibly, the next morning, a Saturday, while Mr. Moffitt was contemplating the COA's just-received decision to do less than nothing, the prosecutor called, tersely admitted that the driver of the first car was in fact the CI, and hung up.

Armed with this bombshell admission, Mr. Moffitt now worked day and night to file an emergency appeal with the Michigan Supreme Court. But time had run out. The re-trial before Judge Waterstone was to start only 48 hours later.

First Re-Trial Date: "Judge, Something We've Been Meaning To Mention. . ."
By 11 a.m. 3-28-06, the pool of potential jurors had been waiting restlessly for almost two hours to begin the case. The prosecutor and the defense trial counsel had concluded preliminary matters, and just as the judge was about to order the bailiff to

from the prosecution witnesses could be asked of them in the second trial. Mr. Moffitt knew that such an unheard-of ruling could only mean one thing— a cover-up.

bring the potential jurors in, Mr. Moffitt stood up as appellate counsel for the defendant and asked to speak. "We have 41 people sitting out there waiting. So please be brief", said Judge Waterstone. Mr. Moffitt then in matter-of-fact tones accused the judge, the prosecutor, and the police of complicity in a perjury conspiracy of a degree unmatched in the history of Michigan jurisprudence.

Mr. Moffitt methodically and politely laid out the basis of his accusation. "Your Honor understands we're alleging your Honor's active complicity in the subornation of this perjury." The courtroom was silent. No such accusation had ever been made in the history of the State.

Stammering nervously, the judge denied complicity. "If I was unaware, how could I be complicitous?" "I would have to know what was going to be said." But Mr. Moffitt insisted the judge knew that what she had heard in trial were pre-planned, deliberate prosecution lies. She knew, having been previously told in the closed *Gates* hearing who the CI was, the minute he testified in front of her at the first trial as the driver of the first car. Mr. Moffitt insisted the judge disqualify herself from the case. The *Free Press* headline of 3-30-06 read, "*Wayne Co. Judge Steps Aside As Controversy Swirls In Drug Case.*"

New Judge Inadvertently Opens Pandora's Box. A new judge, Vera Massey-Jones, was appointed to hear the case. At counsel's request she ordered that all previously sealed transcripts be unsealed now that the CI's identity was out in the open. Then the second bombshell came.

The court reporter, responding to the order to transcribe "all" transcripts, not only turned over the closed *Gates* hearing transcript,

but *two others*, one that took place just before the first trial, 9-8-06, and one just after the testimony was completed, but before the case was given to the jury to decide, 9-19-06. They were held without defense counsel present. In them, the judge and the prosecutor *discuss* the perjury the prosecution witnesses told before, and again during, the trial.

[Prosecutor]: “With regard to the (1st car's driver's) testimony, he was asked whether he had been offered any sort of deals or immunity. He said no. He obviously was offered a deal because he's the confidential informant.”

Numerous other false statements were discussed in the transcripts. The judge ignored court rules requiring reporting such secret meetings, when they are allowed at all, so the defense never knew they were taking place. A masterful *MetroTimes* article summarized the situation 5-3-06, “*Tainted Testimony—Attorney Levels Perjury Allegation Against Wayne County Judge, Assistant Prosecutor, Cops.*”

Michigan Supreme Court: “See No Evil.” Mr. Moffitt supplemented his already-filed emergency appeal to the Michigan Supreme Court with the from-their-own-mouths-proof from the revealed secret transcripts that the entire first trial was a travesty. “It’s outrageous,” said a University of Michigan law professor quoted in the *MetroTimes*. Not to the Michigan Supreme Court [“MSP”], though. It declined any consideration of the matter, and refused to block the re-trial.

New Judge: “Let's Leave Bad Enough Alone. . . Except For You.” Newly appointed trial judge Vera Massey-Jones had a reputation for independence, and it was hoped that she would not tolerate the high court’s indifference to this official corruption. Mr. Moffitt brought a new Motion To Dismiss, based upon now-indisputable proof. Meanwhile, the prosecution, on the defensive, transferred the involved prosecutor to another unit and filed a “confession of error,” a half-hearted admission of “irregularities,” with the COA in the convicted truck driver’s case, clearing the way for his own re-trial.

[The prosecutor] [referring to a police witness]: “He committed perjury knowingly, all in efforts to keep the CI confidential.”

[The Court:] “So I think it was appropriate for him to do that.”

* * *

The Motion To Dismiss before the new judge was heard. To the astonishment of the packed courtroom, Judge Massey-Jones announced she would *not* disturb the rulings of the now-disqualified Judge Waterstone that had earlier denied the motion. “You won’t ‘disturb’ the ruling she made when she was still covering up her involvement in the conspiracy? That is to tantamount to joining the conspiracy yourself !” argued Mr. Moffitt.

