RECEIVED

2017 MAR 23 P 3: 24

TOWNSHIP OF HANOVER


Jeffrey M Harty
43 John Street
Morris Township, NJ
07963

Legal Mail

Hanover Township Municipal
c/o Hanover Township Police Dept.
1000 Route 10 West
Whippany, NJ 07981

Attn: Joseph Quinn and Police Officers
Re: Civil Law Suite, MRS-L-205-17
"Malicious Prosecution"

NEW JERSEY JUDICIARY

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2017 MAR 23 P 3:24

TOWNSHIP OF HANOVER

Jeffreg M Harty
Plaintiff

# FILING FEE WAIVER REQUEST
Based on Inability to Pay

vs.
Blanche L. Harty; Tom Monahan; Hanover Township Police Department; State of New Jersey
Defendant

| | | | |
|---|---|---|---|
| Applicant's Name: Last Harty | First Jeffreg | MI M | Docket Number: L-205-17 |
| Home Address: Street 51 Washington Street | | Apt No | Home Phone # (973) 727-7510 |
| City Morristown | State NJ | Zip 07963 | Number of Dependents 1 |

I, Jeffreg M Harty, am over the age of 18 and request no court fee be charged as I am without funds to pay the fee. I am a (check one) ☑ Plaintiff ☐ Defendant in the following court:

☐ Civil ☑ Special Civil Part ☐ General Equity ☐ Probate ☐ Family

The following are facts about my financial condition. My income before taxes is:

| | |
|---|---|
| Salary (per month): $ 0.00 | Other Income (per month): $ 0.00 |
| Specify source of other income, including six months of prisoners' account statements in accordance with *N.J.S.A.* 30:4-16.3 (per month): | |

The following is a complete list of everything I own and owe, as far as I know:

| Own | Amount $ |
|---|---|
| Money in any bank accounts | 0.00 |
| Automobiles | Gave Back |
| Real estate | 0.00 |
| Insurance with cash value | 0.00 |
| Money owed to me | 0.00 |
| Other (specify) | |
| TOTALS | $0.00 0.00 |

| Owe (per month) | Amount $ |
|---|---|
| Rent/mortgage | 0.00 |
| Food | Food Stamps |
| Utilities | 0.00 |
| Alimony/child support | $95,000.00 |
| Auto payment | 0.00 |
| Other (specify) Business / Personal | 125,000.00 / 250,000.00 |
| TOTALS | 0.00 |

Please attach documents as to income (pay stubs, welfare documents, unemployment documents, last bank statement, etc.)

I certify the statements made by me in this document are true and that my proposed pleading is attached. I understand that if I give any false information, I may be punished by the court.

I am signing this statement to explain to the court why I am unable to pay any court fees in this lawsuit. (Rule 1:13-2(a))

Fee Waived: ☒ Yes ☐ No

Jeffrey M Harty
Signature (Applicant)

Jan 20th 2017

Jeffrey M. Harty
(Print Name)

[signature]
Signature (Judge)

1/25/17
Date

(Print Name)

ROSEMARY E. RAMSAY, P.J.CV.
SUPERIOR COURT OF NEW JERSEY

Revised: 08/05/2010, CN 11208

FORM A

**SUPERIOR COURT OF NEW JERSEY**
**LAW DIVISION**

Morris County
Docket Number MRS-L-205-17

Jeffrey M Harty
Your Name
51 Washington Street
Street Address
Morristown, NJ 07963
Town, State, Zip Code
973-727-7310
Telephone Number
Jeffrey M Harty
Plaintiff
vs.
Blanche L. Harty; Tom Monahan; State of New Jersey; Hanover Township Police Department
Defendant

**CIVIL ACTION**
**Notice of Motion**

TO:

Take Notice that the undersigned will apply to the above named Court located at

on ________ at 9:00 a.m. for an Order to: Punitive and Compensatory Damages Pain and Suffering, Mental and Emotional Trama, Lost Wages, Defamation of Character, Malicious Prosecution

I will rely on the attached certification which contains the grounds for the relief sought.

Pursuant to *R.* 1:6-2(d), the undersigned: **(check one)**

- [ ] Waives oral argument and consents to disposition on the papers.
- [x] Requests oral argument if this matter is contested.
- [ ] Requests oral argument for the following reasons

RECEIVED & FILED
SUPERIOR COURT
MORRIS COUNTY
CIVIL DIVISION
2017 JAN 20 P 3:08

A proposed form of Order is attached.

## COURT DATES

No pre-trial conference, arbitration proceeding, calendar call or trial date has been set except as follows: (If any dates have been scheduled, note them here; otherwise state "none")

## DISCOVERY END DATE

Check one

☐ Discovery in this matter is scheduled to be completed on ____________________.

☑ A discovery end date has not been assigned to this matter.

## CERTIFICATION REGARDING ATTEMPTS TO RESOLVE

**(Required for discovery and calendar motions – check one)**

☐ I certify that I have personally discussed this matter with the attorney for the opposing party, or the opposing party if appearing *pro se*, in order to resolve the issues raised by this motion. This effort was not successful.

☑ I certify that I have made a good faith effort to personally discuss this matter with the attorney for the opposing party, or with the party if appearing *pro se*, in order to resolve the issues raised by this motion. The effort I made included the following action: (specify attempts to confer):

☑ I certify that I have advised the attorney for the opposing party, or the party if appearing *pro se*, by letter that if I will make this motion if she/he continues to fail to comply with my discovery request.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements are willfully false, I am subject to punishment.

Date: Jan. 20, 2017

Jeffrey M Harty
Signature:

Jeffrey M. Harty
(print or type your name)

If this is the first paper you are filing in this case, you must sign the following certification. I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with *Rule* 1:38-1(b).

Date: Jan 20, 2017

Jeffrey M Harty
Signature:

Jeffrey M Harty
(print or type your name)

FORM B

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION

Jeffrey M Harty
Your Name

51 Washington Street
Street Address

Morristown, NJ 07963
Town, State, Zip Code

973-727-7310
Telephone Number

Jeffrey M Harty
Plaintiff

vs.

Tom Monahan; Blanche Harty; State of New Jersey
Hanover Township Police
Defendant

Morris County

Docket Number MRS-L-205-17

CIVIL ACTION
Certification in Support of Motion

RECEIVED & FILED
SUPERIOR COURT
2017 JAN 20 P 3:08
CIVIL DIVISION

I, Jeffrey M. Harty, am the ☑ plaintiff ☐ defendant in the above-captioned matter. I make this certification in support of my motion to (state what you want the court to do)

This motion should be granted because: on March 15th 2016 Blanche L. Harty and Tom Monahan has me Maliciously Arrested and Unlawful Imprisonment for 9 months from March 15th 2016 To December 2016 let ale has me arrested on December 31st 2016 and forced to do anoth 2 more weeks while Judge Michael Wright Dismisses Cha
(State the basis for your motion and why is should be granted. Use extra paper if necessary.)

I certify that the above statements made by me are true and that if any of the statements are willfully false, I am subject to punishment.

Date: 1-20-17

Jeffrey M Harty
Signature:

Jeffrey M Harty
(print or type your name)

## CERTIFICATION OF SERVICE

I certify that on 1-24-17 I sent a copy of the Notice of Motion, Certification, and proposed form of Order to the following parties by to the following by: (Check which mailing method you chose. If you sent it by both regular and certified mail, check both)

☑ regular mail ☐ certified mail

List each party to the lawsuit; use the attorney's name and address if the party is represented by counsel.

Name Blanche L. Harty
Address 60 Perry Street
Whippany, NJ 07981

Attorney for Hanover Township Police Dept.
1000 Rt 10 West
Whippany, NJ 07981

Name Tom Monahan
Address 46 Perry Street
Whippany, NJ 07981

Attorney for State of New Jersey
Dept. of Law and Public Safety
25 Market St. Trenton, NJ 08625

Date: Jan 20 2017

Jeffrey M Harty
Signature:

Jeffrey M Harty
(print or type your name)

RECEIVED & FILED
SUPERIOR COURT
2017 JAN 20 P 3:08
MORRIS COUNTY
CIVIL DIVISION

FORM C

**SUPERIOR COURT OF NEW JERSEY**
**LAW DIVISION**

Jeffrey M Harty
Your Name

51 Washington Street
Street Address

Morristown, NJ 07963
Town, State, Zip Code

973-727-7510
Telephone Number

Jeffrey M Harty
Plaintiff

vs.

