

Gag Orders

Carter v Rafferty 631 F Supp 533

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Summer 8-23-1976

## Notice of Motion for Leave to Appeal

Passaic County Prosecutor



PASSAIC COUNTY PROSECUTOR

COURT HOUSE  
PATERSON, NEW JERSEY 07505  
(201) 325-5000

AUG 24 1976

August 23, 1976

BURRELL IVES HUMPHREYS  
PROSECUTOR

JOSEPH A. FALCONE  
FIRST ASSISTANT PROSECUTOR

ANTHONY P. TIRINATO  
DEPUTY FIRST ASSISTANT PROSECUTOR

JOHN GOCELJAK  
CHIEF, APPELLATE SECTION

RONALD G. MARMO  
CHIEF, TRIAL SECTION A

GEORGE TOSI  
CHIEF, TRIAL SECTION B

RICHARD F. THAYER  
CHIEF, GOVERNMENTAL CORRUPTION  
AND WHITE COLLAR CRIME SECTION

Mr. David Lampen  
Superior Court of New Jersey  
Appellate Division  
State House Annex  
P.O. Box CN00608  
Trenton, New Jersey 08625

Re: State v. Rubin Carter and John Artis  
Indictment No. 167-66

Dear Mr. Lampen:

Enclosed please find original and four (4) copies of Notice of Motion for Leave to Appeal in connection with the Opinion and Order of Judge Marchese regarding alleged violations of the Order of Restraint previously entered. A copy of the Opinion and Order is annexed to the Notice of Motion. Due to the demands of time and the multitudinous other matters in which we are engaged, papers in support of the Motion shall be forwarded in the immediate future. Service of copies of the Notice of Motion has been made upon counsel for defendants as indicated in the enclosed affidavit of mailing.

I trust this will be satisfactory. Thank you for your cooperation in this matter.

Very truly yours,

Burrell Ives Humphreys  
Passaic County Prosecutor

By: Gary H. Schlyen

Gary H. Schlyen  
Assistant Prosecutor

cc: Beldock, Levine & Hoffman  
Lewis M. Steel, Esq.  
Jeffrey E. Fogel, Esq.  
Donald J. Busch, Esq.

GHS:ms  
enclosure

BURRELL IVES HUMPHREYS  
PASSAIC COUNTY PROSECUTOR  
NEW COURT HOUSE  
PATERSON, NEW JERSEY  
(201) 525-5000

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION : PASSAIC COUNTY  
INDT. NO. 167-66

STATE OF NEW JERSEY,

Plaintiff-Movant,

vs.

RUBIN CARTER and  
JOHN ARTIS,

Defendants-Respondents.

:  
: CRIMINAL ACTION  
:  
: NOTICE OF MOTION FOR LEAVE  
: TO APPEAL

TO: Myron Beldock, Esq.  
Beldock, Levine and Hoffman  
565 Fifth Avenue  
New York, New York 10017

Lewis M. Steel, Esq.  
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Donald J. Busch, Esq.  
Busch & Busch  
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P. O. Box 33  
New Brunswick, New Jersey 08903

SIRS:

PLEASE TAKE NOTICE that Plaintiff-Movant, through Burrell

Ives Humphreys, Passaic County Prosecutor hereby seeks leave to appeal to the Appellate Division of the Superior Court of New Jersey from that part of the Opinion and Order of the Honorable William J. Marchese, J. C. C., entered on August 6, 1976, denying defendants' motion for dismissal and other relief based upon alleged violations of restraints previously imposed by the Court, which is to be considered as a reprimand to the Prosecutor.

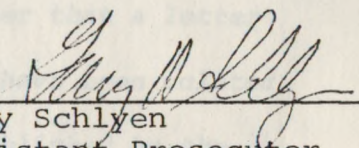
We shall rely upon the memorandum to be submitted forthwith.

BURRELL IVES HUMPHREYS  
PASSAIC COUNTY PROSECUTOR  
ATTORNEY FOR PLAINTIFF-MOVANT

BY: 

Gary H. Schlyen  
Assistant Prosecutor

I certify that a transcript of relevant testimony heard in regard to the above motion has been ordered from and supplied by Rocco Emma, CSR.

  
Gary Schlyen  
Assistant Prosecutor

STATE OF NEW JERSEY, :  
Plaintiff, :  
VS. :  
RUBIN CARTER and JOHN ARTIS, :  
Defendants :  
----- :

CRIMINAL ACTION

OPINION  
AND  
ORDER

Motions were filed by defendants charging the Prosecutor, Passaic County, with violations of the restraints imposed by the previous order, and by reason of the resulting prejudice to defendants seek dismissal of the Indictment. This Court has been delegated by Hon. Charles S. Joelson, Assignment Judge, Passaic County, the authority to hear the motions, to consider and to rule upon the request for dismissal.

Testimony and legal argument was heard on August 4, 1976. The charges were as follows:

1. Prosecutor's statement to one news reporter that a letter bomb received in the prosecutor's office may have been related to the Carter-Artis case, which remark was published by the United Press wire service;
2. Prosecutor failed to take such action as necessary to preclude Carolyn Kelley from conducting a press conference on June 7, 1976, knowing that she would make inflammatory and prejudicial remarks and accusations about defendant, Carter;
3. Prosecutor, through his staff, failed to properly sequester State's witnesses during a bail revocation hearing, which was

then being held in camera, and allowing Carolyn Kelley to conduct a press interview;

4. Prosecutor was responsible for prejudicial remarks contained in a New York Times article of June 20, 1976.

On August 4, 1976 this Court dismissed charge No. 2 aforesaid. The Court's opinion is in the record, hence no further comment is necessary.

