

**IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT,  
IN AND FOR ORANGE COUNTY, FLORIDA**

CHRISTOPHER M. COMINS,

Plaintiff/Counterdefendant,

vs.

MATTHEW FREDERICK VAN VOORHIS,

Defendant/Counterclaimant.

CASE NO.: 09-CA-015047-O

JUDGE: Evans (Div. 40)

**COUNTERCLAIM**

Defendant/Counterclaimant, MATTHEW VAN VOORHIS (hereinafter “Van Voorhis” or “Counterclaimant”) sues Plaintiff/Counterdefendant CHRISTOPHER M. COMINS (hereinafter “Comins” or “Counterdefendant”), and states as follows:

**PRELIMINARY STATEMENT**

Plaintiff COMINS was involved in an incident that garnered international media attention in May and June of 2008. In that incident COMINS engaged in irresponsible use of firearms and sadistically fired shot after shot into two household pet dogs, who had escaped from their owner’s yard. COMINS initially claimed that he did so out of necessity – that the dogs tried to attack him and some cows. See *Pet Dogs Repeatedly Shot By Neighbor For No Reason, Owner Says*, WKMG Local 6 Orlando (May 23, 2008).<sup>1</sup> However, a video of the incident surfaced, which demonstrated a far different reality; COMINS was not seeking to protect himself, but

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<sup>1</sup> Found at <http://www.clickorlando.com/news/16374176/detail.html> (last visited February 8, 2010, attached as Exhibit A to Defendant’s contemporaneously-filed Answer and Affirmative Defenses)

rather seems to be harming the animals out of either sport or irrational anger.<sup>2</sup>

A video of the incident shows COMINS opening fire on the dogs. See <http://www.youtube.com/watch?v=nhNOO0e1Kqw> (last visited February 8, 2010, attached as Exhibit B to Defendant's contemporaneously-filed Answer and Affirmative Defenses), and the video of the incident is hereby incorporated by reference (hereinafter, references to the video will "Video" followed by the time on the video). The video depicts COMINS firing at the dogs as they are near the cows. He then fires again, even as the dogs withdraw from the Cows, standing over them as one dog appears to attend to its wounded companion. Video at 0:32. Then, as the dogs are on the ground clearly presenting neither a threat to the cows nor to himself, COMINS walks away, turns, and fires at them again. Video at 0:38-0:42. At the 0:41 and 0:47 marks in the video, the audio track of the video contains a sound consistent with that of a bullet whizzing by the camera operator.

As one dog gets up off the ground and runs away, COMINS can be seen walking toward the edge of the pasture, away from one dog that is wounded and lying on the ground. Video at 0:54. The dogs' owner can then be seen entering the pasture, gesticulating and screaming frantically. Video at 0:56. Nevertheless, COMINS turns toward the wounded dog on the ground, and fires one last shot into the animal. Video at 0:57. The videographer and his companion can be heard on the video expressing outrage, as can onlookers. At the one minute, 10 second mark into the video, observers begin blaring their horns in protest at COMINS

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<sup>2</sup> COMINS use of the firearms in this incident was marked with incompetence. He appears to fire 14 rounds at point blank range, but only hits his targets with 7 of those rounds. Furthermore, he loaded his weapon with "target rounds," which have a slick metal jacket over the bullet. This causes them to pass through the target, inflicting great pain, but offer little stopping or killing power.

behavior.

After the video appeared online, a massive public outcry erupted, and COMINS and his actions were subjected to widespread and worldwide media scrutiny. See, e.g., *Caught on video, shootings of dogs in Orlando area sparks global outcry*, Orlando Sentinel, May 31, 2008<sup>3</sup>; *Dogs Shot in Central Florida*, CNN iReport, Sept. 25, 2008.<sup>4</sup> The coverage was extensive, both locally and beyond.<sup>5</sup> The negative opinions about COMINS were so strong that no less than

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<sup>3</sup> Available at [http://articles.orlandosentinel.com/2008-05-31/news/dogshot31\\_1\\_dogs-youtube-christopher-butler](http://articles.orlandosentinel.com/2008-05-31/news/dogshot31_1_dogs-youtube-christopher-butler). (last visited February 8, 2010, attached as Exhibit C to Defendant's contemporaneously-filed Answer and Affirmative Defenses.)

