

CRIMINAL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK

PEOPLE OF THE STATE OF NEW YORK

Docket No.: CR-019463-19NY

**NOTICE OF MOTION
TO DISMISS**

- against -

CUBA GOODING JR.,

Defendant.

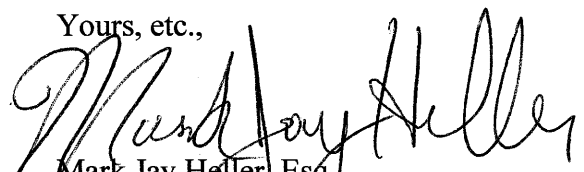
SIRS/MADAMS:

PLEASE TAKE NOTICE that upon the annexed affirmation of Mark Jay Heller, Esq., affirmed the 21st day of June, 2019, the Affidavit of Matthew Assante, the Affidavit of Claudine Deniro, the Affidavit of retired Detective John J. Baeza, the June 9, 2019 video surveillance footage, along with the other annexed Exhibits, and all the papers and proceedings heretofore had herein, the undersigned will move this Court, at the Courthouse located at 100 Centre Street, New York, NY on the 26th day of June, 2019 at 9:00 o'clock in the forenoon or as soon thereafter as counsel can be heard, for an order:

- (1) DISMISSING the Misdemeanor Complaint in the Interest of Justice pursuant to NY CPL §170.30 (1)(g) and §170.40.
- (2) GRANTING such other and further relief as this Court shall deem just and proper under the circumstances.

Dated: New York, New York
June 21, 2019

Yours, etc.,



Mark Jay Heller, Esq.
Attorney for the Defendant
445 Park Avenue
New York, NY 10022
(212) 737-4490

TO: New York County District Attorney
One Hogan Place, New York, NY 10007

CRIMINAL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK

PEOPLE OF THE STATE OF NEW YORK

Docket No.: CR-019463-19NY

- against -

**AFFIRMATION IN SUPPORT
OF MOTION TO DISMISS**

CUBA GOODING JR.,

Defendant.

Mark Jay Heller, Esq., an attorney duly admitted to practice law before the Courts of the State of New York, hereby affirms the following to be true under the penalty of perjury:

1. I am the attorney for the Defendant, Cuba Gooding, Jr., and am familiar with the facts and circumstances surrounding the Misdemeanor Criminal Complaint.
2. I submit this Affirmation in support of the instant Motion to Dismiss the Misdemeanor Criminal Complaint bearing Docket Number CR-019463-19NY which charges Cuba Gooding, Jr. with one count of Forcible Touching pursuant to Penal Law §130.52(1) and one count of Sexual Abuse in the Third Degree pursuant to Penal Law §130.55. (a copy of the Misdemeanor Criminal Complaint is annexed hereto as **Exhibit A**)
3. The Interests of Justice are SCREAMING OUT FOR THE EXONERATION OF CUBA GOODING, JR. and calling for a critical examination of this case and the Accuser whose personal blogs have included statements which clearly reveal the metamorphosis of a troubled mentality which sheds light on why she would make false allegations after being rejected and rebuffed that evening and asked to excuse herself from Cuba Gooding, Jr.'s and Claudine Deniro's presence and give them privacy.

4. The Accuser maintained Blogs wherein she reveals a great deal about herself and the operation of her mind. A careful review of the statements in her blogs, some of which are set forth below, provide considerable insight into the dynamics of why an individual with certain mental characteristics would be predisposed to make a false accusation against someone because, for example, they rejected her, or she was jealous of them, or was envious of their fame, or felt that in their presence she was inferior, or would never fit in.
5. She shares that “ **I got diagnosed with depression, ADHD, Anxiety Disorder, and PTSD and basically learned that my brain was one big fat mess.**” and further shared in another Blog entry that “As an adult with PTSD, Depression, and Anxiety Disorder I must put one teensy tiny thing right here. Your brain can only get *so* distracted. Trauma and unresolved pain come out in your subconscious by influencing your behavior, your self-esteem, and your relationships... In addition to being distracted, **I am quite prideful. I must win.**” (emphasis added)
6. The Accuser reveals that “**When I was younger it was all about being loved and being famous and being wanted....(I operate in extremes)**” then further reveals that “One of the great blessings and curses of my life is that **I have NEVER fit in. The damage done was deep and cost me years of happiness.**” (emphasis added).
7. She admits that “I was always scared of standing out, **being different always felt like I was begging to be rejected by a world that, it felt like, was always on the verge of kicking me off the cool kids’ table at any moment....**And, in a world of extensions and fake boobs, my short haircut paired with my moderate breast size makes me feel

invisible. Some people are scared of others and want nothing more than to be invisible.

I am not that type of person. **I am starving to be seen.**"

8. She also admits that **"I am terrified of people.** Not in the sense that I cannot talk to them. **I could talk to Beyonce like she's my oldest friend (She's not).** More in the sense that connecting with my actual oldest friend has always eluded me..."(emphasis added)
9. She explains that **"A life that is chronically mediocre** and we become **"taking-off-the-edge-aholics. Drinking, binge eating, and getting absorbed in the entertainment industry to take the edge off of a life we didn't choose."**; and, she declares that **"Jealousy is GREAT!!** It motivates us to change and **it helps us to build our world up using the best parts of other peoples' worlds."** (emphasis added)
10. She also states that **"I would start controlling, nagging, and pushing the guys I was dating** to take advantage of this perfect opportunity... **When they would refuse to try new things,.... I felt utterly betrayed.... Turns out, it was everything to me."** (emphasis added)
11. I have had an investigation conducted concerning the facts and circumstances in the Complaint and believe that the evidence is insufficient to support the charges. Firstly, the surveillance video does not show any criminality (a copy of the video to be provided under separate cover). The surveillance video was reviewed by retired Detective Baeza who was a Detective in the Manhattan Special Victims Square of the New York City Police Department, and retired Detective Baeza concluded that the video does not show Cuba Gooding, Jr. "place his hand on the Accuser's breast and

squeeze” as is alleged in the Complaint. Secondly, that material, eye-witnesses, who were available and made known to Law Enforcement, were not interviewed by the Police Department prior to the arrest, and said eyewitnesses represent and state that the allegations are not true and never took place. Thirdly, the Accuser’s initial, first-account allegations regarding the occurrence were not revealed on the video and did not exist on the video because she was not truthful and Law Enforcement ignored this fact and evidence of a lack of credibility on the part of the Accuser and failed to thoroughly investigate this case before arresting Cuba Gooding, Jr. (a copy of the eye-witness Affidavits are annexed hereto as **Exhibit B** and a copy of retired Detective Baeza’s Affidavit is annexed as **Exhibit C**)

12. The Accuser’s initial, first account of the events and circumstances that gave rise to the Complaint against Cuba Gooding, Jr., as expressed to the Hotel personnel and the first responding Police Officer (Sgt. Jason Bryant), was unsubstantiated and contradictory to subsequent facts related by the Accuser; and the Report of said initial, first account was ignored and not investigated by Law Enforcement. (see a copy of the Hotel Reports annexed hereto as **Exhibit D**)
13. It is respectfully submitted that a rudimentary review of the video evidence and the Affidavits from both eyewitnesses who were present, along with the other annexed Exhibits, conclusively shows that no crime was committed, as alleged in the Complaint, and that Law Enforcement committed serious misconduct in the investigation by ignoring the initial, first account of the events and circumstances related to them by the Accuser and failing to interview material, eyewitnesses who

were present which would have revealed that the Accuser was not credible nor truthful.

14. Criminal Procedure Law §170.40 provides that an information may be dismissed in the interest of justice "when, even though there may be no basis for dismissal as a matter of law..., such dismissal is required as a matter of judicial discretion by the existence of some compelling factor, consideration or circumstance clearly demonstrating that conviction or prosecution of the defendant upon such an accusatory instrument or count would constitute or result in injustice."
15. Criminal Procedure Law §170.40 further states that in determining a motion to dismiss in the Interest of Justice, the Court is required to consider, individually and collectively, the following factors:
 - (a) the seriousness and circumstances of the offense;
 - (b) the extent of harm caused by the offense;
 - (c) the evidence of guilt, whether admissible or inadmissible at trial;
 - (d) the history, character and condition of the defendant;
 - (e) any exceptionally serious misconduct of law enforcement personnel in the investigation, arrest and prosecution of the defendant;
 - (f) the purpose and effect of imposing upon the defendant a sentence authorized for the offense;
 - (g) the impact of a dismissal on the safety or welfare of the community;
 - (h) the impact of a dismissal upon the confidence of the public in the criminal justice system;
 - (i) where the court deems it appropriate, the attitude of the complainant or victim with respect to the motion;
 - (j) any other relevant fact indicating that a judgment of conviction would serve no useful purpose.
16. The decision to dismiss in the Interest of Justice lies within the discretion of this Honorable Court, and it is well-established that when deciding a Motion to Dismiss in

the Interest of Justice, it is not necessary to engage in a point-by-point 'catechistic' discussion of all 10 factors listed under Criminal Procedure Law §170.40(1). (Rickert, 58 NY2d at 128.) Instead, the Court is required to consider the factors 'individually and collectively' in making a value judgment that is based upon striking a sensitive balance between the interests of the individual and those of the state. (People vs. Harmon, 181 AD2d 34, 35 [1st Dept. 1992].)

17. The seriousness and circumstances of the offense (C.P.L. §170.40(a)) are greatly diminished, if not completely extinguished, by the video evidence and eyewitness Affidavits which evidence establishes that Cuba Gooding, Jr. did not "place his hand on the Accuser's breast and squeeze" as is alleged in the Complaint. Notably, the Criminal Complaint is not signed and sworn to by the Accuser and the Accuser has not signed a Supporting Deposition, but rather the Criminal Complaint was signed and sworn to by a Police Officer who was not present at the time of the occurrence.
18. Eyewitness Claudine Deniro, who is present and seated in between the Accuser and Cuba Gooding, Jr., witnessed the entire interaction between the Accuser and the Cuba Gooding, Jr. and avers in her Affidavit that she "...was attentive and engaged during the entire interaction with the Accuser and Mr. Gooding and at no time did Mr. Gooding touch the Accuser's breast and at no time did Mr. Gooding "place his hand on her breast and squeeze" as is stated in the Criminal Complaint."
19. In addition, eyewitness Matthew Assante, who is the individual who walks over during the interaction between the Accuser and Cuba Gooding, Jr. (where Claudine Deniro is also seated in between them), states that while he "...was present during the interaction between Mr. Gooding and the Accuser, Mr. Gooding did not "place his

hand on the Accuser's breast and squeeze" as is alleged in the Complaint, and the Accuser did not say anything or make any statements to me or Mr. Gooding about any such conduct having been committed upon her by Mr. Gooding while I was present."

20. Matthew Assante further states "At no time did Mr. Gooding touch the Accuser's breast during my interaction with Claudine Deniro, Mr. Gooding and the Accuser."

21. In further support, retired and former Manhattan Special Victims Unit Detective Baeza, who has previously been qualified as an Expert, has more than twenty years of experience in Law Enforcement and has "reviewed and evaluated countless numbers of surveillance videos" during his extensive career in Law Enforcement, avers that he has "...closely viewed, reviewed and evaluated the surveillance video in this case, numerous times, frame-by-frame, and it is my professional opinion, as an expert in the field of sex crimes, that Cuba Gooding, Jr. did not "place his hand on the Accuser's breast and squeeze" as is alleged in the Complaint and Cuba Gooding, Jr. did not commit a sex crime, Forcible Touching, Sexual Abuse in the Third Degree, or any other criminal conduct during the video."

22. Notably, retired Detective Baeza is a distinguished and decorated Law Enforcement Officer who worked for the New York City Police Department for approximately 13 years and was a Detective with the Manhattan Special Victims Squad for approximately 6 years, which is the same Squad that arrested Cuba Gooding, Jr.

23. The extent and harm caused by the offense (C.P.L. §170.40(b)) is also non-existent because no offense took place as is evidenced by the surveillance video and statement provided by the eyewitnesses in their respective Affidavits.

24. Similarly, the evidence of guilt (C.P.L. §170.40(c)) is also non-existent because no offense took place as is evidenced by the surveillance video and statement provided by the eyewitnesses in their respective Affidavits.
25. In regards to the history, character and condition of Cuba Gooding, Jr. (C.P.L. §170.40(d)), Cuba Gooding, Jr. is a 51 year old, citizen of the United States, with no criminal convictions, and he is highly regarded in his chosen profession of acting. He is an Academy Award winning actor who through dedication, earnestness and hard-work elevated himself as a striving artist from the Bronx to a position as an internationally, world-renowned Movie Star.
26. It is respectfully submitted that exceptionally serious misconduct of law enforcement personnel in the investigation and arrest of Cuba Gooding, Jr. took place (C.P.L. §170.40(e)).
27. Upon information and belief, Law Enforcement ignored and/or suppressed the initial, first statements made by the Accuser regarding the occurrence which the Accuser alleged took place.
28. Upon information and belief, Sergeant Jason Bryant was the first Law Enforcement Officer to interview the Accuser and the Accuser was also interviewed by the venue's Manager.
29. The venue's Management Report states that the Accuser's initial, first statements were that "She was not sure when it happened or what time it happened. She gave us a 2 or 3 hour window of when it could have happened....", even though the venue Management took the accuser "...upstairs so she could tell us where it happened."

30. Furthermore, the venue's Manager reports that they then "...checked camera footage with the police for roughly 45 mins." and that "After not finding anything the police decided to leave."; yet, upon information and belief, the responding Police Officers did not challenge her credibility which was here, greatly put in issue.
31. Upon information and belief, Sgt. Bryant reported that the Accuser initially stated that she was "partying with Cuba Gooding Jr." and that the incident took place when she was handing him a glass of water at which time she got into a verbal altercation with him – none of which took place, was untrue and thus was not found on the surveillance video and could never been found on the surveillance video because what the Accuser described never happened.
32. Upon information and belief, Sgt. Bryant also reported that in the Accuser's initial account, the Accuser stated that the incident took place at approximately 9:00PM, however, the surveillance video shows that the Accuser did not even interact with Cuba Gooding Jr. until approximately 10:14PM.
33. Upon information and belief, after Sgt. Bryant's initial interview of the Accuser, Detectives from the Manhattan Special Victims Unit took over the investigation of the case and ignored and/or suppressed the erroneous, unsubstantiated allegations made by the Accuser and did not challenge her credibility in spite of her misstatements and inconsistencies.
34. The purpose and effect of imposing upon Cuba Gooding, Jr. a sentence authorized for the charged offenses would not be necessary in light of all of the aforesaid. (C.P.L. §170.40(f))

35. A dismissal would not impact on the safety or welfare of the community because there was no criminality in the instant case and Cuba Gooding, Jr. has no record.
(C.P.L. §170.40(g))
36. A dismissal in the instant case, in light of all the evidence and information contained herein, would enhance, promote and justify the Public's confidence in the criminal Justice System. (C.P.L. §170.40(h))
37. In such a high profile matter, which has driven the worldwide media to view the handling of this investigation, arrest and prosecution by the Justice System in New York City, it is extremely important that the Public has complete confidence in the legal mechanisms that are in place in the prosecution and defending of such matter – especially, in the current environment which is hypersensitive to allegations of sexual abuse.
38. It is urgently necessary that the consideration of these types of allegations not be treated in a cavalier fashion because the Interests of Justice mandate that the facts, circumstances and evidence concerning both the Accuser and the Accused be vetted with the greatest degree of meticulousness taking into account that each and every element giving rise to the prosecution of such matters must balance not only the rights of victims of sexual abuse incidents, but with equal importance the rights of Defendants who are charged with perpetrating acts that constitute such offenses.
39. The Criminal Justice System must respect, at the very earliest stage of such proceedings, the rights of not only victims but of Defendants, so that we do not allow the remarkably sensitive environment that we are currently existing in to inadequately consider all points and factors that come together and lead us into a sexual abuse case

– in the absence of which, an unvetted investigation, arrest or prosecution would gravely, unfortunately and unjustifiably burden and prejudice a Defendant and impact his life and future merely by the assertion of an unsubstantiated allegation being made.

