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November 26, 2012

Judge Charles W. Welch, III
Kent County Courthouse
414 Federal Street
Dover, DE 19901

RE: State of Delaware v. Jahi Issa, Criminal Case ID # 1203000747

Dear Judge Welch:

Given the proffers made by the Office of the Attorney General and the topics discussed during the teleconference, several post teleconference issues must be raised with the court.

UNCONSTITUTIONAL STATUTE

The Delaware disorderly conduct statute in Count 4 of the information appears to be unconstitutional. It is overbroad and vague on its face and overbroad and vague as applied in this case. The United States Constitution and Delaware Constitution clearly protect the 1st Amendment activities that took place on the date of arrest. *Colten v. Kentucky*, 407 U.S. 108 (1972), *State v. Ausmus*, 336 Or. 493, 85 P.3d 864 (2004) The decision preclude testimony of ACLU agents demonstrates that Delaware courts interpret the Delaware disorderly conduct statute, that includes the same language as the Kentucky version, in a manner that is overboard and vague on its face and as applied in this case. The Delaware statute lacks a reasonable clarity to guide the behavior of citizens. The ACLU agents were apparently unable to accurately interpret Delaware 1st Amendment rights. The scope of the statute eliminates the existence of 1st Amendment rights as reflected through the U.S. Constitution and Delaware Constitution.

NOTICE OF ADDITIONAL DEFENSES AND AFFIRMATIVE DEFENSES

Notice of intent is provided regarding additional defenses and affirmative defenses of Justification-Use of Force in Self-Protection, Mistake of Law, Mistake of Fact, and Diminished Capacity/Insanity.

ELEMENT OF INTENT

Defendant is challenging the element of intent with respect to all charges that have been filed. Specific intent is one element of the alleged crimes. The specific intent alleged must be proven beyond a reasonable doubt. Defendant is entitled as a fundamental aspect of the criminal justice proceedings to present a defense. Evidence of intent is admissible in proceedings where specific intent is an issue. Motive tends to help negate the element of intent. Not only is plaintiff's motive on the date of arrest relevant to the effort to raise reasonable doubt, Dr. Issa is entitled to a jury instruction indicating that the 1st Amendment related evidence of motive can be used by the jury to conclude there is reasonable doubt with regard to the element of intent and other elements of the various charges. *State v Pinnock*, 220 Conn. 765 (1992)

1ST AMENDMENT

Defendants predominate intent on the date of the alleged crimes was the exercise of all of his 1st Amendment rights. To support a conviction for disorderly conduct, the defendant's predominant intent must be to cause inconvenience, annoyance or alarm, rather than to exercise his constitutional rights. This is uncontroverted. The Court must allow evidence on this point. Defendant has the right to present this evidence through the ACLU agents.

POST TRAUMATIC STRESS DISORDER JURY INSTRUCTION

This instruction is requested in that Defendant's mental state is admissible to negate specific intent.

MOTION TO QUASH

ACLU agents should be notified by the Court that they must honor their subpoenas. Defendant has a right to compulsory process. It is defendant's position that the court has committed reversible error by preventing defendant from presenting a defense. Furthermore, the court has for practical purposes required defendant to testify in violation of his 5th amendment rights. Confrontation Clause rights have been abridged. The testimony of the ACLU Attorney and Executive Director provide evidence supportive of the affirmative defense of mistake of law. *Long v. State*, 65 A.2d 489 (Del. 1949) Furthermore, this testimony is circumstantial evidence of defendants predominate intent.

