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COMMONWEALTH OF MASSACHUSETTS

BRISTOL, SS.

SUPERIOR COURT DEPARTMENT

DOCKET NO: 1773CR00361

1773CR00365

1773CR00371

1773CR00362

COMMONWEALTH

BRISTOL SUPERIOR COURT

FILED

V.

APR 11 2025

STEVEN ORTIZ, TOMMY ORTIZ,

JASON DAROSA, AND

KATHERINE ESPINAL PARADES

JENNIFER A SULLIVAN ESQ.

CLERK/MAGISTRATE

**COMMONWEALTH'S ASSENT TO THE DEFENDANT'S MOTION TO DISMISS BASED UPON
REVIEW OF THE MOTION HEARING EVIDENCE**

NOW COMES the Commonwealth in the above captioned matters and assents to the Defendants' motions to dismiss insofar as the evidence presented during the motion hearing and the Court's previous findings in Commonwealth v. Martinez¹ clearly establishes the entire investigation in this matter was tainted and irrevocably compromised by the gross misconduct of former New Bedford Detective Jared Lucas and his inappropriate sexual relationship with Carly Medeiros. Wherefore, the Commonwealth assents to the Motion to Dismiss for the following reasons:

1. On May 21, 2024, in Martinez, the Court allowed a Motion to Suppress evidence relating to three search warrants that were issued on April 3, 2019, and authored by New Bedford Police Department. "The search warrants were based in large part on information provided by a confidential informant, Ms. Medeiros, and two controlled buys conducted...via Ms. Medeiros"² As a result of the investigation, Mr. Martinez was charged with trafficking in fentanyl, 36 grams or more, trafficking in cocaine, 18 grams or more, and unlawful possession of suboxone with intent to distribute.
2. In March of 2019, then New Bedford Gang Unit officer "Jared Lucas introduced Ms. Medeiros to (New Bedford narcotics detective) Kevn Barboza as a 'reliable' confidential information who had information

¹ See Commonwealth v. Martinez, Bristol Superior Court Docket # 1973CR00199, Paper #45.

² See Martinez, Paper #45 p. 2.

about (Martinez) being involved in illegal narcotics sales.” “Mr. Lucas told Det. Barboza that Ms. Medeiros provide information in the past in an investigation that led to the seizure of fentanyl and the arrest of the target.”³

3. “Based on the information provided by Ms. Medeiros, Detective Barboza started (an) investigation.” After additional investigation by the narcotics detective, “three search warrant applications were granted and executed....”⁴
4. “...Lucas retired from the New Bedford police department in August 2021. In July of 2022, Carly Medeiros identified herself publicly as a person involved in at least two New Bedford police investigations, (Martinez) and another involving a different romantic interest of Ms. Medeiros, Steven Ortiz.”⁵
5. In her public outing, Ms. Medeiros “allege(d) that she was in a sexual relationship with Mr. Lucas for at least seven years, starting in 2013, when he was a patrol officer. She was seeing him in an on-again-off again fashion.”⁶
6. “In a text message exchange, both Mr. Lucas and Ms. Medeiros talk about their seven-year relationship. The texts are sexually explicit and verify that the two had an intimate relationship. Ms. Medeiros and Mr. Lucas talked over text about setting up a video call where they could watch each other perform sexual acts. To that end, Ms. Medeiros suggest that she would start a fight with “him” (presumably Mr. Ortiz) to justify her sleeping in the living room.”⁷
7. The Court conducted an evidentiary hearing over three days in the winter of 2024. Ms. Medeiros and Detective Barboza testified. Jared Lucas did not testify. The Court concluded, “I do not find Ms. Medeiros a believable witness. While I do find that Ms. Medeiros was having a sexual relationship with

³ Martinez, p. 2-3.

⁴ Matinez, p. 3. – This is the same Steven Ortiz that is a party to the instant motion.

⁵ Martinez, p. 3.

⁶ Martinez, p. 4.

⁷ Martinez, p. 5.

Mr. Lucas, I base that finding upon the tangible evidence introduced in the form of uncontroverted text messages which contain a suggestive picture of Mr. Lucas and sexually graphic communications.”⁸

8. The Court further found that Ms. Medeiros had “many reasons to lie. She has a bias against, if not hatred for, Mr. Lucas and the New Bedford police department. At the time she reached out to Mr. Lucas, in March and April of 2020, and secured the text, she was re-involved with Mr. Ortiz. Her sexual relationship with Mr. Lucas has since been raised as the basis for motion to dismiss Mr. Ortiz’s case, which is pending. The more damage that can be inflicted on the New Bedford Police Department, the more favorable it will be for her boyfriend, Mr. Ortiz.” The Court further notes in footnote 7 that, “Mr. Ortiz accompanied Ms. Medeiros to court for the hearing on this motion (Martinez) and was present in the courtroom during her testimony.”⁹
9. The Court credited Detective Barboza that “he believed Mr. Lucas’ assertion that Ms. Medeiros was a reliable confidential informant and that he had no knowledge of the fact that they were in an intimate relationship.” And the Court further found that “Mr. Lucas consciously withheld the nature of his relationship with Ms. Medeiros because it was both against police department policy and likely that Detective Barboza would have declined to use Ms. Medeiros as a confidential informant if he had known of the affair and her motive to cooperate in the investigation.”¹⁰
10. The Court also found “more likely than not that when Mr. Lucas introduced Ms. Medeiros to Detective Barboza to use as a confidential informant in the investigation involving (Martinez), Mr. Lucas was either himself motivated by personal animus, because of his personal interest in Ms. Medeiros or aware that Ms. Medeiros was participating as a confidential informant out of personal vengeance or both.”¹¹
11. The Court concluded that “(i)t was gross misconduct for Mr. Lucas to have a sexual relationship, with his informant. That gross misconduct was exacerbated when Mr. Lucas, motivated by his own personal animus or in other to assist Ms. Medeiros in her personal vendetta, presented Ms. Medeiros to Detective

⁸ Martinez, p. 6.

⁹ Martinez, p. 7.

¹⁰ Martinez, p. 8.

¹¹ Martinez, p. 10.

Barbosa as a “reliable” confidential informant to be used to support search warrants targeting the (Martinez) without informing Detective Barbosa of the true nature of his or (Martinez’s) relationship with Ms. Medeiros. Such misconduct cannot go unaddressed.”¹²

12. In Martinez, the Court engaged in a legal discussion finding that “Mr. Lucas’s misconduct and Ms. Medeiros’ lack of reliability, if included in the affidavit, would have negated the magistrate’s probable cause finding. Accordingly....suppression is required.”¹³
13. A multi-day hearing was conducted on the instant matter. On August 15, 2024, Sergeant Mark Burke of the Massachusetts State Police testified. Burke testified, among other things, that he was provided information from Jared Lucas regarding Carly Medeiros, her knowledge of the Ortiz drug dealing operation, and Ms. Medeiros’ reliability. Ms. Medeiros was identified as a confidential informant that was in a relationship with Steven Ortiz.
14. As established through Sergeant Burke’s testimony, Jared Lucas brought Steven Ortiz and his family to Burke’s attention.¹⁴ Mr. Lucas told Sergeant Burke that he, Lucas, had a confidential informant (Carly Medeiros) who could get information regarding Steven Ortiz and his family’s drug operation.¹⁵ Lucas did not inform Sergeant Burke that he was in a relationship with Carly Medeiros.¹⁶ Burke listed Carly Medeiros as a confidential informant in his search warrant affidavits and included information she provided Lucas regarding the Ortiz family drug operation.¹⁷ At no point in time was the sexual relationship between Mr. Lucas and Ms. Medeiros disclosed to Sergeant Burke and, as such, that information was not included in an affidavit.
15. While his affidavit described Ms. Medeiros as a confidential informant, Sergeant Burke testified that he would in retrospect describe Ms. Medeiros as an “unwitting source of information” and his “understanding throughout the investigation was that when (Ms. Medeiros) got mad, she’d call (Mr.

¹² Martinez, p. 11.

¹³ Martinez, p. 12.

¹⁴ Burke p.28-29.

¹⁵ Burke p. 29.

¹⁶ Burke p. 42 and throughout Burke’s testimony.

¹⁷ Burke p. 77-81.