40. The Public should be able to expect that before anyone in the Public is accused and pressed into the onerous experience of a criminal arrest and prosecution that the very basic elements of consideration/investigation be implemented in advance of their arrest and prosecution.
41. The Public should expect that Law Enforcement will not merely rely on an allegation being made by one who purports to be a victim, but that Law Enforcement will conscientiously, diligently and fairly explore all evidentiary and investigative elements that are available at the inception, such as videos, photographs, testimony of eyewitnesses, etc., so that both sides of the equation are fairly assessed in advance of an arrest or prosecution.
42. In the absence of the aforesaid, the Public will have no confidence in the System if people are arrested and charged simply as a result of one party making an unsubstantiated claim against another. Clearly, Law Enforcement need not establish their case beyond a reasonable doubt to initiate an arrest, but must consider, as a prerequisite to arrest, that there is enough evidence to support an arrest, prosecution and conviction beyond a reasonable doubt.
43. Where the initial facts show that it would be impossible or improbable to successfully prosecute a Defendant, then Law Enforcement should decline to arrest – This is borne out by the horrifying cases Society has suffered through in the past where people go

to jail for many years which could have been avoided had a fair evaluation been made at the inception of the investigation.

44. All of this is extremely important because the unsubstantiated, unfounded and untruthful accusation by one person, severely diminishes, devalues, disrespects and adversely impacts valid accusers.

WHEREFORE, it is respectfully requested that the Court grant an Order Dismissing the Misdemeanor Complaint in the Interest of Justice for which no previous application has been made to any Court or Judge.

Dated: New York, New York
June 21, 2019

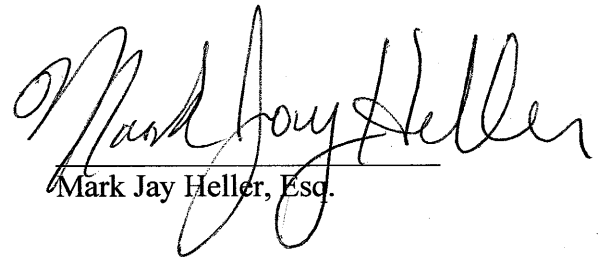

Mark Jay Heller, Esc.

EXHIBIT "A"

CRIMINAL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK

MISDEMEANOR

-against-

Cuba Gooding Jr (M 51),

ADA Jenna Long
(212) 335-3183

Defendant.

Police Officer Timothy Trotter, Shield #18501 of the MAN SPECIAL VICTIMS SQUAD, states as follows:

The defendant is charged with:

- 1 PL 130.52(1) Forcible Touching
(defendant #1: 1 count)
- 2 PL 130.55 Sexual Abuse in the Third Degree
(defendant #1: 1 count)

On or about June 9, 2019 at about 10:00 P.M., inside 485 7 Avenue in the County and State of New York, the defendant intentionally, and for no legitimate purpose, forcibly touched the sexual and other intimate parts of another person for the purpose of degrading and abusing such person, and for the purpose of gratifying the defendant's sexual desire; the defendant subjected another person to sexual contact without the latter's consent.

The factual basis for these charges are as follows:

I am informed by an individual known to the District Attorney's office that she observed the defendant place his hand on her breast and squeeze. I am further informed by this individual that she did not consent to the defendant touching her breast.

False statements made in this written instrument are punishable as a class A misdemeanor pursuant to section 210.45 of the Penal Law, and as other crimes.

PO Trotter
Police Officer Timothy Trotter

6/13/19
Date

1655
Time

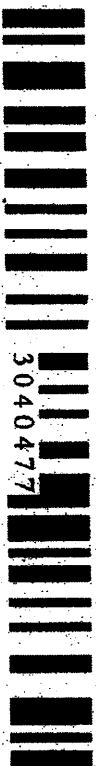


EXHIBIT "B"

CRIMINAL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK

PEOPLE OF THE STATE OF NEW YORK

Docket No.: CR-019463-19NY

AFFIDAVIT

- against -

CUBA GOODING JR.,

Defendant.

STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YORK)

I, Claudine De Niro, being duly sworn depose and state, under the penalty of perjury, the following:

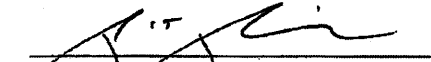
1. On June 9, 2019, I was at the Times Square Moxy Hotel located at 485 7th Avenue in the City, County and State of New York.
2. I was seated next to Cuba Gooding, Jr. when the Accuser approached Mr. Gooding and myself and sat next to me. I was seated between Mr. Gooding and the Accuser the entire time during which the Accuser interacted with Mr. Gooding.
3. I was attentive and engaged during the entire interaction with the Accuser and Mr. Gooding and at no time did Mr. Gooding touch the Accuser's breast and at no time did Mr. Gooding "place his hand on her breast and squeeze" as is stated in the Criminal Complaint.
4. This interaction was the first time that I met the Accuser.
5. Prior to this interaction with the Accuser, I had observed the Accuser watching Mr. Gooding and I around the venue and subsequent to our interaction with the Accuser, the Accuser continued to follow Mr. Gooding and I around the venue, and I ultimately, in essence, asked the Accuser to excuse herself and give us our privacy.

