

IN THE COURT OF COMMON PLEAS, LOGAN COUNTY, OHIO

STATE OF OHIO,	:	
Plaintiff,	:	Case No. 83-CR-3
-VS-	:	JUDGE RONALD E. HADLEY
GEORGE W. SKATZES,	:	MOTION TO DISMISS
Defendant.	:	

MOTION

Now comes the defendant, by and through his undersigned counsel, and moves the Court for an order dismissing all charges in the instant case on grounds of prosecutorial misconduct.

Respectfully submitted,

Lewis E. Williams, Jr. (DM)

LEWIS E. WILLIAMS, JR.
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D. G. Day

DENNIS G. DAY
Attorney for Defendant
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FILED
COURT COMMON PLEAS

APR 25 1983

Janet J. Lane
CLERK, LOGAN COUNTY, OHIO

MEMORANDUM

In June, 1982, a man with an extensive criminal record who was then serving time in an Ohio prison for his latest criminal conviction notified local authorities that he had information for sale concerning the murder of Arthur Smith. His price for the information was shock probation (release from prison) and immunity for a number of felonies, including several aggravated robberies. As a result of this sale of information, the office of the Logan County Prosecutor commenced an investigation which has been conducted in a reprehensible and highly unethical manner.

The Court has had certain aspects of this conduct

presented to it before. Unfortunately, pointing out such conduct has not deterred the prosecutor from continuing to violate the ethical standards required of members of the legal profession.

Before addressing the new grounds which form the basis for this motion, a brief history of the prior unethical conduct should be reviewed so that there is no question in the Court's mind that the conduct engaged in by the prosecutor is a deliberate and sustained effort to win a conviction via the grossest sort of unethical conduct.

I. HIRING A PRIVATE INVESTIGATOR TO SPY ON
THE DEFENSE BY PRETENDING TO BE A DEFENSE
INVESTIGATOR:

In August of 1982 the prosecutor employed private investigator Thomas Martin of Marion, Ohio, who then promptly hired himself out to the co-defendant, James Rogers, for the purported purpose of aiding Rogers in his defense. Martin and the prosecutor's office had already executed a written services contract, a copy of which is attached, and he adhered to that contract by selling Rogers out to his first master, the prosecutor.

Although Martin denies he was ever working for Rogers, the Court will recall that he was caught lying under oath on this very subject. He denied that he acknowledged his arrangement with Rogers on a visit he made to the Southern Ohio Correctional Facility, yet prison records which were verified and placed into evidence proved otherwise.

The prosecutor's conduct was clearly in violation of the American Bar Association Code of Professional Responsibility, Disciplinary Rule 1-102(A)(4), which states that a lawyer "shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation." Refusal to recognize the concept that justice is based upon the rule of law means that individual rights become subject to unrestrained power, respect for the law is destroyed, and rational self-government is impossible.

II. CHARGING DIANE ROGERS WITH THE MURDER OF
ARTHUR SMITH WITHOUT PROBABLE CAUSE TO
BELIEVE SHE WAS GUILTY:

In an attempt to pressure James Rogers into becoming a witness against George Skatzes, the prosecutor charged his wife, Diane Rogers, with the murder of Arthur Smith. He did so with full knowledge that there was no evidence available which would give anyone probable cause to believe that Diane Rogers was guilty.

Such conduct is another violation of the Code. Disciplinary Rule 7-103(A) states that "a public prosecutor shall not institute criminal charges when he knows or it is obvious that the charges are not supported by probable cause."

III. COMMUNICATING WITH ONE OF ADVERSE INTEREST:

Sometime prior to James Rogers' scheduled trial, and without notifying Rogers' attorney, J.C. Ratliff, the prosecutor caused Rogers to be taken from the Logan County Jail and brought to his office where, apparently, some deal was discussed between the two.

The Code was again violated, for Disciplinary Rule 7-104 states that "during the course of his representation of a client a lawyer shall not communicate on the subject of the representation with a party he knows to be represented by a lawyer in that matter unless he has prior consent of the lawyer representing such other party or is authorized by law to do so."

This concludes the review of what has preceded the commencement of George Skatzes' trial. Since the trial has started, new areas of unethical conduct have become known to the defense. They are as follows:

IV. PERPETRATING A FRAUD UPON THE COURT:

In response to a Court order requiring the prosecutor to provide the defense with summaries of statements of new witnesses, whose names were given to the defense on the first day of trial, the prosecutor caused to be filed with the Court a false and fraudulent statement.

