IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

COREY BRYANT, a minor, by and through Charles and Shari Bryant, Natural Parents; and CHARLES and SHARI BRYANT;	)	**Civil Action No. 3:12-cv-37-NBB-SAA**
Plaintiff,	)	
v.	)	
CITY OF RIPLEY, MISSSISSIPPI; SOUTH TIPPAH SCHOOL DISTRICT; RIPLEY POLICE DEPARTMENT, SCOTT WHITE, in his official and individual capacities; RODNEY WOOD, in his official and individual Capacities; and ALLAN STANFORD, in his official and individual capacities;	)	
Defendants.	)	

MEMORANDUM IN SUPPORT OF MOTION FOR TEMPORARY RESTRAINING ORDER, OR, IN THE ALTERNATIVE, A PRELIMINARY INJUCTION

INTRODUCTION/FACTUAL BACKGROUND[1]

This will be the third time this Court has had an application for temporary restraining order before it. Make no mistake, Plaintiff understands the Court previously ruled on this matter, **but new facts have been unearthed that STRENGTHEN the legitimacy of Plaintiff's claim and require for federal action**. Put another way, the Youth Court in Tippah County has shown itself to be an unworthy guardian of constitutional liberties.

[1] Because this is the third time the Court has entertained this type of motion, Plaintiff will not recite every fact, but, in the name of judicial economy, incorporates the factual background previously briefed. In a nutshell, this case began when Plaintiff was unlawfully interrogated about an October 14, 2012, incident involving the vandalism of a camera. Charges were brought against Plaintiff five (5) months after the date of incident and just as he was able to file his federal lawsuit challenging the interrogation. Plaintiff maintains the charges against him in youth court were brought in bad faith and in retaliation for exercising his civil rights.

The new evidence unearthed is as follows:

- Plaintiff's June 4, 2012, Youth Court hearing was postponed, without consulting Plaintiff, after the Youth Court prosecutor admitted he could not find his key witness;[2]
- Minutes prior to this opposed continuance, the Youth Court prosecutor plainly stated that he was ready to proceed with the hearing on its set date of June 4, 2012;[3]
- Because the Youth Court prosecutor stated he was ready to proceed, all counsel conferred as to what evidence was to be presented and how long the hearing would take;[4]
- After the Youth Court prosecutor stated the evidence he intended to present – (i) testimony from the local teenager who was photographed destroying the camera and (ii) the testimony of Ripley Police Officer Rodney Wood (hereinafter "Wood"), Ripley High School Assistant Principal Allan Stanford (hereinafter "Stanford") as to what Plaintiff allegedly confessed;[5]
- Plaintiff's counsel then stated[6] the States case was legally insufficient. Plaintiff's counsel told the prosecutor: (i) school officials, when working in concert with the police, are required to provide *Miranda* warnings,[7] (ii) an interrogation of a minor child outside the presence of a parent/attorney is unlawfully obtained[8] and (iii)

[2] *See* Declaration of Joseph R. Murray, II, Esq., attached to Plaintiff's Application as Exhibit "1," ¶ 4.
[3] *Id.*, ¶ 5.
[4] *Id.*
[5] *Id.*, ¶¶ 5, 6.
[6] *Id.*, ¶ 5.
[7] *See Ferguson v. City of Charleston*, 532 U.S. 67, 79 n.15 (2001) (noting that "[i]n T.L.O., [the Court] made a point of distinguishing searches 'carried out by school authorities acting alone and on their own authority' from those conducted 'in conjunction with, or at the behest of law enforcement agencies'").
[8] *See* Miss. Code Ann. § 43-21-303(3) (requiring apparent/attorney be present at questioning); *See also M.A.C. v. Harrison County Family Court*, 566 So.2d 472 (Miss. 1990) and *Edmonds v. State*, No. 2004-CT-02081-SCT (MSSC).

exculpatory testimony from a witness formerly accused and found delinquent of the same criminal matter **does not** even rise to the level of reasonable suspicion;[9]

- Plaintiff's counsel further explained to the prosecutor that a minor's out of court confession alone, even if admissible at a later date, is not sufficient evidence to show a minor was delinquent;[10]
- It was at this time the Youth Court prosecutor admitted he could not find his key witness, the local boy who was photographed destroying the camera in question, **and a continuance was granted without Plaintiff's counsel being consulted**;[11]
- An inference is created that Judge Gay and the Youth Court prosecutor engaged in an *ex parte* discussion in granting the continuance;[12]
- **After** the prosecutor stated the continuance was granted, Plaintiff's counsel appeared before the Honorable Joe Gay, Youth Court judge, and objected. Before Plaintiff's counsel could object Judge Gay stated the matter was continued to June 22, 2012;[13]
- Judge Gay stated he continued the matter because it was not set for June 4, 2012, **despite the fact he signed an order to that effect**;[14]
- Judge Gay stated he was not prepared to hear the case, **despite the fact he signed an order to that effect**;[15]