Blanche Harty; Tom Monaghan; State of New Jersey
Hanover Township Police Department
Defendant

Morris County

Docket Number MRS-L-205-17

**CIVIL ACTION**
**Order**

This matter having been brought before the Court on Motion of (check one)
☐ plaintiff ☐ defendant for an Order (describe relief requested)

and the Court having considered the matter and for good cause appearing,

It is on this _____ day of _________, 20
ORDERED as follows:

_____________________________, J.S.C.

☐ **opposed**

☐ **unopposed**

# Malicious Prosecution Against Bank of America Results in $600,000 Settlement

Civil Litigation, Civil Rights, False Arrests and Excessive Force

A former bank teller at Bank of America, acquitted on criminal theft charges, reached a $600,000 settlement with the bank last month in her lawsuit for malicious prosecution.

In January 2004, Tiffany Davis worked at the bank's Stone Mountain branch as the teller coordinator, giving her key access to the main vault and the reserve cash vault, which each contained up to $200,000 in cash.

When Davis and the bank's manager went to count the money in the main vault on January 22, they found that $6,000 was missing. Two days before, when Davis had last entered the vault, she and another employee had counted all the money and found nothing missing.

Then, money went missing from the reserve vault that weekend, this time nearly $40,000. The corporate security officer who came to investigate, Elaine Scorza, accused Davis, as did assistant manager Shahidah Harley.

According to Davis' complaint, the accusation that Davis had stolen from both vaults was unreasonable given the fact that several other bank employees had access to the vault over that weekend. Davis claimed innocence and asked to take a polygraph test, but was not given the opportunity.

Davis was arrested by the Gwinnett County Police Department in February and charged with theft by taking, after Souza requested prosecution. She provided the police with documents including ledgers and audit tapes.

At the criminal trial in December 2009, after the judge first rejected a request for a directed verdict, a jury took only six minutes to return a verdict of not guilty.

Two years later, Davis filed a malicious prosecution suit against the bank, Scorza, and Harley.

A malicious prosecution case under Georgia law requires that probable cause be completely lacking, a fact very difficult to prove where there is an arrest warrant and a grand jury indictment. Malicious prosecution cases are even more difficult where a motion for a directed verdict is denied. Davis' attorney was able to get around this predicament by building a case that the bank had misrepresented facts that formed the basis of the probable cause.

The investigating detective, E.R. Kressel, who had not been a part of the criminal trial, reviewed witness testimony and found it to be in conflict with the facts he had used to secure the arrest warrant. He said he was misled by Scorza about Davis, including being falsely told that Davis had moved out of state prior to her arrest, which he claims was why he never interviewed her.

Davis' suit was also complicated by the 1992 Annuzio-Wylie Anti-Money Laundering Act. The Act provides immunity to banks and employees in civil suits arising from disclosure of criminal acts. But Davis' attorney successfully argued that the Act only applied where the bank was acting in good faith, an issue he heavily disputed.

The parties went to arbitration, resulting in a $600,000 settlement and a dismissal of the suit on October 7. This was a great result for this falsely accused bank teller and her lawyer.

*Date: November 5th 2013*

# Malicious Prosecution

*An action for damages brought by one against whom a civil suit or criminal proceeding has been unsuccessfully commenced without* **Probable Cause** *and for a purpose other than that of bringing the alleged offender to justice.*

An action for malicious prosecution is the remedy for baseless and malicious litigation. It is not limited to criminal prosecutions but may be brought in response to any baseless and malicious litigation or prosecution, whether criminal or civil. The criminal defendant or civil respondent in a baseless and malicious case may later file this claim in civil court against the parties who took an active role in initiating or encouraging the original case. The defendant in the initial case becomes the plaintiff in the malicious prosecution suit, and the plaintiff or prosecutor in the original case becomes the defendant. In most states the claim must be filed within a year after the end of the original case.

A claim of malicious prosecution is a tort action. A TORT action is filed in civil court to recover money damages for certain harm suffered. The plaintiff in a malicious prosecution suit seeks to win money from the respondent as recompense for the various costs associated with having to defend against the baseless and vexatious case.

The public policy that supports the action for malicious prosecution is the discouragement of **Vexatious Litigation**. This policy must compete against one that favors the freedom of law enforcement officers, judicial officers, and private citizens to participate and assist in the administration of justice.

In most jurisdictions an action for malicious prosecution is governed by the **Common Law**. This means that the authority to bring the action lies in case law from the courts, not statutes from the legislature. Most legislatures maintain some statutes that give certain persons **Immunity** from malicious prosecution for certain acts. In Colorado, for example, a merchant, a merchant's employee, or a police officer, who reasonably suspects that a theft has occurred, may detain and question the suspect without fear of liability for slander, false arrest, **False Imprisonment**, unlawful detention, or malicious prosecution (Colo. Rev. Stat. Ann. § 18-4-407 [West 1996]).

An action for malicious prosecution is distinct from an action for false arrest or false imprisonment. If a person is arrested by a police officer who lacks legal authority for the arrest, the proper remedy is an action for false arrest. If a person is confined against her or his will, the proper remedy is an action for false imprisonment. An action for malicious prosecution is appropriate only when the judicial system has been misused.

## Elements of Proof

To win a suit for malicious prosecution, the plaintiff must prove four elements: (1) that the original case was terminated in favor of the plaintiff, (2) that the defendant played an active role in the original case, (3) that the defendant did not have probable cause or reasonable grounds to support the original case, and (4) that the defendant initiated or continued the initial case with an improper purpose. Each of these elements presents a challenge to the plaintiff.

The Original Case Was Terminated in Favor of the Plaintiff The original case must end before the defendant or respondent in that case may file a malicious prosecution suit. This requirement is relatively easy to prove. The original case qualifies as a prosecution if the defendant or respondent had to appear in court. The original case need not have gone to trial: it is enough that the defendant or respondent was forced to answer to a complaint in court. If the original case is being appealed, it is not considered terminated, and the defendant or respondent must wait to file a malicious prosecution suit.

To proceed with a malicious prosecution claim, the plaintiff must show that the original case was concluded in her or his favor. Generally, if the original case was a criminal prosecution, it must have been dismissed by the court, rejected by the **Grand Jury**, abandoned by the prosecutor, or decided in favor of the accused at trial or on appeal. If the original case was a civil suit, the respondent must have won at trial or the trial court must have disposed of the case in favor of the respondent (now the plaintiff).

If recovery by the plaintiff in a civil action was later reversed on appeal, this does not mean that the action was terminated in favor of the respondent. However, if the plaintiff in the original case won by submitting fabricated evidence or by other fraudulent activity, a reversal on such grounds may be deemed a termination in favor of the respondent. A settlement between the plaintiff and the respondent in a civil suit is not a termination in favor of the respondent. Likewise, courts do not consider a plea bargain in a criminal case to be a termination in favor of the defendant.

The Defendant Played an Active Role in the Original Case In a malicious prosecution suit, the plaintiff must prove that the defendant played an active role in procuring or continuing the original case. The plaintiff must prove that the defendant did more than simply participate in the original case. False testimony alone, for example, does not constitute malicious prosecution. Moreover, witnesses are immune from suit for **Defamation**, even if they lie on the witness stand. Such is the case because the concept of a fair and free trial requires that witnesses testify without fear of having to defend a defamation suit owing to their testimony.

An action for malicious prosecution focuses on the abuse of legal process, not on defamatory, untruthful statements. If a person helps another person launch a baseless case or takes action to direct or aid such a case, the first person may be held liable for malicious prosecution. The defendant must have been responsible in some way for the institution or continuation of the baseless case. This position of responsibility does not always include criminal prosecutors and civil plaintiffs. For example, if a prosecutor bringing criminal charges is tricked into prosecuting the case by an untruthful third party, the deceiving party is the one who may be found liable for malicious prosecution, not the prosecutor.

The Defendant Did Not Have Probable Cause to Support the Original Case The plaintiff must prove that the person who began or continued the original case did not have probable cause to do so. Generally, this means proving that the person did not have a reasonable belief in the plaintiff's guilt or liability. In examining this element, a court will look at several factors, including the reliability of all sources, the availability of information, the effort required to obtain information, opportunities given to the accused to offer an explanation, the reputation of the accused, and the necessity in the original case for speedy judicial action.

A failure to fully investigate the facts surrounding a case may be sufficient to prove a lack of probable cause. The termination of the original case in favor of the original defendant (now the plaintiff) may help to prove a lack of probable cause, but it may not be decisive on the issue. The plaintiff should present enough facts to allow a reasonable person to infer that the defendant acted without a reasonable belief in the plaintiff's guilt or liability in beginning or continuing the original case.