The defense did not move any testimony, evidence or argument with regard to Charge No. 4 aforesaid. This Court, therefore, considers the charge abandoned and thereby dismisses that charge.

Charge No. 1 emanates from a news report published apparently in various newspapers as the result of a by-line by reporter Gerald Coffey of U.P. staff. Mr. Coffey testified to a midnight telephone conversation with Prosecutor Humphreys wherein he sought comment upon the letter bomb. During the conversation, Mr. Coffey quoted the Prosecutor as saying "I can't figure out why the hell they mailed it to us". Then the release paraphrases rather than quotes that he speculated that there might be a connection between the bomb and his official's involvement in . . . . Carter-Artis case. Mr. Coffey's testimony stands uncontradicted, except that Prosecutor Humphreys has filed an affidavit with the Court indicating he did not recall that conversation, that he received numerous telephone calls about the letter bomb from representatives of the news media. He indicated further that various press conferences were called to discuss the letter bomb. In response to inquiries of the press regarding any possible connection of the letter bomb to the Carter-Artis case, his response was in the negative. Other reporters testified during this hearing and corroborated the denials of connection at the press conference.

It seems apparent that the Prosecutor evidently made the statement to Mr. Coffey. It was unfortunate, and perhaps, when made, he should have instructed

the reporter to disregard same. The remark, once published, obviously, was serious and was prejudicial to the defense. The following day at various press conferences the Prosecutor made every effort to remedy the matter and to emphasize that there was no connection. This Court finds that the remark was so made by Prosecutor and would constitute a violation of the restraining order. I feel it was made inadvertently at a time when he did not give due consideration to the offhand telephone interview. While prejudice undoubtedly could result, the Court feels all proper action was taken to correct the problem, and that the prejudice resulting is not so great as to warrant the dismissal of the indictment. The Prosecutor is thus charged to be more aware in the future of the necessity for selectivity in the choice of his words considering the gravity of impending trial. Prosecutor may consider the above as a reprimand. Motion for dismissal by reason of the above violation is denied.

The Charge No. 3 is with regard to the failure of the Prosecutor to sequester his witnesses during the bail revocation hearing and allowing one witness to converse with the press.

Testimony was presented from various reporters with regard to an incident on July 1, 1976 when the State's witnesses were being confined to an unoccupied 6th floor courtroom while awaiting a call to testify at the bail hearing. Investigator Taylor, of Prosecutor's Office, was in charge of the witnesses. His testimony insofar as his instructions regarding the press and the witnesses was vague and at times contradictory. It is a certainty that he was not always in the room with the witnesses. It should be noted that associates and friends of the witnesses were also permitted in the room. Mr. Taylor necessarily left the room to escort witnesses to and from the court for their testimony, and also from the building. He has denied being present on date in question when Carolyn Kelley did permit an interview of 5-10 minutes with some reporters. Mr. Polak, of the Record, did not place Taylor in the room, and Mr. Hall of the Newark Star-Ledger contradicted himself, on direct, stating that Taylor

was in the room, and on cross, stating he had no recollection of seeing him in the room at the time the reporters spoke to Mrs. Kelley. The testimony of Mr. Witherspoon, *New York Daily News*, indicated that he had previously been ejected from that room by Mr. Taylor. He also indicated that on previous days various reporters had interviews with Mrs. Kelley and some of her associates, not witnesses. Mrs. Kelley, on July 2, 1976, denied calling a press conference as indicated in the press. Based on the testimony adduced, the Court cannot find that Mr. Taylor, or the Prosecutor, were violative of the restraining order by reason of Mrs. Kelley's conversations on July 1st with reporters. It has not been established that Taylor was in the room at that time. It may very well be that Mrs. Kelley has violated instructions of the Court during that hearing, as well as possibly falsely testifying in court on July 2 with regard to that incident, and the Court may on its motion consider that matter.

In the overall picture, considering the Prosecutor's efforts to keep his witnesses apart from the press, it may be observed in retrospect that more than one man was needed for that assignment.

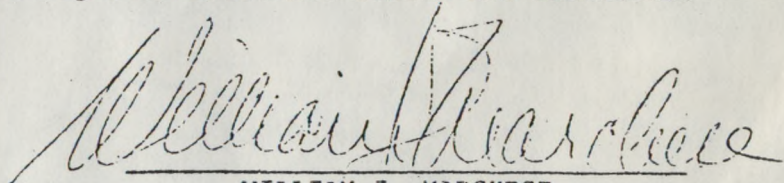
This Court finds no direct, or indirect, violation by the Prosecutor of the restraining orders then in effect as a result of the above incident.

Defendants' motion for dismissal, or censure, is denied.

Further, on August 5, 1976, Mr. Sagor pointed out the possibility of perjury by Mrs. Kelley on July 2, 1976 with regard to this incident, and requested the Court to reopen the bail revocation hearing. That request is hereby denied.

It is on this 6th day of August, 1976,

ORDERED that the foregoing motions by defendants are denied and dismissed.

  
WILLIAM J. MARCHESE,  
J.C.C.