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[9] *Redding v. Safford Sch. Dist. #1*, 531 F.3d 1071, 1082-83 (9th Cir. 2008) (noting that "we do not treat all informant tips as equal in their reliability" and "**we are most suspicious of those self-exculpatory tips that might unload potential punishment on a third party**."), aff'd in part, rev'd in part, 129 S.Ct. 2633 (2009). *See also Fewless v. Board of Educ. of Wayland Union Schools*, 208 F. Supp. 2d 806, 819-820 (W.D. Mich. 2002) (strip search of student for drugs was not justified at its inception **when based on information from students with highly questionable credibility given their potential ill motives as they were serving detention for bullying the accused student**).

[10] *See* U.R.Y.C.P. 24(a)(6)(iii) (*holding* "An out-of-court admission or confession by the child, even if otherwise admissible, shall be insufficient to support an adjudication that the child is a delinquent child unless the admission or confession is corroborated in whole or in part by other competent evidence"). *See also* Murray Declaration, ¶ 6.

[11] *See* Murray Declaration, ¶ 7.

[12] *Id.*, ¶¶ 7-11.

[13] *Id.*, ¶ 8.

[14] *Id.*

[15] *Id.*

- Plaintiffs' costs, to date, exceed $400 (more than ten times of what his restitution would be if he were adjudicated delinquent in the Youth Court matter);[16] and
- Continuing this matter has caused Plaintiff to incur greater costs and, further, the continuance seeks to harass Plaintiff in hopes they will not be able to afford the costs associated with re-serving their witnesses.[17]
- Both the Youth Court Prosecutor and Judge expressed surprise that Bryant's case was set for hearing, **despite the fact the case was FIRST on the June 4, 2012, docket**.[18]

This evidence was only unearthed after Plaintiff was railroaded at his June 4, 2012, hearing and further exposes the bad faith borne of this prosecution. Even before June 4, 2012, Plaintiff had put forth evidence of bad faith and this Court recognized that the factual evidence supplied by Plaintiff would result in a retaliation claim if he successfully defended himself against the Youth Court charges. The original evidence of bad faith is as follows:

- The proceedings against Plaintiff were instituted five (5) months after the property in question was allegedly vandalized and three (3) months after the other minor, who was actually caught on camera vandalizing the property and the prosecutor's key witness who was absent at the June 4, 2012 hearing, was prosecuted for the same vandalism;[19]
- Moreover, the prosecution's only evidence implicating Plaintiff in any act of vandalism is (i) **an unlawful interrogation of a minor conducted outside the**

[16] *See* Murray Declaration, ¶ 4.
[17] *Id.*
[18] *Id.*
[19] *Id.*

presence of his parent or attorney[20] and (ii) **the self-serving testimony of the child who previously admitted to and was charged with vandalizing the camera**.[21]

- The charge against Plaintiff was suspiciously timed to correspond with his ability to file a federal lawsuit against the City of Ripley;[22] and
- The charges came just a month after Jack Combes, the insurance representative for the City of Ripley, contacted undersigned counsel and asked if charges were filed against Plaintiff.[23]

When the Court views the blatant disregard for law exhibited at the June 4, 2012, adjudication hearing with the questionable, if not disturbing timing of the charge filed against Plaintiff, the facts complete a puzzle of bad faith that compels this Court to take the extraordinary step of enjoining this Youth Court proceeding before additional constitutional rights are trampled with the implicit blessing of this Court.

Plaintiff, thus, files this brief in support of his motion for a temporary restraining order or, in the alternative, a preliminary injunction, in order to halt the unconstitutional Youth Court prosecution to be held on **Friday, June 22, 2012**.