In a criminal case, an acquittal does not constitute a lack of probable cause. A criminal defendant stands a better chance of proving lack of probable cause if the original case was dismissed by prosecutors, a grand jury, or the court before the case went to trial. The criminal process provides several safeguards against prosecutions that lack probable cause, so a full criminal trial tends to show the presence of probable cause. Civil cases do not have the same safeguards, so a full civil trial does not tend to prove probable cause.

The Defendant Initiated or Continued the Original Case with an Improper Purpose In a malicious prosecution, the plaintiff must prove with specific facts that the defendant instituted or continued the original proceeding with an improper purpose. Sheer ill will constitutes an improper purpose, and it may be proved with facts that show that the defendant resented the plaintiff or wanted somehow to harm the plaintiff. However, the plaintiff does not have to prove that the defendant felt personal malice or hostility toward the plaintiff. Rather, the plaintiff need only show that the defendant was motivated by something other than the purpose of bringing the plaintiff to justice.

Few defendants admit to improper purposes, so improper purpose usually must be inferred from facts and circumstances. If the plaintiff cannot discover any apparent purpose, improper purpose can be inferred from the lack of probable cause.

*Hodges v. Gibson Products Co. Hodges v. Gibson Products Co.*, 811 P.2d 151 (Utah 1991), contained all the elements of a malicious prosecution. According to Chad Crosgrove, the manager of Gibson Discount Center in West Valley, Utah, store money was noticed missing during the afternoon of September 4, 1981. Both Crosgrove and part-time bookkeeper Shauna Hodges had access to the money, and both denied taking it. On September 9 Crosgrove and Gibson officials went to the local police station, where they lodged an accusation of theft against Hodges. Crosgrove was not accused. Hodges was arrested, handcuffed, and taken to jail. After a **Preliminary Hearing**, she was released on bail and ordered to return for trial on May 12, 1982.

After Hodges was formally charged, an internal audit at Gibson revealed that Crosgrove had embezzled approximately $9,000 in cash and goods from the store. The thefts had occurred over a time period that included September 4, 1981. Gibson still did not charge Crosgrove with theft. Instead, it allowed him to resign with a promise to repay the money.

The night before Hodges's trial was to begin, and almost two months after Crosgrove's **Embezzlement** was discovered, management at Gibson notified Hodges's prosecutor of Crosgrove's activities. The prosecutor immediately dropped the charges against Hodges. Hodges then filed a suit for malicious prosecution against Gibson and against Crosgrove.

At trial Hodges was able to prove all the elements of malicious prosecution to the jury's satisfaction: (1) She had been subjected to prosecution for theft, and the matter had been terminated in her favor. (2) She had sued the correct parties, because Gibson and Crosgrove were responsible for instituting the original proceedings against her. (3) She had ample evidence that the original prosecution was instituted without probable cause because Gibson failed to investigate Crosgrove until after she had been arrested and because the prosecutor dismissed the charges against her. (4) Finally, there were enough facts for the jury to infer that both Gibson and Crosgrove had acted with improper motive: Gibson had acted with an apparent bias against Hodges, and Crosgrove apparently had accused Hodges for self-preservation. The jury awarded Hodges a total of $88,000 in damages: $77,000 from Gibson, and $11,000 from Crosgrove. The verdict was upheld on appeal.

## Damages

The plaintiff in an action for malicious prosecution can recover money from the defendant for certain harms suffered. Typical injuries include loss of reputation and credit, humiliation, and mental suffering. If the original action was a criminal case, additional harms often include discomfort, injury to health, loss of time, and deprivation of society with family.

If the plaintiff suffered an economic loss directly related to the original action, the plaintiff can also recover the amount lost. This amount includes attorneys' fees and court costs incurred by the plaintiff in defending the original case.

Finally, the plaintiff may recover **Punitive Damages**. Punitive damages are imposed by judges and juries to punish misconduct by a party. Because an action for malicious prosecution requires proof of improper intent on the part of the defendant, punitive damages commonly are awarded to malicious prosecution plaintiffs who win damages awards.

## Other Considerations

Actions for malicious prosecution must compete against the public interest in allowing parties to pursue cases unfettered by the specter of a retaliatory case. Very few civil or criminal cases result in an action for malicious prosecution. This is because it is difficult to prove that the defendant procured or continued the original case without probable cause and with an improper purpose.

Another difficulty for the plaintiff in an action for malicious prosecution is immunity. Generally, the law protects witnesses, police officers, judges, prosecutors, and lawyers from suit for malicious prosecution.

# COMPLAINT - WARRANT

| COMPLAINT NUMBER | | | |
|---|---|---|---|
| 1412 | W | 2016 | 000214 |
| COURT CODE | PREFIX | YEAR | SEQUENCE NO. |

HANOVER MUNICIPAL COURT
1000 RT #10
WHIPPANY NJ 07981-0000
973-428-2519 COUNTY OF: MORRIS

| # of CHARGES | CO-DEFTS | POLICE CASE #: |
|---|---|---|
| 2 | | 16-11601 |

COMPLAINANT NAME: STEPHEN MANNEY

*THE STATE OF NEW JERSEY*
*VS.*
JEFFREY M HARTY

ADDRESS: 51 WASHINGTON ST.
MORRISTOWN NJ 07960-0000

DEFENDANT INFORMATION
SEX: M EYE COLOR: GREEN DOB: 02/26/1967
DL STATE: NJ
DRIVER'S LIC. #. H07043937402676
SOCIAL SECURITY #: 143-68-7497 SBI #:
TELEPHONE #: 973-906-4532

By certification or on oath, the complainant says that to the best of his/her knowledge, information and belief the named defendant on or about 05/07/2016 in HANOVER TWP , MORRIS County, NJ did:
WITHIN THE JURISDICTION OF THIS COURT, PURPOSELY OR KNOWINGLY DISOBEY A JUDICIAL ORDER OR PROTECTIVE ORDER, SPECIFICALLY BY MAILING A LETTER TO THE VICTIM, BH, WHO HAS A FINAL RESTRAINING ORDER, FV_14-00126507, PROTECTING HER FROM COMMUNICATION FROM THE DEFENDANT

WITHIN THE JURISDICTION OF THIS COURT, PURPOSELY OR KNOWINGLY VIOLATE A PROVISION IN AN ORDER ENTERED UNDER THE PROVISIONS OF HTE "PREVENTION OF DOMESTIC VIOLENCE ACT OF 1991," WITH SAID VIOLATION ALSO CONSTITUTING THE OFFENSE OF CONTEMPT, 2C:29-9A, SPECIFICALLY BY MAILING A LETTER TO THE VICTIM, BH, IN VIOLATION OF A FINAL RESTRAINING ORDER, FV-14-001265-07

in violation of:

| | | | |
|---|---|---|---|
| Original Charge | 1) 2C:29-9A | 2) 2C:29-9B(1) | 3) |
| Amended Charge | | | |

**CERTIFICATION:**
I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are wilfully false, I am subject to punishment.

Signed: STEPHEN MANNEY Date: 05/10/2016

DATE OF FIRST APPEARANCE 05/18/2016 TIME 08:30AM DATE OF ARREST 05/10/2016

**PROBABLE CAUSE DETERMINATION AND ISSUANCE OF WARRANT**

☐ Probable cause **IS NOT** found for the issuance of this complaint.

Signature of Court Administrator or Deputy Court Administrator Date Signature of Judge Date

☑ Probable cause **IS** found for the issuance of this complaint. James Bride JMC/ld 5/10/16
Signature and Title of Judicial Officer Issuing Warrant Date

TO ANY PEACE OFFICER OR OTHER AUTHORIZED PERSON: PURSUANT TO THIS WARRANT YOU ARE HEREBY COMMANDED TO ARREST THE NAMED DEFENDANT AND BRING THAT PERSON FORTHWITH BEFORE THE COURT TO ANSWER THE COMPLAINT.

