

COUNTY COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

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PEOPLE OF THE STATE OF NEW YORK

– against –

MARTIN H. TANKLEFF,

Defendant.

Index Nos. 1535-88/1290-88

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**MEMORANDUM IN SUPPORT OF
RENEWED MOTION TO DISQUALIFY DISTRICT ATTORNEY THOMAS J. SPOTA
AND THE OFFICE OF THE DISTRICT ATTORNEY
AND TO APPOINT A SPECIAL PROSECUTOR**

This Court has presided over a post-judgment hearing to determine whether Martin Tankleff is entitled to a new trial based on overwhelming new evidence implicating Joseph Creedon, Peter Kent, and Jerry Steuerman in the murders of Arlene and Seymour Tankleff. By Orders dated September 21, 2004 and October 25, 2004, the Court denied Defendant’s Motion to Disqualify District Attorney Thomas J. Spota and the Office of the District Attorney and to Appoint a Special Prosecutor [hereinafter “Motion to Disqualify”] and his Motion for Reconsideration of the same. These motions were based on the probable perjury committed by Detective James McCready, District Attorney Spota’s former client, at Mr. Tankleff’s trial; Mr. Spota’s law firm’s former representation of Todd Steuerman and Jerry Steuerman; Mr. Spota’s illegal delegation of duties to Assistant District Attorney Leonard Lato; and the obstructionist tactics used by the District Attorney’s office to prevent Glenn Harris from testifying at the § 440 hearing.

Since that time, the Court has heard the testimony of Mark Callahan and Walter Warkenthien. This additional testimony adds to the evidence already adduced at the §440 hearing—which itself established Mr. Spota’s conflicts—and clearly further demonstrates how those conflicts have manifested themselves. In light of Mr. Spota’s conflicts of interest, Mr. Tankleff respectfully renews his motion to disqualify the District Attorney and the Office of the District Attorney and to appoint a Special Prosecutor.

BACKGROUND

District Attorney Spota has several conflicts of interest in this case—stemming from his former representation of Detective James McCready and his former law firm’s representation of Todd Steuerman—which have been demonstrated by the Defendant’s Motion to Disqualify and Motion for Reconsideration. Since those motions were filed and ruled upon, this Court has heard

the testimony of Mark Callahan and Walter Warkenthien, which further illustrate how these conflicts have manifested themselves. First, Brian Scott Glass maintained for some 13 years that Jerry Steuerman offered the Tankleff murders to him and that he passed the job on to Joseph Creedon. Yet, when he took the stand, Glass claims to have fabricated this story—a story that has been corroborated by the testimony of other witnesses. Mr. Callahan’s testimony shed a bright light on this sudden change of heart: the District Attorney’s Office made a deal with Glass that induced Glass to change this story. Second, on cross examination, Mr. Warkenthien admitted that he was hand-picked by Mr. Spota for this case and he reported directly to Mr. Spota while investigating this case despite Mr. Spota’s promises to wall himself off from the case.

As described in Defendant’s Memorandum of Supplemental Authority in Support of Defendant Marty Tankleff’s Motion to Vacate His Convictions Under C.P.L. § 440 [hereinafter “Defendant’s Memorandum of Supplemental Authority”], Jerry Steuerman had a substantial motive to kill Seymour Tankleff. See Defendant’s Memorandum of Supplemental Authority, Statement of Facts, Section II. Further, as this Court is aware, Steuerman was present at a poker game that took place at the Tankleff residence the night Seymour and Arlene Tankleff were murdered and was the last one to leave the house when the game ended. A week after the attacks, while Seymour was still alive, Steuerman engaged in some incredibly bizarre behavior: he withdrew money from the joint account he held with Seymour, feigned his own death, changed his appearance and fled to California. Later, Steuerman offered Creedon \$10,000 to cut out Marty’s tongue because Marty had accused him of murdering the Tankleffs. See Motion to Disqualify at 4-5.

Despite these facts, Detective McCready claimed to have never considered Steuerman a suspect and failed to investigate him. If McCready had a personal or business relationship with Steuerman, the quality of his investigation and the credibility of his testimony would have been easily and rightly attacked. Thus, it is incredibly significant that at trial McCready flatly denied he ever knew Steuerman, because this Court has since heard testimony that McCready and Steuerman—the very person the defense believes is behind the murders—knew each other years before the murders, and the two were on friendly terms.¹ Lubrano, 8/3/04 at 77-79; Salpeter, 7/19/04 at 33.