ARGUMENT

This application centers around one issue – **bad faith**. The purpose of this application **is not to rehash** the application previously litigated. As stated, there are new facts that expose the bad faith inherent in Plaintiff's Youth Court prosecution. Before the Court can address the new issues created

[20] *See* Miss. Code. Ann. § 43-21-303(3) (Unless the child is immediately released, the person taking the child into custody shall immediately notify the judge or his designee. A person taking a child into custody shall also make continuing reasonable efforts to notify the child's parent, guardian or custodian **and invite the parent, guardian or custodian to be present during any questioning**). *See also Edmonds v. State*, No. 2004-CT-02081-SCT (MSSC) (quoting Walker v. State, 235 So.2d 714-15 (Miss. 1970)) and Complaint, ¶¶ 20-34.
[21] *Redding* 531 F.3d at 1082-83 *See also Fewless*, 208 F. Supp. 2d at 819-820.
[22] *See* Murray Declaration, ¶ 4.
[23] *Id.*

by the Youth Court's blatant disregard for civil liberties, Plaintiff must demonstrate that the Court inadvertently confused the issues surrounding the legal standard in granting a temporary restraining order. After that is done, Plaintiff can, and will show, bad faith that justifies the issuance of an injunction.

In its previous rulings this Court has never addressed the evidence of bad faith presented by Plaintiff. Instead, this Court ruled, in denying Plaintiff's Motion for Reconsideration, Plaintiff had legal remedies available to him and, therefore, did not suffer irreparable harm. Specifically, the Court opined, "If the plaintiff is convicted, he has a remedy at law in an appeal. If the plaintiff is acquitted, there is also a remedy at law available in a suit under 42 U.S.C. § 1983." (**Doc. 21**). **This ruling directly conflicts with established precedent.**

"**The harm posed by bad faith prosecution is both immediate and great, [5] and defending against the state proceedings would not be an adequate remedy at law because it would not ensure protection of the plaintiff's federal constitutional rights**."[24] The Fifth Circuit has adopted this reasoning and read the Court's *Younger* opinion as **implicitly recognizing that a suit to enjoin a state criminal prosecution brought in BAD FAITH is of a different breed than a suit to enjoin a prosecution brought lawfully and in good faith**.[25] The Court explained further:

> The reason for distinguishing, for Younger purposes, between a suit to enjoin a good faith prosecution and a suit to enjoin a bad faith prosecution is that the interests of both the criminal defendant and the State differ significantly from those relied on by the Court in Younger when the injunction is sought against a state prosecution brought in bad faith. **With respect to the criminal defendant, he is seeking to protect his federal "right not to be subjected to a bad faith prosecution or a prosecution brought for purposes of harassment, (a) right (that) cannot be vindicated by undergoing the prosecution."**[26]

[24] *Younger v. Harris*, 401 U.S. 37, 46; *See also Juidice v. Vail*, 430 U.S. 327, 337(1977).
[25] *Wilson v. Thompson*, 593 F.2d 1375, 1382 (1979).
[26] *Shaw*, 467 F.2d at 122 n.11 (*citing Younger*, 401 U.S. at 56)(emphasis added).

In denying Plaintiff's motion, the Court inadvertently confused the issues by holding Plaintiff "must convince this court that there is no remedy at law available to him to prevent irreparable harm caused by the pending prosecution." In other words, this Court ruled that procedural remedies negate the need for federal intervention. This is an incorrect assessment of the law and guts the *Younger* exception doctrine.

It is clear "**a showing of a bad faith (prosecution) is equivalent to a showing of irreparable injury for purposes of the comity restraints defined in *Younger.***"[27] The Fifth Circuit has held further that "a showing of bad faith or harassment is equivalent to a showing of irreparable injury for purposes of the comity restraints defined in Younger, **because there is a federal right to be free from bad faith prosecutions**. Irreparable injury need not be independently established."[28]

In this case Plaintiff can show bad faith and thus irreparable injury is present. The notion that the Plaintiff has the remedy to appeal a conviction from a trial that was tainted from the start undercuts the very purpose of the *Younger* exception. If such was the standard, government authorities could willfully institute bad faith criminal proceedings against individuals exercising their rights, force these individuals to incur the stress and costs associated with a criminal defense, and leave the decision of guilt and innocence in the very hands of those violating the rights of the individual. This is not logical and, more importantly, results in additional harm against the individual, as evidenced by this case.

In showing bad faith a plaintiff must show the criminal case against him "was brought in bad faith for the purpose of retaliating for or deterring the exercise of constitutionally protected rights."[29] A finding of bad faith under *Younger* does not require evidence that the charges levied against the

[27] *Shaw v. Garrison*, 467 F.2d 113, 120, (5th Cir. 1972), cert. denied,409 U.S. 1024, 93 S.Ct. 467, 34 L.Ed.2d 317.
[28] *Id.*
[29] *Wilson*, 593 F.2d at 1383.

plaintiff were instituted with "no genuine expectation" of their eventual success, but only to discourage the exercise of the plaintiff's constitutionally guaranteed rights.[30] Specifically, it has been determined that "[t]here are three factors that courts have considered in determining whether a prosecution is commenced in bad faith or to harass: (i) whether it was frivolous or undertaken with no reasonably objective hope of success; (ii) whether it was motivated by the plaintiff's suspect class or in retaliation for the plaintiff's exercise of constitutional rights; or (iii) whether it was conducted in such a way as to constitute harassment or abuse of prosecutorial discretion, typically through the unjustified and oppressive use of multiple prosecutions.[31] Plaintiff has met this burden.

