

**THE STATE OF NEW HAMPSHIRE  
JUDICIAL BRANCH  
SUPERIOR COURT**

Rockingham Superior Court  
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**NOTICE OF DECISION**

**Joseph Allen Foster, ESQ  
NH Attorney Generals Office  
33 Capitol Street  
Concord NH 03301-6397**

Case Name: **Scott Wood v Joseph Gordon, as Chief of Police**  
Case Number: **218-2013-CV-01250**

Enclosed please find a copy of the court's order of October 13, 2016 relative to:

Final Order

October 17, 2016

Maureen F. O'Neil  
Clerk of Court

(504)

C: Andrew Livernois, ESQ; Timothy J. Connors, ESQ; Stanley D. Helinski, ESQ

STATE OF NEW HAMPSHIRE  
SUPERIOR COURT

Rockingham, ss.

SCOTT WOOD

v.

JOSEPH GORDON,  
in his capacity as CHIEF OF POLICE FOR THE TOWN OF SANDOWN

216-2013-CV-01250

FINAL ORDER

As a result of pretrial rulings, this case has been narrowed to a single claim for a permanent injunction. Plaintiff Scott Wood seeks a judicial order removing him from the so-called "Laurie list." The Laurie list is a database of police officers and former police officers who have done, or likely done, something that so adversely affects their general credibility that it must be disclosed if the officer testifies in a criminal case. See State v. Laurie, 139 N.H. 325 (1995); Duchesne v. Hillsborough County Attorney, 167 N.H. 774 (2015). Wood argues that he was denied the opportunity for a due process hearing before being added to the Laurie list and, even if his initial placement on the Laurie list was lawful, he should now be removed because he is innocent of wrongdoing.

The court held a two day bench trial on November 24, 2015 and June 9, 2016. The court now concludes that there is overwhelming evidence to support Wood's continued placement on the Laurie list. Therefore, the court DENIES Wood's request for injunctive relief and grants JUDGMENT TO DEFENDANT JOSEPH GORDON.

Facts

Plaintiff Scott Wood worked as a police officer for small towns in Rockingham County for fifteen years. He served as a Hampstead police officer from 1997 through

2008 and as a part-time Atkinson police officer from 2001-2003. Wood was hired as a part-time Sandown police officer in 2006. In 2008, the Chief of Police for Sandown, defendant Joseph Gordon, hired Wood as full-time sergeant.

Wood had been on friendly terms with Corporal William Pica, who was hired at the same time that Wood became a full-time sergeant. Wood and Pica worked well together and were friends outside of work. They both participated in a law enforcement motorcycle club. Until 2012, there had never been any bad blood or tension between Wood and Pica.

Circa the summer of 2012, Pica grew concerned about some unprofessional conduct on Wood's part that Pica feared could taint his own reputation. One of Pica's concerns was that Wood required Pica to bring him to the law enforcement motorcycle club during times that Pica had police obligations to perform. Another of Pica's concerns was that Wood sometimes left the town for short periods of time when he was on duty. A third concern involved an incident in which Wood destroyed materials that had been logged into the department's evidence locker. These materials were not evidence related to any pending, closed or anticipated prosecution. Still, Wood failed to follow the correct procedure in destroying the materials, which consisted of contraband drugs and scales. Finally, Pica grew concerned because other officers expressed their frustration with Wood.

Pica was fearful for his own reputation because he had recently been promoted to corporal and worked most of his shifts alongside Wood. Therefore, Pica thought he might be painted with the same brush as Wood.

Pica brought some of his concerns to the attention of Chief Gordon and administrative Sergeant Aurie Roy. Gordon and Roy directed Pica to tell them about any additional incidents or issues involving Wood that might reflect badly on the Sandown Police Department.

In response to this directive, Pica disclosed that he believed Wood might have placed false and fabricated electronic records in the department's "IMC" database. The IMC database contains all of the police department's electronic records relating to contacts with detainees, arrestees, witnesses and victims. Thus, if an officer entered false information into the database, it would cast doubt on the integrity and reliability of all of the officer's other entries and, indeed, of the entire department's electronic records.

The basis for Pica's suspicion that Wood made false and fabricated computer entries was Pica's own first hand observations. At the end of one shift, Pica personally observed Wood entering motor vehicle stops into the "IMC" database on the department's computer system. Both Pica and Wood were seated in the patrol room at the time. Pica was behind Wood and could tell what he was doing because he was familiar with the IMC screen.

Pica found Wood's computer entries suspicious because he and Wood had both worked the same shift and there were no motor vehicle stops called into dispatch. Sandown police officers are required to call their motor vehicle stops into dispatch before leaving their cruisers. By calling a stop into dispatch, the officer lets his department know where he is so that the department can quickly send back-up if needed. The Sandown police department trains its officers to call every stop into

dispatch. This is also what is taught at the Standards and Training Academy. Because no motor vehicle stops had been called into dispatch during the shift in question, Pica had good reason to believe that Wood was not entering information related to a motor vehicle stop he had made that day.

It was standard operating procedure for officers to enter motor vehicle stops into the IMC database before leaving work at the end of a shift.<sup>1</sup> Pica never before saw any officer wait longer than the end of a shift to enter information into IMC. This meant that there were three possibilities: (A) Wood was entering information related to motor vehicle stops that he actually made but never called into dispatch, (B) Wood was entering information from stops that he made on previous shifts, or (C) Wood was placing false and fabricated information into the department's computer records.

After Pica related all of this, Gordon assigned Roy to investigate the matter. Roy looked at all of the motor vehicle stops that Wood entered in IMC for the time period of January 1, 2012 through August 4, 2012. She compared those IMC entries to the Rockingham County Dispatch records. Roy discovered that:

- Wood had self-reported 67 motor vehicle stops in IMC (resulting in 3 summons and 64 warnings); but

- Rockingham County Dispatch showed that Wood called in a total of 19 stops.

Roy also compared Woods' IMC entries for 2011 with the Rockingham County Dispatch records for the same year. She determined that Wood made IMC entries for 94 motor vehicle stops that were not called into dispatch.

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<sup>1</sup>It is now possible to enter motor vehicle stops into IMC from a cruiser mounted computer. At the time, officers had to enter information into IMC at the police department at the end of each shift.

Roy next looked at a sample of fourteen IMC records that were entered under Wood's name. Each record related to a driver who was purportedly given a verbal warning by Wood. All of those drivers had been previously stopped in Sandown by other officers while driving the same vehicles. In other words, their information had previously been entered into the IMC database based on a prior motor vehicle stop.

Roy then looked at the motor vehicle registration data in her sample of IMC records. She discovered that five of the fourteen drivers had either sold their vehicles or let the registrations expire before the date that Wood allegedly stopped and warned them. The registrations matched the drivers' vehicles at the time the drivers were previously stopped in prior years by other officers.

Gordon followed up on Roy's investigation by calling three of the drivers listed in Wood's IMC records and asked them if they had been stopped in Sandown in 2011 or 2012. All three drivers denied that they had been stopped during that time frame. In one case the driver had sold the vehicle that Wood claimed he stopped. In another, the driver had moved and not returned to Sandown for years.

Thus, Roy's investigation proved that Wood's IMC entries included numerous fabricated motor vehicle stops relating to actual persons who had been legitimately stopped in prior years.

On August 17, 2012, Gordon and Roy met with Wood to discuss the fabricated IMC entries. The meeting was audio recorded. Before confronting Wood, Gordon asked him to describe how he (Wood) trained officers to conduct stops. Wood's

response included an acknowledgment of the need to notify dispatch before leaving the cruiser. Wood indicated that he personally followed this procedure.

Gordon then read Wood his Garrity warnings. See, Garrity v. New Jersey, 385 U.S. 493 (1967). Gordon confronted Wood with the facts revealed by Roy's investigation. Gordon explained that based on those facts it would appear that Wood had made false entries in the department's IMC system.

Wood neither admitted nor denied guilt. Indeed, he said nothing at all about the IMC records. Instead, he asked Gordon several times to tell him the "the bottom line."

Gordon asked for Wood's resignation. Gordon explained that if Wood did not resign, Gordon would have to ask the Select Board to terminate Wood's employment.

