
Jury Misconduct

Carter v Rafferty 631 F Supp 533

4-23-1979

James Meyerson, on behalf of NAACP

James I. Meyerson

SUPERIOR COURT OF NEW JERSEY

BRUNO L. LEOPIZZI
JUDGE



COURTHOUSE
PATERSON, NEW JERSEY 07505

April 23, 1979

N.A.A.C.P.
1790 Broadway
New York, New York 10019

Att: James I. Meyerson, Esq.
Nathaniel R. Jones, Esq.
Charles E. Carter, Esq.

Re: State v. Rubin Carter
State v. John Artis
Indt. 167-66

Gentlemen:

I am writing this letter to clarify my position concerning the admission of James Meyerson, Esq. before this court. Mr. Meyerson has been appearing on behalf of the N.A.A.C.P.

During oral argument before the court on April 11, 1979 Mr. Mayerson was removed from the courtroom and his permission to appear before this court was revoked. My reasons for taking such action resulted from Mr. Meyerson's continual display of indignation, his unprofessional conduct and his lack of respect in the appearances he has made before me.

It must be noted that Mr. Meyerson was granted permission to appear before this court under R. 1:21-2, "Appearances Pro Hac Vice." Such permission is a matter of discretion with the trial judge. While pro hac vice admission is a practice to be encouraged, neither the attorney nor his client have a right to be represented by out-of-state counsel. Leis v. Flynt, 99 S. Ct. 698, 24 Cr. L. 4155 (January 15, 1979); Bundy v. Rudd, 581 F. 2d 1126 (5th Cir. 1978), cert. den. _____ U.S. _____, 25 Cr. L. 4017 (April 16, 1979)

In the present situation, it is the opinion of this court that Mr. Meyerson has abused the privilege granted to him of appearing pro hac vice. Therefore, he will not be permitted to make any further appearances before this court. Furthermore, since he has shown to the


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court that he is unable to control his conduct, I am also barring him from admission to the courtroom.

It is important to note that my decision with respect to Mr. Meyerson is in no way to be interpreted as precluding the N.A.A.C.P. from appearing before this court through New Jersey counsel of its choice or through out-of-state counsel as provided by R. 1:21-2. Should out-of-state counsel be selected, strict compliance with R. 1:21-2 will be required and such counsel is to be accompanied in court by a member of the New Jersey Bar who will be responsible for the conduct of such counsel.

Oral argument in the above captioned matter will continue before this court on Friday, April 27, 1979 at 11:00 A.M.

Very truly yours,



BRUNO L. LEOPIZZI

BL:ss

cc: Burrell I. Humphreys, Pros.
Myron Beldock, Esq.
Lewis M. Steel, Esq.

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April 27, 1979

The Honorable Bruno Leopizzi, Judge
Superior Court
State of New Jersey
Courthouse
Patterson, New Jersey 07505

State v. Rubin Carter - State v. John Artis, Indictment
167-66

Dear Sir:

Please be advised that I am in receipt of your letter, dated April 23, 1979, in which you set forth your reason for excluding me from further participation in the above proceedings and for prohibiting me from further appearances before the Court on behalf of both Mr. Carter and Mr. Artis.

I must respectfully take exception to certain statements which you make in your correspondence.

In the first paragraph of your letter, you indicated that I was appearing in the proceedings on behalf of the N.A.A.C.P.

On the first day of the proceedings convened herein, March 12, 1979, Charles E. Carter and I appeared and were introduced to the Court by Jeffrey Fogel, Esq., New Jersey counsel for John Artis.

Mr. Fogel advised the Court that we had appeared on the papers in the Appellate Division on behalf of the Defendants and that we were now working with previously admitted out of state counsel, as well as New Jersey counsel, for the Defendants.

I am employed by the N.A.A.C.P. as an Assistant General Counsel; and I have been employed in said position for over eight years. Mr. Carter holds the position of Associate General Counsel. It should be noted that Nathaniel R. Jones, Esq., General Counsel of the N.A.A.C.P., also appears on the papers in the Appellate Division as co-counsel for the Defendants-Appellants therein.

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The transcript of the March 12, 1979 proceedings indicates that Mr. Carter and I were appearing for the Defendants.

At the proceedings on March 13, 1979 some discussion ensued whereat reference is made to my appearance along with Mr. Carter's appearance. Mr. Carter was not present at the proceedings on that date. It is fair to read the exchange as one acknowledging our presence and participation on behalf of the Defendants. See: Tr. at pages 4-5.