As this Court is also aware, Detective McCready was well acquainted with District Attorney Spota. The two have maintained a lengthy attorney-client relationship, during which Mr. Spota has defended Detective McCready in court, before a state commission investigating police misconduct, and before the public. See Motion to Disqualify at 6. Given the discrepancies in McCready’s testimony regarding his relationship with Steuerman, it is possible that McCready—Mr. Spota’s former client—committed perjury while testifying at Marty’s trial.

¹ In fact, Leonard Lubrano can positively place Steuerman and McCready together as early as 1984. In the late 1970s and early 1980s, Lubrano operated a wholesale distribution company that supplied baked goods to area restaurants. For bagels, Lubrano went to Steuerman. He personally picked up bagels from Steuerman on a daily basis and saw McCready at the bagel shop on more than one of those occasions. Lubrano, 8/3/04 at 75-76. In 1984, Lubrano opened a pizzeria, where he again encountered McCready. McCready owned a construction business and had a number of jobs in the area, so he frequented the pizzeria to pick up food for his construction crews. Lubrano had noticed McCready’s Rolex watch on his trips to the bagel shop and recognized the watch and McCready when McCready came into the pizzeria. Lubrano, 8/3/04 at 77-78, 79. Aside from remembering McCready from the bagel shop, McCready also told Lubrano that he was doing work for Strathmore Bagels (or Strathmore Stables, which Steuerman also owned). Lubrano, 8/3/04 at 78.

Given this possibility, it is clear that District Attorney Spota—McCready’s attorney—should not be involved in this proceeding.

Yet it is apparent that these conflicts have compromised the District Attorney’s impartiality and objectivity. Several actions taken by the District Attorney’s office more than amply show this to be so, specifically including its treatment of Brian Scott Glass.

In July 2004, Glass told defense counsel that Steuerman had offered him the job of killing Seymour Tankleff and that the job was ultimately passed on to Joseph Creedon.² Glass also agreed to testify at the § 440 hearing. A few days after this initial meeting, Glass reported that he remained willing to testify, but he was worried that if he appeared in court he would be arrested on an outstanding robbery charge. Glass, 12/6/04 at 21. He was also afraid that if Creedon heard that he testified and if he were subsequently sent to prison on the robbery charge, his girlfriend’s life would be in danger. *Id.* at 21-22.

The District Attorney’s office wanted Glass to change his story, Callahan, 12/21/04 at 735, and met with him on October 22, 2004. Glass, 12/6/04 at 67. As a two-time violent offender, Glass faced 25 years to life if convicted of the pending robbery charge. Callahan, 12/21/04 at 736; Glass, 12/6/04 at 17-18. With this ammunition, the District Attorney’s office threatened Glass, saying that if he testified as to the offer from Steuerman, it would make things tough for him. Callahan, 12/21/04 at 736.

Ultimately, a deal was struck. When Glass was arraigned on the robbery charge, the District Attorney moved to release him on recognizance. Callahan, 12/21/04 at 754. As Mark Callahan testified at the § 440 hearing, “As you know, helping the D.A. when you’ve got an armed robbery, a violent B felony, and you’re a two-time violent felon and you get an ROR, obviously there’s a benefit there.” Callahan, 12/21/04 at 751. Having received this benefit and with charges still pending against him, Glass changed his story. Callahan, 12/21/04 at 735. Glass now denies that he knows Steuerman and he denies that Steuerman ever asked him to attack Seymour Tankleff. In addition, he now claims to have made up his original story because he was bored and/or because the defense promised to arrange legal representation for the robbery case. Glass, 12/6/04 at 15-16, 50.

Finally, it is of utmost importance to note that District Attorney Spota is still intimately involved in this case. Investigator Warkenthien, who was handpicked by the District Attorney to work on this hearing, testified on cross-examination that throughout his investigation, he reported directly to Mr. Spota. Warkenthien, 2/4/05 at 73-74. This was so even after Mr. Spota promised to wall himself off from the case.