Bail Amount Set: 2,500.00 FULL by: Judge Lewis Sceusi, JSC Telephonically Per MC [illegible]
(if different from judicial officer that issued warrant)

☑ Domestic Violence – Confidential ☑ Related Traffic Tickets or Other Complaints W-2016-213 ☐ Serious Personal Injury/ Death Involved

Special conditions of release:
☒ No phone, mail or other personal contact w/victim
☒ No possession firearms/weapons
☐ Other (specify):

**DEFENDANT'S COPY**



NJ/CDR2 8/1/200

# COMPLAINT - WARRANT

| COMPLAINT NUMBER | | | |
|---|---|---|---|
| 1412 | W | 2016 | 000498 |
| COURT CODE | PREFIX | YEAR | SEQUENCE NO. |

HANOVER MUNICIPAL COURT
1000 RT #10
WHIPPANY NJ 07981-0000
973-428-2519 COUNTY OF: MORRIS

| # of CHARGES | CO-DEFTS | POLICE CASE #: |
|---|---|---|
| 2 | | 16-32139 |

COMPLAINANT
NAME: ERIK WOODRUFF

*THE STATE OF NEW JERSEY*
*VS.*
JEFFEREY M HARTY

ADDRESS: 51 WASHINGTON STREET
MORRISTOWN NJ 07960-0000

DEFENDANT INFORMATION
SEX: M EYE COLOR: GREEN DOB: 02/26/1967
DRIVER'S LIC. #. H07043937402676 DL STATE: NJ
SOCIAL SECURITY #: 143-68-7497 SBI #: 825029D
TELEPHONE #: 973-727-7510
LIVESCAN PCN #: 141201003017

By certification or on oath, the complainant says that to the best of his/her knowledge, information and belief the named defendant on or about 12/30/2016 in HANOVER TWP , MORRIS County, NJ did:
WITHIN THE JURISDICTION OF THIS COURT, PURPOSELY OR KNOWLINGLY VIOLATE AN ORDER ENTERED UNDER THE PROVISIONS OF THE PREVENTION OF DOMESTIC VIOLENCE ACT SPECIFICALLY BY SENDING AN EMAIL TO THE HANVOER STORM HOCKEY CLUB, INITIATING COMMUNICATION TO OR ABOUT B.H. WHO IS KNOWN TO BE A MEMBER OF THE HOCKEY CLUB'S EXECUTIVE BOARD.

WITHIN THE JURISDICTION OF THIS COURT, WITH THE PURPOSE TO HARASS ANOTHER, MAKE OR CAUSE TO BE MADE COMMUNICATION OR COMMUNICATIONS IN A MANNER LIKELY TOP CAUSE ANNOYANCE OR ALARM SPECIFICALLY BY SENDING AN EMAIL TO THE HANOVER STORM HOCKEY CLUB, INITIATING COMMUNICATION TO OR ABOUT B.H. WHO IS KNOWN TO BE A MEMBER OF THE HOCKEY CLUB'S EXECUTIVE BOARD.

**in violation of:**

| | | | |
|---|---|---|---|
| Original Charge | 1) 2C:29-9B(2) | 2) 2C:33-4A | 3) |
| Amended Charge | | | |

**CERTIFICATION:**
I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are wilfully false, I am subject to piunishment 12/31/2016
**Signed:** ERIK WOODRUFF

You will be notified of your Central First Appearance/CJP date to be held at the Superior Court in the county of at the following address:

**Date of Arrest:** 12/31/2016 **Appearance Date:** 01/09/2017 **Time:** 08:30AM **Phone:**

## PROBABLE CAUSE DETERMINATION AND ISSUANCE OF WARRANT

☐ Probable cause **IS NOT** found for the issuance of this complaint.

Signature of Court Administrator or Deputy Court Administrator Date Signature of Judge Date

☑ Probable cause **IS** found for the issuance of this complaint. BRIAN OTOOLE JUDICIAL OFFICER 12/31/2016
Signature and Title of Judicial Officer Issuing Warrant Date

**TO ANY PEACE OFFICER OR OTHER AUTHORIZED PERSON: PURSUANT TO THIS WARRANT YOU ARE HEREBY COMMANDED TO ARREST THE NAMED DEFENDANT AND BRING THAT PERSON FORTHWITH BEFORE THE COURT TO ANSWER THE COMPLAINT.**

**Bail Amount Set:** 2,500.00 /10% **by:**
(if different from judicial officer that issued warrant)

☑ **Domestic Violence – Confidential**
☑ **Related Traffic Tickets or Other Complaints**
☐ **Serious Personal Injury/ Death Involved**

**Special conditions of release:**
☐ **No phone, mail or other personal contact w/victim**
☐ **No possession firearms/weapons**
☐ **Other** (specify):

COMPLAINT - WARRANT (DEFENDANT'S COPY)

# Hanover Township Police Department

1000 Route 10, Whippany, NJ 07981
Phone: 973-428-2512 Fax: 973-428-1543 Mun. Code: 1412

## Arrest Report

**Arrest Details**

| Case Number | Arrest Number | Arrest Date | Arrest Time | Place of Arrest |
|---|---|---|---|---|
| 16-06793 | | 03/15/16 | 21:15 | 324 Whippany Rd., Whippany, NJ 07981 |

**Arrestee Information**

| Name(Lastname, Firstname) | MI | Suffix | Alias_Nickname |
|---|---|---|---|
| Harty, Jeffrey | m | | |

| Address | DOB | Age | Sex | Race | SSN |
|---|---|---|---|---|---|
| 51 Washington Ave., Morristown, NJ 07960 | 02/26/67 | 49 | M | 1B | 143-68-7497 |

| Place of Birth | DLN | | Height | Weight | Hair | Eyes | Complexion | Mar. Status |
|---|---|---|---|---|---|---|---|---|
| Montclair, NJ | H07043937402676 | NJ | 508 | 265 | BRO | GRN | Fair | Div |

| Other Descriptive Info | Glasses | Build | Speech | Handed | Miranda | Prints | Photo |
|---|---|---|---|---|---|---|---|
| | N | Heav | English | Right | Y | Y | Y |

| Occupation | Employer | Bus. Address |
|---|---|---|
| Supplier | Harlo Wholesale Lighting | 51 Washington St., Morristown, NJ 07960 |

| SBI # | FBI # | Phone |
|---|---|---|
| | | 973-906-4532 |

**Complaint Information**

Charge(s)
Contempt of Court 2C:29-9

| Complainant Name(Lastname, Firstname) | & | Address | Mun. Code |
|---|---|---|---|
| Ptl. Robert Carpenter 764 | | | NJ014120 |

| Offense Date | Offense Time | Place of Offense | Checked car prior to placing in & after removing arrestee from the back seat |
|---|---|---|---|
| 03/15/16 | 21:15 | 60 Perry St., Whippany, NJ 07981 | Y |

| w/ Warrant | w/o Warrant | On View | Summons | Handcuffed The Arrestee |
|---|---|---|---|---|
| | | X | | Y |

| Vehicle | Yr | Make | Body Type | Color | Reg | State | VIN |
|---|---|---|---|---|---|---|---|
| | | | | | | | |

| Date | Court |
|---|---|
| 03/15/16 | Hanover Twp Municipal Court |

| Amount Bail | 10% | Bail Result | Place Committed |
|---|---|---|---|
| $10,000.00 | N | Comm. Def | Morris County Jail |

| Date | Court | Disposition |
|---|---|---|
| | | |

**Narrative**

Above named was arrested for violating a final restraining order 2C:29-9. Bail was set at $10,000 and he was committed to the Morris County Jail in default.

**Officer of Record** | **Date** | **Reviewed By** | **Juvenile Released To** | **Time**

| Officer of Record | Reporting Date | Reviewed By | Parent or Responsible Party Signature | |
|---|---|---|---|---|
| Ptl. Michael Byrnes 773 | 03/15/16 | rwilliams | | |

# Hanover Township Police Department

1000 Route 10, Whippany, NJ 07981
Phone: 973-428-2512 Fax: 973-428-1543 Mun. Code: 1412

## Investigation Report

**Incident Details:**

| Case Number | Time Reported | Date Reported | Time Occurred | Date Occurred | Occurrence Between Date / Time of | Time Occurred | Date Occurred | 911 | Completed |
|---|---|---|---|---|---|---|---|---|---|
| 16-06793 | 21:15 | 03/15/16 | 21:15 | 03/15/16 | | | | X | X |

| Incident Type: | Incident Location: Street # | Street Name | Intersection / Cross Street of: |
|---|---|---|---|
| Violation: TRO/ FRO 2C:25-31 | 60 | Perry Street | |
| | Business / Common Location Name | | |

**Contact Information: Victim Suspect Complainant Witness Driver Arrest Passenger Missing Business Other**

| Code | Contact Name | MI | Suffix | Age | Sex | Race | DOB | SSN |
|---|---|---|---|---|---|---|---|---|
| A | #1 Harty, Jeffrey | M | | 49 | M | 1B | 02/26/1967 | 143-68-7497 |
| | Address: 60 Perry Street, Whippany, NJ 07981-1910 | | | | | Home Phone: 973-906-4532 | | Cell Phone: 973-906-4532 |
| V | #2 Harty, Blanche | | | 52 | F | 1A | 08/[redacted]/1963 | |
| | Address: [redacted] Whippany, NJ 07981 | | | | | Home Phone: [redacted] | | Cell Phone: [redacted] |
| W | #3 Monahan, Thomas | | | 49 | M | 1B | 06/[redacted]/1966 | [redacted] |
| | Address: [redacted] Whippany, NJ 07981 | | | | | Home Phone: [redacted] | | Cell Phone |
| O | #4 Harty, Jason (Juvenile) | | | 11 | M | 1B | 11/[redacted]/2004 | |
| | Address: [redacted] Whippany, NJ 07981 | | | | | Home Phone | | Cell Phone: [redacted] |

