

Prosecution's Memos Supporting Dropped Charges Fall Outside the Work-Product Doctrine, Judge Finds

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New York Law Journal

July 30, 2009

New York City must turn over in a civil rights suit a Brooklyn prosecutor's memorandum outlining the reasons charges were dropped against a woman who was arrested for prostitution, a federal magistrate judge in Brooklyn has ruled.

In an action for false arrest, plaintiff Monica Gonzalez moved to compel production of the New York Police Department's Internal Affairs Bureau's file and report regarding the incident, which included the memorandum prepared by a Brooklyn assistant district attorney. The New York City Law Department produced redacted versions of the documents, claiming a right to protect information under the work-product doctrine.

In a decision issued earlier this week, Eastern District Magistrate Judge Cheryl L. Pollak ordered the city to turn over the complete file and report.

After finding that the Law Department lacked standing to assert the work-product doctrine on behalf of the defendant officer, Magistrate Judge Pollak found that, in any case, the documents would not have fallen within the privilege.

She noted that the disputed documents apparently were prepared the day the charges were dropped and referred to the charges as "dismissed."

"[I]t does not appear that the documents in question were prepared in anticipation of litigation or for trial," Magistrate Judge Pollak held in *Gonzalez v. City of New York*, 08-cv-2699.

The Eastern District decision will be published **tomorrow**.

According to her complaint, Ms. Gonzalez, a part-time medical secretary, suffered an asthma attack on Nov. 18, 2007. She walked from her home to the nearby Lutheran Hospital, in Sunset Park, Brooklyn. While on Third Avenue between 53rd and 54th streets, she was arrested by police officers Sean R. Spencer and Carlos Viera and charged with one count of loitering for the purposes of engaging in a prostitution offense.

The charges against Ms. Gonzalez were dismissed in May 2008, and the internal affairs bureau initiated an investigation into her arrest and Officer Spencer's allegedly inaccurate paperwork.

Ms. Gonzalez initiated the present action for false arrest and malicious prosecution in July 2008.

The case is before Eastern District Judge Jack B. Weinstein. Discovery issues were referred to Magistrate Judge Pollak.

As part of discovery, Ms. Gonzalez demanded the Internal Affairs Bureau's file and report regarding the case.

Before it produced the documents, the Corporation Counsel's Office redacted approximately 11 pages, including the assistant district attorney's closing memo, notes and commentary.

Ms. Gonzalez moved to compel production of the documents with no redactions, which the city again opposed.

On Tuesday, Magistrate Judge Pollak ordered the city to produce the documents.

She relied on, among other cases, *Howell v. City of New York*, 2007 WL 2815738, a civil rights suit in which the court required the Brooklyn District Attorney's Office to hand over a document that "was made precisely because there would be no litigation or trial."

"The 'Closing Memo' in Ms. Gonzalez's case is dated May 29, 2008, which plaintiff alleges is the date on which the criminal charges were dismissed," Magistrate Judge Pollak wrote. "The header on the memorandum itself includes a line labeled 'Disposition' that reads, 'Case was dismissed by the people.' Thus on its face, the document appears to have been created *after* the charges were dismissed and therefore not in anticipation of litigation."

Richard J. Cardinale of Cardinale & Marinelli in Brooklyn represented Ms. Gonzalez.

"This case presents yet another example in which the New York City Law Department has inappropriately asserted a privilege in an attempt to deny a plaintiff a document which she needs to prosecute her case," Mr. Cardinale said.

Assistant Corporation Counsel Caroline Ling-Yu Chen represented the city and Officer Viera.

John W. Burns of Worth, Longworth & London represented Officer Spencer. Mr. Burns said his client had joined the plaintiff's motion, but otherwise declined to comment.