Lucas) and almost, like, a vent. My understanding was she didn't know her information was being used in a formal police investigation."¹⁸

16. Knowing what he knows now, Sergeant Burke testified that he would not have relied upon anything Carly Medeiros told him or independently rely on anything Jared Lucas told him. And, Burke testified, knowing what he knows now, that he would have made sure Jarred Lucas had nothing to do with the investigation.¹⁹
17. On September 23, 2024, now retired Jared Lucas, represented by an attorney, invoke his privilege against self-incrimination and elected not to testify. Since Mr. Lucas' refusal to testify, the hearing has been continued for various reasons.
18. The hearing evidence and Martinez decision clearly establish that the investigation into the Ortiz family drug operation was initiated because of information Lucas obtained during his sexual relationship with Carly Medeiros, his confidential informant. Had that relationship been disclosed, the investigation would not have commenced.
19. The Martinez decision, as described above, found gross misconduct through the inappropriate sexual relationship between Ms. Medeiros and Mr. Lucas. That inappropriate relationship is again at the center of the hearing currently pending before the Court.
20. After review of the evidence presented at the hearing, the Commonwealth has concluded that there is no sufficient independent basis for the wire without Ms. Medeiros. Even if there were, the gross misconduct by Mr. Lucas amounted to egregious police misconduct that compromised the entire investigation.
21. Here, the evidence produced at the hearing is similar to Martinez, insofar as it involves Mr. Lucas presenting Ms. Medeiros as a reliable confidential informant to be used to support applications for warrants without disclosing the true nature of his relationship with Ms. Medeiros. And, as was found in Martinez, the evidence at this hearing would support that "Mr. Lucas consciously withheld the nature of his relationship with Ms. Medeiros because it was both against police department policy and likely that

¹⁸ Burke p.255.

¹⁹ Burke p. 98-99.

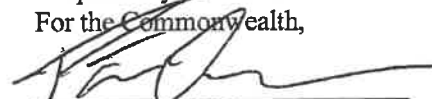
(Trooper Burke) would have declined to use Ms. Medeiros as a confidential informant if he had known of the affair and her motive to cooperate in the investigation.”

22. As in Martinez, “Mr. Lucas’s misconduct and Ms. Medeiros’ lack of reliability, if included in the affidavit, would have negated the magistrate’s probable cause finding.”²⁰
23. The same gross misconduct found in Martinez is present in the instant matters. And as articulated in Martinez, this gross misconduct should not go unaddressed.
24. In review of the evidence developed at the hearing, the Commonwealth can no longer contend that Ms. Medeiros played a small role in the investigation, that her part could be excised from the warrants and that the warrants could stand on their own, separate and apart from Ms. Medeiros’ information. Rather the evidence proves that Mr. Lucas and Ms. Medeiros’ sexual relationship and the judicial finding of Ms. Medeiros’ lack of credibility is inextricably intertwined in this case. The failure to disclose the relationship tainted and irrevocably compromised the entire investigation, and, as such, dismissal of the matters is an appropriate remedy.

Conclusion

For the reasons discussed above, the Commonwealth respectfully requests this Honorable Court allow the Defendant’s motion to dismiss.

Respectfully submitted
For the Commonwealth,



PATRICK D. DRISCOLL
Assistant District Attorney

²⁰ Martinez, p. 12.

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COMMONWEALTH OF MASSACHUSETTS

BRISTOL, ss.

FALL RIVER SUPERIOR
DOCKET NO. 1773CR00361

BRISTOL, SS SUPERIOR COURT
FILED

COMMONWEALTH

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MAR 28 2024

v.

1773CR00371

JENNIFER A. SULLIVAN, ESQ.
CLERK / MAGISTRATE

STEVEN ORTIZ

**DEFENDANTS' MOTION AND INCORPORATED MEMORANDUM OF LAW TO
DISMISS FOR EGREGIOUS MISCONDUCT**

Now comes the defendant, Steven Ortiz, and respectfully requests that this Honorable Court dismiss the charges against him with prejudice. The government's conduct in utilizing coerced sexual relationships to achieve their investigative means was egregious to the point that it violated Steven's 6th and 14th Amendment rights to Due Process as well as Article 12 of the Massachusetts Declaration of Rights. Commonwealth v. Jacobsen, 419 Mass. 269, 276 (1995); Bridgeman v. Dist. Attorney for Suffolk Dist., 476 Mass. 298, 316-17 (2017); U.S. v. Cuervelo, 949 F.2d 559 (2nd Cir. 1991); Commonwealth v. Manning, 373 Mass. 438, 444 (1977) (dismissal warranted due to egregious interference with defendant's Constitutional rights).

Introduction

To date, counsel has knowledge of three drug addicted women who have alleged that they were used as informants and victimized by New Bedford Police officers: Rose Katz, Tanya Pickney and Carly Medeiros. R 292, R 579. The New Bedford Police Department has engaged in egregious misconduct where officers have manipulated, coerced, and sexually victimized young women in exchange for information on cases.

hearing motion is by agreement with the court
4/11/2025 - after allowed

New Bedford Police Detective Jared Lucas actively manipulated and engaged in coerced sex with an unregistered confidential informant (CI). Lucas knew that the CI was young, vulnerable, drug addicted, and had been the victim in several cases in the past.

Knowing all of this, Lucas threatened the CI with jail time and to “out” her as CI if she did not provide information against Steven Ortiz and what investigators called Steven’s¹ drug operation. R579-580. Lucas provided drugs and protection to the CI in exchange for sex and information to commence and continue his investigation against Steven. Counsel has discovered that Lucas’ outrageous behavior is not uncommon to the new Bedford Police Department, but this egregious misconduct is so vile and shocking that dismissal is warranted.

In June of 2016, former Detective Jared Lucas of the New Bedford Police Department identified Steven as a major drug dealer to multiple state and federal agencies. R 344. Lucas based his alleged information about Steven originating from a single confidential informant, identified as Carly Medeiros. R 502. Medeiros, an admitted drug addict and girlfriend of Steven Ortiz, was the confidential informant that the Commonwealth used to attempt to establish probable cause in many of the surveillance and warrant applications in this case, all while Lucas was coercing Medeiros to give information about Steven while having sex with Medeiros. The Commonwealth never disclosed this manipulation to Steven prior to the litigation of any of his

¹ Because several targets in this investigation share the last name “Ortiz” Steven Ortiz will be referred to as “Steven” and Tommy Ortiz will be referred to as “Tommy” to avoid confusion.

Motions to Suppress, though the evidence indicates investigators knew about the nature of Lucas' relationship with Medeiros early in the investigation. Despite the fact that Lucas was not in the narcotics unit, he was present for every part of the investigation into the Ortiz family, including reviewing wiretap conversations, conducting surveillance, and was on the scene when Steven was arrested on June 7, 2017. R 529.

On September 28, 2017, Defendant, Steven Ortiz, was indicted for two counts of violating M.G.L. c. 94C, § 40, Conspiracy to Possess with Intent to Distribute Heroin and Conspiracy to Traffic Heroin; a violation of M.G.L c. 94C, §32E(c)(4), trafficking in Heroin; and a violation of M.G.L. c. 266, §30, larceny by single scheme of amount greater than \$250.00. R1.

Medeiros Letter

On July 26, 2022, Medeiros disclosed the 8-year sexual abuse and misconduct by Lucas in a 147-page notarized letter to the Court. R9.

Medeiros' letter recounts her struggle with addiction and her victimization, including the abuse by now "retired²" police Detective Jared Lucas from 2014 through 2021. Medeiros' letter provided corroboration of Lucas' sexual abuse including, but not limited to, text and social media messages between Medeiros and Lucas, and Lucas's half naked pictures he sent to Medeiros. R 108. Lucas abused Medeiros for both sex and information about Steven and, at the same time, professed his love for her, as he groomed her as an informant. R107-141. Specifically, Lucas

² The New Bedford Police claim that Lucas has "retired" sometime after Ortiz was charged, in 2021.

told Medeiros, “[b]ut legit for 7 years now our love has never changed and you always hold my heart.” R 108.

In her July 26, 2022 letter, Medeiros recounts Lucas abuse, a few examples of which include: that Lucas had sexual intercourse with Medeiros in Lucas’ in his patrol car while he was on duty (R35) that Lucas gave Medeiros a jar of marijuana that he had seized from another party the day before in June of 2018 (R82); that Lucas warned Medeiros about search warrants being executed in locations that she was present (R45-46); that when Medeiros was pulled over by officers while driving without a license, Lucas used his influence over those officers to allow Medeiros to leave the scene³ without being charged (R75); and that Lucas gave Medeiros drugs and money to plant on Miguel Martinez (R67).

Medeiros and Lucas’ first encounter

Lucas forced his way into Medeiros’ life in the late Spring or early Summer of 2014. Medeiros was 22 years old at the time. Lucas’ immediate focus was to get enough information from Medeiros to investigate Steven Ortiz’s alleged drug operation. Lucas approached Medeiros and asked her if she was “Steven’s girlfriend” and if she was heading to Steven’s mother’s house. When Medeiros asked how he knew that, Lucas responded that he “knows everything.” R24. At some point, Lucas contacted Medeiros on Medeiros’ phone. R28. When Medeiros asked how

³ One of these incidents, involving Medeiros being stopped by police and allowed to leave due to Lucas’ intervention was confirmed by the New Bedford Police Officer Division of Professional Standards investigation. R158.

Lucas got her number, Lucas eventually told her that he allegedly obtained her number through the New Bedford Police information and investigating system. R34. Lucas asked Medeiros to “hang out with him.” Medeiros declined. Lucas then provided Medeiros with information about Steven that Lucas knew would get Medeiros angry with Steven, specifically stating: “okay I didn’t want to be the one to tell u this but Steven isn’t worried about you he’s at a strip club in Fairhaven with his brother and Jason.” R29-30. Lucas then offered to drive Medeiros to the establishment so that she could confirm what he was telling her was true. R30. Medeiros declined and then Medeiros walked to the establishment by herself, and allegedly witnessed Steven, confirming what Lucas had told her. R30. Medeiros called Lucas the next day. R30-31. Medeiros believed that as long as she stayed in contact with Lucas, had sex with him, and informed on Steven Ortiz, Lucas would keep her out of jail. R34.

