

COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss.

LAWRENCE DISTRICT COURT  
DOCKET No: 1918CR003662

COMMONWEALTH )  
 )  
v. )  
 )  
AXXXX AXXXX, )  
Defendant )

PETITION TO EXPUNGE  
(ASSENTED) (VERIFIED)

NOW COMES THE DEFENDANT, by and through counsel, and respectfully requests that this Honorable Court direct the expungement of all records and files regarding the above-captioned matter. The Defendant further requests that the Court furnish to him certified copies of a complete copy of the court's file prior to the expungement.

The Commonwealth assents to this request.

As applicable here, G.L. ch. 276, §100K(a) permits expungement of criminal court records upon a showing, by "clear and convincing evidence", that "the record was created as a result of ... (1) demonstrable errors by law enforcement; [or] (2) demonstrable errors by civilian or expert witnesses[.]" Expungement may be ordered "in the best interests of justice." Id., subpar. (b).

The instant complaint involved a domestic incident which the complainant claimed occurred on interstate 495, on the way to JB Pride Uniforms in Woburn. "When asked

about where exactly the incident happened, [the complainant] stated that due to the commotion she could not recall the exact location of the incident." Incident Report No. 19005867 (attached). Notwithstanding his lack of affirmative evidence that the incident occurred in this Court's jurisdiction, Lawrence Officer Olivo filed the instant complaint.

On the arraignment date, given that venue was in doubt, the Defendant requested that the Commonwealth agree to hold off on arraignment until venue was established. Because the incident involved a domestic allegation, the prosecutor wished to proceed with the arraignment so bail conditions could be set. The Defendant agreed to that request, subject to the prosecutor's agreement that, if it were determined venue was improper, the Commonwealth would join in the Defendant's request that the matter be expunged from the Defendant's record.

On the November 20, 2019 trial date, the alleged victim appeared. In interviewing the alleged victim, the prosecutor learned, and disclosed to the Defendant, that the incident occurred off the exit in Woburn and thus outside this court's territorial jurisdiction. The prosecutor agreed that the matter should be dismissed for

want of territorial jurisdiction. G.L. c. 218, § 1;  
Commonwealth v. Leach, 246 Mass. 464, 471-472 (1923).

Expungement is proper in this instance, as "demonstrable errors by law enforcement" and "demonstrable errors by civilian or expert witnesses" caused the instant complaint to erroneously issue in the Lawrence District Court. Officer Olivo was demonstrably mistaken in filing a complaint in Lawrence without first determining that venue existed in Lawrence. The alleged victim demonstrably erred by reporting the incident in Lawrence, not Woburn, causing the complaint to issue in the wrong jurisdiction.

Viewed individually or in concert, these two "demonstrable errors" establish, by clear and convincing evidence, that the "best interests of justice" require expungement, which G.L. ch. 276, §100E defines as "the permanent erasure or destruction of a record so that the record is no longer accessible to, or maintained by, the court, any criminal justice agencies or any other state agency, municipal agency or county agency."

G.L. ch. 276, §100K(b) mandates a hearing on this request "if requested by the petitioner or the district attorney." Given the agreed-upon nature of this request, neither party seeks a hearing.

The Defendant encloses proposed findings of fact, which the statute requires. Id.

The Defendant requests that the Court "forward [this] order for expungement ... forthwith to the clerk of the court where the record was created, to the commissioner and to the commissioner of criminal justice information services appointed pursuant to section 167A of chapter 6," as required by subpar. (c).

The Defendant requests that this Court direct the criminal clerk to furnish a complete certified copy of its file to the Defendant prior to expungement.

WHEREFORE, the Defendant respectfully requests that this Honorable Court allow his petition.

Undersigned counsel verifies, under oath, that the facts contained herein are based on information he knows or believes to be true.

Respectfully submitted,  
/s/ Murat Erkan  
Murat Erkan, BBO: 637507  
Erkan & Associates  
300 High Street  
Andover, MA 01810  
(978) 474-0054

Dated: June 19, 2020

COMMONWEALTH OF MASSACHUSETTS

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FINDINGS OF FACT AND  
RULINGS OF LAW ON  
PETITION FOR EXPUNGEMENT

Having duly considered the matter, this Court finds the following by clear and convincing evidence:

1. The instant complaint involved a domestic incident which allegedly occurred on interstate 495, on the way to JB Pride Uniforms in Woburn. At the time of the complaint, the complainant did not recall where the incident happened.
2. A Lawrence Police Officer filed the instant complaint without any affirmative evidence that the incident occurred within this Court's territorial jurisdiction. This was demonstrable error.
3. The complainant revealed on November 20, 2019 that the incident occurred in Woburn, outside this Court's territorial jurisdiction. Her report of the incident to Lawrence Police was demonstrable error.

**Premised on these findings of fact, the Court issues the following Rulings of Law:**

4. The demonstrable errors of the complaining officer and complaining witness caused the Defendant to be arraigned in Lawrence District Court for an offense occurring outside its territorial jurisdiction, in violation of G.L. c. 218, § 1. See Commonwealth v. Leach, 246 Mass. 464, 471-472 (1923).
5. The best interests of justice are served by expungement, because this Court was without jurisdiction over the matter.

**IT IS THEREFORE ORDERED THAT:**

- A. All record of this matter be expunged, defined in G.L. ch. 276, §100E as "the permanent erasure or destruction of a record so that the record is no longer accessible to, or maintained by, the court, any criminal justice agencies or any other state agency, municipal agency or county agency."
- B. This Order shall be forwarded to the Clerk of the Court where the record was created, to the Commissioner of Probation, and to the Commissioner of Criminal Justice Information Services appointed pursuant to section 167A of chapter 6.

C. Prior to expungement, the criminal clerk of this court shall furnish a complete certified copy of its file to the Defendant.

**SO ORDERED.**

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Justice, Lawrence District Court

Dated: