

IN THE COUNTY COURT OF BROWARD COUNTY, FLORIDA

STATE OF FLORIDA,

CASE NO. 11-015766MM10A

vs.

NADIRA HOSEIN

---

**DEFENDANT'S MOTION TO DISMISS FOR FORT LAUDERDALE POLICE  
DEPARTMENT'S INTENTIONAL DESTRUCTION OF VIDEO EVIDENCE**

COMES NOW the Defendant, NADIRA HOSEIN, by and through undersigned counsel, and files this, her Motion to Dismiss for Fort Lauderdale Police Department's Intentional Destruction of Video Evidence, and as grounds therefore states:

1. All charges against the Defendant, NADIRA HOSEIN, must be dismissed where officers of the Fort Lauderdale Police Department intentionally, unlawfully, and without cause took the cell phone of an unarrested individual that was taping the interaction between the Defendant and the police and removed the memory card (SIM card), thus wiping the memory clean, and destruction of any video which had been taken of the interaction between the Defendant and the police.

2. The willful, intentional destruction of evidence requires sanctions. Bad faith destruction of evidence requires dismissal of the charges. State of Florida v. Milo, 596 So.2d 722 (Fla. 5<sup>th</sup> DCA 1992). Bad faith exists when police intentionally destroy evidence they believe would exonerate a defendant. Guzman v. State, 868 So.2d 498 (Fla. 2004). See Arizona v. Youngblood, 488 U.S. 51, 57, 109 S.Ct. 333, 102 L.Ed.2d 281 (1988).

3. The Defendant was initially charged by Probable Cause Affidavit with battery on a law enforcement officer (third degree felony), resisting with violence (third degree felony), and disorderly conduct arising out of allegations by the Fort Lauderdale Police Department that the Defendant had spit on a police officer.

4. Ultimately, charges against the Defendant were formally filed in an Information charging misdemeanor battery, resisting without violence, and disorderly conduct.

5. Defendant disputes the allegations by the officers from the Fort Lauderdale Police Department and, in fact, affidavit and witness statements have shown the officers' allegations to be unfounded.

6. Discovery in this matter has shown that the boyfriend of the Defendant, MOHAMED “Nazir” HUSSAIN, upon the interaction with the police, had immediately begun videotaping the Defendant’s interaction and the video tape did record the time frame in which the officers claim the Defendant, NADIRA HOSEIN, was resisting with and/or without violence, and committing the crime of disorderly conduct.

7. Upon seeing Defendant’s boyfriend, MOHAMED “Nazir” HUSSAIN, videotaping the interaction with his cell phone, Fort Lauderdale police officers detained him, and took his cell phone.

8. A second individual witnessed the officer who had taken MOHAMED “Nazir” HUSSAIN’S cell phone remove the SIM card from the phone. The cell phone was ultimately returned not to the owner of the phone, MOHAMED “Nazir” HUSSAIN, who was not arrested, but to his brother, MOHAMED “Safaraz” HUSSAIN. A true and correct copy of the Property Receipt is attached hereto as Exhibit “A”.

9. Upon retrieval of his cell phone, MOHAMED “Nazir” HUSSAIN found that all pictures, videos, and other photographic material were removed from the phone.

10. Wherein the Fort Lauderdale Police Department officers consciously approached an individual who was videotaping the events occurring between the Defendant and the police, seized the cell phone video taping the interaction, opened the back of the cell phone and removed and either destroyed or threw away the SIM card so that evidence would be unavailable to the defense, bad faith exists.

11. The actions of the police in this case shock the conscience and call for the ultimate sanction of dismissal of this matter.

WHEREFORE, undersigned counsel respectfully requests that this Honorable Court enter an Order dismissing the charges against the Defendant, NADIRA HOSEIN, and granting such other and further relief as it deems just and fair.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing was served via U.S. mail this 1<sup>st</sup> day of December, 2011 upon Sharonda LeBrun, Esquire, State Attorney's Office, Misdemeanor Division, 201 SE 6<sup>th</sup> Street, Fort Lauderdale, Florida 33301.

SCHWARTZ, GOLD, COHEN, ZAKARIN & KOTLER, P.A.  
54 S.W. Boca Raton Boulevard  
Boca Raton, Florida 33432  
(561)361-9600

By: \_\_\_\_\_  
DAVID KOTLER, ESQUIRE  
Florida Bar No. 121290