

# United States Court of Appeals For the First Circuit

---

No. 21-1518

JEFFREY L. CLEMENS,

Plaintiff - Appellant,

v.

MICHAEL J. O'HARA,

Defendant - Appellee.

---

Before

Lynch, Howard and Kayatta,  
Circuit Judges.

---

## JUDGMENT

Entered: October 6, 2022

Pro se plaintiff-appellant Jeffrey Clemens appeals from the decision of the district court dismissing his complaint for malicious prosecution based on Heck v. Humphrey, 512 U.S. 477 (1994), Broussard v. Great Atlantic & Pacific Tea Co., 324 Mass. 323, 86 N.E.2d 439 (1949), and judicial estoppel principles.

After a careful de novo review of the record and the submissions of the parties, we affirm the judgment of dismissal, substantially for the reasons set forth in the district court's thorough June 10, 2021 order of dismissal and June 22, 2021 order denying reconsideration. See Local Rule 27.0(c); see also Estate of Bennett v. Wainwright, 548 F.3d 155, 162 (1st Cir. 2008) (standard of review).

By the Court:

Maria R. Hamilton, Clerk

cc:

Jeffrey L. Clemens

Stephen C. Pfaff

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

_____	)	
JEFFREY L. CLEMENS,	)	
	)	
Plaintiff,	)	
	)	Civil Action No.
v.	)	20-12083-FDS
	)	
MICHAEL J. O'HARA,	)	
	)	
Defendant.	)	
_____	)	

MEMORANDUM AND ORDER  
ON DEFENDANT'S MOTION TO DISMISS

SAYLOR, C.J.

This is the sixth action brought by plaintiff Jeffrey L. Clemens for events arising out of his arrest by the Town of Scituate Police Department on May 12, 2005.

The complaint asserts a single claim of malicious prosecution against defendant Michael J. O'Hara, a Scituate police officer. Jurisdiction is based on diversity of citizenship.

**I. Background**

Jeffrey Clemens was arrested for disorderly conduct by officer Michael J. O'Hara on May 12, 2005. (Complaint ¶¶ 14-15). Approximately a week later, Clemens received a summons in the mail with the additional charges of criminal harassment and impersonating a private investigator. (*Id.* ¶ 36).

The criminal harassment charge was dismissed by the Hingham District Court on October 16, 2008. (*Id.* ¶ 41). Clemens pleaded to sufficient facts and received a continued without a finding ("CWOFF") disposition on the charge of impersonating a private investigator. (*Id.* ¶ 42). He went to trial in the Hingham District Court on the charge of disorderly conduct and was

found guilty. (*Id.* ¶ 62).

Clemens appealed the guilty finding. On July 6, 2010, the Massachusetts Appeals Court overturned his conviction. (*Id.* ¶ 150).

The charge of disorderly conduct was refiled by the Commonwealth of Massachusetts in Hingham District Court. (*Id.* ¶ 152). It was later dismissed by the District Court on June 16, 2015. (*Id.* ¶ 154).

## **II. Analysis**

To establish a claim of common-law malicious prosecution, a plaintiff must show (1) the commencement or continuation of a criminal proceeding against the eventual plaintiff at the behest of the eventual defendant; (2) the termination of the proceeding in favor of the accused; (3) an absence of probable cause for the charges; and (4) actual malice. *Nieves v. McSweeney*, 241 F.3d 46, 53 (1st Cir. 2001).

Here, Clemens was found guilty in state court of disorderly conduct and pleaded to sufficient facts on the charge of impersonating a private investigator and received a CWOFF. The fact that he was found guilty of disorderly conduct precludes his recovery under 42 U.S.C. § 1983 for malicious prosecution under *Heck v. Humphrey*, 512 U.S. 477 (1994).

The fact that the disorderly-conduct conviction was overturned on appeal does not mandate a different result. In *Broussard v. Great Atlantic & Pacific Tea Co.*, 324 Mass. 323 (1949), the Supreme Judicial Court held that in an action of tort for malicious prosecution, “a conviction of the accused by a tribunal to which the complaint was made, although reversed on appeal, conclusively establishes the existence of probable cause unless the conviction ‘was obtained solely by false testimony of the defendant [charged with malicious prosecution] or is impeached on the grounds of fraud, conspiracy or subordination in its procurement.’” 324 Mass.

at 324 (quoting *Dunn v. E.E. Gray Co.*, 254 Mass. 202, 202-04 (1926) (brackets in original)).

*See Ramos v. Gallo*, 596 F. Supp. 833 (D. Mass. 1984).

Furthermore, and in any event, as to the charge concerning impersonating a private investigator, Clemens admitted in open court to facts sufficient to establish a crime. The doctrine of judicial estoppel prevents a litigant from pressing a claim that is directly inconsistent with a position taken by that litigant, and adopted by the court, in a prior legal proceeding.

*Salcedo v. Town of Dudley*, 629 F. Supp. 2d 86, 102 (D. Mass. 2009).

### **III. Conclusion**

For the foregoing reasons, the motion of defendant for judgment on the pleadings is GRANTED. This matter is hereby DISMISSED with prejudice.

**So Ordered.**

Dated: June 10, 2021

/s/ F. Dennis Saylor IV  
F. Dennis Saylor IV  
Chief Judge, United States District Court

# United States Court of Appeals For the First Circuit

---

No. 21-1518

JEFFREY L. CLEMENS,

Plaintiff - Appellant,

v.

MICHAEL J. O'HARA,

Defendant - Appellee.

---

Before

Kayatta, Lynch and Howard,  
Circuit Judges.

---

**ORDER OF COURT**

Entered: March 2, 2023

The petition for panel rehearing is denied.

By the Court:

Maria R. Hamilton, Clerk

cc:

Jeffrey L. Clemens  
Stephen C. Pfa



U.S. Department of Justice

Criminal Division

Office of Administration

Washington, D.C. 20530

May 16, 2023

Mr. Jeffrey Clemens  
5210 W. Waterberry Dr.  
Huron, OH 44839

Dear Mr. Clemens:

Your correspondence to the U.S. Department of Justice has been referred to the Criminal Division (CRM) for review and response.

A Controlled Tracking System number, NM301950417, has been assigned to your correspondence for future reference. For any further information regarding your correspondence, you can telephone us at (202) 353-4641. You can also find general information about the Department of Justice online at [www.justice.gov](http://www.justice.gov).

Please be aware that the standard response time for most inquiries is 60 days. If you requested assistance with a personal legal matter, you should be aware that there are time limits called statutes of limitations that establish deadlines after which criminal prosecutions and private civil lawsuits can no longer be filed. The Department of Justice cannot provide legal advice to you regarding your rights or whether there may be time limits that apply to your situation. Therefore, you may want to consult with an attorney promptly for legal advice. If you do not have an attorney, or if you cannot afford an attorney, you may wish to contact the lawyer bar association for your state to request an attorney referral or to obtain information on whether free or reduced-fee legal services are available to you.

Sincerely,

Correspondence Management Staff  
Office of Administration

ATTACHMENT

Reference Number: NM301950417

*For further correspondence please email [criminal.division@usdoj.gov](mailto:criminal.division@usdoj.gov). Should you wish to speak to a representative please call (202) 353-4641 and provide the reference number.*