In her letter, Medeiros explains that she would sometimes provided false information on Steven to Lucas because “I was furious at Steven for cheating on me so at that point I did not care. I just wanted revenge with Steven.” R10. Medeiros also states that “anytime I told [Jared] anything it was out of anger and frustration.” Id. Medeiros was often on drugs when she spoke with Lucas, and Lucas was aware of her drug addiction and the fact that she was high. R10. In fact, Lucas often provided drugs to Medeiros in exchange for information about Steven. R579.

Medeiros drug addiction and victimization

Medeiros began using drugs in 2012. R71. Medeiros would get high with her children's father and her own mother, and struggled with addiction for many years. R72. Medeiros told Lucas about her drug use "multiple times." R70. According to Medeiros, the first time that Lucas manipulated her for sex, she was offered Medeiros marijuana and mushrooms by Lucas. R32. Lucas knew Medeiros was an addict, was vulnerable, and was listed as a victim in many cases. R504. Lucas would often give Medeiros drugs or money for drugs during the course of his manipulation. R579. Lucas knew Medeiros had drugs on her every time she came to visit him at his home. R70. Rather than help Medeiros, Lucas took advantage of her by giving her drugs and manipulating her into having sex with him.

Medeiros tried to distance herself from Lucas on several occasions, to the point of trying to set Lucas up with a friend of hers (to no avail) so that he would stop pressuring Medeiros for sex and information about Steven. R47. Lucas manipulated Medeiros by continuing to insist on sex, while he fixed cases for Medeiros and helped Medeiros avoid arrest and jail. R45. Medeiros continued to give information to Lucas, despite feeling pressured by Lucas. Medeiros stated that she "felt super pressure every day to give people up... I felt obligated to do it because he was always helping me out for [some] kind of bull**** I was in[.]" R65. Medeiros was also petrified to end the relationship because she felt that if she stopped having sex with Lucas, "any moment he was going to have my door kicked in [to search her home]." R65. In fact, on one occasion when Medeiros told Lucas she no longer wanted to have sex with him, he laughed at her and

threatened to tell Steven that she was informing on him. R580. She told Lucas whatever he wanted to hear to keep him happy, so that he would not disclose her status as an informant.

During her struggles with drug addiction, Steven took Medeiros to treatment approximately four times. Each and every time after Medeiros had finished treatment, Lucas would give Medeiros drugs to get high. R 579. After a series of relapses, Medeiros had vowed to get her life back together in 2019 and tried to ignore Lucas. She explained why she wanted to make a change:

“I just want to do what’s right and not a tool for someone or a piece of meat to someone anymore like I was for Jared[.] His secret little sex slave that he could abuse and bribe whenever he wanted cause he knew I always didn’t follow the law how I was supposed to...” R72. Lucas continued his manipulation and hold on Medeiros.

Despite receiving this letter from Medeiros on July 26, 2022, the Commonwealth did not turn over a copy of the letter to defense counsel until December 20, 2023.

Division of Professional Standards Investigation

In late August of 2022, New Bedford Police Lieutenant Scott Carola received an email from the Boston Globe (the Globe) asking him to comment on the Medeiros letter, dated July 26, 2022. R 154-155. After attempting to get this letter from the Globe, Police Chief Paul Oliveira was directed, by the reporter, to obtain a copy of this report from the Commonwealth. The

Commonwealth told Chief Oliveira the letter could not be released. After explaining this to the reporter, the Globe released the report to Lt. Carola. R 155.

Sergeant Kevin Lawless of the Division of Professional Standards Office (DPS.) conducted a partial internal investigation. R 154. Sgt. Lawless never interviewed Lucas, ADA Butts, or Medeiros. No charges were ever sought against Lucas for his manipulation and sexual abuse of Medeiros, even though Sgt. Lawless developed evidence that Lucas was assisting Medeiros with criminal charges, and using his influence to prevent Medeiros from developing new criminal charges, while he was having sex with her. R 177.

In the letter, Medeiros alleged that five other New Bedford Police Detectives knew about Lucas' manipulation: Detective Gene Fortes, Detective Kevin Barbosa, Detective Lorenzo Gonzalez, an officer with the first name of Brian, and Detective Kory Kubik. R 14. With the potential exception of this unknown Officer Brian, all the other named detectives participated in Steven's case. When interviewed by Sgt. Lawless, all of these named officers denied knowing about Lucas' sexual coercion of Medeiros until 2022-2023. However independent investigation into these officers have shown that, at a minimum, Detectives Barbosa, Gonzalez and Fortes has shown that, at a minimum, their credibility has been significantly challenged.

1. Detective Kevin Barbosa

Detective Barbosa participated in the investigation in Steven's case. Detective Barbosa was present in the wire room and on surveillance logs. R559-577. In Commonwealth v.

Benjamin Duarte, evidence showed that Detective Barbosa illegally searched Duarte's phone to obtain a search warrant for Duarte's phone. Detective Barbosa testified that he had no memory of accessing the defendant's phone prior to the issuance of a search warrant being executed yet the motion judge found that Detective Barbosa had, in fact, illegally accessed Duarte's phone and used the information therein to support a search warrant. R583. Duarte's motion to suppress was granted on September 12, 2023. R583. Additionally, according to the publicly available New Bedford Police Professional Standards case file, Detective Barbosa has two sustained complaints, dated February 14, 2018, for improperly performing duties assigned and completing reports. R593.

2. Detective Lorenzo Gonzales

Detective Gonzales participated in the investigation in Steven's case; he was present in the wire room and conducted surveillance. R 559-577. Detective Gonzalez has five sustained POST commission entries, dated February 18, 2021, including sustained complaints of commission of an act contrary to good order and discipline of the department and failure to perform according to duties and regulations. R 584.

3. Detective Gene Fortes

Detective Fortes participated in the investigation into Steven and was present in the wire room and conducted surveillance. R 559-577. In her letter, Medeiros provides instances where Fortes was present for several of her interactions with Lucas, including: several occasions where

Fortes and Lucas met with Medeiros and her friend, Clifton Jefferson; an occasion where Fortes let her drive away from the scene of a motor vehicle crash, and an occasion on May 9, 2016, where Fortes and Lucas picked up Medeiros in their police cruiser and at some point, responded to an incident while Medeiros was still in the car. R 37-38. Medeiros implied that Fortes may have had a sexual relationship with Jefferson. Sergeant Lawless conducted an interview with Jefferson, where Jefferson stated that Fortes would flirt with him, but they were not engaged in a sexual relationship. R 185.

While no sexual relationship with Jefferson could be confirmed by the investigation, it should be noted that Detective Fortes has been accused of having a sexual relationship with a different drug-addicted female confidential informant, in the Commonwealth v. Ivan Fontanes case, by the name of Rose Katz.

On November 1, 2023, Rose Katz testified that she had a sexual relationship with Fortes beginning in either 2014 or 2015. R276. The sex continued even after her incarceration in June of 2017, where Katz would call Detective Fortes and he would accept her jail calls and speak with her. R 276. Katz testified that Fortes would provide her with protection from arrest in exchange for sexual favors. R 275. Katz testified that when there were BOLOs posted on her car, officers from the New Bedford drug and gang unit would approach her and tell her that police were looking for her. R 298. Katz confirmed that she had sex with many other detectives and officers on the New Bedford Police Department. When asked who the other detectives and

officers were specifically, Katz replied: "I don't think we have enough time in the day." Katz eventually named five other law enforcement officers that she was sexually involved with: New Bedford Police Officers Hill, Fernandez, Barnes and Viera, as well as State Trooper Duarte. R 291. After naming these officers, Katz stated that the list of other officers engaged in misconduct "goes on." R 291.

Division of Professional Standards Findings

Sergeant Lawless found that Lucas was "dating" Medeiros for at least part the investigation into Steven, and that Lucas abused his power and influence regarding Medeiros, but because Lucas was retired, Sgt. Lawless did not recommend sanctions and did not refer the matter for prosecution. R 177.

The Medeiros letter and affidavit and the subsequent investigation by Sergeant Lawless revealed that Jared Lucas intentionally manipulated Medeiros in order to further his investigation into Steven Ortiz and to coerce, force, or intimidate Medeiros into further cooperation in Ortiz investigation. The DPS investigation also yielded evidence that Medeiros was an active heroin user while Lucas was engaged in sex with her and that Lucas knew that Medeiros was addicted to heroin. R 192.

Lucas never registered Medeiros as in informant until 2019, five years after he began using her for information about Steven Ortiz and manipulating her for sex. R 510.