The statement, purporting to be a summary of the expected testimony of Reverend Thomas Montgomery of Rushsylvania, Ohio, was an absolute falsehood. The statement reads as follows:

"Reverend Montgomery can testify that George Skatzes has admitted his involvement in a series of armed robberies that he has been charged with."

What really happened was that certain employees of the Logan County Sheriff's Office attempted to pressure Reverend Montgomery into giving them a statement. They wanted him to reveal everything he had heard from George Skatzes during the course of a confidential relationship, that of minister to a penitent. Reverend Montgomery proved himself a man of principle and refused to give in to their bullying tactics.

It is further a fact that George W. Skatzes made no statements to Reverend Montgomery concerning involvement in any robberies.

The filing of a fraudulent statement with the Court is a very serious matter. So is intimidation of a witness, the creation and fabrication of evidence, the interference with a jailed defendant's freedom of religion, and the apparent willingness of the prosecutor to violate a privileged communication. Repeated violations of the Code of Professional Responsibility and denial of due process of law, as guaranteed by the Fourteenth Amendment to the United States Constitution, are intolerable. This is especially true where the prosecutor's flagrantly unethical conduct has already been brought to the attention of the Court.

V. APPARENT FALSIFICATION OF SHERIFF'S REPORT:

On October 22, 1979, in response to contact made with the Logan County Sheriff's Office by one James R. Grunden, deputies went to Mr. Grunden's home at 2655 Valleyview Drive and took a report. That report, a copy of which is attached, concerned the sighting of an automobile which had pulled off Township Road 179, the road along which Arthur Smith's body was found. The sighting occurred sometime between the disappearance of Arthur Smith and the discovery of his body. Within two (2)

months of this report being taken, James Grunden was dead, having accidentally choked to death at home.

Mr. Grunden's widow, Jan Smith, and the man who was riding with Grunden at the time the car was spotted, are in agreement on several things. They agree that the car was seen by Grunden and the other man while they were on their way back from work at Rockwell International in Kenton, that the car was seen between 11:30 P.M. and midnight while they were travelling south on Township Road 179, and that they couldn't get an accurate description of the car, other than its being dark in color, because it was too dark outside.

In response to a demand for discovery, the prosecutor provided the defense with a report purporting to be one taken from James Grunden. However, that report states that the automobile was seen at approximately 2:45 P.M. on Thursday, October 18, while Grunden and his passenger were travelling northbound on Township Road 179. Additionally, the report offers a description of a car in far greater detail than that which Grunden actually claimed he saw at that time or what the passenger claims he saw at the time.

Furthermore, the passenger states that at some later time, and after Grunden had switched to the third shift at Rockwell, a Logan County Sheriff's Deputy came to the Rockwell plant at approximately 3:00 A.M. and talked to Grunden again. If any official report was taken at the time, it has not been provided to the defense and its contents are therefore unknown.

It is difficult to understand what is going on here, but on its face it appears that the report allegedly taken from Grunden on October 22, 1979, does not comport with what his widow and passenger claim that he told them, nor does it comport with what the passenger experienced firsthand. The question is inescapable: Was this report tampered with, and, if so, why?

Serious charges of this kind are not made lightly against a public official and member of the bar. However, there are witnesses present in Logan County who know that the contents

of the alleged police report are not what Grunden told them. Coupled with the prior history of prosecutorial misconduct, the circumstances surrounding this alleged report must make the Court, at a minimum, suspicious of just what is happening in this case.

VI. PROVIDING APPARENTLY FALSE INFORMATION
ON DISCOVERY:

Prior to the commencement of the trial in this case, the prosecutor provided the defense with the name of Deputy Sheriff Paul Bozman as a potential witness for the State of Ohio. Knowing that Bozman was a jailor, defense counsel asked the prosecutor if the subject matter of Bozman's testimony might possibly be statements by George Skatzes that he allegedly overheard at the jail. The prosecutor answered in the affirmative.

Both defense counsel talked with Bozman shortly thereafter in a private meeting. He informed us that not only did George Skatzes not implicate himself in any of the crimes with which he is charged, but also that he has, at all times, professed his innocence to the killing of Arthur Smith.