With newspaper attention of the case mounting, Mr. Moffitt moved for a full disclosure under oath by the Prosecutor's Office and Judge Waterstone of all the lies told in earlier proceedings, and production of all their private papers and notes regarding them. Judge Massey-Jones, evidently not taking kindly to the increasing heat on her colleague, suddenly reneged and “disturbed” one of the disqualified judge’s rulings, deciding, without even a prosecution request, to overturn her order allowing Mr. Moffitt to appear in the case on a limited basis to bring various technical legal challenges. Announcing “We don’t recognize *down here* those...limited appearances,” which are of course perfectly permissible under the states' court rules, she all but forced Mr. Moffitt out of the case, knowing full well she was leaving as the defendant's sole attorney the let's-not-rock-the-boat trial counsel.

Re-Trial. Mr. Moffitt watched from the sidelines the painful spectacle of the re-trial being conducted by other counsel in almost complete disregard of the recommendations made by Mr. Moffitt to preserve the client's maximum appeal rights over such rulings.

The truck driver flipped and testified for the prosecution. The disqualified circuit judge,

called as a trial witness, admitted that she knew of and overlooked the perjury in the first trial, explaining that she did so to “save the life” of the CI. [Note: the CI, fully identified in the newspaper

As Mr. Moffitt and his smart, ravishingly beautiful Office Manager, Lynn [she made us write that] sat in court quietly taking notes, the prosecutor accused him of trying to “intimidate” prosecution witnesses. “He's sticking his chest out at them” was the bizarre claim to Judge Massey-Jones. The judge immediately ordered Mr. Moffitt *banned* from the entire courthouse, then, knowing Mr. Moffitt was unlikely to take this lying down, decided to get confirmation from the two witnesses. Both said under oath they didn't have a clue what the prosecutor was talking about. The judge lifted the order.

The Attorney General: “What, Me Worry?” Unable to improve the trial's conduct, Mr. Moffitt opted to pursue intervention in the case by the Michigan Attorney General's [“AG”] Office.

The AG's office is the supervisor of all prosecuting attorneys in the state. Mr. Moffitt, on behalf of his client, sought investigation and prosecution of the police, prosecutor, and judge, disqualification of the Wayne County Prosecutor's Office [because they'd have to prosecute their own employee] and assignment of an outside special prosecutor.

But letters, phone calls, and repeated press inquiries failed to get the AG's Office to even acknowledge the existence of the matter to date. Why? Immediately before his election as Attorney General Mr. Cox was a Wayne County assistant prosecutor. Evidently prosecuting policemen, judges, and his old prosecutorial colleagues is not part of his current re-election plan.

When the re-trial ended, elected Wayne County Prosecutor Kym Worthy, responding to the *News'* page one story, *praised* the accused prosecutor, and instead blamed misconduct of the Inkster Police for the debacle. Inkster Police Chief Gregory Gaskin, quoted in a 6-22-06 article in the Inkster *Ledger Star*, retorted that “my officers did exactly what they were asked to do by the prosecutor.”

stories, is still alive, well, and not under any protective custody as this newsletter goes to press].

Read the bizarre conclusion of the defendant's re-trial, handled by other trial counsel, in “*Taint Right*,” the *MetroTimes* full page follow-up story 6-14-06, and in the page one 6-19-06 *Detroit News* story, “*State Probes Why Perjury Allowed*.”

It's Not Over Yet. The client has filed grievances, challenges to their law licenses, against both the prosecutor and the disqualified judge which are under consideration by the State Bar. A separate “forfeiture” case, in which the police attempt to take all the defendant's personal and real property allegedly bought with illegal activity proceeds, is still pending without present trial date. All the same issues will be brought up again in that case, because the same perjured testimony was used to legally justify the warrants resulting in the seizure of the property. *Stay tuned*.

Lawyer Joke

The defendant, jury, and lawyers were all assembled to start the trial. One juror raised her hand, and the judge motioned to her to speak.

“I can't serve as a juror, Your Honor. One look at that man convinces me he is guilty.” The judge sighed. “Ma'am, that's the prosecutor.”

Did You Know...?

1. That Warren Burger, Chief Justice of the U.S. Supreme Court, made such fundamental errors in the simple Will he wrote for himself that it caused his family a devastating loss of privacy and subjected them to the expense of having to go through probate court.
2. That the cost of a Last Will and Testament, and Durable Power of Attorney For Health Care seldom exceeds \$199.00, and that an estate plan with a revocable trust is often available for just \$999.00?
3. That Mr. Moffitt won the leading Michigan Supreme Court case establishing the law in medical malpractice post-operative infection

cases, *Wilson v Sparrow Hospital*, 411 Mich 587 (1981).