The shenanigans of the Tippah County Youth Court authoritatively prove Plaintiff is being subjected to bad faith. Plaintiff appeared at the Youth Court and stood ready to defend himself at his adjudication hearing. After the prosecutor stated he was ready to move forward with the hearing and discussed evidence with Plaintiff's counsel, the tone quickly changed and a continuance was ordered by the judge in a conversation believed to be *ex parte*. The prosecutor realized that his evidence was not enough to satisfy constitutional safeguards.

At an adjudication hearing the State **cannot** rely solely on an out of court confession of a minor **without** corroborating competent evidence. In other words, if the State is going to use such evidence, it must have independent evidence that supports the factual validity of the minor's alleged confession. Plaintiff's counsel explained this to the prosecutor. In responding, the prosecutor stated he would be calling the local teenager, who was photographed vandalizing the property in question, as well as Officer Roger Woods and Vice Principal Allan Stanford (the two men who "heard" the alleged confession. Plaintiff's counsel stated such evidence was insufficient because (i) testimony from an individual accused of the same crime is wholly unreliable and (ii) Youth Court rules would

[30] *Alle v. Medrano*, 416 U.S. 802, 819 (1974); *see also Perez v. Ledesma*, 401 U.S. 82, 85 (1971); *Central Avenue News, Inc. v. City of Minot, N.D.*, 651 F.2d. 565, 570 (8th Cir. 1981) (*holding* "gravamen of bad faith prosecution is the lack of reasonable expectation that a valid conviction will result).

[31] *Torries*, 11 F.Supp.2d at 815 (*quoting Phelps v. Hamilton*, 122 F.3d 885, 889 (10th Cir.).

prevent either Woods or Stanford from testifying to what they believe is an alleged confession. It was at this point a continuance was granted.

The continuance is patently bad faith. At the same time the prosecutor told Plaintiff's counsel about the continuance, he admitted he could not find the local teenager; the witness he was going to use to corroborate Plaintiff's "confession." More telling, when the prosecutor stated a continuance was ordered, he had done so prior to consulting with Plaintiff's counsel. This creates an inference that an *ex parte* communication was held between the prosecutor and the judge. The Youth Court judge then proceeded to grant the continuance by arguing he never intended to hear the case on June 4, 2012, **despite the fact he signed an order setting the hearing and the case was listed first on the Youth Court docket**.

This case has been continued three times – twice because the Court was not "prepared" to hear the case and once because Judge Virden's chambers requested Plaintiff's counsel attempt to obtain a continuance so the federal court would have more time to considered the application for a temporary restraining order. **There was absolutely no legitimate need to continue this matter on June 4, 2012**. The petition in this matter was filed in March 2012. The prosecutor has had over ninety days to locate his witness. Moreover, **Plaintiff had located, and subpoenaed his four (4) witnesses each time this matter was set for hearing**. Because this matter is stale and because the local teenager who was photographed vandalizing the property has long since had his day in Court, the law dictated that the case be dismissed. This did not happen, as the case was continued to give the prosecutor time to find a witness he had three (3) months to find.

Make no mistake; these proceedings are being used to financially drain the Plaintiff's in this case and an inference can be made the authorities are using the Youth Court proceedings to inflect a death of a thousand cuts on the plaintiffs. The Bryant's, a family of modest means, have already incurred close to four hundred dollars in expenses in being prepared to battle the charges in Court.

Each continuance means the Bryant's will have to spend over one hundred dollars. An inference can be made that the costly continuances will beat down the Bryant's, impair their ability to fight the federal lawsuit and result in them taking a "plea." This is not justice, but extortion and **is clear evidence this Court must intervene**.