As with the March 12, 1979 proceeding, the transcript of the March 13th proceedings notes my appearance for the Defense.

Again, on March 14, 1979, I did appear herein; and the transcript notes my presence for the defense.

On March 20, 1979, I appeared again; and the transcript notes the same for the Defendants. In point of fact, at the March 20, 1979 proceeding Mr. Steel, attorney for Defendant Artis, was not present; and, at page two of the transcript, I note my appearance for Mr. Steel on behalf of Mr. Artis and for both Mr. Artis and Mr. Carter.

At page 38 of the March 20, 1979 transcript (and thereafter), I note that, when I spoke, I was speaking for Mr. Steel on behalf of Mr. Artis and joining with Mr. Beldock on behalf of Mr. Carter.

I trust that the transcript of the proceedings on April 11, 1979 (which we have yet to receive) reflects and notes my appearance for the Defendants.

Thus, I think that your letter should more accurately reflect that I did appear for the Defendants in this matter and not for the N.A.A.C.P. Necessarily, of course, my appearance and that of Mr. Carter reflect an organizational decision to support the Defendants herein. Consistent with the policy of the General Counsel's office, we appear for the Defendants.

In addition to the exception as discussed heretofore, I must respectfully take exception to your position that your action "resulted from (my) continual display of indignation, ...unprofessional conduct and...lack of respect in the appearances (I) made before (you)."

In this regard, I have appeared before this Court in these proceedings on five different occasions representing five (5) full days of hearing (or parts thereof). More specifically, I appeared on March 12, 13, 14, 20 and April 11, 1979.

On March 12, 1979, your Honor recognized me for the purposes of permitting me to speak; and the transcript reflects that I did advocate a position arising out of certain statements made by Mr. Marmo about how the hearings should proceed. See: Tr. at pages 77-82.

On that date I made no other comments and merely sat at counsel table and observed the proceedings. The Court made no reference to me otherwise during the proceedings.

At the March 13, 1979 proceedings I spoke once to indicate that "occasionally he (Mr. Adamo) would put his finger down on the table--" The comment was made in a discussion between counsel and the Court as a consequence of a statement made by Mr. Marmo about the conduct of Mr. Adamo during his testimony. See: Tr. at page 24.

Other than the foregoing comment, I made no other statements during those proceedings and the Court made no reference to me.

At the March 14, 1979 proceedings, Mr. Marmo accused Mr. Beldock and me of some improper conduct (by implication, if not directly) because Mr. Beldock said something to me at the conclusion of Mr. Alario's testimony and I acknowledged the same with an affirmative nod. At page 56 of the transcript I note, in the course of Mr. Beldock's statement to the Court, that "I was nodding my head in acknowledgement."

Still further in the proceedings, at page sixty two (62), this Court acknowledged my presence and reprimanded me. The Court noted:

"Mr. Meyerson, you know, your're not at a little ballpark or something. You act like an infant. You keep raising your head and shaking your head--why don't you act like a lawyer now."

I responded that "I take that as a compliment."

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I must confess that, at the time you reprimanded me, I had no idea what you were speaking of; but, rather than further aggravating a situation which by that time had become heated to say the least, I elected not to take exception to your characterization of me or the basis upon which you made your judgment.

I trust that throughout the proceedings we have all raised our heads, if not our voices, and otherwise been guilty of bodily movement.

I do feel that the reprimand, at that time, was uncalled for and that I had done nothing to be rebuked by the Court.

At the March 20, 1979 proceedings, I did speak on several occasions to make arguments relative to the proceedings. I note that I spoke more on that date than in the previous three proceedings because Mr. Steel was not present and he requested that I speak on his behalf for Defendant Artis. See: Tr. at pages 2, 38-45, 48-51. Aside from the above references, the Court did not acknowledge my presence or otherwise direct any discussion, questions, etc., to me.

As noted previously, the April 11, 1979 proceedings are not yet available. Accordingly, I must reconstruct what transpired thereat, as far as my participation, based on memory.

The proceedings on the 11th were directed largely at a motion made by Mr. Steel and joined in by Mr. Beldock to disqualify you, as the presiding jurist in these proceedings, because it was apparent to counsel that you were not conducting these proceedings fairly.

