

DOCKET NO. N23N-CR10-0110202-S	:	SUPERIOR COURT
	:	
STATE OF CONNECTICUT	:	G.A. 23
	:	
V.	:	AT NEW HAVEN
	:	
LUIS LUNA	:	FEBRUARY 2, 2011

DEFENDANT'S MOTION TO REOPEN JUDGMENT

Pursuant to Conn. Gen. Stat. § 54-95b and his rights under the Fifth and Fourteenth Amendments to the United States Constitution and Article First, Section Eight of the Connecticut Constitution, the Defendant, LUIS LUNA, by and through his attorneys, hereby moves this Court to reopen the judgment and vacate his guilty plea in the above-captioned case. In support of this motion, the Defendant represents the following:

- (1) On September 25, 2010, Mr. Luna was riding his bicycle near 177 College Street in New Haven and witnessed several officers of the New Haven Police Department (NHPD) making multiple arrests on the opposite side of the street.
- (2) Mr. Luna then stopped his bicycle and began taking video of the incident using his mobile telephone.
- (3) Assistant Police Chief Ariel Melendez (now retired), who was at the scene of the arrests, ordered Mr. Luna to stop filming and leave.
- (4) When Mr. Luna failed to comply with the order, Melendez ordered Officer Kristen Fitzgerald to arrest Mr. Luna. Mr. Luna was taken into custody and charged with

Interfering with a Police Officer in violation of Conn. Gen. Stat. § 53a-167a (see police report, attached as Exhibit A).

- (5) Mr. Luna was held in NHPD custody for approximately nine hours. His mobile phone was returned to him upon his release, but the video he had taken of the police had been erased.
- (6) When Mr. Luna appeared in court on October 8, 2010, the State offered to file a substitute information reducing the charge to “Creating a Public Disturbance” in violation of *Conn. Gen. Stat.* § 53a-181a, punishable with a \$50.00 fine. The prosecutor explained that Creating a Public Disturbance is an infraction and does not reflect a criminal conviction or create a criminal record.
- (7) Mr. Luna told the prosecutor that he was uncertain as to how to proceed because he felt that he had not done anything wrong. The State offered to give him time to think it over and decide whether to accept the plea offer, apply for a public defender, or seek a continuance to hire a private attorney.
- (8) Mr. Luna decided to accept the plea offer, reasoning that it would allow him to put the ordeal behind him, escape what he experienced as the stressful chaos of a day at G.A. 23, and maintain a clean record.
- (9) Mr. Luna’s uncertainty, however, persisted during the actual plea, at which he first stated he was “not guilty” and asked the Court whether “Creating a Public Disturbance”

is in fact an infraction. The Court (Sequino, J.) explained that a guilty plea to an infraction would have no effect on his criminal record (See Transcript, *State v. Luna*, Oct. 8, 2010, pp. 1-2 , attached as Exhibit B).

- (10) At no time during the course of Mr. Luna's guilty plea did the Court advise Mr. Luna or inquire into his understanding that, by pleading guilty, he gave up the right to plead not guilty, the right to remain silent, the right to a trial, and the right to confront witnesses with the assistance of counsel, as required by *Conn. Prac. Book* § 39-19.
- (11) The Court also did not inquire whether the plea resulted from any force, threats, or promises, and did not inquire of the State (Brian Leslie, Esq., appearing for the State) as to the factual basis for the plea, as required by *Conn. Prac. Book* §§ 39-20, 39-21 and 39-24.
- (12) In the month following his guilty plea, Mr. Luna learned that recording police activity on video is not a crime.
- (13) The NHPD has begun an internal investigation into the conduct of former Assistant Chief Ariel Melendez with respect to Mr. Luna's arrest as well as similar incidents in which citizens were arrested for filming police.
- (14) Melendez retired from the NHPD shortly after the internal affairs investigations began.
- (15) *Conn. Gen. Stat.* § 54-95b states, "Any judgment rendered in the Superior Court in any case involving prosecution for a motor vehicle violation or criminal offense adjudging

the defendant to pay a fine only, may be reopened, provided a motion to reopen is filed within four months succeeding the date on which it was rendered.”

- (16) Infractions, including Creating a Public Disturbance, are “criminal offenses.” See Conn. Prac. Book §§ 44-21 and 44-37(4).
- (17) This motion is filed within four months of the judgment of guilty entered on October 8, 2010.
- (18) Mr. Luna’s guilty plea will additionally result in the prejudicial collateral consequence that he will be barred from seeking civil redress for the violation of his civil rights by former Assistant Chief Melendez. See *Maesse v. Oliver*, 2008 WL 1897738*3 (D. Conn.) (plea to “Creating a Public Disturbance” bars false arrest claim).
- (19) Although Mr. Luna’s fine has been paid in full and he is neither incarcerated nor on probation or parole as a result of his guilty plea, the question of reopening the judgment of guilty is not moot since he suffers the prejudicial collateral consequence that he cannot seek civil redress for the violation of his rights. See *Rowe v. Superior Court*, 289 Conn. 649, 655-56 (2008) (reversal of judgment in a case in which the sentence has been fully served is not a moot question if it may afford the litigant some practical relief in the future) (internal citations omitted).
- (20) There is good cause for the Court to grant this motion.
- (21) Neither this nor any similar motion is currently pending in this or any other court.

For the foregoing reasons as well as those presented at a requested hearing, the Defendant respectfully requests that this motion be GRANTED.

THE DEFENDANT, LUIS LUNA

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ORDER

The foregoing Motion to Withdraw Guilty Plea, having been presented to the Court and hearing held thereon, it is hereby **ORDERED**:

GRANTED / DENIED

_____, J.