

IN THE CIRCUIT OF THE THIRTEENTH JUDICIAL CIRCUIT  
IN AND FOR HILLSBOROUGH COUNTY, STATE OF FLORIDA  
CRIMINAL DIVISION

STATE OF FLORIDA

vs.

DEMETRIUS L. EDDIE,  
Defendant.

CASE NO.: 14-CF-015754;  
10-CF-010110;  
12-CF-009144;  
12-CF-010032

DIVISION: A

**MOTION TO DISQUALIFY ASSISTANT STATE ATTORNEY  
AND REQUEST FOR IN CAMERA HEARING**

Comes Now, the Defendant, Demetrius Lashay Eddie, by and through his undersigned counsel and respectfully moves this Honorable Court for an Order disqualifying Assistant State Attorney Darrell Dirks with the Thirteenth Judicial Circuit State Attorney's Office from further prosecution of above referenced case. In support thereof, Defendant states as follows:

1. Demetrius Eddie was arrested on October 27, 2014, by Detective Alexander Rahmings with the Tampa Police Department at 8803 Crestview Drive, Tampa, Florida. Mr. Eddie was arrested for new charges in case 14-CF-015754, and for a Violation of Probation in cases 10-CF-10110, 12-CF-009144, and 12-CF-010032.

2. After being arrested, Mr. Eddie was taken from the Crestview location and brought to the Hillsborough County Sheriff's Office on Falkenberg Road, where he was further questioned in this matter.

3. It is reported by Detective Rahmings that Mr. Eddie agreed to cooperate with law enforcement while they were either at the Crestview location, or while at the Hillsborough County Sheriff's Office.

4. Detective Rahmings communicated with Assistant State Attorney Darrell Dirks while Mr. Eddie was being held for his arrest in this case and the Violation of Probation cases.

5. Mr. Eddie was released from custody on October 27, 2014, in hopes that he would provide substantial assistance and intelligence to the Tampa Police Department regarding the ongoing investigations.

6. Mr. Eddie was called by Detective Rahmings on October 28, 2014 and asked to come to the Tampa Police Department to further discuss the matter. Upon arrival at the police department, Mr. Eddie was arrested by Detective Rahmings.

7. It is unclear why Law Enforcement changed their mind and arrested Mr. Eddie on October 28, 2014. Additionally, Mr. Eddie never signed a substantial assistance agreement with Law Enforcement.

8. During various motion hearings in this matter, it was disclosed by Assistant State Attorney Darrell Dirks and Detective Rahmings that Judge Jack Espinosa was overseeing the investigation in this matter. Judge Espinosa reviewed the wiretap applications and signed the orders authorizing the intercept, as well as the periodic reports in this matter. However, Judge Espinosa's exact involvement in this matter has not been disclosed to defense counsel.

9. On March 9, 2018, during a Motion to Suppress hearing in this matter, which is 3.5 years after Mr. Eddie's arrest in this case, Assistant State Attorney Darrell Dirks asked Detective Rahmings about an ex parte meeting with Judge Christopher Sabella. This meeting had never been disclosed to defense counsel prior to March 9, 2018, and the details of this meeting have yet to be provided. A motion to compel the ex parte communications and meetings was filed by undersigned counsel. During a hearing on April 4, 2018, Mr. Dirks informed the

court that he did not document the ex parte meetings with the Judges in this case.

10. While testifying in court, Detective Rahmings could not remember if the meeting with Judge Sabella occurred prior to or after Mr. Eddie was released from custody. Judge Sabella did not sign any orders or warrants for a Violation of Probation. It is still unclear to defense counsel why Judge Sabella was approached by Assistant State Attorney Darrell Dirks and law enforcement. The only explanation provided was that Judge Sabella was the Judge assigned to Mr. Eddie's violation of probation cases.

11. On April 4, 2018, defense counsel Lily McCarty Gonzalez approached Mr. Dirks to ascertain what the substance of the ex parte communication was and to inquire as to the reason for not documenting the ex parte meetings. Attorney McCarty Gonzalez asked Mr. Dirks if a discussion concerning the ethical responsibilities of the prosecutor was necessary, specifically related to these ex parte communications.

12. Mr. Dirks immediately became hostile, belligerent, enraged and began yelling at defense counsel. This incident was captured via courthouse video surveillance (without sound), and is attached as Exhibit A.

