

ESSEX, SS.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT
CRIMINAL NO: ESCR09-0969FILED
IN THE SUPERIOR COURT
FOR THE COUNTY OF ESSEX

AUG 13 2009


CLERK

COMMONWEALTH

v.

HENRY MICHALSKI, JR.

COMMONWEALTH'S STATEMENT OF THE CASE

Now comes the Commonwealth, and respectfully submits this Statement of the Case. This document is not a full and complete recitation of the facts that support the indictments in the above-numbered case, and is not meant to be a Bill of Particulars. It is solely intended to aid the Court, defense counsel, and the probation department in assessing the general nature and circumstances of the crimes alleged.

I. EMT LICENSING AND RECERTIFICATION

1. The Emergency Medical Services statute and accompanying regulations require EMTs in Massachusetts to be licensed. Once licensed, EMTs have to be "recertified" every two years by the Department of Public Health, Office of Emergency Medical Services (OEMS). To qualify for recertification at the basic level (EMT-Basic), OEMS regulations mandate the completion of a 24-hour refresher course (refresher) and 28 hours of continuing education (CE) in each two-year cycle.

2. The EMT-Basic refresher covers six subject matter modules: (a) Preparatory (including scene safety, lifting/moving patients); (b) Airway (including opening the airway, suctioning, resuscitation techniques); (c) Patient assessment; (d) medical/behavioral (including cardiac, diabetic, allergic, poisoning/overdose and behavioral emergencies); (e) Trauma (including shock, wounds, burns, bone/joint injuries, head/spine injuries); and (f) Obstetrics, infants and children.

3. CE classes provide additional supplemental training and education to help EMTs stay current with ongoing growth and development in the field of emergency medical care, including courses on things like recreational drugs, mass casualty training, incident command training, OSHA update, and HIPAA privacy training.

4. The training requirements must be completed by December 31st of the second year of the two-year cycle. Three months later, on April 1st, the old recertification expires and the new one becomes effective so long as a timely application has been filed and a fee paid.

II. TOWN OF HAMILTON AMBULANCE SERVICE AND EMT TRAINING

5. Until late September 2008, the Hamilton Police Department (HPD) ran the Town of Hamilton Ambulance Service. Accordingly, the Town required all full-time and reserve police officers to be certified as EMTs.

6. As properly certified EMTs, full-time HPD officers received a weekly "EMT stipend" in each paycheck, and annual "training pay" in the form of a lump sum payment of 30 hours overtime as compensation for attending EMT training.

7. For many years David J. Mastrianni (Mastrianni), a reserve officer at HPD and full-time paramedic at Danvers-based Lyons Ambulance Service (Lyons Ambulance), taught the required refresher and CE courses for HPD.

III. THE MASTRIANNI ROSTERS

8. In July, 2008, OEMS received allegations that Mastrianni had allowed officers to sign EMT attendance rosters without going to the training, and that in 2006-2007 he allowed officers to sign attendance rosters for trainings that were not held at all.

9. In August, 2008, soon after OEMS received the allegations, HPD Chief Walter D. Cullen (Chief Cullen) assured one or more inquiring town officials that he had checked with the state and everybody, including himself, was certified.

10. The subsequent OEMS investigation determined that Mastrianni falsely credited a number of police officers, including his father-in-law, Chief Cullen, with completing a 24-hour refresher and CE classes that were either not held, or held but not attended by certain officers.

IV. THE MICHALSKI ROSTERS

11. During the OEMS investigation, Chief Cullen told investigators that he did not sign the Mastrianni rosters, and asked why he would have signed the rosters when he had taken a refresher the month before the Mastrianni refresher. Indeed, official attendance rosters filed with OEMS showed that he had taken a 24-hour refresher at the Essex Fire Department (Essex refresher) on 8 Tuesday and Thursday evenings in November, 2006, and had taken an additional 7 CE courses, totaling 24 hours, sponsored by Lyons Ambulance.

12. These 8 refresher and 7 CE rosters upon which OEMS relied in granting the Chief certification had two common denominators: (a) the name of James W. Foley (Foley), a former Lieutenant on the Wenham Police Department, appeared with Chief Cullen's name on all 15 rosters, and (b) all 15 rosters were signed and submitted to OEMS by the training coordinator for Lyons Ambulance, Henry Michalski (Michalski).

13. To ascertain the accuracy of the rosters, investigators from the Attorney General's Office spoke to both Michalski and Foley. Both men told investigators that the Essex refresher and the seven CE courses had indeed been held.

14. Michalski was called before an Essex County Grand Jury on June 17, 2009, and testified in considerable detail about the Essex refresher. He stated that the bulk of the class was conducted in Essex. Once the "First Responder" component (a subset of the more comprehensive EMT-Basic training) was completed, the 6 EMTs in attendance finished up at Lyons Ambulance. Michalski confirmed that the 6 EMTs who completed the training included Foley and Cullen, as well as Robert Parr, Edward McLaughlin, Joseph Tricca, and Jonathan Levis. In response to the question "And in all instances, did each of the attendees attend each class?" Michalski answered affirmatively, "Yes, they did." (See Exhibit A).

15. When asked specifically if Chief Cullen attended each and every class of the Essex refresher, Michalski stated "If his name is on the paper, he attended it because I don't allow people to sign it if they're not there."

16. He testified that attendees are required to take a practical exam and a written exam. When asked what grade Chief Cullen got, Michalski said "She [sic] got a 90." When asked what Foley got, Michalski said "He got an 80. He didn't try very hard."

