

Argument

I. The Officer Lacked Reasonable Suspicion that Mr. Damon Committed an Offense to Justify an Investigatory Stop of Mr. Damon

The officer had no reason to stop Mr. Damon. The police officer did not have the requisite reasonable suspicion that Mr. Damon committed a crime. *Commonwealth v. Rivas*, 77 Mass.App.Ct. 210, 217 (2010). The officer mistakenly issued a citation to Mr. Damon for violating G.L. chapter 85 section 11b because said chapter does not make failing to keep to the right while being overtaken illegal. No statute makes the conduct of Mr. Damon that the officer observed and recorded in his report illegal. The officer also mistakenly applied for the issuance of a criminal complaint G.L. 272 section 53 because Mr. Damon's conduct, traveling, clearly served a legitimate purpose. The officer had no lawful reason to stop Mr. Damon.

II. The Officer's Mistake of Law Negates the "Reasonableness" of His Suspicion Justifying His Investigatory Stop

The officer's stop of Mr. Damon can not be justified by the officer's mistaken understanding of the law. *Commonwealth v. Censullo*, 40 Mass.App.Ct. 65, 66-69 (1996) (A police officer's mistaken belief that Defendant was operating a motor vehicle in the wrong direction on a one-way street rendered the stop unlawful where the officer had failed to inform himself of the traffic pattern and required the exclusion, under the Fourth Amendment to the United States Constitution, of evidence obtained as a result of the

stop), *See also United States v. Miller*, 146 F.3d 274 (5th Cir. 1998) (stop illegal where based on mistaken belief that driving through an intersection with turn signal on, without turning or changing lanes, violated the law); *United States v. King*, 244 F.3d 736, 740-741 (9th Cir. 2001) (stop illegal where based on mistaken belief that parking placard hanging from defendant's rearview mirror violated the law); *United States v. Chanthasouvat*, 342 F.3d 1271, 1277-1280 (11th Cir. 2003) (stop illegal where based on mistaken belief that code required inside rearview mirrors when in fact code did not). The officer mistakenly believed that operating a bicycle in the middle of the right travel lane on Russell St. was against the law. It is not. Therefore the officer had no reason to stop Mr. Damon and all items and observations from that stop must be suppressed.

II. The Fruits of the Officer's Illegal Stop Are Not Redeemed By the Officer's Good Faith in Believing He had the Ability to Stop Mr. Damon.

The officer can not rely on his own ignorance of the recent changes in bicycle regulation to stop law-abiding bicyclists. The exclusionary rule is to discourage police misconduct, even if that misconduct is in good faith. *Commonwealth v. Consullo*, 40 Mass.App.Ct. at 69-70. That the officer is uninformed about the regulation of bicycle operation should not allow him to stop bicyclists. To allow a good faith exception to the exclusionary rule would swallow the purpose of the exclusionary rule. *Id.* The illegally seized evidence, the camera that was on Mr. Damon's helmet and the officer's observation made during the illegal stop, must be suppressed.

Respectfully submitted,
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By his attorney

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