6. At not time did the Accuser have a verbal argument with Mr. Gooding.



Claudine De Niro

Sworn before me this
19th day of June, 2019



Notary Public

PETER TOUMBEKIS
Notary Public, State of New York
No. 01T05033736
Qualified in Nassau County
Commission Expires ~~September 26, 20~~
NOVEMBER 9, 2022

CRIMINAL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK

PEOPLE OF THE STATE OF NEW YORK

Docket No.: CR-019463-19NY

AFFIDAVIT

- against -

CUBA GOODING JR.,

Defendant.

STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YORK)

I, Matthew Assante, being duly sworn depose and state, under the penalty of perjury, the following:

1. On June 9, 2019, I was at the Moxy Times Square Hotel located at 485 7th Avenue in the City, County and State of New York.
2. On June 9, 2019, I observed Cuba Gooding, Jr. and Claudine Deniro sitting besides one another, and there was a woman, who I do not know, seated immediately next to Claudine Deniro on her other side.
3. I have since learned that the unknown woman is the person who made the criminal accusation against Mr. Gooding.
4. On June 9, 2019, while I observed Mr. Gooding, Claudine Deniro and the Accuser sitting together, I walked over to them to inform Mr. Gooding and Claudine Deniro that the event had ended and to invite Mr. Gooding and Claudine Deniro to go to the Second Floor of the Moxy Hotel to have dinner with me.
5. On June 9, 2019, while I was present during the interaction between Mr. Gooding and the Accuser, Mr. Gooding did not “place his hand on the Accuser’s breast and squeeze” as is alleged in the Complaint, and the Accuser did not say anything or

make any statements to me or Mr. Gooding about any such conduct having been committed upon her by Mr. Gooding while I was present.

6. At no time did Mr. Gooding touch the Accuser's breast during my interaction with Claudine Deniro, Mr. Gooding and the Accuser.



Matthew Assante

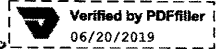


EXHIBIT "C"

**CRIMINAL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK

PEOPLE OF THE STATE OF NEW YORK**

Docket No.: CR-019463-19NY

AFFIDAVIT

- against -

CUBA GOODING JR.,

Defendant.

STATE OF Florida)

COUNTY OF Hernando)

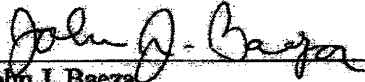
SS.:

I, John J. Baeza, being duly sworn depose and state, under the penalty of perjury, the following:

1. I have over twenty years of Law Enforcement experience, including, but not limited to, approximately thirteen years with the New York City Police Department where I was a Detective with the Manhattan Special Victims Squad for approximately six years, which is the same Squad that arrested Cuba Gooding, Jr.
2. I was also the Deputy Sheriff of the Pasco County Sheriff's Office in the State of Florida and have received numerous recognitions for my police work, including, two exceptional Merit Awards for acts of bravery, two Commendation Awards for acts involving grave personal danger, six Meritorious Police Duty Awards for acts of intelligent and valuable police service, eight Exceptional Police Duty Awards for intelligent acts contributing to a valuable accomplishment, as well as Two Unit Citation Awards from the Manhattan Special Victims Squad, along with a Certificate of Appreciation from the United States Department of Justice, Office of the United States Attorney, Southern District of New York.

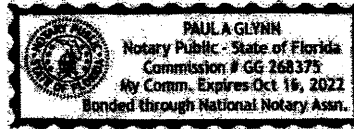
3. I have previously been declared as an Expert Witness in Police Policy and Procedures in the Courts of the State of New York.
4. I have authored and published thirteen articles, including articles on the topic of false allegations, including, but not limited to, "*False Reports in Cases of Sexual Assault*" in the Journal of Behavioral Profiling, "*False Reports*" in the London Academic Press, and "*Frame-by-Frame Analysis*" in the Journal of Behavioral Profiling.
5. I have received international training in the area of False Allegations and have conducted Courses and Presentations in the areas of Identifying False Reports, Interviewing the False Reporter, Investigation Procedures and Practices, etc. and have developed a "Red Flag Index" to assist investigators in evaluating and determining which reports may be false.
6. A copy of my Curriculum Vitae (CV) is annexed hereto which further enumerates and details my Law Enforcement Professional Activities and Training.
7. I have been involved in over one thousand criminal investigations related to sexual assault, serial rape, sexual homicide and child abuse, etc.
8. I have reviewed and evaluated countless numbers of surveillance videos during my Law Enforcement career.
9. I have been involved in the arrest of approximately three (300) hundred women and men for filing a False Police Report for sexual assault during my time with the Manhattan Special Victims Squad. All of these cases involved fully detailed accounts and reconstruction, when possible, as well as motive for the filing of the False Police Report.

