

APPLICATION FOR CRIMINAL COMPLAINT

APPLICATION NO. (COURT USE ONLY)

PAGE

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Trial Court of Massachusetts
District Court Department



I, the undersigned complainant, request that a criminal complaint issue against the accused charging the offense(s) listed below. If the accused **HAS NOT BEEN ARRESTED** and the charges involve:

- ONLY MISDEMEANOR(S), I request a hearing **WITHOUT NOTICE** because of an imminent threat of **BODILY INJURY** **COMMISSION OF A CRIME** **FLIGHT** **WITH NOTICE** to accused.
- ONE OR MORE FELONIES, I request a hearing **WITHOUT NOTICE** **WITH NOTICE** to accused.

WARRANT is requested because prosecutor represents that accused may not appear unless arrested.

Gloucester District Court
197 Main Street
Gloucester, MA 01930

ARREST STATUS OF ACCUSED

HAS **HAS NOT** been arrested

INFORMATION ABOUT ACCUSED

NAME (FIRST MI LAST) AND ADDRESS

Daniel J. Mahoney
168 Main St.
Rockport, MA 01966

BIRTH DATE

unknown

SOCIAL SECURITY NUMBER

unknown

PCF NO.

unk

MARITAL STATUS

unknown

DRIVERS LICENSE NO.

unk

STATE

MA

GENDER

male

HEIGHT

5'10-6'

WEIGHT

EYES

HAIR

?

RACE

Caucasian

COMPLEXION

SCARS/MARKS/TATTOOS

unknown

BIRTH STATE OR COUNTRY

unk

DAY PHONE

(978) 546-3444

EMPLOYER/SCHOOL

Rockport Police Department

MOTHER'S MAIDEN NAME (FIRST MI LAST)

unk

FATHER'S NAME (FIRST MI LAST)

unk

CASE INFORMATION

COMPLAINANT NAME (FIRST MI LAST)

James M. Atkinson

COMPLAINANT TYPE

POLICE CITIZEN OTHER

PD

ADDRESS

31 R Broadway
Rockport MA 01966

PLACE OF OFFENSE

Rockport, MA

INCIDENT REPORT NO.

OBTN ?

CITATION NO(S).

0939CR000772

OFFENSE CODE	DESCRIPTION	OFFENSE DATE
1 MGL 272, 99	Illegal Wiretap/Recording of Phone Call	11/18/2009
VARIABLES (e.g. victim name, controlled substance, type and value of property, other variable information; see Complaint Language Manual)		
Acting For monetary gain		
2 MGL 265, 37	Violation of Civil Rights	11/18/2009
VARIABLES		
Lead to Assault & Battery & Physical Injury		
3		
OFFENSE CODE	DESCRIPTION	OFFENSE DATE
VARIABLES		

REMARKS	COMPLAINANT'S SIGNATURE	DATE FILED
11/16/09 4:53	X [Signature]	11/16/2009
COURT USE ONLY	A HEARING UPON THIS COMPLAINT APPLICATION WILL BE HELD AT THE ABOVE COURT ADDRESS ON	DATE OF HEARING
DATE	PROCESSING OF NON-ARREST APPLICATION (COURT USE ONLY)	TIME OF HEARING
	CLERK/JUDGE	

DATE	COMPLAINT TO ISSUE	COMPLAINT DENIED	CLERK/JUDGE
	<input type="checkbox"/> PROBABLE CAUSE FOUND FOR ABOVE OFFENSE(S) NO(S). <input type="checkbox"/> 1. <input type="checkbox"/> 2. <input type="checkbox"/> 3. BASED ON <input type="checkbox"/> FACTS SET FORTH IN ATTACHED STATEMENT(S)	<input type="checkbox"/> NO PROBABLE CAUSE FOUND <input type="checkbox"/> REQUEST OF COMPLAINANT <input type="checkbox"/> FAILURE TO PROSECUTE <input type="checkbox"/> AGREEMENT OF BOTH PARTIES	



The undersigned alleges the following as a full or partial statement of the factual basis for the offense(s) for which a criminal complaint is sought.

COURT DIVISION
Gloucester

See attached "Affidavit of James M. Athinsey, dated 11/16/2012, Re: Pstolman Mahoney Illegal Recording of Telephone Call" JMA

FILED
CLERK OF COURT DIVISION
DISTRICT COURT DEPT.