A grave mistake has been made. Witnesses should not be allowed to engage in pretrial behavior designed to impact the outcome of a criminal trial for their own benefit. "The Court on motion made promptly may quash or modify the subpoena if compliance would be unreasonable or oppressive." The ACLU agents made it clear that they did not want to help in the defense of Dr. Issa. They made no assertions of unreasonable or oppressive impacts. Court of Common Pleas Rules of Criminal Procedure Rule 17 (c)

The ACLU agents are in possession of important testimony and documentary evidence regarding Dr. Issa's intent. The ACLU agents were central figures in the planning and implementation of the exercise of 1st Amendment rights on the date of arrest and they provided legal advice that the Attorney General implies, through the in formations filed, was incorrect legal advice regarding the legality of the events that took place. It is no wonder that the Attorney General joined in the effort to preclude the testimony of the ACLU agents. The advice of the ACLU agents should be advice that those who seek to exercise 1st Amendment rights can rely upon. The ACLU should not be allowed to hide from their central role.

The admitted phone call to the Delaware State University campus officials on the date of the arrest is evidence consistent with the Entrapment affirmative defense that has been previously pled. It goes further in that it that the nature of the communication made by the ACLU agents increased the likelihood that the exercise of 1st Amendment rights would lead to physical harm to those exercising the rights. Furthermore, the Court should address whether it is legal/ethical for an attorney to give legal advice resulting in the arrest of a person who it was given to and to then seek to quash a subpoena in the related criminal case. It is rather self serving and inconsistent with what the ACLU holds itself out as with regard to the exercise of 1st Amendment rights. Clearly the position of the ACLU is designed to take the side of the Attorney General in an effort to ensure that the Delaware State University community, a predominately black community, is not able to exercise 1st Amendment rights in the same manner that predominantly white Delaware State University Equestrian team students are allowed to exercise their rights. Mere ACLU agent witnesses should not be afforded such external influence over criminal proceedings in the manner that has been allowed.

Evidence relating to acts of the defendant, to be provided through ACLU agents, may be used since it relates to issues such as the defendant's motive, intent, preparation, consciousness of guilt, presence or absence of certain psychiatric or psychological conditions, mental state, or knowledge. This is evidence to determine issues relevant to the charged crimes.

Justification-Use of Force in Self-Protection also makes Dr Issa's intent a material issue. The police injured him in order to prevent him from exercising 1st Amendment rights. Seeking constitutional and legal advice is evidence of his character to abide by the law. The ACLU agents are the source of relevant and probative evidence. ACLU agents played a role in the planning and execution of the alleged crime. The ACLU agents have evidence of premeditation to exercise 1st Amendment rights.

JURY INSTRUCTION SUPPLEMENTS FOR DISORDERLY CONDUCT

The following language or similar language is requested as part of the disorderly conduct jury instruction. State v. Indrisano, 228 Conn. 795, 640 A.2d 986 (1994), State v. Muckle, 108 Conn.App. 146, 947 A.2d 972 (2008)

The alleged conduct must have occurred in a public place, that is, a place used by or held out for use by the public.

The predominant intent must be to cause what a reasonable person operating under contemporary community standards would consider a disturbance to or impediment of a lawful activity, a deep feeling of vexation or provocation, or a feeling of anxiety prompted by threatened danger or harm.

To support a conviction for disorderly conduct, the defendant’s predominant intent must be to cause inconvenience, annoyance or alarm, rather than to exercise his constitutional rights.

This intent to cause inconvenience, annoyance or alarm as defined must predominate over any intent to exercise a constitutional right. Predominance can be determined either (1) from the fact that no bona fide intent to exercise a constitutional right appears to have existed or (2) from the fact that the interest to be advanced by the particular exercise of a constitutional right is insignificant in comparison with the inconvenience, annoyance or alarm caused by the exercise.

RESISTING ARREST/SELF DEFENSE JURY INSTRUCTIONS

A detailed instruction on the meaning of the phrase peace officer is requested. A detailed instruction regarding the fact that the use of unwarranted or excessive force is not within the duties of peace officers. Detailed instructions that Delaware State University agents who are not peace officers are not allowed to arrest or detain anyone. A self-defense instruction is required as well. These instructions are required given the use of force by Delaware State University officials who were not in police uniforms and who were not peace officers.

Thank you for your consideration.

Very truly yours.



Samuel L. Guy, Esq.

SLG:bms

cc: DAG Lindsay A. Taylor,