10. I have closely viewed, reviewed and evaluated the surveillance video in this case, numerous times, frame-by-frame, and it is my professional opinion, as an expert in the field of sex crimes, that Cuba Gooding, Jr. did not "place his hand on the Accuser's breast and squeeze" as is alleged in the Complaint and Cuba Gooding, Jr. did not commit a sex crime, Forcible Touching, Sexual Abuse in the Third Degree, or any other criminal conduct during the video.


John J. Baeza

Sworn before me
this 20 day of June, 2019


Notary Public



PROFESSIONAL EXPERIENCE

- 2016-Present *Police Practices Expert, NYPDTRUTH.com*
- 2015-2016 *Director of Security, United States Presidential Campaign, Senator Rand Paul*
- 2011-2012 *Director of Security, United States Presidential Campaign, Congressman Ron Paul*
- 2004-2007 *Deputy Sheriff, Pasco County Sheriff's Office, Florida*
- 1994-2000 *Detective, Manhattan Special Victims Squad, New York City Police Department (temporarily assigned to the Manhattan North Homicide Squad for six months)*
- 1991-1994 *Narcotics Detective/Undercover Officer, Manhattan North Tactical Narcotics Team and Manhattan North Narcotics Major Case Unit, New York City Police Department*
- 1987-1991 *Police Officer, Patrol, 32nd Precinct, Harlem, New York City Police Department*
- 1984-1987 *Correction Officer, New York State Department of Correctional Services, Sing Sing Correctional Facility and Otisville Correctional Facility*

PROFESSIONAL ACTIVITIES

- New York City Police Department Honor Legion
- New Jersey Police Honor Legion (act of bravery in NJ while employed by NYPD)
- Retired Detectives of the Police Department of the City of New York
- New York City Police Detectives' Endowment Association
- International Homicide Investigators Association
- National Homicide Investigators Association
- The Association for Crime Scene Reconstruction
- Diplomat, International Association of Forensic Investigators (IAFI) – Criminal Investigation, Criminal Profiling
- Certified Instructor, IAFI-Criminal Investigation and Criminal Profiling

COMMENDATIONS

- Two Exceptional Merit awards for acts of bravery involving personal risk to life
- Two Commendation awards for acts involving grave personal danger
- Six Meritorious Police Duty awards for acts of intelligent and valuable police service
- Eight Exceptional Police Duty awards for intelligent acts contributing to a valuable accomplishment
- Two Unit Citation awards, 32nd Precinct, Harlem, 1990; Manhattan Special Victims Squad, 1994
- Nominated for the Manhattan Borough President's Medal for Valor and Heroism in Undercover Work Award
- Certificate of Appreciation from the United States Department of Justice, Mary Jo White, Office of the United States Attorney, Southern District, NY

PRESENTATIONS/COURSES INSTRUCTED

- Sotheby's, New York City: Sexual Assault Prevention and Awareness Seminar, 1997
- New York State Police Sex Offense Seminar: Serial Rape Case Presentation, 1998
- Academy of Behavioral Profiling Annual Meeting: Criminal Profiling and Investigative Relevance, 1999
- Academy of Behavioral Profiling Annual Meeting, 2000
 - False Reports in Rape Investigations
 - Investigative Overview of the Marilyn R. Sheppard Homicide
- Knowledge Solutions, Inc., 2000
 - Rape Investigation Course
 - Child Abuse Investigation Course
- John Jay College of Criminal Justice: Investigating False Reports of Rape, 2000
- New Jersey International Association of Forensic Nurses Meeting: The Behavioral-Oriented Interview of the Sexual Assault Victim, 2001
- Greater Saint Louis Major Case Squad, 2001
 - False Reports-A Preliminary Study
 - Identifying False Reports
 - Interviewing the False Reporter
 - Task Force Management
- Academy of Behavioral Profiling Annual Meeting, 2001
 - Target America: Criminal Profiling and the Response to Domestic Terrorism
 - Sex Crimes: Using the Behaviorally Oriented Interview
- Criminal Profiling Workshop, East Rutherford, New Jersey: False Reports in Sexual Assault Investigations, 2001
- Sexual Homicide Investigation, Juarez, Mexico, 2013
- Investigating Serial Rape, Juarez, Mexico, 2014
- Sexual Assault Motivational Typologies, Juarez, Mexico, 2014

- Invited by the Chief of the Juarez, Mexico Municipal Police: Investigating Serial Rape and Police Ethics, 2014
- University of Puebla, Villahermosa, Mexico: Interviewing Adult and Child Victims of Sexual Assault, 2017
- CLEU University, Guadalajara, Mexico, 2017
 - Interviewing Adult and Child Victims of Sexual Assault, The Frame by Frame Analysis
 - Interview Method
- False Allegations of Sexual Assault, Torreon, Mexico, 2017
- The First Investigative Response to Sexual Assault; Rapist Motivational Typologies; Investigation of Serial Rape, Juarez, Mexico, 2017
- Rapist Motivational Typologies, Webinar (U.S., Latin America), Mexico City, 2017
- Investigating Serial Rape, Mexico City, Mexico, 2017
- Developed the Professional General Knowledge Examination, Criminal Investigation Section, for the International Association of Forensic Investigators (IAFI) for Professional Status
- Developed the Criminal Investigation Board Certification Examination for Diplomate Status for the International Association of Forensic Investigators (IAFI)

PUBLICATIONS

Rossmo, D. K., & Baeza, J. J. "The Upper East Side Serial Rapist: A Case Study in Geographic Profiling." Paper presented at the meeting of the American Society of Criminology, Washington, DC, November 1998