**Property Information:**

| | Currency | Jewelry | Furs | Clothing | Auto | Misc. | Total |
|---|---|---|---|---|---|---|---|
| Value of Stolen Property | | | | | | | |
| Value of Stolen Property Recovered | | | | | | | |

**Automobile Information:**

| | Vehicle Code | Year | Make | Body Type | Color | Registration | State | VIN |
|---|---|---|---|---|---|---|---|---|
| 1 | | | | | | | | |
| 2 | | | | | | | | |
| 3 | | | | | | | | |
| 4 | | | | | | | | |

**Narrative:**

Narrative

While driving past Monroe Hall on Whippany Road, I observed PTL Carpenter outside of his patrol car speaking with Jeffery Harty in front of Monroe Hall. At shift change, we had been briefed that Jeffrey had been released from jail and a copy of the FRO between Jeffrey and his ex-wife, Blanche Harty, was provided to us. I turned onto Park Avenue and made a U-turn to go back to Monroe Hall to back up PTL Carpenter. Carpenter was interviewing Harty regarding him possibly violating the FRO. Harty denied walking in front of 60 Perry Street. Harty admitted to walking to the residence at 50 Perry Street due to recent construction. In order to get to 50 Perry Street, He had to walk past 60 Perry Street.

| Officer of Record: | Date: | Other Reports Filed: | Reviewed By: |
|---|---|---|---|
| Ptl. Michael Byrnes 773 | 03/15/16 | MVA Arrest X DV X DWI DWIQ Tow SD CI TRO / SHA Prop. Evdn UOF Prst Supp X Juv Bias Pris | rwilliams |

# Hanover Township Police Department

1000 Route 10, Whippany, NJ 07981
Phone: 973-428-2512 Fax: 973-428-1543 Mun. Code: 1412

## Investigation Report

Case Number: 16-06793

Narrative Continued (Page 2)

PTL Littman and Hermans arrived on scene. Harty was found to be in violation of the active FRO by doing so.

Harty was placed under arrest for the violation of the FRO. He was handcuffed, searched, and secured in the rear of patrol car (#76). He was transported to headquarters and PTL Hermans followed PTL Carpenter. PTL Littman and I proceeded to Blanche's residence.

Once at 60 Perry Street, we spoke with Blanche who was home with her son Jason. She directed us into the residence. She informed us that she was called by her neighbor Tom Monahan, who resides at [redacted] that he saw Jeffrey Harty walk past her residence. She went on to say that Monahan informed her that Harty stopped and stated, "Jason, I love you, fuck you Blanche/bitch" in front of 60 Perry Street. Monahan informed her that after Harty said that, he proceeded to walk down the block. Blanche was provided a voluntary statement form and a continuation sheet to write down the aforementioned statement.

PTL Littman proceeded to [redacted] to get a written statement from Mr. Monahan. Monahan provided a written statement regarding the aforementioned information of Harty's actions resulting in the violation. PTL Littman came back to 60 Perry Street upon receiving the written statement. I completed a VINE form, had Blanche initial and sign the required areas of the form and provided her a copy.

Harty was charged for violating an active Final Restraining Order - (2C:29-9B) on Warrant # W - 2016 - 000141 - 1412 and it was considered a disorderly persons contempt offense. Judge O'Toole set bail at $10,000 full no 10% option. The first appearance in Family Court was scheduled for March 21, 2016 at 8:30 AM. A Family Court first appearance form was completed and faxed to MCPO and Superior Court with all proper forms. All reports were faxed to the MCPO and Probation Office.

See PTL Littman's and Carpenter's reports for more detail.

| Officer of Record: | Date: |
|---|---|
| Ptl. Michael Byrnes 773 | 03/15/16 |

# Hanover Township Police Department

1000 Route 10, Whippany, NJ 07981
Phone: 973-428-2512 Fax: 973-428-1543 Mun. Code: 1412

## Supplemental Investigation Report

**Incident Details:**

| Case Number | Time Reported | Date Reported | Time Occurred | Date Occurred | Occurrence Between Date / Time of | Time Occurred | Date Occurred | 911 | Completed |
|---|---|---|---|---|---|---|---|---|---|
| 16-06793B | | 03/15/16 | 21:15 | 03/15/16 | | | | | X |

**Incident Type:** Investigation Follow-Up

**Incident Location:**

| Street # | Street Name | Intersection / Cross Street of. |
|---|---|---|
| 60 | Perry Street | |

Business / Common Location Name:

**Contact Information: Victim · Suspect · Complainant · Witness · Driver · Arrest · Passenger · Missing · Business · Other**

| Code | Contact Name | MI | Suffix | Age | Sex | Race | DOB | SSN | Home Phone | Cell Phone | Address |
|---|---|---|---|---|---|---|---|---|---|---|---|
| S | #1 Harty, Jeffrey | M | | 49 | M | 1B | 02/26/1967 | 143-68-7497 | 973-906-4532 | 973-906-4532 | 60 Perry St, Whippany, NJ 07981-1910 |
| | #2 | | | | | | | | | | |
| | #3 | | | | | | | | | | |
| | #4 | | | | | | | | | | |

**Property Information:**

| | Currency | Jewelry | Furs | Clothing | Auto | Misc. | Total |
|---|---|---|---|---|---|---|---|
| Value of Stolen Property | | | | | | | |
| Value of Stolen Property Recovered | | | | | | | |

**Automobile Information:**

| | Vehicle Code | Year | Make | Body Type | Color | Registration | State | VIN |
|---|---|---|---|---|---|---|---|---|
| 1 | | | | | | | | |
| 2 | | | | | | | | |
| 3 | | | | | | | | |
| 4 | | | | | | | | |

**Narrative:**

Narrative

On the above date and time I monitored Ptl. Carpenter's radio transmission stating that he was out with Mr. Harty at Monroe Hall. As I was proceeding over I was asked by the dispatcher to call him at the police desk. Upon speaking with Dispatcher Kapral he advised me that he had just received a 9-1-1 call from Blanche Harty who reported her ex-husband (Jeff) had walked by her residence. This officer had personal knowledge that Jeff has an active final restraining order against him barring him within 300 feet from Blanche's residence (60 Perry Street Whippany). I then arrived on scene with Ptl. Carpenter, Ptl. Hermans, and Ptl. Byrnes. I advised the other officers of the recent phone call I had with dispatch.

| Officer of Record: | Date: | Other Reports Filed: | Reviewed By: |
|---|---|---|---|
| Ptl. David Littman 756 | 03/15/16 | MVA Arrest DV DWI DWIQ Tow SD CI TRO / SHA Prop. Evdn UOF Prst Supp X Juv Bias Pris | rwilliams |

Hanover Township Police Department
1000 Route 10, Whippany, NJ 07981
Phone: 973-428-2512 Fax: 973-428-1543 Mun. Code: 1412

# Supplemental Investigation Report

Narrative Continued (Page 2)

Case Number 16-06793B

Mr. Harty was placed under arrest for the violation of restraining order. Ptl. Hermans and Ptl. Carpenter transported Harty to HQ for processing. Ptl. Byrnes and I then responded to 60 Perry Street and spoke with Blanche. Blanche advised that her son received a call from Jeff earlier in the evening. Jeff was advised by his son (Jason) that he was at home doing homework. Blanche stated they were not at home and did not want Jeff to know their location. Blanche stated that she received a call from her neighbor at [redacted] (Tom Monahan) who reported seeing Jeff standing in front of her house and was yelling at the house. Ptl. Byrnes had Blanche completed a voluntary statement as to the facts and a domestic violence VINE form. I then responded to [redacted] and spoke with Mr. Monahan. Mr. Monahan stated he was walking his dog in the area 60 Perry Street and observed Jeff standing in front of #60 yelling "Jason Harty your dad loves you and your mom is a bitch". Mr. Monahan stated that he knew that there was an active restraining order against Jeff and that he called Blanche to notify her. I had Mr. Monahan complete a voluntary statement as to what he saw (see form). After returning to HQ this officer contacted Morris County Assistant Prosecutor Pennis who advised that this violation was only a disorderly persons offense. I then contacted Judge O'Toole and advised him of the facts. Judge O'Toole requested that a total number of past violations of this restraining order be tallied. I advised him that Jeff had 10 previous violations in his criminal history. Judge O'Toole then set bail at $10,000.00/full. See Ptl. Byrnes report for further details. No further action by patrol.

| Officer of Record: | Date: |
|---|---|
| Ptl. David Littman 756 | 03/15/16 |

Witnesses are given immunity because justice requires that they testify without fear of reprisals. Law enforcement and judicial officers are given immunity because they must be free to perform their duties without continually defending against malicious prosecution cases.