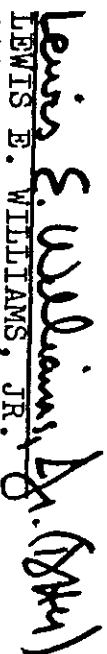
The question once again is: What in the world is going on here? Why does there appear to be a plan on the part of the prosecutor to constantly misinform the defense as to what the discoverable evidence is? Perhaps, when this trial is over, a full-scale investigation will be conducted by the proper authorities to determine the existence and extent of a possible scheme to improperly and illegally undermine the defense effort in this case by the creation and fabrication of evidence, falsification of official reports, intimidation of witnesses, and all the other points raised in this motion and in previous motions.

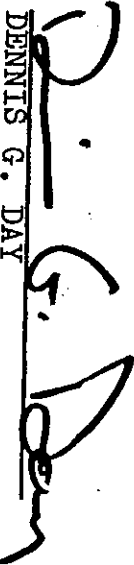
As the Court will recall, George Skatzes was held not to have standing at the previous hearing on an earlier motion to dismiss for prosecutorial misconduct. As a result, he was prohibited from cross-examining witnesses at that hearing and from calling witnesses to support his claims. Any findings

the Court made after that hearing apply only to defendant James Rogers and are not dispositive of the issues raised now, and before, by George Skatzes.

At this point, the Court has two (2) apparent choices: one is to interrupt the trial to determine the existence and extent of prosecutorial misconduct and the correct legal remedy if such misconduct is established; the other is to let the trial run its course and determine these issues after the trial is over. We leave to the sound discretion of this Court the decision as to how we proceed from here.

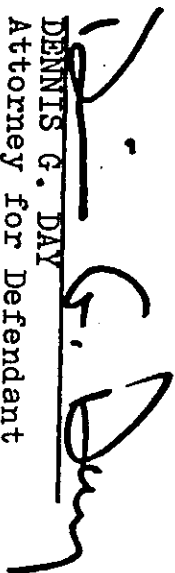
Respectfully submitted,


LEWIS E. WILLIAMS, JR.
Attorney for Defendant


DENNIS G. DAY
Attorney for Defendant

PROOF OF SERVICE

I personally served a copy of the foregoing upon Douglas MacGillivray, Logan County Prosecuting Attorney, this 25th day of April, 1983.


DENNIS G. DAY
Attorney for Defendant

APPLICATION FOR SERVICES UNDER NEGOTIATED CONTRACT

I, the undersigned, do hereby make application to MARTIN INVESTIGATIONS for the following services, by assisting in the felony investigation of the _____

_____ of a Pink's Store manager in Bellefontaine, Ohio, further certify that I have a legal right to the information obtained from the said investigation of MARTIN INVESTIGATIONS.

Aug 10 1982 _____
(DATE) (SIGNATURE OF CLIENT)

In pursuant to the application described above, MARTIN INVESTIGATIONS does agree to perform the following services, to provide investigation, Tape Recording, photographs, and other information to include witnesses, witness statements, etc. in the above captioned case.

According to the fee schedule and any negotiated agreement between the client and MARTIN INVESTIGATIONS.

Charges for services of MARTIN INVESTIGATIONS will be as follows, A minimum of \$500.00 (Five Hundred Dollars) Plus expenses. Also if this investigators service is directly responsible for the arrest and conviction of the suspect (s) the fee offered in the amount of \$10,000.00 (Ten Thousand Dollars) will be paid to Martin Investigations.

The other party to this contract shall have the right and authority to terminate his service at any time by notification in writing to the other party. MARTIN INVESTIGATIONS will provide a complete report and other information that has been obtained to date, when all outstanding balances owed MARTIN INVESTIGATIONS that are due and payable, are paid in full.

The parties to this contract hereby agree to the content of this contract and to abide by the stipulations established thereto and do further attest that this fact by affixing their signatures below.

MARTIN INVESTIGATIONS
[Signature]
(SIGNATURE)
Aug 10 1982
(DATE)

FOR THE CLIENT
[Signature]
(SIGNATURE)
325 N. Main
(ADDRESS)
Bellefontaine Ohio
(CITY, STATE, ZIP)
8-10-82
(DATE)

At approx. 2:45 p.m. Thurs. Oct. 1
as another guy & I were going north on Top 1
I noticed an automobile on the east side of the
road driving parallel with a driveway that goes back in
the pasture on woods. The vehicle appeared to me to
be a red late model Plymouth Volvo (vehicle was per-
haps a 1978 or 1979) I could not see the girl & top 1 from
the highway. I saw no people or any movement
there. I made the remarks to the driver that someone
probably dumping trash.

James R. [Signature]