Lucas' Involvement and Bias in Ortiz case

As evidence of his bias against Steven, during Lucas' participation in the wiretap on Steven Ortiz, Lucas erroneously transcribed statements of Steven to cast Steven as a leader in the alleged trafficking organization, despite the fact that the call did not portray Steven as any sort of leader. In this transcription, Lucas writes that Steven told Tommy: "**so call him back and tell him he'll need to pay me the 5 from next time all he got is 7[,]**" to imply Steven was directing others. R 303. This transcription is incorrect. What is actually stated on the call by Steven is: "**So he called me back and told me that he could give me the five** on the next one. All he got is seven." The voices on the call are clear. How Lucas could have possibly heard what he transcribed is unclear.

Based on the misconstrued statements, Trooper Burke stated, throughout his affidavit for wiretap, referred to the "Organization led by Steven Ortiz." R 321.

Lucas kept close tabs on Medeiros and constantly used his police authority to surveille Steven and report back to Medeiros. R60. During this time, Lucas remained in constant contact with Medeiros. Lucas called Medeiros so frequently that his own phone number appeared in a "numbers of interest" generated by the narcotic unit investigating Steven Ortiz. R 511.

The Investigation into Steven Ortiz

After manipulating Medeiros for over a year, using her for sex and information about Steven Ortiz, Lucas brought Steven to the attention of state and federal narcotic investigators in

June of 2016. R 344. This is specifically referenced in the "Operation High Stakes" Warrant affidavit authored by Trooper Burke:

" In early June of 2016, this affiant along with Special Agent Michael Belli from Homeland Security Investigations (HSI) and Special Agent Seref McDowell from the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) met with Detective Jared Lucas from the New Bedford Police Department Gang Unit to discuss a heroin distribution service operating in New Bedford. Detective Lucas informed us that a previously reliable confidential informant for the New Bedford Police Department, CI-1, had spoken to him recently about a Drug Trafficking Organization led by Steven Ortiz. According to CI-1, Steven Ortiz was in charge of importing kilogram quantities of heroin into New Bedford from Providence, RI." R 344.

According to Lucas, this CI (Medeiros) provided Lucas with intimate details regarding Steven's alleged drug trafficking investigation, including drug quantities, where they were stored, how they were moved, how they were distributed, what the proceeds were used for, locations for where drug transactions occurred, the names of people involved in the alleged "drug trafficking operation" and two phone numbers for Ortiz. R 344-45. Also, according to the affidavit, Lucas told Burke that:

"Following one meeting with CI-1, Detective Lucas informed this affiant that members of Steven's organization attempted to follow him and his partner in their unmarked New Bedford Police vehicle as they drove in the area of the city wherein the organization conducts many of its activities. This corroborated the information provided by CI-1 about the degree to which Steven Ortiz is concerned with surveillance by law enforcement." R 345.

Lucas was now using his own unconfirmed claims to bolster claims allegedly made by Medeiros to further his case against Steven. According to the discovery provided to the defense, to date, specifically the document entitled "CI-1 credentials," Medeiros is the CI that Lucas was

referring to in the two prior paragraphs. R 502. Despite Lucas' claims, Medeiros was not registered as a CI with the New Bedford Police in 2016 when she was alleged to have made these observations and given this information. In fact, Lucas did not register Medeiros as an informant until 2019² despite her involvement as the key informant in this case and her involvement in conducting controlled buys for the department in cases preceding her registration in 2019. R 510.

According to the New Bedford Police Confidential Informant Policy (General Order 5-02) enacted on December 22, 2016, all informants must register with the department. The informant's handler must bring the informant's information to a supervisor to determine if the informant is suitable to work as an informant. All New Bedford Police Detectives are required to know that confidential informant policy by reviewing and signing a copy on an annual basis. An informant "packet" should be completed prior to the informant taking any actions. R 268.

Lucas was a detective prior to the confidential informant policy being activated, and thus was required to read and sign the policy every year. Lucas used Medeiros for at least three years without registering her as an informant in violation of New Bedford Police General Order 5-02.

According to the affidavit in the criminal investigation, based on the information received by Lucas from Medeiros, "a multi-agency investigation was initiated with the goal of disrupting

² Medeiros is listed as an activated informant on 10/30/2018 according to R 510. "New Bedford Police Department-Informant Registration Form." However, the dates of her signature were 4/12/2019, and the Investigation by the NBPD Division of Professional Standards found that Medeiros was not registered as an informant until the 2019 date, after she had already conducted controlled buys for the NBPD. The investigator found that it was likely that Lucas misled his superiors about the date that Medeiros was activated.

and dismantling the (Ortiz drug) organization. Plans were devised to conduct surveillance on the group and to corroborate the information provided by CI-1.” R 345. The investigation was dubbed “Operation High Stakes” and commenced in July of 2016.

Lucas’ involvement during the multi-agency Ortiz investigation

July 2016

In early July of 2016, Homeland Security Investigations installed a pole camera at 14 Edward Street based on information provided by Medeiros. According to Lucas, Medeiros told him that this was a location “where the organization stored drugs and money and discussed their business.” R 346. However, investigators “observed no obvious business activity” at that location despite watching the area for several months. R 346- 347.

July 6, 2016- September 14, 2016

Relying on Lucas’ claims about Medeiros, investigators secured call records for a 5244 number, identified as Carly Medeiros, in a report prepared by Sprint on July 6, 2016. R 512

The Commonwealth knew of or should have known about Lucas’s manipulation of Medeiros as far back as July 6, 2016, when they received a file labeled: “774-634-5244, Carly Medeiros (tolls back)” which included a word document entitled “5244 Numbers of Interest” with a date in the computer file as modified on September 14, 2016. R 511. The numbers of interest included Lucas’ telephone number, calling Medeiros number so many times that it was labeled a “number of interest.”

The following entry is contained in the document: "508-789-8239 - No subscriber info. Numerous calls, long duration." R 511. The 8239 number belongs to Jared Lucas, as confirmed by Investigator Contact List and the Division of Professional Standards investigation. R 158.

As further evidence of the Commonwealth's knowledge of Lucas's manipulation and illegal contact with Medeiros, the Excel spreadsheet containing Medeiros' phone records inexplicably do not include Lucas' number despite the number being listed in the 5344 "Numbers of Interest" document and noted as having numerous calls of long duration with Medeiros. R 513-514. This begs the question of how would the Commonwealth would know to omit the Lucas calls, if the Commonwealth was unaware of the manipulation of Medeiros by Lucas, or at the very least, an unethical and inappropriate relationship between the two, even if the full extent of the sexual misconduct had not yet been exposed.

Because Lucas' number is absent from the provided Medeiros call logs, it is impossible to determine just how many "numerous calls" existed between the pair.

Week of December 11, 2016

According to the affidavit in this case, at some point in the investigation, prior to December 11, 2016, Lucas was involved in establishing surveillance at 862 South First Street, an address believed to be associated with Tommy Ortiz. R 367.

During the week of December 11, 2016, a second CI was allegedly used to conduct a controlled buy from Tommy Ortiz. During the week of December 11, 2016, Lucas, along with

other investigators, conducted surveillance on Tommy and Steven “as they drove from 862 South First Street directly to the pre-arranged meeting spot.” R 367-69. To date, it is not known if there in fact was a second informant, and if so, whether it was another drug addicted young woman that was being taken advantage of by the New Bedford gang and drug detectives.

January 24, 2017- March 6, 2017, Interference with Attorney Client Relationship

Under the “Associates” tab of the discovery disclosed on May 8, 2023, investigators took photographs of Attorney John Calcagni’s car, presumably on January 24, 2017, based on the date next to the file. Investigators entitled these photographs “John Calcagni for Tommy.” R 516 Attorney Calcagni actually represented Steven, a fact that investigators clearly knew on March 6, 2017, when they ran Attorney Calcagni’s financial information while he was representing Steven Ortiz. R 517.

Additionally, Medeiros’ affidavit stated that Lucas would ask her questions about Steven’s conversations with his attorney, specifically, Lucas asked Medeiros how Steven was able to pay for his attorney and asked Medeiros to listen in on Steven’s calls with his attorney and report what she heard to Lucas. Medeiros complied with Lucas’ demands. R579.

Based on this information, by January 24, 2017, investigators, including Lucas, knew that Steven was represented by Attorney Calcagni. Despite this knowledge, Lucas continued to manipulate Medeiros into disclosing confidential information on Steven, including Steven’s conversation with his attorney and the funds that Steven used to hire his attorney.

Wire Tape

On May 11, 2017, a Superior Court Justice granted wiretap applications submitted by the investigators in “Operation High Stakes” for phones belonging to Tommy Ortiz and Jason DaRosa. R 491. On May 19, 2017, officers began intercepting communications of Tommy and DaRosa. On May 31, 2017, the same Justice granted a wiretap application for two phone numbers associated with Steven: “Phone A”: 860-751-9445; and “Phone B”: 774-305-1889. R 456.

In the warrant affidavit, the very first section in the “History of the Investigation” section is titled “A. Information received by Detective Lucas (June 2016).” R 344. The affidavit is riddled with references to “CI-1” (Medeiros) including the line that “much of the information corroborated throughout this multi-agency investigation originated from a reliable Confidential Informant (who we know is Medeiros) for Detective Jared Lucas of the New Bedford Police Department.” R 344.