Gordon also told Wood that "this is a Laurie issue." See Defendant's Ex. S, p. 6 (unofficial transcript). Gordon explained:

I have already spoken to the county attorney and I have spoken with Attorney Coyle about Laurie issues and about how to make this not happen. I can't, It's done. I can't change it.

Id., p. 7.

Despite this clear language, Gordon also suggested that if Wood chose to resign, "I will not allow this to leave this room if you want to leave it in this room." Id. Therefore, Wood may have believed that if he chose to resign he could avoid both the possibility of formal termination by the Select Board and the concomitant possibility of placemen on the Laurie list.

Wood chose to resign. According to the unofficial transcript of the meeting he said:

I'm not denying or confirming[.] I'm not saying anything but I accept what you're saying and I'll leave and that's the end of it. So I'll give you my stuff and I'll leave.

Id., p.8. Wood then provided a written letter of resignation.

Twelve days later, on August 29, 2012, Gordon received an email from Wood's email address. Gordon had previously received emails from Wood that originated from this address, Scottwood298@gmail.com. The mail contained a letter of apology, purportedly written by Wood and addressed to Chief Gordon and the entire Sandown Police Department. Although the letter did not contain any factual details, it did say:

I owe the entire department an apology. I let every one down [sic]. Yourselves and my family,[sic] For that I sincerely apologize to all of you. There is no reason, there is no excuse. A man spends his time teaching his children to do the right thing. . . . I didn't follow that. I broke an oath bottom line.

Defendant's Trial Ex. R.

Following Wood's resignation, Gordon sent a memorandum to the Rockingham County Attorney's Office that placed Wood on the Laurie list. Because Wood is on the Laurie list, he has been unable to find another police job in New Hampshire. Wood claims that he was offered a position with the Chester Police Department but the offer was rescinded when Chester learned he was on the Laurie list. He also claims that the Seabrook Police Department and Newton Police Department refused to consider him for employment because he is on the Laurie list. It is not clear whether any of these prospective employers were provided the facts that led to Wood's resignation from the Sandown Police Department.

\* \* \*



Wood filed this action more than a year after he resigned from the Sandown Police Department. He now claims that (a) he did not make any false entries in the IMC database and (b) he neither authored nor sent the letter of apology. Wood maintains that he has been framed by a malefactor who wanted to end Wood's career and stain his reputation.

Wood suggested that another officer could have made entries in the IMC database under his name. To do so would have required the officer to use Wood's ID and Password.

Wood insinuated that perhaps Pica made the false IMC entries in his name. Pica denied doing so. He testified that he never logged onto the IMC database using Wood's ID. Pica testified that he knew Wood's password for the Explorer's youth group, which he used with permission, but he did not know Wood's password for the IMC database. The court found Pica to be a credible witness and the court believes his testimony.

Wood also suggested that some of the false entries into the IMC database were made on days that he did not work. Wood points to an entry made under his name on March 9, 2012. He presented a doctor's letter indicating that he had eye surgery that day. However:

(A) The March 9, 2012 entry in the IMC database was for a motor vehicle stop that was called into dispatch;

(B) The March 9, 2012 motor vehicle stop resulted in an actual arrest that was made by Wood;

(C) Wood's signed timesheet indicates that he worked twelve hours on March 9, 2012 and the stop occurred during his shift.

The court has compared Wood's 2012 IMC entries with his time sheets. See Defendant's Exs. C and Q. With two exceptions, the time sheets show that Wood worked during on the date and time for every one of his IMC entries in 2012. The two exceptions are for IMC entries dated May 15 and July 24, 2012. The court was not provided with time sheets for these two pay periods and, therefore, cannot say with certainty what the actual time records show.

The court has also compared many of Wood's 2011 IMC entries with his time sheets. See Plaintiff's Ex. 4 and Defendant Ex. P. Because the quality of the IMC printout is poor, the court stopped short of checking each and every entry in the IMC printout against Wood's time sheets. However, the court checked many of the entries and did not find a single discrepancy. Wood did not point to any 2011 IMC entries for motor vehicle stops on dates or times that were not listed in his time sheets.