There are exceptions, however. If a law enforcement or judicial official ventures outside the bounds of official duties to instigate or continue a malicious prosecution, the official may be vulnerable to a malicious prosecution suit. For example, a prosecutor who solicits fabricated testimony to present to a grand jury may be sued for malicious prosecution. The prosecutor would receive only limited immunity in this instance because the solicitation of evidence is an administrative function, not a prosecutorial function (*Buckley v. Fitzsimmons*, 509 U.S. 259, 113 S. Ct. 2606, 125 L. Ed. 2d 209 [1993]).

Private parties may also at times enjoy immunity from actions for malicious prosecution. For example, a person who complains to a disciplinary committee about an attorney may be immune. This general rule is followed by courts to avoid discouraging the reporting of complaints against attorneys.

## Further readings

American Law Institute. *Restatement (Second) of Torts*, div. 7, ch. 29, topic 2, §§659–661. 1977. St. Paul, Minn.: American Law Institute.

Cooper, David R. 1993. "Attorneys as Plaintiffs: Absolute Immunity for Ethics Complainants Bars Suit by Attorney for Malicious Prosecution (*Jarvis v. Drake*, 250 Kan. 645, 830 P.2d 23 [1992])." *Washburn Law Journal* 32.

Linscott, Steven, and Randall L. Frame. 1994. *Maximum Security: The True Story of Steven Linscott.* Wheaton, Ill.: Crossway Books.

Schillaci., Jacques L. 2002. "Unexamined Premises: Toward Doctrinal Purity in §1983 Malicious Prosecution Doctrine." *Northwestern University Law Review* 97 (fall).

Sherwood, Carlton. 1991. *Inquisition: The Persecution and Prosecution of the Reverend Sun Myung Moon.* Washington, D.C.: Regnery Gateway.

Silver, Isidore. 1989. *Police Civil Liability: Law and Practice.* New York: Matthew Bender.Toomey, Kate A. 2002. "Practice Pointer: The Rule Against Threatening Criminal Prosecution to Gain an Advantage in a Civil Matter. *Utah Bar Journal* 15 (December).

Weber, Christopher W. 1994. "The Loss of Consortium-Malicious Prosecution Nexus: No Recovery for Loss of Spousal Consortium Absent Physical Injury and No Recovery for Malicious Prosecution Beyond the Person Prosecuted: *Browning Ferris Industries v. Lieck*, 881 S.W.2d 288 (Tex. 1994)." *Texas Tech Law Review* 26.

Zbytowski, Jennifer S. 1995. "The Case Against Section 1983 Immunity for Witnesses Who Conspire with a State Official to Present Perjured Testimony." *Michigan Law Review* 93.

## Cross-references

**False Arrest; Malice; Probable Cause; Tort Law.**



# malicious prosecution

n. filing a lawsuit with the intention of creating problems for the defendant such as costs, attorneys fees, anguish, or distraction when there is no substantial basis for the suit. If the defendant in the lawsuit wins, and has evidence that the suit was filed out of spite and without any legal or factual foundation, he/she may, in turn, sue for damages against the person who filed the original action. If malice is clearly proved against the party who brought the original suit, punitive damages may be awarded along with special and general damages. In recent cases, courts have ruled that an attorney who knowingly assists a client in filing a worthless lawsuit out of malice or spite may be liable for damages along with the client. The suit by the victim to recover damages for a malicious prosecution cannot be filed until the original law suit is decided in favor of the victim. (See: **malice**)

# malicious Prosecution

*noun* indefensible proseeution, Kafka-like prosecution, malicious charges instituted by a prosecutor, malicious criminal enforcement, malicious pursuit by a law enforcement agency, prosecution mainnained with venal intentions, prosecution without proper procedures, reprehensible prosecution, unconscionable prosecution, unconstitutional prosecution, underhanded prosecution, unfair prosecution, unjust and unfair pursuit of criminal charges, unjustifiable prosecution, unmerited prosscution, unprincipled prosecution, unscrupulous prosecuuion, unwarrantable prosecution, wrongful prosecution



# malicious prosecution

a tort of abuse of legal procedure. It consists in the defendant maliciously initiating proceedings, ending in favour of the plaintiff, where there was no reasonable cause for the prosecution, causing damage to the plaintiff Malice for these purposes covers not only spite and ill-will but also any motive other than a desire to bring a criminal to justice.



MALICIOUS PROSECUTION, or MALICIOUS ARREST, torts, or remedies. These terms import a wanton prosecution or arrest, made by a prosecutor in a criminal proceeding, or a plaintiff in a civil suit, without probable cause, by a regular process and proceeding, which the facts did not warrant, as appears by the result.

2. This definition will be analysed by considering, 1. The nature of the prosecution or arrest. 2. Who is liable under it. 3. What are malice and probable cause. 4. The proceedings. 5. The result of the prosecution and afterwards, 6. The remedy.

3.-Sec. 1. Where the defendant commenced a criminal prosecution wantonly and in other respects against law, he will be responsible. Addis. R. 270; 12 Conn. 219. The prosecution of a civil suit, when malicious, is a good cause of action, even when there has been no arrest. 1 P. C. C. 210; 11 Conn. 582; 1 Wend. 345, But no action lies for commencing a civil action, though without sufficient cause. 1 Penna. R. 235.

4.-Sec. 2. The action lies against the prosecutor and even against a mere informer, when the proceedings are malicious. 5 Stew. & Port. 367. But grand jurors are not liable to an action for a malicious prosecution, for information given by them to their fellow jurors, on which a prosecution is founded. Hardin, 556. Such action lies against a plaintiff in a civil action who maliciously sues out the writ and prosecutes it; 16 Pick. 453; but an action does not lie against an attorney at law for bringing the action, when regularly employed. 16 Pick. 478. See 6 Pick. 193.

5.-Sec. 3. There must be malice and want of probable cause. 1 Wend. 140, 345; 7 Cowen, 281; 2 P. A. Browne, Appx. xlii; Cooke, 90; Litt. Sel. Cas. 106; 4 Litt. 334; 3 Gil. & John. 377; 1 N. & M. 36; 12 Conn. 219; 3 Call. 446; 2 Hall, 315; 3 Mason, 112, 2 N. & M. 54,143. See Malice; Probable cause.

6.-Sec. 4. The Proceedings under which the original prosecution or action was held, must have been regular, in the ordinary course of justice, and before a tribunal having power to ascertain the truth or falsity of the charge, and to punish the supposed offender, the now plaintiff. 3 Pick. 379, 383. When the proceedings are irregular, the prosecutor is a trespasser. 3 Blackf. 210. See Regular and irregular process.

7.-Sec. 5. The malicious prosecution or action must be ended, and the plaintiff must show it was groundless, either by his acquittal or by obtaining a final judgment in his favor in a civil action. 1 Root, R. 553; 1 N. & M. 36; 2 N. & M. 54, 143; 7 Cowen, 715; 2 Dev. & Bat. 492.

8.-Sec. 6. The remedy for a malicious prosecution is an action on the case to recover damages for the injury sustained. 5 Stew. & Porter, 367; 2 Conn. 700; 11 Mass 500; 6 Greenl. 421; 3 Gill. & John. 377. See Case; Regular and irregular process.

See, generally, Bull. N. P. 11; 1 Saund. 228; 12 Mod. 208; 1 T. R. 493 to 551; Bac. Ab. Actions on the case, H; Bouv. Inst. Index, h.t.