13. While Mr. Eddie was leaving the courtroom, he overheard Mr. Dirks yelling that Mr. Eddie was providing substantial assistance and providing information about this case. As seen on the video at 10 minutes and 59 seconds, Mr. Dirks is pointing at Mr. Eddie as he is leaving the courtroom.

14. Johayward Bradshaw, the co-Defendant in this case, was left in the courtroom while Mr. Dirks continued to yell that Demetrius Eddie was providing information about Johayward Bradshaw, intentionally trying to harm Mr. Eddie.

15. At 11 minutes and 07 seconds into the video, while the co-Defendant Mr. Bradshaw was still in the courtroom, Mr. Dirks yells “cause he’s a snitch,” referring to Mr. Eddie. Mr. Dirks continued to yell that Mr. Eddie was going to “snitch on Bradshaw.”

16. Mr. Eddie has not signed any agreements to provide substantial assistance and has not been listed as a witness in this matter. Mr. Dirks intentionally called Mr. Eddie a snitch in an open courtroom, in the presence of the co-Defendant, Johayward Bradshaw, in violation of Fla. Stat. § 914.28 “Rachel’s Law” and with intent to cause harm to Mr. Eddie.

17. Mr. Dirks continued to berate defense counsel, at which point Mr. Dirks behavior escalated to him physically bullying and intimidating defense counsel in addition to demeaning her intelligence and name calling. Mr. Dirks began to leave the courtroom, however, he came back and re-engaged in his physical intimidation with no provocation from defense counsel, placing defense counsel in fear. This can be observed on the video at 13 minutes and 54 seconds.

18. Mr. Dirks’ behavior towards Ms. McCarty Gonzalez is an escalation of the pattern of behavior exhibited during the pendency of this case towards both defense attorneys. Mr. Dirks’ aggressive bullying tactics has continued to escalate in severity.

19. Due to Mr. Dirks behavior towards Mr. Eddie and his counsel, Mr. Eddie has suffered actual prejudice, vindictive prosecution, and fears he cannot receive a fair trial if Mr. Dirks remains the assigned prosecutor on this matter.

### **MEMORANDUM OF LAW**

Assistant State Attorney Darrell Dirks has demonstrated actual prejudice, to which Mr. Demetrius Eddie has already suffered consequences, and will continue to suffer if Mr. Dirks is

permitted to continue as the prosecutor assigned to Mr. Eddie's case. Mr. Dirks has violated Mr. Eddie's right to due process and protections afforded under Fla. Stat. § 914.28, Confidential Informants (Informally known as "Rachel's Law"), *Brady v. Maryland*, 373 U.S. 83 (1963), *Giglio v. United States*, 405 U.S. 150 (1972), the Fifth and Fourteenth Amendment to the United States Constitution, and Article I, section 9 of the Florida Constitution. Based upon Mr. Dirks hostile, inappropriate and unprofessional conduct, necessary communications between the parties has stopped and the professionalism required of opposing counsel in an adversarial relationship has been irretrievably tarnished. As a result of Mr. Dirks actions, all communication has ceased. Even in the most heated and contentious cases, parties must be able to communicate regarding scheduling and evidentiary matters, and this can no longer be accomplished in this matter. Furthermore, during his hostile exchange with Ms. McCarty Gonzalez, Mr. Dirks violated Rachel's law and intentionally placed Mr. Eddie's life in jeopardy.

Mr. Eddie seeks for this court to order that Mr. Darrell Dirks be disqualified from further prosecution of Mr. Eddie's case, order the Thirteenth Judicial Circuit Office of the State Attorney appoint a different prosecutor to Mr. Eddie's case, and order Mr. Dirks to not discuss this case with any newly assigned prosecutor, and to screen himself from all aspects of prosecution of Mr. Eddie's pending cases. *State v. Clausell*, 474 So.2d 1189 (Fla. 1985), *State v. Fitzpatrick*, 464 So. 2d 1185 (Fla. 1985), *Nash v. State*, 466 So. 2d 378 (Fla. 1<sup>st</sup> DCA, 1985), and *Henry v. State*, 649 So. 2d 1361 (Fla. 1994).