Finally, as noted above, Wood denies sending the email apology to Gordon on August 19, 2012. He admits that the email originated from his Gmail address but opines that his email address could have been spoofed by a tech-savvy evildoer. Wood did not present any forensic or other evidence to back up this claim.

#### Analysis

In Gantert v. City of Rochester, 168 N.H. 640 (2016), the New Hampshire Supreme Court recognized that police officers have a constitutional right to procedural due process with respect to both placement on and removal from the Laurie list. In Gantert, the officer was placed on the Laurie list after (a) an internal investigation, (b) review by the deputy chief, (c) review by the chief, (d) a meeting with the chief and (e) a hearing before the police commission. The Gantert court found that this was sufficient

to satisfy the officer's procedural due process rights prior to placement on the list.

However, Gantert did not provide a template for Laurie list placement hearings. The court was silent with respect to what procedures must be afforded in every case.

Gantert also recognized a due process right to "some post-placement mechanism" by which an officer on the Laurie list can seek removal "if the grounds for placement on the list are thereafter shown to be lacking in substance[.]" Gantert, 168 N.H. at 650. The court did not specify any particular set of procedures that must be afforded to an officer seeking removal from the Laurie list.

Whether Wood was provided with sufficient due process prior to placement on the Laurie list is open to question. On the one hand, there was (a) a full investigation by Sergeant Roy, (b) a meeting with Chief Gordon during which Wood had the opportunity to give his side of the story and/or request additional procedures<sup>2</sup>, and (c) the opportunity for a termination hearing before the Select Board. On the other hand, Wood wished to resign rather than face possible termination and he was not given the opportunity for a free-standing Laurie list placement hearing. On the third hand, he did not profess his innocence and he did not request either a hearing or any further investigation into his IMC entries.

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<sup>2</sup>Wood could have asked for discovery of Roy's report and the underlying documents. He could have asked for time to respond to the allegations. Because Roy was in the room, Wood could have asked her questions and thereby brought out any discrepancies, weaknesses or biases in her investigation. He could have asked to have Pica brought into the room so that he could be questioned. He could have asked Gordon to look at his time sheets (although, as explained above, the time sheets corroborate the other circumstantial evidence of Wood's guilt). Indeed, Wood could have asked for a more formalized hearing and, if he had a problem with Gordon's objectivity, for a different hearing officer.

Regardless, Wood has now been afforded far more in the way of due process than Gantert requires. He was given a two day bench trial in Superior Court. He had the opportunity for both written discovery and depositions under the Superior Court Rules. He had the benefit of the Rules of Evidence. Through counsel he questioned Corporal Pica, Sergeant Roy and Chief Gordon. Although he chose not to present expert testimony, Wood had more than sufficient time to look into technical issues regarding both the IMC system and the provenance of the apology email purportedly sent from his Gmail account.

The New Hampshire Supreme Court has not articulated the burden of proof that must be applied at Laurie list placement and removal hearings. The court applies the preponderance standard and, in the absence of guidance from the Supreme Court, allocates the burden of proof to Chief Gordon.<sup>3</sup>

Applying this burden of proof, the court finds that (a) Gordon properly placed Wood on the Laurie list and (b) there is no reason to remove him from the list. There are several reasons for this conclusions:

1. A comparison of the Sandown Police Department's IMC records and the Rockingham County Dispatch records clearly proves that somebody used Wood's ID and Password to make false and fabricated entries in the IMC database. Three of these fabricated entries were proven beyond all doubt because (a) the stops were not called into dispatch, (b) the vehicles were not registered to the drivers at the time of the purported stop, (c) the vehicles and drivers had been stopped in prior years, so their

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<sup>3</sup>The parties presented their proof at trial in the order suggested by the caption of the case, i.e. plaintiff first and defendant second. Wood did not object to proceeding in this manner. Neither party addressed the burden of proof or how it should be allocated.

information could be "cut and paste." and (d) the drivers denied being stopped in 2011 or 2012. The proof regarding the remaining 139 stops was substantial. Although Wood might have made isolated motor vehicle stops without calling them into dispatch, it is inconceivable that he did so 139 times in a year and a half. Indeed, Wood admitted to Gordon that he knew he was required to call every stop into dispatch.