<sup>4</sup> found at <http://www.ireport.com/docs/DOC-94218>. (last visited February 8, 2010, attached as Exhibit D to Defendant's contemporaneously-filed Answer and Affirmative Defenses.)

<sup>5</sup> See also, WESH.com, "Loose Dogs Shot After Chasing Cattle," (May 23, 2008), <http://www.wesh.com/news/16372321/detail.html> (last visited February 8, 2010, attached as Exhibit E to Defendant's contemporaneously-filed Answer and Affirmative Defenses); Local6.com, "Pet Dogs Repeatedly Shot for No Reason, Owner Says," (May 23, 2008), <http://www.clickorlando.com/news/16374176/detail.html> (last visited February 8, 2010, attached as Exhibit F to Defendant's contemporaneously-filed Answer and Affirmative Defenses); Local6.com, "Pet Dog Shooting Investigation Reopened," (June 1, 2008), <http://www.clickorlando.com/news/16453702/detail.html> (last visited February 8, 2010, attached as Exhibit G to Defendant's contemporaneously-filed Answer and Affirmative Defenses); WFTV.com, "Humane Society Wants Man Who Shot Two Dogs to Be Prosecuted," (July 15, 2008), <http://www.wftv.com/news/16892360/detail.html> (last visited February 8, 2010, attached as Exhibit H to Defendant's contemporaneously-filed Answer and Affirmative Defenses); WFTV.com, "Man Who Shot Two Dogs Could Face Misdemeanor Charge," (July 28, 2008), <http://www.wftv.com/news/17017827/detail.html> (last visited February 8, 2010, attached as Exhibit I to Defendant's contemporaneously-filed Answer and Affirmative Defenses); My Fox Orlando, "Orlando Man Who Shot Dogs is Charged," (July 28, 2008), [http://www.myfoxorlando.com/dpp/news/Orlando\\_Man\\_Who\\_Shot\\_Dogs\\_is\\_Charged](http://www.myfoxorlando.com/dpp/news/Orlando_Man_Who_Shot_Dogs_is_Charged) (last visited February 8, 2010, attached as Exhibit J to Defendant's contemporaneously-filed Answer and Affirmative Defenses); Central Florida News 13, "Man Caught on Tape Shooting Dogs Charged," (July 29, 2008), [http://www.cfnews13.com/News/Local/2008/7/29/man\\_caught\\_on\\_tape\\_shooting\\_dogs\\_charged.html](http://www.cfnews13.com/News/Local/2008/7/29/man_caught_on_tape_shooting_dogs_charged.html) (last visited February 8, 2010, attached as Exhibit K to Defendant's contemporaneously-filed Answer and Affirmative Defenses); ZooToo, "'Ranchers' Right' to Shoot Dogs Sparks Debate," (Nov. 25, 2008), <http://nypost.zootoo.com/petnews/ranchersrighttoshootdogsspark-1037> (last visited February 8, 2010, attached as Exhibit L to Defendant's contemporaneously-filed Answer and Affirmative Defenses); WFTV.com, "Man Charged of Shooting Dogs Now

three Facebook groups sprung up decrying the shooting or showing support for the injured dogs.<sup>6</sup>

Mr. Van Voorhis is the publisher of the “Public Intellectual” blog. Mr. Van Voorhis reviewed the widespread negative media coverage of the incident, and like countless other bloggers, commenters, and observers, he voiced his opinion on the incident. That opinion was clearly negative toward COMINS, and it mirrored the world wide negative coverage of COMINS behavior. So much negative opinion grew toward COMINS that there was a rally on September 23, 2008 at the Orange County Courthouse. See CNN iReport: *Update: Dogs Shot in Orlando Florida*, found at <http://www.ireport.com/docs/DOC-94218> (last visited February 8, 2010, see Exhibit D to Defendant’s contemporaneously-filed Answer and Affirmative Defenses). Thousands of people signed an online petition demanding that COMINS be charged with animal cruelty. See *Justice for Husky Dogs Shot in Orange County, FL*, found at <http://www.thepetitionsite.com/50/justice-for-husky-dogs-shot-in-orange-county-florida> (last visited February 8, 2010, attached as Exhibit Q to Defendant’s contemporaneously-filed Answer and Affirmative Defenses).

Van Voorhis compiled data from various news sources and public records about the

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Facing Felonies,” (Jan. 9, 2009), <http://www.wftv.com/greatpets/18449158/detail.html> (last visited February 8, 2010, attached as Exhibit M to Defendant’s contemporaneously-filed Answer and Affirmative Defenses).