ARGUMENT

As set forth in Defendant’s Motion to Disqualify, there are three independent grounds upon which a court should disqualify the District Attorney: (1) where there is a “clear conflict of interest,” *People v. Zimmer*, 51 N.Y.S.2d at 390, 394; accord *People v. Gordon*, 709 N.Y.S.2d 503, 504 (1st Dept. 2000); (2) where there is a “reasonable potential for prejudice,” *Zimmer*, 51 N.Y.S.2d at 395; or (3) where there is an “appearance of impropriety” and a “substantial risk that...public confidence in our criminal justice system could be undermined,” *People v. Dellavalle*, 687 N.Y.S.2d 199, 200 (3d Dept. 1999); accord *People v. Shinkle*, 51 N.Y.S.2d 417,

² As early as 1990 or 1991 Glass said that Steuerman offered him the job of killing the Tankleffs and that he passed the job on to Creedon. See Callahan, 12/21/04 at 738, 740.

421 (1980). Any of these factors, standing alone, is sufficient to require disqualification of the District Attorney. All three are present here.

First, there is a “clear conflict of interest” relating to Mr. Spota’s former representation of Detective McCready and his former law firm’s representation of Todd Steuerman. If these conflicts were not sufficiently clear when Mr. Tankleff filed his original Motion to Disqualify and his Motion for Reconsideration, testimony subsequently adduced at the § 440 hearing demonstrates how they have manifested themselves. Most striking is the testimony of Mark Callahan, who stated that Brian Scott Glass changed his story because he was pressured to do so by the District Attorney’s office.

That the District Attorney’s office has persevered with its obstructionist tactics only strengthens the notion that a conflict exists. Mr. Spota has continued to eschew an honest evaluation of the evidence out of loyalty to his former client. Detective McCready’s credibility and the strength of his investigation have been seriously weakened by his potential perjury. For the District Attorney to achieve a just result in this case would require a vigorous investigation into McCready’s apparent perjury and the bases therefore. By pressuring Glass to change his story, the District Attorney has done anything but.

Second, there is not merely a reasonable potential for prejudice, but there has been a disturbing trend of *actual* prejudice. As a result, Marty Tankleff has been denied his right to a fair hearing and to due process under the New York Constitution and the United States Constitution. As previously argued in Defendant’s Motion to Disqualify and Motion for Reconsideration, the District Attorney’s Office enjoyed the fruits of its intimidating tactics when Glenn Harris asserted his Fifth Amendment rights and declined to testify. The District Attorney’s office continued to obstruct the Court’s fact-finding function by refusing to grant Harris immunity. We have now seen yet another display of its obstructionist devices: pressuring Glass to change his story and offering him a benefit in return.³

Like Harris, Glass has exculpatory evidence that goes directly to Mr. Tankleff’s innocence. Mr. Tankleff is entitled to a fair and impartial hearing to adjudge the weight of the evidence showing his innocence. For the District Attorney’s office to pressure Glass to change his story such that this additional exculpatory evidence does not come to light constitutes prejudice that is no longer remote and speculative. It is absolutely prejudicial for the District Attorney’s office intentionally to induce witnesses such as Glass (and Harris) to either change their long-consistent stories or frighten them into saying nothing at all.

Finally, there is an “appearance of impropriety” and a “substantial risk that...public confidence in our criminal justice system could be undermined.” Here, there is more than a mere appearance of impropriety; instead, it is *unmistakably improper* for the District Attorney’s office to make a deal with a violent criminal, the terms of which involve releasing him on recognizance if he will change his story to reflect the District Attorney’s theory of the case. How can the public possibly remain confident in a system that is capable of pressuring witnesses such that they change their stories to suit the District Attorney’s needs?

³ In addition, Mr. Spota’s former client Todd Steuerman was a potentially vital witness in this proceeding. Mr. Spota sat silent about his firm’s prior representation of Todd Steuerman for selling drugs out of the bagel store, even as Mr. Tankleff was trying to prove that fact in the evidentiary hearing. Then, when Tankleff subpoenaed Todd Steuerman as a witness, the District Attorney argued that Tankleff was not entitled to a material witness warrant to effectuate his right to compulsory process. There can be no clearer conflict than arguing that Tankleff has no right to have the District Attorney’s former client compelled to testify at this proceeding.

CONCLUSION

This case deserves to be investigated by someone other than the hand-picked subordinate of the former lawyer of two of the key participants. Because the District Attorney's deal with Glass further demonstrates Mr. Spota's conflicts of interest, because of the disturbing trend of actual prejudice, because the District Attorney's obstructionist tactics are improper and because the public cannot remain confident in a system that allows such abuses, the Defendant respectfully renews his request that the Court issue an order disqualifying the District Attorney and the District Attorney's office and appointing a special prosecutor.

Respectfully submitted,

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