The responsibility of a prosecutor is one that carries an immense magnitude. The United States Supreme Court, as discussed in *Berger v. United States*, 295 U.S. 78 (1935), discussed this immense responsibility:

The United States Attorney is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. As such, he is in a peculiar and very definite sense the servant of the law, the twofold aim of which is that guilt shall not escape or innocence suffer.

In order to have an effective judicial system, one cannot tolerate impropriety:

Our judicial system is only effective when it's integrity is above suspicion. **Our system must not only refuse to tolerate impropriety, but even the appearance of impropriety as well.** *Castro v. State*, 597 So. 2d 259 (Fla. 1992). (Emphasis added).

Even though *Castro* dealt with former defense counsel, now an Assistant State Attorney, giving his opinion only as to case law effecting his former client's case, the Supreme Court held that the State Attorney's Office should have been disqualified because the contact resulted in the appearance of impropriety and undermined the integrity of the judicial system. *Castro* demonstrates that even relatively minor actions on the part of a prosecutor can rise to the level of an "appearance of impropriety" sufficient to mandate disqualification.

The Court should evaluate a case by determining from the facts whether the appearance of impropriety undermines the integrity of the judicial system. "Although we have stated that the appearance of impropriety created by certain situations may demand disqualification, we have evaluated such situations on a case by case basis." *Bogle v. State*, 655 So. 2d 1103 (Fla. 1995). *See also, Reaves v. State*, 574 So. 2d 105 (Fla. 1991), *Castro v. State*, 597 So. 2d 25 (Fla. 1992), *Rogers v. State*, 783 So. 2d 980 (Fla. 2001).

Mr. Dirks diminished the integrity of the judicial process by conducting *ex parte* meetings with Judge Jack Espinosa and Judge Christopher Sabella. Defense counsel finds no law providing

Mr. Dirks with the ability to have ex parte meetings with the court, absent the request to review and sign a search warrant or to review a supplemental application for interception. This matter was discussed in a 2014 Florida Bar News Article, which is titled, “Ex parte communication in a criminal case is a poor idea.” (Bible J. Kathy, *Ex Parte Communication in a Criminal Case is a Poor Idea*, Aug. 15, 2014, The Florida Bar Journal). The American Bar Association Standards for Criminal Justice Prosecution Function and Defense Function (which Florida has adopted) 3-2.8 which governs a prosecutor’s relations with the courts and the bar states at subsection (c):

A prosecutor should not engage in unauthorized ex parte discussions with or submission of material to a judge relating to a particular case which is or may come before the judge.

Furthermore, in the commentary following this standard the ABA states that:

Inappropriate ex parte contacts of whatever nature erode the public confidence in the fairness of the administration of justice, the very cement that holds the system together.

It is still unclear to defense counsel why the Office of the State Attorney sought ex parte communication with Judge Espinosa and Judge Sabella. Detective Rahmings has previously testified before Judge Nick Nazaretian that Judge Espinosa was overseeing the investigation in this case. While defense is aware that Judges must approve wiretap applications and review periodic reports, defense counsel is unaware of any additional reason that Judge Espinosa would be overseeing an investigation in this matter. Assistant State Attorney Darrell Dirks has not formally documented this alleged investigation, has not drafted any notes or details of the meetings, and has not documented the dates and/or times of these meetings with Judge Espinosa.

Defense counsel has filed and litigated a Motion to Compel the details of any meetings between the Office of the State Attorney and Judge Espinosa or Judge Sabella. Mr. Dirks

informed the court on Wednesday, April 4, 2018, that he created no reports documenting the details of these meetings. Therefore, Mr. Dirks has reported that he has no additional information on this matter to provide to defense counsel. Therefore, essentially, Mr. Dirks can use the information gathered in these meetings to bolster the testimony of Detective Rahmings at motion hearings but does not provide the defense with the details of the meetings to be used for effective cross examination or further investigation of this case. He is using the information to the advantage of the prosecution and refusing to provide the information to Mr. Eddie's counsel. Additionally, Mr. Dirks filed a Superseding Information on March 7, 2018, amending Count Three and adding three additional counts, including separating out a specific date to create an additional conspiracy to traffic in cocaine allegation. There is no legal basis for a separate conspiracy to traffic count, yet Mr. Dirks did so in order to enhance Mr. Eddie's exposure and scoresheet.