In Brunson v. Affinity Fed. Credit Union, 954 A.2d 550 (N.J. Super. App. Div. 2008), the Court reversed summary judgment that had been entered in favor of the bank, Affinity Federal Credit Union, and its fraud examiner, Jim Wilcox. Howard Brunson claimed that the banks fraud examiner had improperly linked Brunson to an account opened with Brunsons stolen identity.Specifically, Brunson asserted that the bank failed to review surveillance tapes showing the individual who had opened an account in Brunsons name, using Brunsons apparently stolen social security number and a bogus New Jersey non-drivers identification card with Brunsons date of birth and address. The perpetrator deposited $25 and withdrew fraudulent checks totaling $9,506.82. The person who opened the account was identified on seven different surveillance tapes, and eyewitness descriptions stated that he was 5 6 tall. Brunson, however, was 6 3 tall. The banks fraud examiner found that the named holder of the account, who was Brunson, had a criminal record. However, the examiner did not review photos of Brunson, which were included in his criminal record, to compare them to the person captured on the surveillance tape. Likewise, the examiner did not review Brunsons height and weight descriptions, which were also included in his criminal record, and compare them to the eyewitness accounts. Nonetheless, the examiner signed criminal complaints against Brunson and appeared and testified at a grand jury proceeding, which resulted in an indictment of Brunson. Brunson was then arrested and jailed for thirteen days until his charges were dismissed.After his release, Brunson sued the bank and the examiner for malicious prosecution and negligent investigation, and negligent hiring of the examiner by the bank. In laying out the foregoing facts, the Superior Court noted that the fraud examiner had a questionable basis for probable cause at best. The Superior Court then noted that the bank could be held vicariously liable for the examiners conduct.The Superior Court next turned to the question of whether the bank owed a duty to Brunson as the purported account holder, but who had not in fact opened the fraudulent account. The Superior Court began its analysis by reciting a laundry list of reports and data about identity theft and its growing presence and importance in the financial services economy. The Superior Court concluded that the significant concerns over identity theft may necessitate a duty of a bank to a non-customer under such circumstances. The Superior Court stated:With the growth of identity theft both nationally and in New Jersey, it is incumbent upon financial institutions and fraud investigators to pursue with reasonable care their responsibility for protecting, not only their own customers, but non-customers who may be victims of identity theft. Fairness and public policy require financial institutions to be accountable when they negligently put individuals at risk by failing to exercise reasonable care in undertaking investigations of fraud claims.[Brunson v. Affinity Fed. Credit Union, 954 A.2d 550, 559560 (N.J. Super. App. Div. 2008)]Nonetheless, the Superior Court then acknowledged that, generally, a bank owes no duty of care to third parties who are not bank customers. However, the Superior Court then noted that sometimes tort liability of a financial institution can be established where a special relationship has been established from which a duty can be deemed to flow. The Superior Court noted that the question of whether a bank has a duty of reasonable care to non-customers who have been victimized by imposters has not been addressed in New Jersey. The Superior Court then turned to other jurisdictions which have established that a bank owes a duty to non-customers to use reasonable care in opening checking accounts or extending credit. The other jurisdictions that the Superior Court next considered was the Alabama Supreme Court, which had decided over ten years ago the duties arising from an imposter who had opened a checking account using a non-customers stolen identity.In Patrick v. Union State Bank, 681 So.2d 1364 (Ala. 1995), the Alabama Supreme Court reversed the banks dismissal and held that a bank owes a duty of reasonable care to the person in whose name, and upon whose identification, an account is opened to ensure that the person opening the account and to whom checks are given is not an imposter. The New Jersey Superior Court then noted the special status of banks in our society that the Alabama Supreme Court had relied upon and similarly found that banks in New Jersey may owe such a duty to non-customers.Accordingly, the Superior Court in Brunson held:As did the bank in Patrick, Affinity established a relationship with plaintiff when it opened the account in his name with address, date of birth and social security number. The injury to plaintiff was foreseeable: the identity theft, the fraudulent scheme and the resulting injury and the harm it caused plaintiff were foreseeable. The depositing and cashing of worthless checks would be a likely result of an imposter opening a checking account.[Brunson v. Affinity Fed. Credit Union, 954 A.2d 550, 563 (N.J. Super. App. Div. 2008).]Nonetheless, the Superior Court then purported to limit this legal duty of care to fraud investigations and resultant complaints. The Superior Court stated:We need not go as far as the Patrick court, which held that the bank could be held liable for the negligent opening of accounts. Here, we do no more than hold that Affinity and Wilcox may be held liable for initiating the criminal complaints against plaintiff based upon the negligent investigation of the fraud perpetrated on the bank by the imposter.[Brunson v. Affinity Fed. Credit Union, 954 A.2d 550, 563 (N.J. Super. App. Div. 2008).]However, two sentences later the Superior Court may have left the legal duty door open by again referencing a general duty to exercise reasonable care in opening accounts. The Courts full statement follows:Financial institutions -- particularly banks -- have a duty to exercise reasonable care in opening accounts. A duty of care extends to investigating fraud and pursuing allegedly fraudulent claims. Here, Affinity, through its employee, Wilcox -- a certified fraud investigator -- pursued plaintiff in the face of numerous indicators that he was not the perpetrator of the fraud.[Brunson v. Affinity Fed. Credit Union, 954 A.2d 550, 564 (N.J. Super. App. Div. 2008).]Thus, the Superior Court found that the bank and its examiner had a duty of care to plaintiff. The Court found that that specific duty included the duty to conduct a reasonable investigation before initiating criminal proceedings against the person whose stolen identity was used to open the account.Finally, in a somewhat ironic twist at the end of its decision, the Superior Court rejected the trial courts ruling requiring Brunson to be present during trial, holding that, [a]s long as the proofs can be presented in accordance with the rules of evidence, plaintiff need not be present at trial. Alas, it seems that Brunson was in jail at the time of trial on other charges in another state and was unable to travel to New Jersey for his case. - See more at: https://www.lexisnexis.com/legalnewsroom/top-emerging-trends/b/emerging-trends-law-blog/archive/2008/12/17/free-download_3a00_--stutzman-on-a-bank_2700_s-duty-of-care-to-a-non_2d00_customer_3a00_-know-your-customer-_2800_and-non_2d00_customers_2900_-_1420_-you-may-have-a-duty-.aspx?Redirected=true#sthash.fSwXG86R.dpuf

# HANOVER TOWNSHIP POLICE DEPARTMENT

## VOLUNTARY STATEMENT

DATE: 3-15-16 TIME: 9:30 I.R.No. 16-06793

NAME: Tom Monahan DATE OF BIRTH: 6-[redacted]-66

ADDRESS: 16 Perry Street, Whippany NJ 07981

HOME PHONE [redacted] SEX: M SOCIAL SECURITY No. [redacted]

OCCUPATION: Operations Manager WORK PHONE: [redacted]

EMPLOYER / ADDRESS PHONE:

I Tom Monahan hereby make the following voluntary statement:

I was walking my dog and saw Jeff Harty walk past Blanche Harty home on Perry St.
He yelled "Jason Harty you dad loves you and your mom is a bitch"
He the contiued up Perry ST. & made a right on Merrit ST.
I Then contacted Blanche on her cell phone & informed her I saw him in front of he home on Perry ST.

Witnessed by and made in the presence of:

Ptl. Littman

Signed Tom Monahan

Date 3-15-16 Page 1 of 1

# HANOVER TOWNSHIP
# POLICE DEPARTMENT

## VOLUNTARY STATEMENT

DATE: 3-15-16 TIME: 9:30pm I.R.No. 16-067[illegible]

NAME: Blanche Harty DATE OF BIRTH: 8-[redacted]-63

ADDRESS: [redacted] Whippany

HOME PHONE [redacted] SEX: F SOCIAL SECURITY No. [redacted]

OCCUPATION: Finance WORK PHONE: [redacted]

EMPLOYER / ADDRESS [redacted] PHONE:

I Blanche Harty hereby make the following voluntary statement:

Jeff called between our allowed time 7:30pm - 8pm - he stated he was at library - we were on our way to baseball hitting clinic @ Montview - Jason told him we were at home & he was doing homework - (I make Jason not say where we are to avoid Jeff showing up) When we got home & settled in to do some quick studying - my phone rang my neighbor Tom Monahan called to

Witnessed by and made in the presence of:

PTL MICHAEL BYRNES #773

03/15/16 @ 2151

Signed B Harty

Date 3/15/16 Page 1 of 2

VOLUNTARY STATEMENT

let me know as he was walking
his dog - Jeff passed him. Tom's dog
barked at Jeff & he said "Nice dog!"
Tom noticed Jeff had come down
Park Ave - made R onto Perry St -
walked in front of my house & my mom's
house ([redacted] was Flo) & made R
onto Harnett Drive
I then called police

Signature ___

# TOWNSHIP OF HANOVER
# POLICE DEPARTMENT

## VOLUNTARY STATEMENT

DATE: 5-10-16 TIME: ______ I.R. NO. 16-11601

NAME: Blanche Harty DATE OF BIRTH: 8 [redacted] 63

ADDRESS: [redacted] Whippany NJ 07981

HOME PHONE: [redacted] SEX: F SOCIAL SECURITY #: [redacted]

OCCUPATION: Finance WORK PHONE: [redacted]

EMPLOYER/ADDRESS: [redacted] PHONE: [redacted]

I, Blanche Harty, hereby make the following voluntary statement:

I am in receipt of 2 envelopes from Jeff Harty addressed to me w/ "Prevention of Domestic Violence Act of 1991 Retaliation" I opened first envelope - ~~of~~ all statutes & legal definitions -

Witnessed by and made in the presence of:

[signature]

Signed: Blanche L Harty

Date 5/10/16 Pg. 1 of 1

60 Perry Street
Whippany, NJ 07981

July 22, 2016

Superior Court of New Jersey
Family Division
County of Morris
PO Box 910
Morristown, NJ 07963-0910
Attn: Chris Mueller, Domestic Violence

**RE: FV-14-001265-07**
**(Blanche L. Harty vs. Jeffrey M. Harty)**

Dear Chris,

I am requesting that my son's middle school, Memorial Junior School, Highland Avenue, Whippany, NJ be added as a protected location commencing September 2016 and continuing for his 6th, 7th, and 8th grade school years – potentially graduating June 2019.