<sup>6</sup> Facebook, “Dog Shooting in Orlando,”

<http://www.facebook.com/group.php?gid=20486668687> (last visited Feb. 8, 2010, attached as Exhibit N to Defendant’s contemporaneously-filed Answer and Affirmative Defenses);

Facebook, “Justice for Husky Dogs Shot in Orange County Florida,”

<http://www.facebook.com/group.php?gid=20060139815&ref=mf> (last visited Feb. 8, 2010, attached as Exhibit O to Defendant’s contemporaneously-filed Answer and Affirmative

Defenses); Facebook, “Help Hoochie and Raley!!,”

<http://www.facebook.com/group.php?sid=63c11b097c16c3f3a633ffc2705717a8&gid=17331012378&ref=search> (last visited Feb. 8, 2010, attached as Exhibit P to Defendant’s contemporaneously-filed Answer and Affirmative Defenses).

incident. Van Voorhis discovered news reports that showed that COMINS has a history of firearm-related erratic behavior. See *Outrage Over Man On Video Shooting Dogs At Orange County Ranch*, WFTV.com, June 3, 2008 found at <http://www.wftv.com/news/16464020/detail.html> (last visited February 8, 2010, attached as Exhibit R to Defendant's contemporaneously-filed Answer and Affirmative Defenses). That article reported that COMINS was charged with Felony Aggravated Assault with a Deadly Weapon in 2005 for "focusing his gun's laser site [sic] on his girlfriend's son's forehead. He pleaded no contest to a lesser charge and served one year probation." *Id.*

In the beginning, it appeared that COMINS might escape criminal liability for his actions. However, a chorus of angry citizens did not let COMINS' acts of wanton cruelty go without further attention. In addition to the many newspaper articles published in the mainstream media, citizens organized a petition drive, and forced local authorities to take note that this politically well-connected individual seemed to be getting away with a crime.

Van Voorhis joined the chorus. He gathered published news reports and publicly available information and composed an article about the incident; he then published it in *Public Intellectual*. In response to the outcry, the Orange County Sheriff's Department re-evaluated its initial determination that COMINS had committed no crime, and asked the State Attorney to prosecute COMINS. See *Sheriff: Charge dog shooter*, ORLANDO SENTINEL, July 29, 2008 at B1. ("After reviewing the videotape and interviewing more than 20 witnesses, investigators concluded that the last shot Comins fired crossed the line, sheriff's Cmdr. Stephen Garrison said. That shot occurred after the dogs' owner, Christopher Butler, jumped a fence and ran to his pets.") In November 2009, the Court denied COMINS his attempts to get that charge dismissed,

and COMINS will stand trial on two felony counts of animal cruelty in March 2010.

Despite the fact that major media outlets reported on the incident, and thousands of people were calling for COMINS to be prosecuted, COMINS filed two defamation lawsuits over the incident – one against Christopher Butler (the owner of the two dogs) and the instant suit against Mr. Van Voorhis. COMINS focused on Van Voorhis because Van Voorhis was presumably in less of a financial position to be able to defend himself from a frivolous and baseless lawsuit than, for example, CNN or the Orlando Sentinel. In order to attempt to bully Van Voorhis into removing the article from his publication, and to attempt to create a climate of fear among others who might expose COMINS' depraved and incompetent behavior, COMINS filed suit his lawsuit against Van Voorhis.

#### **COMMON ALLEGATIONS**

1. This is an action for damages in excess of \$15,000.00 exclusive of interest and attorneys' fees.
2. Counterclaimant, Matthew Van Voorhis, is a citizen of Massachusetts with a temporary place of residence in Gainesville, Florida.
3. Counterdefendant, Christopher Comins, is a *sui juris* individual resident of the state of Florida, maintaining an address of 10505 Tyson Rd, Orlando, FL 32832. Venue and personal jurisdiction are therefore appropriate.
4. Counterclaimant incorporates the above Preliminary Statement as if fully set forth herein.
5. All conditions precedent to the bringing of this counterclaim have been performed, waived, or excused.

6. Counterclaimant has engaged the undersigned attorneys to prosecute this action, and has agreed to pay such attorneys a reasonable fee for their services.