The standard for issuance of a temporary restraining order is the same as a preliminary injunction. The standard for a preliminary injunction in the Fifth Circuit is well-established. The factors to be considered were noted in *Roho, Inc. v. Marquis*:

> [A] preliminary injunction is an extraordinary remedy that should not be granted unless the movant has demonstrated, by a clear showing: (1) a substantial likelihood of prevailing on the merits; (2) a substantial threat of irreparable harm if the injunction is not granted; (3) that the threatened injury outweighs any harm that may result from an injunction to the non-movant; and (4) that the injunction will not undermine public interests [32]

While the grant or denial of a preliminary injunction rests in the discretion of the trial court, the court's discretion is not unbridled and a preliminary injunction "must be the product of reasoned application of the four factors held to be necessary prerequisites [to a preliminary injunction]."[33]

The evidence in favor of Plaintiff is not only compelling, but is overwhelming. Here the Court is faced with a situation where zero evidence indicated Plaintiff had vandalized the property in question. Instead, Defendants only interrogated Plaintiff after the teenager who was caught red-handed vandalizing the property implicated Plaintiff. Such evidence does not even constitute reasonable suspicion, but Defendants, nonetheless, opted to interrogate Plaintiff for almost an hour without notifying his parents or providing Plaintiff an attorney.

Defendants quickly adjudicated the claims against the teenager photographed vandalizing the equipment, but waited until Plaintiff was able to file his federal lawsuit to prosecute Plaintiff.

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[32] 902 F.2d 356, 358 (5th Cir. 1990). see also Hull v. Quitman County Bd. of Educ., 1 F.3d 1450, 1453 (5th Cir. 1993) (citing Roho, Inc.).

[33] *Enterprise Int'l, Inc. v. Corporacion Estatal Petrolera Ecuatoriana* ("C.E.P.E."), 762 F.2d 464, 472 (5th Cir. 1985) (quoting *Florida Medical Ass'n v. H.E.W.*, 601 F.2d 199, 202 (5th Cir. 1979)).

Moreover, the city's insurance investigator was inquiring as to why Plaintiff had not been prosecuted shortly before the charges were filed. Now the Youth Court continues to stall this proceeding, thus causing the costs of defense to steadily increase for Plaintiffs; a family of modest means. When coupled with the weight of the law condemning Defendants' actions, it is clear Plaintiff is likely to succeed on the merits of his case.

It is a well established principle of law that were a plaintiff shows retaliatory or bad faith prosecution, irreparable injury for the purposes of *Younger* is established.[34] **Moreover, it's a rudimentary principle of law that the losses of constitutional freedoms, even for minimal periods of time, constitute irreparable injury justifying a temporary restraining order**.[35] It is clear a day that the prosecution of Plaintiff is in an effort to deter, harass and retaliate against Plaintiff's exercise of his constitutional freedoms.

Make no mistake, granting a TRO and preliminary injunction until final resolution of this federal suit will do little or no harm to Defendants. If Plaintiff ultimately fails in this federal lawsuit, Defendants' prosecution can move forward.[36] If, on the other hand, the TRO and permanent injunction fails to issue, Plaintiff will suffer irreparable harm when he is compelled to defend himself from Defendants' retaliatory charges in Tippah County Youth Court on May 9, 2012.

The requirement that the public interest not be harmed if the TRO or injunction issues is also satisfied in accordance with applicable law. Just as the court in *Westin* opined, "the only possible harm to the public interest by granting the injunction would be the delay caused by the resolution of the underlying suit, and in truth the court does not believe that this represents any harm to the public at all. If [Plaintiff] ultimately wins his civil suit, the public interest will have been served by the granting of the preliminary injunction preventing unjust retaliation against [Plaintiff]

[34] *Cullen*, 18 F.3d at 104 (*citing Bishop v. State Bar of Texas*, 736 F.2d 292, 294 (5th Cir. 1984).
[35] *Elrod v. Burns*, 427 U.S. 347, 373 (1976).
[36] *See Westin*, 760 F.Supp. at 1570 (threatened injury to district attorney's attempt to take case to a grand jury minimal since, if federal lawsuit was lost, a grand jury could hear evidence against Westin).

by state officers."[37] Even more compelling, the public, in this instance, would be harmed if the injunction is not issued for the palpable chill induced by Defendants' retaliatory prosecution operates not against the civil liberties of Plaintiff alone, but against all individuals who desire to exercise their constitutionally guaranteed civil liberties.

CONCLUSION

Plaintiff has suffered and continues to suffer irreparable injury arising in the context of this of this case. The relief sought by Plaintiff is a temporary restraining order and injunctive relief against the action of Defendants; it is the kind of relief that does not raise a special problem, yet cries out for federal intervention.

Respectfully submitted,

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[37] *Id.*

CERTIFICATE OF SERVICE

I hereby certify that on June 4, 2012, I, Joseph R. Murray, II, attorney for Plaintiff, electronically filed the foregoing document with the Clerk of the Court using the ECF system. This document will be served upon Defendants at the below listed addresses:

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