17. Michalski also testified to the validity of the 7 CE courses for which Cullen and Foley had received credit, confirming that they were properly credited.
18. On June 26, 2009, Foley told investigators he was unable to recall Chief Cullen attending any of the refresher or CE classes Foley took from Michalski, but corroborated Michalski's statement that the courses had been held and that he had attended or otherwise properly received credit. With regard to the Essex refresher, Foley was shown the 8 attendance rosters. He confirmed that those were his signatures, and that he took the entire refresher at the Essex Fire Department.
19. On July 9, 2009, investigators interviewed Jonathan Levis in Raynham, and later that day Edward McLaughlin in Danvers. Both witnesses also corroborated that the Essex refresher had been held. Both said the refresher started at the Essex Fire Department and finished at Lyons. Both said they attended, and recalled Chief Cullen attending. Both identified their handwriting and signatures on each of the 8 rosters.
20. By the end of the day on July 9th, all 4 witnesses contacted by the AG's Office had substantiated the fact that the Essex refresher had been held.
21. On July 17, 2009, the story rapidly unraveled. On or shortly before that date, investigators learned that Tricca and Parr had not attended the Essex refresher, even though their names and signatures appeared on all 8 rosters. With that information in hand, investigators promptly sought out both Sean Cullen (the Chief's son, and head dispatcher at Lyons Ambulance) and Michalski.
22. Sean Cullen admitted to investigators that he had printed and signed his father's name on all 8 Essex refresher rosters because his father was "unavailable." The Town of Hamilton 2006 Yearly Absentee Record for Chief Cullen confirms that he took vacation

from November 9th through November 16th, a period during which he was supposedly at the Essex refresher on the evenings of November 9th, 14th, and 16th. Bank and phone records obtained thereafter show that the Chief was in the Denver, Colorado area on November 9th, San Diego, California on November 14th, and returned to Massachusetts on November 16th.

23. After completing Sean's interview, investigators again interviewed Michalski. He initially stuck to his story, but later recanted, admitting the refresher was not held. In addition, he admitted that a portion of the 24 hours of CE for which Chief Cullen and Foley received credit was either never held or held but not attended by them. On two of the official CE attendance rosters, Sean Cullen again signed his father's name.

24. Both McLaughlin and Levis thereafter recanted as well. They admitted that prior to being interviewed on July 9th they had each talked to Michalski, who explained why investigators were trying to contact them. Michalski then detailed for both Levis and McLaughlin the story he had told investigators. Unbeknownst to the investigators, the initial statements they received from Levis and McLaughlin had been tailored to match Michalski's story.

25. Michalski's cell phone records confirm calls on the morning of July 9th between Michalski and Levis, McLaughlin, and Foley, and follow-up calls with Levis and McLaughlin on July 10th.

26. Investigators ultimately determined that the 2006 Essex refresher had been cancelled because no Essex firefighters needed EMT recertification that year. A four-day "First Responder" program was held in Essex, but as to Foley, Cullen, Parr, McLaughlin, Tricca, and Levis (none of whom were Essex firefighters or had any affiliation with the

Essex Fire Department), Michalski created a fictitious refresher roster so that each could be, and was, falsely credited with attending.

27. In connection with the EMT-Basic recertification for Foley, Cullen, Parr, Levis, and Tricca¹, Michalski aided, abetted, caused or permitted each of them to knowingly violate or fail to observe G.L. c. 111C and accompanying regulations requiring the completion of a 24-hour EMT-Basic refresher within the applicable two-year window.

As a result of Michalski's conduct, all 5 were recertified as EMT-Basics.

28. On these facts, Michalski has been charged as follows:

a) ESCR2009-0969-001: In connection with the Essex refresher attendance roster filed on December 4, 2006, one count of knowingly making false statements on a document filed with OEMS in violation of G.L. c. 111C, § 19(a)(6) and 19(b);

b) ESCR2009-0969-002 thru 006: In connection with helping James W. Foley, Walter D. Cullen, Robert D. Parr, Joseph Tricca and Jonathan Levis knowingly avoid the 24-hour refresher requirement, five counts of aiding, abetting, causing or permitting another to knowingly violate or fail to observe a requirement of the emergency medical services statute or its regulations in violation of G.L. c. 111C, § 19(a)(7) and 19(b);

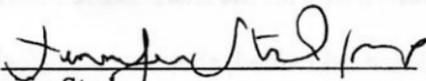
c) ESCR2009-0969-007 and 008: In connection with attempting to directly or indirectly mislead investigators between June 17, 2009 and July 17, 2009 as to Cullen's attendance at (a) the Essex refresher and (b) the 7 CE courses sponsored by Lyons, two counts of attempted obstruction of justice in violation of G.L. c. 274, § 6; and

d) ESCR2009-0969-009: In connection with lying under oath before an Essex County Grand Jury on June 17, 2009 regarding Chief Cullen's attendance at the Essex refresher, administering a written examination at the Essex refresher, and the accuracy of the attendance rosters for the Essex refresher, one count of perjury in violation of G.L. c. 268, § 1.

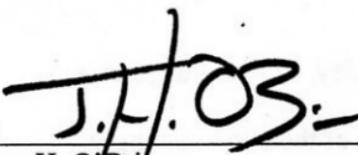
¹ McLaughlin took a 24-hour refresher in September, 2006; no indictment was sought for helping him avoid the refresher requirement.

Respectfully submitted
For the Commonwealth,

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