## **COUNT I**

### **ABUSE OF PROCESS**

7. Counterclaimant incorporates by reference all allegations contained in paragraphs 1-6 as though fully set forth herein.

8. The Counterdefendant has made an illegal, improper, or perverted use of the legal process by filing the underlying lawsuit.

9. The Counterdefendant had an ulterior motive or purpose in exercising the illegal, improper or perverted process.

10. The Counterclaimant was injured as a result of Counterdefendant's action.

11. On approximately June 6, 2008 and August 17, 2008, the Counterclaimant published two articles on his online publication.

12. On his website, the Counterclaimant displayed factual information and opinions regarding matters of public concern, the information therein having been gleaned from mainstream news publications and a video of the incident that was posted on Youtube.com.

13. The filing of the action by the Counterdefendant constitutes an abuse of process in that the action was not filed because Counterdefendant believed the continued posting of Counterclaimant's statements were defamatory, or because Counterdefendant suffered monetary loss as a result of the statements, nor because Counterdefendant's reputation had been damaged as a result of the statements.

14. The action was also not filed to redress any damage suffered by the

Counterdefendant, nor for any other proper purpose.

15. Rather, despite knowing that the publications were protected by absolute and qualified privileges, along with immunity under federal law, and knowing that the conditions precedent to filing a libel suit had not been made, Counterdefendant nevertheless filed the action for improper purposes, with ulterior motives, to accomplish certain ends or goals for which the legal process was not designed, namely to:

- a. Attack the credibility and reputation of Counterclaimant and his opinions and views;
- b. Intimidate Counterclaimant and others so that he and other individuals and organizations with opinions and views contrary to Counterdefendant's would restrict or terminate their efforts to bring those opinions and views to the attention of the public;
- c. Otherwise hamper Counterclaimant's ability and willingness to exercise his constitutional right to freely express his opinions and views and thereby censor his speech.

16. As a direct and proximate cause of Counterdefendant's actions, Counterplaintiff's ability and willingness to advance his opinions and views have been negatively affected, as has his willingness to petition his public officials for redress of grievances and his willingness to instruct his elected representatives on matters of public importance. Furthermore, the free speech rights of many other individuals have been chilled.

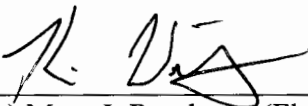
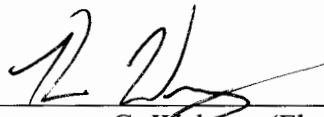
17. Counterdefendant's action in filing its Complaint for an improper purpose was done willfully, maliciously, oppressively, and in conscious disregard of Counterclaimant's constitutional right to free speech.

18. Pursuant to § 768.72, *Fla. Stat.* (2008), Counterclaimant specifically reserves his right to amend this pleading to assert entitlement to an award of punitive damages upon the



proffer of evidence demonstrating a reasonable basis for recovery of such damages.

WHEREFORE, Counterclaimant, Matthew Van Voorhis, requests Judgment for compensatory and special damages in an amount in excess of \$15,000.00, plus costs, Attorneys' fees, interest (including pre-judgment interest), and such further relief as the Court determines just under the circumstances. Counterclaimant demands trial by jury on all issues so triable.

RANDAZZA LEGAL GROUP	WALTERS LAW GROUP
 (for) Marc J. Randazza (Fla. Bar # 625566) mjrpa@me.com 3969 Fourth Avenue, Suite 204 San Diego, CA 92103 978-865-4101 305-437-7662 (Facsimile) Attorney for Defendant/Counterclaimant	 Lawrence G. Walters (Fla. Bar # 776599) Kevin W. Wimberly (Fla. Bar # 0057977) 781 Douglas Avenue Altamonte Springs, FL 32714 407-975-9150 407-774-6151 (Facsimile) Attorney for Defendant/Counterclaimant

### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via email and U.S. mail delivery to: Attorneys for Plaintiff: Frank H. Killgore, Jr., Esq. ([fhkillgore@kpsos.com](mailto:fhkillgore@kpsos.com)), and Christopher M. Harne, Esq. ([charne@kpsos.com](mailto:charne@kpsos.com)), Killgore, Pearlman, Stamp, Ornstein & Squires, P.A., 2 S. Orange Ave., 5th Floor, P.O. Box 1913, Orlando, FL 32802-1913, this 8th day of February, 2010.

  
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Kevin W. Wimberly