Lucas’ name appears multiple times on the “wire room” and surveillance attendance logs. R 559.

May 19, 2017: Wiretap Begins on Tommy and DeRosa’s phones.

Lucas was the first name to appear as signed into the “Wire Room” from 8:00 a.m. through 10:00 p.m. R 557. Lucas’ name appeared for the first time on the transcriptions when he transcribed a call, marked pertinent and monitored by Detective Fortes, between Tommy and

Steven Ortiz. R 303. This was the call where Lucas provided erroneous transcriptions to make Steven appear as the leader of the alleged drug distribution organization.

June 7, 2017- Steven's Arrest involving Lucas.

On June 7, 2017, Steven was arrested at 260 Fountain Street and charged with Trafficking Heroin in Excess of 200 Grams, Conspiracy to Violate the Controlled Substance Act, and a subsequent offence based on his 2005 conviction in New Bedford for Distribution of Heroin.

While no attendance logs for this date were turned over to the defense³, Lucas appeared to be present for Steven's arrest, as evidenced by his assistance in the arrest of Steven's codefendant at the scene, Katherine Espinal-Padres. R529. This corroborates Medeiros' assertion that Lucas was present during Steven's arrest. R41.

On June 7, 2017, investigators were surveilling Steven's residence at 16 Thatcher Street. According to investigators, at approximately 6:00 p.m. Steven was observed getting into the drivers seat of a black Honda Pilot, Medeiros was seen getting into the right passenger side of the Pilot, and a man named Hector Vasquez was in the right rear seat of the car. R526. Investigators allegedly observed Steven pull into the back of 260 Fountain Street parking lot. Investigators then allegedly observed a red Honda Accord parked next to Steven. R526.

³ The only attendance logs turned over to defense were for 5/19/2017-6/6/2017. Additionally, the arrest report for Steven does not list all officers present on the scene and simply stated that "Among the surveillance officers present in Fall River at the time were Trooper Jeff Whitehead (MSP) and Sergeant Shain Ramos (NBPD)" R 553.

Investigators believed that Steven was meeting with a drug distributor, based on Lucas' claim that Medeiros told him that Steven was meeting with his supplier because his alleged drug supply was low.

The arrest report states that while Steven was outside of the vehicle, officers claim they approached and "placed" Steven in handcuffs. They then claimed to have seen Medeiros and Vasquez in the car, and found within the car, "a brown powdery substance wrapped tightly in a clear plastic bag." R 526. Investigators claimed they then removed Espinal-Paredes, Medeiros, and Vasquez from their vehicles and "placed" them under arrest.

Medeiros version of events differs substantially from those in the arrest report. Medeiros asserts officers started jumping out of a truck, with guns drawn. One approached her window and stated, "bitch don't move[.] I'll blow your f***** head off." R42. That same officer smashed the drivers' side window. Next, Medeiros heard the back passenger side door open and witnessed several officers beating Vasquez. R42. The arrest reports and narratives for the June 7, 2017 arrest do not mention a window breaking nor any injury to Vasquez. The photographs taken on the day of the arrest do not show the windows or doors of the Pilot. R 599-618. However, an "injured prisoner" report from Hector Vasquez's booking notes the injury on Vasquez head and states that, "Detectives informed me the injury was caused as the result of broken glass from breaking a window in a vehicle that Hector was present for during his arrest." R 525.

260 Fountain Street is a location that was under surveillance during this investigation since at least December of 2016. The discovery documents provided to the defense contain many surveillance videos for the location dated all the way through May 26, 2017, as evidenced by R 531 marked “downloads before deletion.” Clearly, some files from 260 Fountain Street were deleted in this case. Curiously, there is no footage provided for the arrest of Steven at 260 Fountain Street on June 7, 2017.

Argument

I. THE LATE DISCOVERY IS MATERIAL, EXCULPATORY AND CONTAINS NEW UNINVESTIGATED EVIDENCE OF EGREGIOUS MISCONDUCT NECESSARY FOR ORTIZ TO DEFEND AGAINST THE COMMONWEALTH’S ALLEGATIONS

This evidence is material, exculpatory, and should have been disclosed. See Brady v. Maryland, 373 U.S. 83 (1963). The suppression of exculpatory evidence denies the defendant liberty without due process of law. Id. at 87. The Constitution mandates that the disclosures be made “at such a time as to allow the defense to use the favorable material effectively in the preparation and presentation of its case.” See Miller v. United States, No. 07-CF-1169 (Mar. 3, 2011 D.C. Cir.); Edelen v. United States, 627 A.2d 968, 970 (D.C. (1993); Commonwealth v. Rodriguez Nieves, 487 Mass. 171 (2021). Most courts, including the United States Supreme Court, have recognized that such disclosures should comport with the American Bar Association’s Standard for Criminal Justice, which specifies that disclosure of exculpatory

information be made “at the earliest feasible opportunity” and “as soon as practicable following the filing of the charges.” Miller, No. 07-CF-1169) (Mar. 3, 2011 D.C. Cir.)

The withheld discovery contains new exculpatory evidence which the defendant has been unable to investigate. Hundreds of pages of discovery regarding Lucas’ misconduct and the potential misconduct of the New Bedford Police were disclosed to the defense on December 20, 2023. Specifically, the nearly 500 page DPS report, dated March 6, 2023 contains numerous documents and investigations into Medeiros’ claims of officers’ misconduct who were involved in the Ortiz case, some of the documents date back to 2016 and 2017.

In her letter, Medeiros explains that she provided some false information on Steven to Lucas because she was upset that she believed Steven was cheating on her. R10. Medeiros came to that belief based on information that Lucas gave her. R 10. Lucas was aware of Medeiros’ drug addiction and knew she was often high when he was extracting information from her R10, R579.

A plethora of allegations were made in the Medeiros letter against Lucas and other members of the New Bedford Police Department. While Sgt. Lawless found that Lucas was “dating” Medeiros for at least part the investigation into Steven, and that Lucas abused his power and influence regarding Medeiros, because Lucas was retired, he did not recommend sanctions. R 177. No charges against Lucas have been filed.

The revelations from this explosive confession and subsequent investigation requires defense to comb over tens of thousands of pages⁴ and audio files of previous discovery searching for Lucas' involvement in Steven's case.

The initial review of the discovery produced shocking and exculpatory results. Specifically, not only did Lucas mis-transcribe Steven's calls to make him appear to be a leader in the drug trade, the Commonwealth also doctored phone logs to hide that Lucas was in near constant contact with Medeiros, who was the Ortiz case's primary informant. Through investigation, defense determined that Lucas was involved in every aspect of Steven's case from the investigation's inception to the day of the arrest.

The basis of the investigation and the execution of warrants on this case were based on the assertions of Medeiros, whose credibility was not vetted by the New Bedford Police Department and had been coerced into a sexual relationship with Lucas, the lead detective is exculpatory evidence that severely undermines the entire investigation into Steven; without Medeiros' information, there would be no basis of investigation into Steven. Not only did the prosecution not turn over the exculpatory evidence as soon as was practicable, but it held onto the evidence of the investigation until 2023. This failure to disclose exculpatory information in a

⁴ Hundreds of the audio transcriptions are "locked" from defense in their current format. Defense was able to open most of these files through alternative methods but several still remain "locked." Thus, defense cannot determine if Lucas was involved in these transcriptions.

timely manner now requires defense to spend unreasonable amounts of time comparing every piece of formerly disclosed discovery to identify the amount of times that Lucas influenced the investigation.

II. THE LAW EXPRESSLY PROVIDES FOR DISMISSAL OR EXCLUSION OF EVIDENCE TO REMEDY DISCOVERY VIOLATIONS

In analyzing discovery violations, a prosecutor is responsible for all knowledge and evidence possessed by the police. Commonwealth v. Baldwin, 385 Mass. 165 (1982). A prosecutor's duty to promptly disclose exculpatory evidence extends to evidence in his possession as well as that in the possession of any other agents who participated in the investigation. Kyles v. Whitley, 514 U.S. 419 (1993); Commonwealth v. Tucceri, 412 Mass. 401, 407 (1993). Even if the Commonwealth is presently unaware of the existence of any of the requested evidence, the prosecutor has a continuing duty to inquire of his police agents. Kyles, 514 U.S. at 438; Commonwealth v. Martin, 427 Mass. 816, 823 (1998) (S.J.C. reversed conviction because the prosecutor failed to turn over evidence from crime lab that prosecutor did not even know existed); Commonwealth v. Monteiro, 396 Mass. 123 (1985) (prosecutor responsible for police withholding discovery).

Thus, there is a clear duty on the prosecutor to continually inquire of police investigators and immediately disclose relevant discovery to the defense. However, that prosecutorial duty and the defendant's constitutional rights are meaningless if they are not enforced. As the

Reporter's Notes to Rule 14 observe, "[R]ights and duties are ephemeral indeed without remedies." As such, the Courts have been empowered with the sanctions of dismissal.

