

# Report That Prosecutor Gave “False Testimony” Not Actual Malice, Maryland Judge Rules

By Chuck Tobin and Drew Shenkman

A rural newspaper reporter demonstrated “the opposite of actual malice” in reporting that the county’s chief deputy prosecutor had given “false testimony” during a murder case, a Maryland judge has ruled. *Daggett v. Landmark Community Newspapers of Maryland, et al.*, No. 02-C12-169832, Anne Arundel County, Maryland, Circuit Court (Memorandum Opinion and Order, July 25, 2013).

Circuit Judge Pamela L. North in Annapolis awarded summary judgment and dismissed a defamation and false light lawsuit filed by David P. Daggett against the *Carroll County Times* and its reporter Brett Lake.

## Background

Daggett sued over three articles and an editorial concerning testimony he gave on March 5, 2012 in a hearing during the prosecution of two suspects for the murder of Jeremiah DeMario. Daggett’s office was under pressure to salvage the murder case after the judge threw out confessions and the murder weapon, finding that sheriff’s detectives had unlawfully arrested and interrogated the criminal defendants. The defamation litigation revolved around the following question posed to Daggett and his answer:

Q: And did you ever get any calls on the evening of September 13 into the early morning of September 14, 2010 from investigators with questions about the Jeremiah DeMario homicide?

A: Not to my knowledge, no.

Daggett further testified that that he later heard the victim -witness counselor in his office was contacted that evening from the DeMario murder scene. He also testified that he had attended another murder scene, and notified his boss, two

weeks after the DeMario homicide when the Sheriff’s Office called him at home at night.

Daggett’s boss, the elected State’s Attorney, also testified at the criminal hearing. He criticized the Sheriff’s Office for not calling him, Daggett, or one of the other prosecutors from the DeMario murder scene.

A week after their testimony, the State’s Attorney announced in court that his office was dismissing the murder charges. He cited the Sheriff’s Office’s “willful failure to call our office for legal advice.” To date, no one has been further charged in DeMario’s murder.

In the weeks after Daggett testified, 10 sources told the newspaper’s reporter that Daggett had received a call from the murder scene. Then, in late April 2012, the sheriff called the reporter into his office, presented him with the phone bill,

and introduced him to the sergeant who had made the call. After calling Daggett for comment, and being told that he did not remember the sergeant’s call, the newspaper ran a story with the headline, “Daggett Gave False Testimony” reporting on the testimony, the phone record, and Daggett’s comment. The newspaper also published an editorial calling for a “thorough house cleaning” at the Sheriff’s and State’s Attorney’s Office.

Daggett’s boss fired him a few days later.

In his deposition in Daggett’s libel lawsuit, the State’s Attorney testified that he had specifically asked Daggett after the murder if Daggett received any calls, and that Daggett said he had not. Later in his own deposition, Daggett disputed that the State’s Attorney ever asked whether he received any calls. The State’s Attorney testified that after reading the newspaper’s story, he interviewed the Sheriff’s sergeant, corroborated the reporting, and then offered Daggett, a 17-year veteran of that office, the option of resigning or being fired. Daggett refused to resign.

Daggett sued the newspaper and the reporter a few days later. He alleged that the newspaper falsely reported that he was asked whether he had received any calls at all. Instead, Daggett characterized the sergeant’s call as a “notification

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Lake took all appropriate precautions before writing the article to make sure it was well verified and his words did not mischaracterize Plaintiff’s testimony.

call” and asserted that the question he was asked at the hearing concerned any calls for “legal advice”. Daggett also disputed that his answer, “Not to my knowledge, no,” constituted a definitive denial that he had received a call.

On the standard of care, Daggett asserted that he was a private figure and that the newspaper’s reporting was negligent. Daggett also argued that he could establish actual malice because the reporter had been in the courtroom that day and heard Daggett for himself, and then listened to the court’s audio recording of the testimony. Because of this, Daggett argued, the reporter must have deliberately distorted the question and answer in the reporting. Daggett also argued that the reporter had told another prosecutor the newspaper was pressuring him to write “sensational” stories, which the reporter and the newspaper denied.

The newspaper deposed eight members of the State’s Attorney’s Office, all of whom testified about Daggett’s leadership in the legal and administrative operations of their office. Daggett also provided a resume in discovery that boasted of his statewide teaching, drafting a police practices manual, and testifying before the Maryland General Assembly in support of legislation.

The newspaper also obtained affidavits from the sheriff, the sergeant, one of the criminal defendant’s lawyers, and two courtroom observers who knew the sergeant had called Daggett. Each attested that, beginning immediately after the hearing and during the next several weeks, they told the reporter Daggett had received a call and that his testimony had not been truthful.

### Summary Judgment Motion

Judge North, in her seven-page opinion awarding summary judgment, cited Daggett’s resume and the other prosecutors’ deposition testimony and held that he was a public official under the standard of *Rosenblatt v. Baer*, 383 U.S. 75 (1966). She therefore held that Daggett had the burden to establish actual malice by clear and convincing evidence.

Next, examining the question put to Daggett and his answer in the context of the entire hearing, as Daggett urged, the judge noted the question to Daggett was phrased, “did you ever get *any calls* . . .” (emphasis is the court’s). She

continued that whether Daggett thought the question meant something else “is not the issue here.” In light of Daggett having received the sergeant’s call from the murder scene, and his additional testimony about attending the other murder scene, Daggett’s “answer was a false statement to any listener.”

Turning to actual malice, the judge noted:

- The reporter “was almost immediately approached by people who had knowledge that Plaintiff’s statement was false.”
- Ultimately, the reporter “had a total of ten sources to verify the Plaintiff’s answer constituted a false statement.”
- The reporter received a printout of the sergeant’s phone bill documenting the call to Daggett.
- The reporter “did not believe [Plaintiff] told the truth when Plaintiff responded to the question in open court.”
- The reporter “spoke to his editor first about appropriate language [“false testimony”] to use in the article.”
- The reporter “waited about seven weeks before submitting his story.”

The judge concluded that the reporter had taken “exhaustive measures” in preparing the story:

This record discloses the opposite of actual malice. It shows Lake took all appropriate precautions before writing the article to make sure it was well verified and his words did not mischaracterize Plaintiff’s testimony. If Lake had a motive to write a sensational story, that motive absent other proof of malice is insufficient to prove malice.

Daggett has appealed the judge’s award of summary judgment to the newspaper and the reporter. He signed the notice of appeal himself, without the counsel who had been representing him at the trial level.