12 NOV 16 PM 4:53

James M. Athinsey
CLERK-MAGISTRATE

JMA

JMA

(Use additional sheets if necessary)

PRINTED NAME <i>James M. Athinsey</i>	SIGNATURE X <i>[Signature]</i>	I AM A: <input type="checkbox"/> LAW ENFORCEMENT OFFICER <input checked="" type="checkbox"/> CIVILIAN COMPLAINANT OR WITNESS	DATE SIGNED <i>11/16/2012</i>
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ADDITIONAL FACTS FOUND BY CLERK-MAGISTRATE / ASST. CLERK / JUDGE BASED ON ORAL TESTIMONY

REMARKS	SIGNATURE OF CLERK-MAGISTRATE / ASST. CLERK / JUDGE X	DATE SIGNED
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Affidavit of James M. Atkinson, dated 11/16/2012, re: Patrolman Mahoney Illegal Recording of Telephone Call

In Gloucester District Court in "Criminal Complaint 0939CR000772", Patrolman Daniel J. Mahoney authored a signed narrative that he submitted to this court on or about 30-November-2009 that included his own signed confession of a state and federal felony violation of **M.G.L Chapter 272, Section 99**

On Page 2 of 7 of this aforementioned document Patrolman Mahoney states the following approximately in the 10th paragraph:

"On 11/18/09 @ approximately 1800 I again attempted to contact (via a recorded line within the Rockport Police Station) Mr. Atkinson via his company's phone number. The attempt was successful and I began to speak to him regarding my message that I had left the previous day for him."

At the beginning of this telephone call Patrolman Mahoney did not state that he was recording the call, nor did he state that he was recording the call until the conversation was essentially finished (at the end).

At no time did I consent to such a recording being made, and I was not aware that Patrolman Mahoney was recording the conversation until he mentioned the illegal recording of the call at the end of the call in a way that I perceived his disclosure to be an intimidation tactic.

Indeed a reasonable person who listened to the entirety of the recording would observe that Patrolman only disclosed that he had just recorded the entire call at the end of the call solely as an intimidation tactic.

Patrolman Mahoney was not acting in an undercover capacity, was not engaging in activities where an officers safety might be in danger, did not have a warrant to operate such a wiretap, and had no lawful authority to commit such wiretapping or unlawful recording.

I was told by my attorney (Paul Andrews) that the Assistant District Attorney in this case did not obtain a copy of this illegally recorded call until approximately March or April 2012, essentially on the eve of trial in the aforementioned case, and that a review of the illegal recording resulted in the prosecution themselves requesting to the court that the recording be suppressed, and the charge against me by Patrolman Mahoney based on recording was a violation of the wiretapping statutes by Patrolman Mahoney be dismissed in a way that the charges could never be brought against me again. The judge in the case stated at trial that the request by the Commonwealth to make such a request as quite extraordinary and unusual. The

charges were then dismissed by the court, and following this the court engages in an apology for the misconduct of the officer.

A copy of this audio file of the illegal recording can be provided to the court or to the Grand Jury in whatever format the court desires, and it is quiet clear from the recording that the officer was knowing and willfully engaging in illegal wiretapping and/or illegal recording.

Further, an evaluation of the illegally recorded call reveals that it appears that Patrolman Mahoney was at the time attempting to subvert U.S. Export Law under 22 USC 121.1 XI(b) (restricted military munitions) and 22 U.S.C. 2778-2780 of the Arms Export Control Act (AECA) and the International Traffic in Arms Regulations (ITAR) (22 CFR Parts 120-130) by attempting to unlawfully intimidate me into shipping goods to a foreign government prior to the U.S. Department of State issuing the require exportation license that is required for the transactions. Essentially, Patrolman Mahoney as acting as an agent representing the interests of a foreign power (the Government of Uzbekistan), and that he had not yet registered as required under 22 U.S.C. § 611, 18 U.S.C. § 951; Public Law 893, 50 U.S.C. §§ 851-857; and 18 U.S.C. § 2386.

Further, Patrolman Mahoney violated my 4th and 5th Amendment Rights my making this illegal recording, and in turn violated **MG.L. Chapter 265, Section 37.**

Additionally, at various dates after the making of this illegal recording, Patrolman Mahoney and others did play this recording for monetary gain, and did provide copies to others for monetary and political gain on or about 11/24/2009, 11/25/2009, 11/30/2009, 12/16/2011, and 4/3/2012. He also unlawfully disseminated information gained from illegal wiretaps on or around these and other dates. As this as an **unbroken chain of conduct started before 11/18/2009 and continuing to at least 4/2/2012.** Additionally, as Patrolman Mahoney's actions resulting in an unlawful assault and battery upon my person at a later date, as a direct result of this illegal recording, and bodily injury to me did result, the statute requires that upon conviction that he: "shall be punished by a fine of not more than ten thousand dollars or by imprisonment for not more than ten years, or both"

Signed under the pains and penalties of perjury this 16th day of November 2012, at Rockport, Massachusetts.

JAMES M. ATKINSON
31R Broadway
Rockport, MA 01966
(978) 546-3803