The commentary to the ABA Standard 3-2.8, Ex Parte Contacts with the Court, states as follows:

There are, of necessity, occasions when a judge must discuss problems relating to the administrative of the court's business with the prosecutor or members of the prosecutor's staff. The need for such appropriate discussions with a judge in chambers or in the courtroom should not be permitted to give rise to ex parte discussion concerning a particular case that is or may not come before the court. Inappropriate ex parte contacts of whatever nature erode public confidence in the fairness of the administration of justice, the very cement that holds the system together. If such ex parte discussions do take place in some extraordinary circumstance, the prosecutor should thereafter fully apprise defense counsel of the fact and content of such communications.

Mr. Dirks' conduct in this case creates more than the mere appearance of impropriety.

The ABA commentary also provides that “the practice of law requires the appearance as well as the reality of fairness in the administration of justice.” The ABA Standards for Criminal Justice Prosecution Function and Defense Function standard 3-1.2 sets out the function of the prosecutor. In the commentary following 3-1.2, the ABA states:

Although the prosecutor operates within that the adversary system, it is fundamental that the prosecutor’s obligation is to protect the innocent as well as to convict the guilty, to guard the rights of the accused as well as to enforce the rights of the public. Thus, the prosecutor has sometimes been described as a “minister of justice” or as occupying a quasi-judicial position.

The ABA Standards for Criminal Justice Prosecution Function and Defense Function standard 3-2.1 states that the prosecution authority is to be vested in a public official. In the commentary following 3-2.1, the ABA states:

The concept that the state has a special interest in the prosecution of criminal cases that requires the presence of a professionally trained advocate arose during the formative period of American law. Much earlier, in England, it had been assumed that prosecution was a matter for the victim, the victim’s family or friends. The idea that the criminal law, unlike other branches of the law such as contracts and property, is designed to vindicate public rather than private interests is now firmly established. The participation of a responsible public officer in the decision to prosecute and in the prosecution of the charge gives greater assurance that the rights of the accused will be respected.

The court can disqualify a State Attorney’s Office when the court finds that the inappropriate conduct has led to actual prejudice to the accused. *Downs v. Moore*, 801 So.2d 906 (Fla 2001), *State v. Nolasko*, 803 so.2d 757 (3<sup>rd</sup> DCA 2001), *Rogers v. State*, 783 so.2d 980 (2001). Actual prejudice is defined as “something more than the mere appearance of impropriety.” *Meggs v. McClure*, 538 So.2d 518, 519 (Fla. 1<sup>st</sup> DCA, 1989), *State v. Hayes*, 997

So.2d 446 (Fla. 4<sup>th</sup> DCA, 2008).

In *State v. Kadivar*, 460 So.2d 391 (Fla. 4th DCA 1984), the Respondent moved to disqualify the State Attorney's Office based upon Respondent's filing of a Federal law suit against them in Federal court. Respondent argued that their involvement in the case before the circuit court would present an appearance of impropriety. The circuit court granted the respondent's motion and the Governor appointed a special prosecutor. The State filed a petition for certiorari seeking review of the circuit court's order and the fourth district court of appeal found that this matter was of substantial public interest and guidance was needed for the future. *Id.* Although the court held that recusal was not warranted, the Court cited to *State v. Snyder*, 256 La. 601, 237 So.2d 392 (1970), which held that "[t]he prosecutor should have been recused also from the latter prosecution, saying when a district attorney is personally interested in gaining a conviction, his interest is adverse to that of the state (his client), which is interested in equal and impartial justice only, and not in a conviction as such."

Based on the behavior and actions of Mr. Dirks, as well as the reasons previously stated in this motion, Mr. Dirks has engaged in substantial misconduct and this Honorable court should disqualify Mr. Dirks from further prosecuting this case.

WHEREFORE, the Defendant, DEMETRIUS L. EDDIE, respectfully requests that this Honorable Court recuse Assistant State Attorney Darrell Dirks from further prosecution in this cause.

WE HEREBY CERTIFY that a copy of the foregoing motion has been furnished to Darrell Dirks, Assistant State Attorney, Office of the State Attorney, Thirteenth Judicial Circuit, on this 16<sup>th</sup> day of April, 2018.

Respectfully submitted,

*/s/ Maria Pavlidis*

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