Federal courts and Massachusetts courts have both long since recognized that the late disclosure of discovery can violate constitutional rights and thus dismissal or exclusion of the late discovery is warranted. See Taylor v. Illinois, 484 U.S. 400 (1988); Chappee v. Vose, 843 F.2d 25 (1st Cir. 1988)(Trial courts may exclude witnesses from trial because of late disclosure); Commonwealth v. Lopez, 433 Mass. 406 (2001)(trial judge properly barred Commonwealth for calling newly discovered witness in its case-in-chief at trial because of late-disclosure by prosecutor); Commonwealth v. Lam Hue To, 391 Mass. 301 (1984)(dismissal with prejudice may be appropriate where prosecutor turns over discovery late).

In Massachusetts, "[u]pon the failure of the Commonwealth to comply with a lawful discovery order, a judge 'may impose appropriate sanctions, which may include dismissal of the criminal charge.'" Commonwealth v. Cronk, 396 Mass. 194, 198 (1985). See also Commonwealth v. Johnson, 365 Mass. 534 (sanction for unintentional failure to comply with discovery order); Commonwealth v. Gagliardi, 21 Mass. App. Ct. 439 (1986)(new trial because late exculpatory discovery); Commonwealth v. Lopez, 433 Mass. 406 (2001) (where defendant given late notice of new discovery close to trial, trial judge properly barred Commonwealth from calling witness in its case in chief); Commonwealth v. Lam Hue To, 391 Mass. 301 (1984)

(dismissal with prejudice may be appropriate because late disclosure can hurt defendant's investigation, strategy, and opening statement).

Here, the evidence implies that investigators knew that Lucas was abusing Medeiros as early as September of 2016. The evidence shows that Lucas was making frequent calls to Medeiros during the investigation, and that evidence of these calls had been omitted from Medeiros' phone records. It appears from the record that the Commonwealth never investigated the disappearance of Lucas' phone number from Medeiros' call records, and if the Commonwealth did inquire about the inaccurate records, this discovery was not disclosed to defense.

Here, the Commonwealth has disregarded this Court, the discovery rules, and the constitutional rights of Steven. The late disclosure of this discovery deprives Steven of a multitude of his constitutional rights, and the Commonwealth should be sanctioned for its actions and inactions. Commonwealth v. Manning, 373 Mass. 438, 442 (1977). Because of the late disclosed exculpatory evidence, all of Steven's motions to suppress will have to be relitigated, as such, this matter must be dismissed. United States v. Alvarez, 987 F.2d 77 (1st Cir. 1993)(reversible error where prosecution failed to timely disclose a statement during discovery and trial court had denied motion to exclude that statement).

III. THE COMMONWEALTH VIOLATED STEVEN'S 5th, 6th and 14th AMENDMENT RIGHTS UNDER THE FEDERAL CONSTITUTION AS WELL AS ARTICLE XII AND XIV OF THE MASSACHUSETTS DECLARATION OF RIGHTS WHEN IT ENGAGED IN OUTRAGEOUS

**MISCONDUCT AND FAILED TO DISCLOSE, LUCAS' BIAS AND HIS
MANIPULATION OF MEDEIROS FOR SEX AND INFORMATION,
DURING THE ORTIZ INVESTIGATION TO ACHIEVE ITS OWN
INVESTIGATIVE PURPOSES.**

Standard of Law

Massachusetts Courts have recognized that dismissal of an indictment may be necessary when the government's conduct is so egregious as to prejudice the defendant's right to a fair trial. Commonwealth v. Monteagudo, 427 Mass. 484, 485 (1998). Police conduct may be found to be egregious where it involves coercion, violence or brutality, persistent exploitation of personal weakness, or where it is shocking, outrageous or clearly intolerable. Id.

"In cases alleging egregious government conduct... the focus is not on the propensities and predisposition of a specific defendant, but on 'whether the police conduct revealed in the particular case falls below standards, to which common feelings respond, for the proper use of governmental power.... Under this approach, the determination of the lawfulness of the [g]overnment's conduct must be made—as it is on all questions involving the legality of law enforcement methods—by the trial judge, not the jury. Commonwealth v. Monteagudo, 427 Mass at 487 citing United States v. Russell, 411 U.S. 423, 441 (1973) (Stewart, J., dissenting), quoting Sherman v. United States, 356 U.S. 369, 382, 78 S.Ct. 819, 825-826, 2 L.Ed.2d 848 (1958).

The Due Process Clause protects "certain immutable principles of justice which inhere in the very idea of free government. Holden v. Hardy, 169 U.S. (1898).

In determining a claim of outrageous government misconduct involving sexual relationships between a government agent and a person involved in an investigation, courts have looked at whether: (1) the government consciously set out to use sex as a weapon in its investigatory arsenal, or acquiesced in such conduct for its own purposes once it knew or should have known that such a relationship existed; (2) the government agent initiated a sexual relationship, or allowed it to continue to exist, to achieve governmental ends; and (3) the sexual relationship took place during or close to the period covered by the indictment and was entwined with the events charged therein. Commonwealth v. Sun Cha Chon, 983 A.2d 784, 788 (Pa. Super. Ct. 2009); U.S. v. Cuervelo, 949 F.2d 559 (2nd Cir. 1991); U.S. v. Nolan-Cooper, 155 F. 3d 221 (3d Cir. 1998).

The Court in Nolan-Cooper cautioned that while this criterion was “useful” it “should not be applied rigidly” and emphasized that the ultimate determination is whether the government’s conduct was so “shocking, outrageous, and clearly intolerable that Due Process is offended.” U.S. v. Nolan-Cooper, 155 F. 3d at 232-33.

1. **The government used sex as a weapon in its investigative arsenal in the case against Steven.**
 - a. **Investigators in Steven’s case knew a relationship existed between Lucas and Medeiros, either acquiesced or turned a blind eye to Lucas’ illegal conduct to further their investigation against Steven and all other members of the alleged Ortiz drug organization.**

In analyzing the first criteria of egregious government misconduct involving a sexual relationship the courts should consider: Whether the government consciously set out to use sex

as a weapon in its investigatory arsenal, or acquiesced in such conduct for its own purposes **once it knew or should have known** that such a relationship existed; U.S. v. Nolan-Cooper, 155 F.3d 221 (3d Cir. 1998) (emphasis added).

In Nolan-Cooper, the court reasoned that even if the government should have known that the relationship existed, the record reflected that the case against the defendant had already been made by the time the sexual relationship began and thus no acquiesce by the government at that point would have served any investigatory purposes. United States v. Nolan-Cooper, 155 F. 3d at 234.

Here, the record demonstrates that investigators not only knew of Lucas' manipulation of Medeiros prior to Steven being charged with any crime, but that they actively sought to hide this information to further their investigation.

The September 14, 2016 note about Medeiros' call records, Lucas' phone number, 508-789-8239, appeared in a list of numbers of interest with five other numbers. Lucas' phone number was noted as having frequent conversations with Medeiros for long durations. All the numbers on this list appear on the excel spreadsheet, memorializing Medeiros' call logs, except for Lucas' phone number.

508-525-6953 was the only other number on the list that had been reported as having "no subscriber info" with "numerous calls of long duration." R511. The discovery shows that the Commonwealth requested and received subscriber information and call logs for this phone

number on April 21, 2017. R 619. The Commonwealth made no such request for Lucas' number. This leads to an inference that, at a minimum, investigators learned the 8239 number belonged to Lucas and sought to avoid seeking subscriber information to conceal Lucas's manipulation of Medeiros. Their lead detective, Lucas, was responsible for bringing Steven's case to their attention and was calling the target's girlfriend, Medeiros, who was also Lucas's CI, so often that it led to his phone number being associated with their suspect investigation.

At a minimum, the Commonwealth should have known that there was a relationship between Lucas and Medeiros prior to filing the charges against Steven based on his phone number appearing on the "numbers of interest" note for Medeiros. The Commonwealth should have known this information before they applied for wiretaps on Steven's phone, and before they began their serious surveillance of Steven. The Commonwealth's refusal to subpoena Lucas's phone records or subscriber information provides support that they acquiesced to Lucas's manipulation of Medeiros to serve their investigatory purposes.

Because Steven has provided evidence that the Commonwealth knew or should have known about Lucas's manipulation of Medeiros, and because the record reflects that they acquiesced to this relationship, Steven has met the first criterion of outrageous government misconduct. U.S. v. Nolan-Cooper, 155 F. 3d 221 (3d Cir. 1998); Com. V. Sun Cha Chon, 983 A.2d 784, 788 (Pa. Super. Ct. 2009).

2. Lucas initiated the sexual manipulation with Medeiros to aid in his investigation of Steven.

In analyzing the second criteria for egregious government sexual misconduct, the courts should consider: whether the government agent initiated a sexual relationship, or allowed it to continue to exist, to achieve governmental end. U.S. v. Nolan-Cooper, 155 F. 3d 221 (3d Cir. 1998); Com. V. Sun Cha Chon, 983 A.2d 784, 788 (Pa. Super. Ct. 2009).

In United States v. Cole, a detective engaged in a romantic affair with Cole's co-defendant and live-in companion, Joan Adamson. The detective contacted Adamson as part of their investigation, the two eventually met up and began having a sexual relationship that resulted in Adamson getting pregnant. Adamson was aware that the detective was investigating Cole and refused to provide any information that would assist the detective in his investigation of her partner. United States v. Cole, 807 F.2d 262, , 264-65 (1986). The Court found that the facts in this case presented "a real question as to who seduced whom," and, in taking the parties at their word that they fell in love, found there was no deliberate seduction by either side. Id. at 265. The court reasoned that because there was no deliberate seduction, and because Adamson was not willing to provide inculpatory information about the defendant, the defendant was not deprived of his Constitutional right to Due Process. Id.

Here, Lucas began manipulating Medeiros to obtain information on Steven for sex, including telling her he loved her. In their very first interaction in June of 2014, Lucas illustrated the power he had as a law enforcement officer by asking Medeiros if she was Steven's girlfriend. When

Medeiros asked how he could know something like that, Lucas responded with “I know everything.” R24.

Lucas then initiated the relationship with Medeiros by disrupting her relationship with Steven and playing on Medeiros’ insecurities, providing her with drugs and engaging in sex with her. He also shared information with her about Steven’s whereabouts, and alleged misdeeds to upset Medeiros, to place her in an even more fragile state, making it easier to coerce and manipulate her. Lucas obtained Medeiros’ number using the New Bedford Police and investigation system and called her to inform her that Steven was cheating on her, giving her the precise location and who Steven was with so that Medeiros’ could confirm his allegations.

Once Medeiros confirmed that Lucas’ information was accurate, Lucas’ grip on Medeiros was firm. Lucas fed her drug habit while he questioned Medeiros about Steven and used her for sex. R 579. Because of Lucas's manipulation, Medeiros began to fear that if she did not keep providing Lucas with information, he would use his power to arrest her and search her home, or he would tell Steven she was informing on him.

Here, Lucas and Medeiros did not innocently fall in love. There is no question of “who seduced whom.” Lucas manipulated Medeiros, took advantage of her addiction and used his power over Medeiros to obtain information on Steven to further this investigation.

Unlike the informant in Cole, Medeiros provided information on Steven to Lucas during Lucas's investigation that led to wiretaps and other search warrants.

In fact, Medeiros provided Lucas with every piece of the puzzle law enforcement needed for the wiretap warrants, and all other search and arrest warrants against Steven and the Ortiz family. When Lucas eventually did present Steven's case to multiple law enforcement agencies in June of 2016, Lucas relied exclusively on information he obtained from Medeiros when he was manipulating her, forcing her to have sex with him, threatening her and fixing cases for her to ensure that she stay out of jail.

Because Lucas initiated the sexual relationship with Medeiros, and because he used his role as a police officer to intimidate and coerce her, including having sex with her in the back of a patrol car, to obtain information about Steven for his investigation, Steven has met the second criterion of outrageous government misconduct. United States v. Cole, 807 F.2d 262, , 264-65 (1986); U.S. v. Nolan-Cooper, 155 F. 3d 221 (3d Cir. 1998).

3. The sexual misconduct between Lucas and Medeiros took place during the investigation into Steven and was entwined with the events charged within the indictment.

In analyzing the third criteria for egregious government misconduct involving a sexual relationship with an informant the court should consider: Whether the sexual relationship took place during or close to the period covered by the indictment and was entwined with the events charged therein. Commonwealth v. Sun Cha Chon, 983 A.2d 784, 788 (Pa. Super. Ct. 2009); U.S. v. Cuervelo, 949 F.2d 559 (2nd Cir. 1991); U.S. v. Nolan-Cooper, 155 F. 3d 221 (3d Cir. 1998).

The facts of this case again differ from those in Nolan-Cooper, where the third circuit upheld the district court's finding that "a one-time sexual encounter that served no investigatory purpose occurring near the end of the investigation" did not satisfy the outrageous government conduct doctrine. U.S. v. Nolan-Cooper, 155 F.3d 221, 234 (1998).

Here, Medeiros' letter and affidavit shows that Lucas fed Medeiros drugs, used her for sex, and forced her to give information on Steven. The note regarding Medeiros' phone records confirms that Lucas had almost daily contact with Medeiros, to the point when law enforcement were searching Medeiros's phone, Lucas' number came up as a "person of interest."

That Lucas' sexual manipulation of Medeiros was entwined with the events charged in the indictment is undeniable. The record illustrates that Lucas used Medeiros as the sole basis of information to bring the case against Steven to other law enforcement agencies. When investigators needed cause to advance their investigation into Steven, they would rely on statements from Medeiros.

At several points during the investigation into Steven and his family, investigators relied on statements from Medeiros to continue their operation, to secure wiretaps, pole cameras, and obtain additional investigative resources. For example, Lucas told investigators that Steven had attempted to follow himself and his partner as they were driving in the area of the city where Lucas alleged that Steven's "organization" conducted many of its activities. Investigators determined that this instance "corroborated the information provided by CI-1 about the degree to

which Steven Ortiz is concerned with surveillance by law enforcement.” R 345. The statements of a woman who was coerced into a sexual relationship with Lucas were corroborated by information provided by Lucas, and thus the investigators could begin their investigation into Steven and his alleged “criminal organization.”

Additionally, after Homeland Security Investigations (HSI) installed a pole camera at 14 Edward Street in early July of 2016 based on the information provided by the CI that this was a location “where the organization stored drugs and money and discussed their business,” investigators “observed no obvious business activity” at that location. Despite this observation, after “several months” of watching the area, investigators decided that there was “no obvious reason why the group would rent a garage other than the reasons suggested by CI-1.” R 347. The sexual relationship was clearly intertwined with the entire investigation in the Steven’s alleged drug activities. Without Medeiros, there would be no indictment. As such, the third criteria of outrageous government misconduct have been satisfied. U.S. v. Nolan-Cooper, 155 F.3d 221, 234 (1998). The conduct is even more egregious where Medeiros admits that she supplied false information, but where Lucas knew an unnamed CI who he claimed was reliable and had first-hand knowledge would be summarily credited by the court reviewing the affidavit.

The outrageous government misconduct violated Steven’s rights pursuant to the 5th, 6th and 14 Amendments to the United States Constitution as well as Article XII and XIV of the Massachusetts Declaration of Rights. Commonwealth v. Sun Cha Chon, 983 A.2d 784, 788 (Pa.

Super. Ct. 2009); U.S. v. Cuervelo, 949 F.2d 559 (2nd Cir. 1991); U.S. v. Nolan-Cooper, 155 F. 3d 221 (3d Cir. 1998). Accordingly, this Court should dismiss the case against Steven on the basis of outrageous government conduct.

IV. LUCAS' MANIPULATION OF MEDEIROS TO SECURE INFORMATION ABOUT A PENDING INVESTIGATION INTO STEVEN WAS EGREGIOUS AND THIS VIOLATED STEVEN'S RIGHTS UNDER THE 4TH, 5TH, 6TH AND 14 AMENDMENTS TO THE UNITED STATES CONSTITUTION AS WELL AS ARTICLE XII AND XIV OF THE MASSACHUSETTS DECLARATION OF RIGHTS.

This Court has the power to dismiss Steven's case. The criteria for outrageous government misconduct, Courts have emphasized that these criteria should not be “rigidly applied” and the ultimate determination is whether the government’s conduct was so “shocking, outrageous, and clearly intolerable that Due Process is offended.” U.S. v. Nolan-Cooper, 155 F. 3d at 232-33.

Egregious government misconduct may violate due process and bar prosecution. Commonwealth v. Jacobsen, 419 Mass. 269, 276 (1995); Bridgeman v. Dist. Attorney for Suffolk Dist., 476 Mass. 298, 316–17 (2017); Commonwealth v. Monteagudo, 427 Mass. 484, 485 (1998); U.S. v. Nolan-Cooper, 155 F. 3d 221 (3d Cir. 1998). Where egregious government misconduct is alleged, “the focus is ... on whether the police conduct revealed in the particular case falls below standards, to which common feelings respond, for the proper use of governmental power.” Monteagudo, 427 Mass. at 485, quoting United States v. Russell, 411 U.S. 423, 441 (1973) (Stewart, J., dissenting). Police conduct that involves “coercion, violence or

brutality... persistent exploitation of personal weakness or is “shocking, outrageous and clearly intolerable” may be found to be egregious. Commonwealth v. Ferreira, Mass. Super. No. (2008 WL 1932958) quoting Monteagudo, 427 Mass. at 487.

Here, the investigation into Steven was tainted from the start, and Lucas’ conduct in manipulating Medeiros, when he knew she was a drug addict and had been victimized by many others, in order to obtain information to further his investigation into Steven, fell below the standards of proper use of governmental power.