At some point during the proceeding, after Mr. Steel had spoken, but, I believe, prior to Mr. Beldock's presentation, I did rise and ask permission to speak. Your honor granted the same. In substance I articulated the position that I believed that you should disqualify yourself from these proceedings and that I was constrained to say so because of comments you had made toward Mr. Steel which, in my opinion, reflected less than a judicious temperament and a bias against Mr. Steel which would naturally flow over to his client, Mr. Artis, and to Defendant Carter as well.

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I noted that you had called Mr. Steel sick and had otherwise accused him of speaking half truths.

I do not recall your making any comments to me in response, either about the substance of what I stated or the manner in which I stated the same.

Thereafter, Mr. Beldock entered into a rather lengthy statement and argument of his position with dialogue between your Honor and Mr. Beldock ensuing.

At the conclusion of the same, you advised counsel that you felt that the motion was, in effect, spurious and you otherwise castigated counsel about the same. I recall you indicating to Mr. Beldock, at that time, that you felt that he was guilty of speaking half truths. I recall, as well, that you referred to my arguments or position as nonsense. I believe, as well, that you made reference to me as a young and inexperienced attorney. Moreover, you indicated that you did not think that I had read the transcripts of the trial proceedings.

I rose to respond. I had indicated to you that I had, in fact, read the transcript. You asked me if I had read the entire transcript; and I indicated that I had read substantial portions thereof.

I then sought to further respond to your position that I was young and inexperienced and that I lacked sufficient understanding of the proceedings, because of inexperience and/or otherwise. You instructed me to sit down.

As I recall, I was quite shocked and surprised and at being foreclosed from presenting what I believed to be legitimate positions. I did not know what to do. As a consequence, I continued to stand; and you continued to tell me to sit down.

I did sit down, momentarily, and thereafter I did rise and advise you that I had utter contempt for you.

You then advised me to leave the room; and I continued to sit as much in shock at what was taking place as anything else.

Thereupon, you requested that the court attendant remove me. At that time, I did voluntarily stand

and leave the Courtroom.

Immediately I regreted that I had spoken as I did. However, the circumstances led me to act as I did because I felt that, at that time, as on one previous occasion, you had goaded me and provoked me, unfairly, with characterizations which had no basis in fact (as you had done with both Mr. Steel and Mr. Beldock, as well), and you were not permitting me to respond in what I expect would have been a reasonable, professional manner (as I had displayed in previous statements to the Court).

In view of the foregoing, I do not believe that it is accurate or fair of you to conclude that I had displayed indignation, unprofessional conduct and lack of respect throughout my appearance before you. The record, I believe reflects just the opposite.

I take my role in this case very seriously as I have in all of the many, many matters in which I have been involved over the almost nine years I have been representing Black Americans in various courts throughout this country on behalf of the N.A.A.C.P.

I have never suffered such a rebuke in any other court in which I have practiced. That is not to say that I have not articulated positions unpopular to judges and others and caused uncomfortable feelings to arise.

The nature of the proceeding herein was inherently uncomfortable, for all concerned; but what was said needed to be said.

However, I feel that, in substance, I was trying to articulate the position that I felt: that you were being unfair to counsel and our clients in these proceedings.

That you would cut me off from articulating a position in order to clarify the record was something which reinforced my position and caused me to speak out in the manner in which I did.

That I may have used the wrong words at the wrong time is something which I do regret.

I believe that throughout the proceedings I have

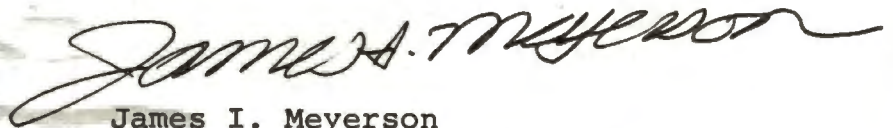
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acted in the interests of my clients and in a dignified and professional manner.

That I may have transgressed your senses of respectability on one occasion should not foreclose me from continuing herein, particularly where I acknowledge that the manner in which I conveyed my views on one occasion was regretful. However, as noted, the circumstances surrounding the same, in my view, were equally regretful.

In view of the foregoing, I request that you reconsider the various statements set forth in your letter and that you otherwise reconsider your ruling to bar me from further participation herein as well from admission to the courtroom.

Respectfully submitted,



James I. Meyerson
Assistant General Counsel

JIM/der

cc: Myron Beldock, Esq.
Lewis Steel, Esq.
Burrell I. Humphreys, Prosecutor