4. That Mr. Moffitt was featured in front-page stories in *Lawyer's Weekly* twice in the past 18 months for ground-breaking victories in auto

How To Contact Us

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What Kind Of Legal Work We Do

Our office has established an award winning, headline-making track record in many areas of the law. We handle:

All Personal Injury Claims, including Automobile and motorcycle accidents; Wrongful death; Injuries at defective property/buildings; Medical malpractice; Nursing home abuse; Defective products; Animal bites; Workman's compensation; and many more.

All Criminal Cases, from traffic tickets to federal indictments, including **Trial and Appeal** defense of: Homicide; Attempted murder and assault; Controlled substances possession and distribution; Robbery and larceny; Home invasion and breaking and entering; weapons/CCW; Embezzlement; Uttering and Publishing/bad checks; Credit card fraud; Retail fraud; Drinking/drugs and driving; Suspended license;

accident injury cases?

5. That our legal help for foolproof sale-by-owner of your home can cost as little as \$750.00?

Probation and parol violation; and many more.

Insurance, Disability And Social Security Claims

, such as PIP/Auto insurance wage, medical, and care benefit denials; Disability benefit denial appeals; Social Security benefit appeals; Fire insurance claim denials; Insurance fraud accusations; Homeowner loss claim denial; and much more.

Business Assistance, such as Preparing contracts; Buying and selling a business; Business start-ups; Incorporations, partnerships, and choosing a business form; Updating your corporate records and preparing annual reports; Minority shareholder protection; Debt collection; Transaction structuring; Idea and invention protection; Government agency/regulation compliance assistance; and much more.

Real Estate Transactions, such as Buying and selling homes and property; Environmental concerns; Broker commission disputes; Boundary disputes; Trespass; Condemnation; Landlord-tenant; Lease negotiation; Mortgage fraud protection; Mortgage foreclosure and land contract proceedings; Zoning disputes, variances and special use approvals; and much more.

Probate And Elder Law, such as Preparing and updating Wills, estate plans, durable powers of attorney, and trusts; Obtaining guardian and conservatorships; Detecting estate fraud and asset misappropriation; Name changes; and more.

Family Law, Divorce And Child

Custody Issues, such as raising/lowering child support, seeking/keeping the custody of a child, visitation rights, valuation of property, and protecting your interests in divorce.

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Your Client Newsletter
Keeping You Informed

**In This Issue: Moffitt Law Firm Makes Headlines
Uncovering Circuit Judge-Prosecutor-Police
Perjury Conspiracy In 47 kg Drug Case**

Address Service Requested

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A lawyer had a dripping faucet in his office bathroom. He called a nearby plumber.

The plumber arrived, easily took the entire faucet apart, replaced a worn-out washer, and put it back together, all within 5 minutes. Wiping his hands, the plumber said, "That will be \$250."

"What?" gasped the astonished lawyer. "That's more money than I make in an hour!"

Nonplused, the plumber looked at him. "I know. That's why I quit being a lawyer."

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That it was Henry Kissinger, President Nixon's National Security Adviser, who said:
“The illegal we do right away. The un-constitutional takes a little longer”

If the vehicle stop was illegal, that is, done without reasonable suspicion based upon reliable CI information, the drugs found could not be used in evidence at trial, and the defendant would likely go free

Call and leave the name and address of someone you'd like to receive our newsletter. They'll be informed of important developments in the law that may directly affect them, and they will have an attorney they know, trust, can ask questions of, and get answers.

The article detailed his 20 year public office career that culminated in his being named in 2004 as the “Most Outstanding Public Official In Southeast Michigan” by the Southeast Michigan Council Of Government [“SEMCOG”], carrying with it a fully paid scholarship for training at Harvard University's John F. Kennedy School of Government, which Mr. Moffitt successfully completed in 2005.

Lawyer Jokes

Posted in the laboratory of Big Cosmetics Company was the following notice: Effective immediately, due to the increase in animal rights group lawsuits over testing cosmetics on rats, our laboratory will immediately begin to use lawyers to test its products, because:

- A. There is no shortage of lawyers.
- B. Lab technicians don't get attached to them.
- C. There are things you simply can't get a rat to do.

* * *

5. That if your will contains a “testamentary trust,” distributing monies to heirs as they turn certain ages, it practically *guarantees* that your heirs will have to go through the expense of probate court for *every year* that the trust is in effect?