Baeza, J., & Turvey, B., "Sadistic Behavior: A Literature Review," *Knowledge Solutions Library*, Electronic Publication, May 1999

Baeza, J., "Task Force Management," in Turvey, B., *Criminal Profiling: An Introduction to Behavioral Evidence Analysis*, London: Academic Press, 1999

Baeza, J., Chisum, W.J., Chamberlin, T.M., McGrath, M., Turvey, B., "Academy of Behavioral Profiling: Criminal Profiling Guidelines," *Journal of Behavioral Profiling*, January 2000, Vol. 1, No. 1

Baeza, J., & Turvey, B., "CBLRP: Review of 'Sexual Burglaries and Sexual Homicide'," *Journal of Behavioral Profiling*, January 2000, Vol. 1, No. 1

Baeza, J., "CBLRP: Review of 'Signature Killers'," *Journal of Behavioral Profiling*, January 2000, Vol. 1, No. 1

Baeza, J., & McGrath, M., "CBLRP: Review of "Reliability, Validity, and Utility of Extant Serial Murderer Classifications," *Journal of Behavioral Profiling*, May 2000, Vol. 1, No. 2

Baeza, J., & Turvey, B., "False Reports in Cases of Sexual Assault: Literature Review and

- Investigative Suggestions," *Journal of Behavioral Profiling*, December 2000, Vol. 1, No. 3
- Baeza, J. & Savino, J., "Frame-by-Frame Analysis: An Interview Technique," *Journal of Behavioral Profiling*, December 2001, Vol. 2, No. 2
- Baeza, J. & Turvey, B. "False Reports," in Turvey, B. *Criminal Profiling: an Introduction to Behavioral Evidence Analysis, 2nd Edition*, London: Academic Press, 2002
- Baeza, J. & Turvey, B. "Sadistic Behavior," in Turvey, B. *Criminal Profiling: an Introduction to Behavioral Evidence Analysis, 2nd Edition*, London: Academic Press, 2002
- Baeza, J., "Task Force Management," in Savino, J. & Turvey, B., *Rape Investigation Handbook*, Elsevier: Academic Press, 2005
- Baeza, J., *The Complete Guide To Sex Crimes Investigation*, (forthcoming), 2019

TRAINING

- New York State Department of Correctional Services Academy, Albany, New York
- New York City Police Department Academy
- New York City Police Department Undercover Narcotics Officer Course
- New York City Police Department Detective Bureau Investigator's Course
- New York City Police Department Criminal Investigation Course
- New York City Police Department Sex Crimes and Child Abuse Investigation Course
- New York City Police Department Homicide Investigator's Course
- New York State Police 1998 Sex Offense Seminar
- Investigative Psychology Conference, Liverpool, UK
- Introduction to Criminal Profiling, Knowledge Solutions LLC
- Criminal Profiling and Psychopathy, Knowledge Solutions LLC
- Serial Rape Investigation, Knowledge Solutions LLC
- Core Competency Training for Domestic Violence Advocates, State of Florida
- Trafficking of Women and Children, Florida Coalition Against Domestic Violence
- HIV/AIDS, Homelessness and Domestic Violence, Florida Coalition Against Domestic Violence
- Law Enforcement Equivalency of Training Certificate, Southeastern Public Safety Institute, St. Petersburg College, St. Petersburg, FL (112 hours)
- Corrections Equivalency of Training Certificate, Southeastern Public Safety Institute, St. Petersburg, FL (74 hours)
- Healthcare Provider BLS/CPR/AED, American Heart Association
- Basic Hostage Negotiations Course, Southeastern Public Safety Institute, St. Petersburg, FL
- Verbal Judo Instructor Course, Institute of Police Technology and Management, Jacksonville, FL
- LEOSA Firearm Qualified
- Crime Scene Analysis and Criminal Profiling, Elgin IL Community College
- Criminal Profiling, Sexual Assault, and Sexual Homicide, Juarez, Mexico
- Criminal Profiling, Crime Scene Processing and Analysis, Forensic Victimology, Human

- Body Rehydration, and Serial Homicide, Juarez, Mexico
- Applegate Method of Instinctive Point Shooting, New Plymouth, OH
- Verbal Self-Defense Communication Skills, Instructor Bob Francis
- Forensic Psychology Certificate, Instructor Elmira Strange
- Compstat Analytics, Instructor Charles Rambo
- Shooting Analysis and Reconstruction Training, Forensic Training Source, Alachua, FL
- Investigative Analysis and Crime Scene Reconstruction, Tri-Tech Forensics, Clearwater, FL
- Advanced Shooting Analysis and Reconstruction Training, Forensic Training Source, Alachua, FL