From the very beginning, Lucas abused his power to prey on Medeiros to build a case against Steven. Lucas’ first interaction with Medeiros where he told her he knew she was Steven’s girlfriend because he “knew everything” was an illustration to Medeiros of the law enforcement power that Lucas held. R 24. Lucas then abused that power to acquire Medeiros’ phone number and tell her that Steven was at a strip club with his brother. Lucas needed to emotionally manipulate Medeiros to get her to trust him and be angry at Steven for his plan to work.

Lucas began his campaign of manipulation and coercion by decreasing Medeiros’ trust in Steven. Not only did this manipulation succeed in getting Medeiros to give Lucas’s information on Steven, but, the coercion went further to inject sex into the manipulation as a means to control Medeiros.

Lucas' manipulation of Medeiros, who was drug-addicted, and who had been repeatedly victimized by others in the past, is beyond outrageous. That no one in the New Bedford Police Department reprimanded Lucas is unconscionable. It appears, however, that there is a systemic problem within the New Bedford Police Department, where manipulation of young female drug addicted victims is accepted practice because these young women are further sexually victimized by sworn police officers without any fear of repercussions. Recent information, including the facts in this case, illustrates that there is a practice within the NBPD of having officers coerce vulnerable, drug-addicted women into becoming police informants through the exchange of sex and information.

At least two separate women with histories of drug addiction, Medeiros and Katz, came forward against officers in the New Bedford Police Department, alleging that, combined, at least seven law enforcement officers engaged in sexual relationships with them. R 292. The record reveals that at least one other New Bedford Police Officer had already been charged with inappropriate conduct with Katz. R 273. Additionally, a third woman, Tanya Pickney, may have also been coerced into sex by New Bedford Police Officers. R579.

To date, it appears that this unnamed person is the only New Bedford Law enforcement officer that was charged with inappropriate conduct with an informant. Although there is ample evidence that Lucas abused his power to engage in sex with Medeiros, neither Lucas, nor any of the other officers accused, have been charged with this gross abuse of power. Moreover, Lucas

was brazen enough to spend time with Medeiros in front of Detective Gene Fortes, further suggesting it was accepted behavior within the department.

At a minimum, the New Bedford Police Department is infected with rampant and systemic abuse of young women suffering from addiction, abuse of power, and abuse of the criminal justice system, such that this prosecution should not be condoned, and the officers involved should be held responsible for this outrageous misconduct.

While Lucas was controlling Medeiros with drugs, his abuse of power, sex, and his white-knight strategy of always coming to her aid when she was in criminal trouble, Lucas consistently asked Medeiros details about Steven until he got enough information to present his case to other state and federal agencies. Taking down Steven Ortiz was a feather in Lucas' cap and would be noticed by the department. Lucas exclusively relied on statements given by Medeiros to make his case against Steven. Lucas claimed that his CI (Medeiros) provided him with intimate details regarding Steven's alleged drug trafficking investigation, including drug quantities, where they were stored, how they were moved, how they were distributed, what the proceeds were used for, locations for where drug transactions occurred, the names of people involved in the alleged "drug trafficking operation" and two phone numbers for Steven.

To further demonstrate Lucas' bias in this investigation, he erroneously transcribed a wiretap call with Steven and his brother to make it appear that Steven was the leader of this alleged criminal organization.

Despite Medeiros drug addiction, vulnerability, and Lucas's coercion, Medeiros did try to break free from Lucas' hold several times. Each time, Lucas would abuse his power, degrade her, threaten to expose her as an informant, and remind her about the power her had as a police officer. In order to maintain complete control over Medeiros, Lucas threatened her that if she ended the relationship, he would not save her from drug arrests and conviction and she would go to jail as an informant. Medeiros understood the power that Lucas had over her and felt powerless. Medeiros was petrified to end the relationship because she felt that if she stopped seeing Lucas, "[at] any moment he was going to have my door kicked in [to search her home]." R65. Lucas had also threatened to expose Medeiros as an informant when she tried to leave the relationship. R 580.

Lucas abused his power when he consistently exploited Medeiros' drug addiction, exploited her sexually, manipulated her, and threatened her, to obtain information about Steven. Lucas' conduct and the conduct of the New Bedford Police Department, was shocking, outrageous, clearly intolerable, and violated Steven's rights under the 4th, 5th 6th and 14 Amendments to the United States Constitution as well as Article XII and XIV of the Massachusetts Declaration of Rights.

As such, this Court should find the outrageous, manipulative, controlling sexual abuse of Medeiros by Lucas in this case violated Steven's constitution rights and dismiss the case against Steven on the basis of outrageous government conduct. Commonwealth v. Jacobsen, 419 Mass.

269, 276 (1995); Bridgeman v. Dist. Attorney for Suffolk Dist., 476 Mass. 298, 316–17 (2017); Commonwealth v. Monteagudo, 427 Mass. 484, 485 (1998); U.S. v. Nolan-Cooper, 155 F. 3d 221 (3d Cir. 1998).

V. **THE GOVERNMENT’S CONDUCT IN SENDING AN INFORMANT TO OBTAIN INFORMATION ON STEVEN WHILE THEY WERE AWARE STEVEN WAS REPRESENTED BY COUNSEL VIOLATED STEVEN’S FIFTH AND SIXTH CONSTITUTIONAL RIGHTS.**

The right to counsel is “indispensable to the fair administration of our adversarial system of criminal justice.” United States v. Owen, 580 F.2d 365 (9th Cir.1978). Government misconduct may have a “devastating effect” on a defendant’s Sixth Amendment right to counsel. United States v. Owen, 580 F.2d 365, 367 (9th Cir.1978); United States v. Marshank, 777 F.Supp. 1507, 1524-25 (1991).

An indictment may be dismissed due to preindictment intrusion into the attorney-client relationship so pervasive and prejudicial as to be considered “outrageous.” United States v. Marshank, 777 F.Supp. 1507 (1991); U.S. v. Voigt, 89 F.3d 1050, 1066 (1996); Commonwealth v. Manning, 373 Mass. 438, 442 (1977).

A defendants’ Sixth Amendment right to counsel and fair trial can be violated “where there is a deliberate and intentional attack by government agents on the relationship between the defendant and his counsel in a calculated attempt to coerce the defendant into abandoning his defense.” Commonwealth v. Manning, 373 Mass. 438, 442 (1977).

The New Bedford Police interfered with Steven's relationship with his criminal defense attorney by requesting that Medeiros listen in on attorney-client conversations and report back to Lucas, who would report what Medeiros told him to the task force. R579. Additionally, Lucas asked Medeiros to find out about the money that Lucas was giving to Attorney Calcagni. R579. Officers began investigating Steven's attorney during his representation of Steven.

During the investigation into Steven, investigators took photographs of Attorney John Calcagni's car, presumably on January 24, 2017, based on the date next to the file. They entitled these photographs "John Calcagni for Tommy." R 516. Attorney Calcagni actually represented Steven, a fact that investigators clearly knew on March 6, 2017, when they ran Attorney Calcagni's financial information along with Steven's. R 517.

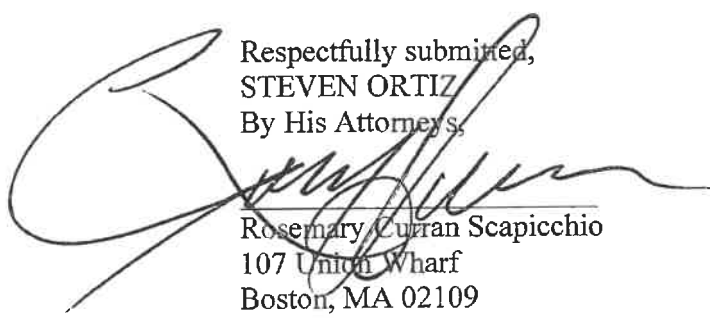
After investigators became aware that Steven had hired Attorney Calcagni as his lawyer, they continued to utilize Medeiros to get information on Steven and the Ortiz family. Specifically, Lucas asked Medeiros to listen to private conversations with Lucas and his attorney and Medeiros reported what she heard back to Lucas. This breach of attorney client privilege was used as a source of probable cause for their cell phone warrants.

Based on this information, investigators, including Lucas, had confirmation that Steven was represented by counsel, yet Lucas still pushed Medeiros to obtain and disclose private attorney-client conversations and financial information on Steven in violation of his Fifth and Sixth

Amendment Rights to the United States Constitution as well as Art. XII and XIV of the
Massachusetts Declaration of Rights. Commonwealth v. Manning, 373 Mass. 438, 442 (1977).


CONCLUSION

For all of the above stated reasons, Steven Ortiz respectfully requests that this Honorable
Court allow his motion to dismiss.



Respectfully submitted,
STEVEN ORTIZ
By His Attorneys,

Rosemary Curran Scapicchio
107 Union Wharf
Boston, MA 02109
(617) 263-7400
BBO# 558312



Nicole R. Scapicchio
107 Union Wharf
Boston, Massachusetts 02109
(617) 263-7400
BBO # 713634

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon the attorney of record for each party and upon any party appearing pro se by first class mail, postage prepaid or by hand delivery.

Dated: 3-19-2024

Signed: 