Memorial is currently a protected location as Jason's summer camp is run from this location – FRO only states for summer months.

Based on Defendant's history, I am requesting a change to the FRO by the courts!

Also am requesting the addition of verbiage related to correspondence from Defendant to our minor son specifically when it includes me in letters. I do not have an issue with Defendant sending a letter to his son, and writing directly to him about his studies, his sports, his well-being, the current events of his life, however, as my evidence will prove, copies of most recent letters received are attached. Defendant writes 2 sentences at beginning of letter to his son – asking how he is – then he goes into a multi-page rant on his illogical hatred towards me and others – and at the end of his rant, the last 2 sentences, is a cordial closing for his son – however, the middle part has completely berated me and threatened me. Defendant's narcissistic behavior and traits are evident in his letters and every single one of the below narcissistic traits are evident in his writings:

- ✓ Anger - People who suffer from personality disorders often feel a sense of unresolved anger and a heightened or exaggerated perception that they have been wronged, invalidated, neglected or abused
- ✓ Baiting - A provocative act used to solicit an angry, aggressive or emotional response from another individual.
- ✓ Belittling, Condescending and Patronizing - This kind of speech is a passive-aggressive approach to giving someone a verbal put-down while maintaining a facade of reasonableness or friendliness
- ✓ Blaming - The practice of identifying a person or people responsible for creating a problem, rather than identifying ways of dealing with the problem
- ✓ Bullying - Any systematic action of hurting a person from a position of relative physical, social, economic or emotional strength
- ✓ Dissociation- A psychological term used to describe a mental departure from reality.

- ✓ Frivolous Litigation - The use of unmerited legal proceedings to hurt, harass or gain an economic advantage over an individual or organization

- ✓ Harassment - Any sustained or chronic pattern of unwelcome behavior by one individual towards another

- ✓ Intimidation - Any form of veiled, hidden, indirect or non-verbal threat

- ✓ Lack of Conscience - Individuals who suffer from Personality Disorders are often preoccupied with their own agendas, sometimes to the exclusion of the needs and concerns of others. This is sometimes interpreted by others as a lack of moral conscience

- ✓ Narcissism - A set of behaviors characterized by a pattern of grandiosity, self-centered focus, need for admiration, self-serving attitude and a lack of empathy or consideration for others

- ✓ Parental Alienation Syndrome - When a separated parent convinces their child that the other parent is bad, evil or worthless

- ✓ Selective Memory and Selective Amnesia - The use of memory, or a lack of memory, which is selective to the point of reinforcing a bias, belief or desired outcome

- ✓ Self-Aggrandizement - A pattern of pompous behavior, boasting, narcissism or competitiveness designed to create an appearance of superiority

# Hanover Township Police Department

1000 Route 10, Whippany, NJ 07981
Phone: 973-428-2512 Fax: 973-428-1543 Mun. Code: 1412

## Supplemental Investigation Report

**Incident Details:**

| Case Number | Time Reported | Date Reported | Time Occurred | Date Occurred | Occurrence Between Date / Time of | Time Occurred | Date Occurred | 911 | Completed |
|---|---|---|---|---|---|---|---|---|---|
| 16-06793A | | 03/15/16 | 21:15 | 03/15/16 | | | | | X |

**Incident Type:**

Investigation Follow-Up

**Incident Location:**

| Street # | Street Name | Intersection / Cross Street of: |
|---|---|---|
| 60 | Perry Street | |

Business / Common Location Name

**Contact Information: Victim Suspect Complainant Witness Driver Arrest Passenger Missing Business Other**

| Code | Contact Name #1 | MI | Suffix | Age | Sex | Race | DOB | SSN |
|---|---|---|---|---|---|---|---|---|
| A | Harty, Jeffrey | M | | 49 | M | 1B | 02/26/1967 | 143-68-7497 |

| Address | Home Phone | Cell Phone |
|---|---|---|
| 60 Perry St, Whippany, NJ 07981-1910 | 973-906-4532 | 973-906-4532 |

| Code | Contact Name #2 | MI | Suffix | Age | Sex | Race | DOB | SSN |
|---|---|---|---|---|---|---|---|---|
| | | | | | | | | |

| Address | Home Phone | Cell Phone |
|---|---|---|
| | | |

| Code | Contact Name #3 | MI | Suffix | Age | Sex | Race | DOB | SSN |
|---|---|---|---|---|---|---|---|---|
| | | | | | | | | |

| Address | Home Phone | Cell Phone |
|---|---|---|
| | | |

| Code | Contact Name #4 | MI | Suffix | Age | Sex | Race | DOB | SSN |
|---|---|---|---|---|---|---|---|---|
| | | | | | | | | |

| Address | Home Phone | Cell Phone |
|---|---|---|
| | | |

**Property Information:**

| | Currency | Jewelry | Furs | Clothing | Auto | Misc. | Total |
|---|---|---|---|---|---|---|---|
| Value of Stolen Property | | | | | | | |
| Value of Stolen Property Recovered | | | | | | | |

**Automobile Information:**

| | Vehicle Code | Year | Make | Body Type | Color | Registration | State | VIN |
|---|---|---|---|---|---|---|---|---|
| 1 | | | | | | | | |
| 2 | | | | | | | | |
| 3 | | | | | | | | |
| 4 | | | | | | | | |

**Narrative:**

Narrative

While conducting a property check at Monroe Hall, I observed Jeffery Harty walking north on the sidewalk of Whippany Rd. in front of the property Monroe Hall. At shift change, we had been briefed that Jeffrey had been released from jail and a copy of the FRO between Jeffrey and his ex-wife, Blanche Harty, was provided to us. In dealing with Jeffrey in the past, I am aware that according to the FRO, Jeffrey is not to be within 300 feet of Blanche's residence [redacted] Jeffrey approached me and advise me that he needed to serve Blanche with some paperwork. This paperwork is from Passaic County. I advised Jeffrey that Passaic would need to send this to Morris County, who would in turn serve Blanche.

| cer of Record: | Date: | Other Reports Filed: | Reviewed By: |
|---|---|---|---|
| | | MVA Arrest DV DWI DWIQ Tow SD CI TRO | |
| arpenter 764 | 03/15/16 | SHA Prop. Evdn UOF Prst Supp X Juv Bias Pris | rwilliams |

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## Supplemental Investigation Report

Narrative Continued (Page 2)

Case Number 16-06793A

I advised headquarters of my status and I was soon joined by Ptl. Littman, Hermans, and Byrnes. Dispatch advised Ptl. Littman that while I was speaking to Jeffrey, Blanche called to report Jeffrey walked passed her house. I advised Jeffrey of his Miranda Rights and he stated he understood.

Jeffrey stated he wanted to see the new house being built at 50 Perry. Jeffrey admitted to being in front of this house to look at it and to look at any signs to see who the general contractor is. Jeffrey denied walking in front of Blanche's house.

Jeffrey was placed under arrest for the violation of the FRO. He was handcuffed, searched, and secured in the rear of my patrol car (#76). He was transported to headquarters and Ptl. Hermans followed me while Ptl. Littman and Ptl. Byrnes went to Blanche's residence.

At headquarters I learned that Jeffrey is also prohibited from being within 300 feet of Blanche's parents' residence [redacted] according to the FRO. According to our mapping program, 50 Perry (where Jeffrey admitted to being) is well under 300 feet from [redacted] Therefore, Jeffrey is not only in violation of being within 300 feet of Blanche's house, but her parents' house as well. Jeffrey was processed. He was finger printed, photographed, and charged with contempt / violation of FRO 2C:29-9b.

See Ptl. Byrnes reports for more information.

No further action taken.

| Officer of Record: | Date: |
|---|---|
| Robert Carpenter 764 | 03/15/16 |