2. These false and fabricated entries were necessarily intentional. There is no other explanation. Although Wood's attorney suggested that the IMC database might have become corrupted, he presented no evidence of this despite three years in which to investigate and prepare his case. The IMC software is in wide use across the country and if there were database corruption problems of this nature, Wood's counsel could have discovered them through diligent investigation. Furthermore, it would be odd—to say the least—for the database to become corrupted only for Wood's entries and only within Wood's entries for purported warnings given to drivers who were stopped during the precise hours of Wood's shifts.

3. When confronted by Gordon with the allegation that he deceitfully and intentionally made false and fabricated entries into the IMC database, Wood stood mute, neither admitting nor denying his guilt. He then promptly resigned from a job he held for six years (including his part-time service from 2006 through 2008). Presumably, when he went to work that day Wood had no plans to leave his shift as an unemployed, former police sergeant. If he was an innocent man who had just been surprised by an accusation of serious wrongdoing, he would have likely reacted in some way other than silently giving up his gun, badge, paycheck and career. Although silence in the face of accusation may not always amount to an admission of guilt, see

e.g. State v. Forbes, 157 N.H. 570 (2008), it is nonetheless relevant and persuasive in this context. See Baxter v. Palmigiano, 425 U.S. 308, 319 (1976); United States ex rel. Bilokumsky v. Tod, 263 U.S. 149 (1923) ("Silence is often evidence of the most persuasive character.")

2. The court observed Corporal Pica during his testimony and finds him to be a reliable and credible witness. The court accepts Pica's testimony that he did not make the false entries. The court further accepts Pica's testimony that he personally observed Wood making IMC entries for motor vehicle stops at the end of shift during which no stops had been called into to dispatch. This supports the conclusion that Wood made intentional false and fabricated IMC entries.

3. The apology email was sent from Wood's Gmail address. Although Wood denies sending the email he has not presented any evidence suggesting that his email address might have been "spoofed." To be sure, there are hackers who can send email bearing a return address other than their own. This is a common practice among spammers and distributors of malware. However, it is unlikely to have occurred in this case for three reasons:

(A) Wood's email address was not used to send malicious email to all of his contacts. Rather it was used to send a single, highly personalized email relating to Wood's recent departure from the police department. Thus, if his email address had been spoofed, the spoofer would have had to be someone with knowledge of both (i) the esoteric, technical know-how involved in spoofing and (ii) Wood's recent resignation from his job. Wood has not suggested who, if anybody, might satisfy both of these criteria.

(B) Wood did not present any evidence of the email routing information (i.e. the metadata that accompanies each email).

(C) Wood did not present any evidence from either his own computer or his Gmail account indicating that the message was not sent from his account.

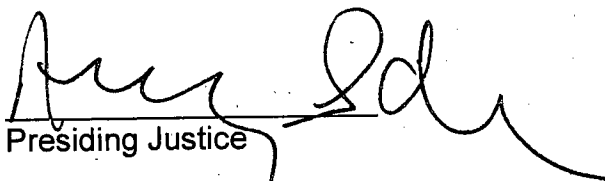
Accordingly, the court concludes that it is far more likely than not that the apology email was authored and sent by Wood. Although the email does not mention the fabricated IMC records, it is clear from the context that Wood was apologizing for those records.

It seems likely that Wood resigned rather than face termination because he thought his career prospects would be worse off after a formal termination. He also may have believed that by resigning he could avoid placement on the Laurie list. He was placed on the Laurie list anyway and properly so. Wood then realized that his Laurie list status was a scarlet letter that made future employment by New Hampshire law enforcement agencies unlikely. It was only then that Wood began to profess his innocence.

As noted above, the court makes these findings based on the preponderance of the evidence standard, with the burden of proof allocated to Chief Gordon. The court recognizes that if this were a criminal case, Wood's testimony standing alone might support a reasonable doubt. However, the court does not believe Wood's testimony was more likely than not true.

Based on this order, and the court's previous orders on the Woods other claims,  
the court now grants FINAL JUDGMENT ON ALL CLAIMS TO THE DEFENDANTS.  
This order finally resolves all claims against all parties.

October 13, 2016

  
Presiding Justice