MEDIA APPEARANCES

- *Fox News Channel*: Washington, DC Homicide Sniper Case, Laci Peterson Homicide Case, Kelsey Smith Homicide Case, Paige Birgfeld Missing Persons Case, Zina Linnik Homicide Case, Street Wars Game, Laura Garza Missing Persons Case, Caylee Anthony Homicide Case, Newton, Connecticut Elementary School Mass Murder
- *MSNBC*: Washington, D.C. Homicide Sniper Case, Vitale Homicide Case
- *America's Most Wanted*: New York City East Side Rapist Case
- *Unsolved Mysteries*: New York City David Gause Rape Case
- *Discovery Health Channel*: Washington, DC Homicide Sniper Case
- *Inside Edition*: Washington, DC Homicide Sniper Case
- *New York City Local News*: various stations, various cases
- *Washington Times*: Washington, DC Homicide Sniper Case
- *Washington Post*: Washington, DC Homicide Sniper Case
- *The Village Voice*: New York City Central Park Jogger Homicide Case
- *Radio France*: New York City Dominique Strauss-Kahn Case
- *Kerolin Radio Report with Jeff Deist*: Feinstein gun control bill

VOLUNTEER WORK

January 2010: Armed protection for a Denver medical team sent to Haiti after earthquake

October 2017: Advisor: Criminal Justice Issues for Bob White, Candidate for Governor of the State of Florida

01/21/19

EXHIBIT "D"

Magic Hour Security Ejection Report - Sunday - 06.09.19

1

Security Report: [REDACTED]

2

Security Report: [REDACTED]

3

Security Report:

Approx. 11:15pm NYPD showed up called by a female guest [REDACTED] claiming she was inappropriately touched by a male guest (Cuba Gooding Jr.) After the cops interviewed her [REDACTED] gave them a time frame, and a location of the incident. After reviewing the footage from 9pm to 11pm we couldn't locate her or Cuba in the area she claimed the incident happened. The police took her complaint, and [REDACTED] ([REDACTED]/GM), and my contact information in case they have to review more footage. [REDACTED] ([REDACTED]/GM) present. A picture of [REDACTED] I.D

Management Report: [REDACTED]

At approx 11:15pm I was notified that there were police at the front door of Magic Hour asking to speak with a manager. I want down with [REDACTED] and was told a female who was later identified as [REDACTED] had accused Cuba Gooding Jr of touching her inappropriately. I noticed the police that he had already left but they wanted to check out upstairs to be sure. We later took the female guest upstairs so she could tell us where it happened. She was not sure when it happened or what time it happened. She gave us a 2 or 3 hour window of when it could have happened from when she called the police. [REDACTED] and I then checked camera footage with the police for roughly 45 mins. After not finding anything the police decided to leave. The officer on duty was Sergeant Bryant, Badge number #2374

[REDACTED]

[REDACTED]

Subject: MOXY TSNY INCIDENT REPORT

DATE: 6/9/19 SUNDAY

SUPERVISOR ON DUTY:

[REDACTED]
(SECURITY DIRECTOR)

MANAGER(S) ON DUTY:

[REDACTED]
[REDACTED]
[REDACTED]

LOCATION OF INCIDENT(S):

East Terrace

TIME OF INCIDENT(S):

Approx. 9:15pm

GUEST(S) INVOLVED:

[REDACTED]

SECURITY INVOLVED:

[REDACTED]
[REDACTED]

POLICE INVOLVED:

badge #2374 Bryant (Sergeant)
badge #19811 Pakuszek (Officer)

EMS INVOLVED: N/A

PICTURES: N/A

a. OF GUEST / VICTIM I.D. / PASSPORT:

[REDACTED] Included the report

b. OF PERPETRATOR / AGGRESSOR I.D. / PASSPORT: N/A

VIDEO IF AVAILABLE OF INCIDENT(S):

Will be sent in separate emails

[REDACTED]

[REDACTED]

INCIDENT(S) / SUMMARY OF EVENT(S):

Approx. 11:15pm NYPD showed up badge #2374 Bryant (Sergeant), and badge #19611 Paluszek (Officer) called by a female guest [REDACTED] claiming she was inappropriately touched by a male guest (Cuba Gooding Jr.). [REDACTED] Security notified me of their arrival at the Magic Hour Entrance. Myself, and [REDACTED] (GM) responded. After the cops interviewed her [REDACTED] gave them a time frame (9pm to 11pm), and a location of the incident. After reviewing the footage from 9pm to 11pm we couldn't locate her or Cuba in the area she claimed the incident happened in an accelerated viewing. The police took her complaint. They also took [REDACTED] (GM), and my contact information in case they had to review more footage. As I was leaving a detective called my phone to ask if he could review footage (approx. 1:30am) after I left, I notified [REDACTED] about views, and the complaint. [REDACTED] (GM) notified. A picture of [REDACTED] I.D. are included in this report.

ANY FURTHER QUESTIONS PLEASE CONTACT ME
THANK YOU,

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

**CRIMINAL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK**

PEOPLE OF THE STATE OF NEW YORK

-against-

CUBA GOODING JR.,

Defendant.

Notice of Motion to Dismiss

HELLER & HELLER

ATTORNEYS AT LAW
Attorneys for DEFENDANT
445 Park Avenue
New York, NY 10022

TO:

Attorney(s) for

Service of a copy of the within is hereby admitted.

Dated:

.....
attorney(s) for

Sir: Please Take Notice

{ } NOTICE OF ENTRY

that the within is a (*certified*) true copy of a
duly entered in the office of the clerk of the within named court on 19

{ } NOTICE OF SETTLEMENT

that an order of which the within is a true copy will be presented for settlement to the HON. one of the
judges of the within named court, at on 19 at M.

Dated:

Yours, etc.

Heller & Heller

Heller & Heller
Attorneys at Law
445 Park Avenue
New York, NY 10022
(212) 737-4490