
Jury Misconduct

Carter v Rafferty 631 F Supp 533

4-3-1979

Notice of Motion for Disqualification of Judge

Lewis Steel '63

EISNER, LEVY, STEEL & BELLMAN, P.C.

Attorneys at Law

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Richard A. Levy Richard F. Bellman
Arthur N. Reed

Mary M. Kaufman

Counsel

April 3, 1979

Hon. Bruno L. Leopizzi
Passaic County Courthouse
Paterson, New Jersey 07505

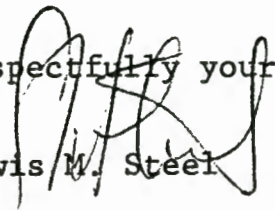
Re: State v. Carter and Artis
Indictment No. 167-66

Dear Judge Leopizzi:

Pursuant to my conversation with your law clerk, I am enclosing an original and two copies of defendants' Motion to Disqualify the Judge and supporting Affidavit. An Affidavit of Service is also enclosed. I am filing this Motion directly with the Court as this matter refers to testimony at the in camera jury misconduct hearing. I trust Your Honor will have the original filed with the Clerk of the Court.

I respectfully ask that the matter be set down for April 11, at 9 a.m., as it should be decided prior to the Motion to Vacate the Convictions.

Respectfully yours,


Lewis M. Steel

LMS/pc

Enclosures

cc: Burrell Ives Humphreys
Myron Beldock
Jeffrey E. Fogel
Ronald Busch
James Meyerson
Leon Friedman
John Artis
Rubin Carter

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Attorneys for Defendant
John Artis

STATE OF NEW JERSEY

v.

RUBIN CARTER and
JOHN ARTIS,

Defendants.

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PASSAIC COUNTY COURT
LAW DIVISION - CRIMINAL
INDICTMENT NO. 167-66

NOTICE OF MOTION FOR DIS-
QUALIFICATION OF JUDGE

TO: Burrell Ives Humphreys
Passaic County Prosecutor
Court House
Paterson, New Jersey 07505

S I R:

PLEASE TAKE NOTICE that on April 11, 1979 at 9:00 a.m. in
the forenoon or as soon thereafter as counsel may be heard, the
undersigned attorneys for defendants shall move before the Hon.

Bruno L. Leopizzi at the Passaic County Courthouse, Paterson, New Jersey, for an Order pursuant to Rule 1:12-1, disqualifying Judge Bruno L. Leopizzi on the ground that his actions and rulings at a hearing concerning the issue of jury misconduct have convinced counsel that their clients cannot obtain a fair and unbiased consideration of the Motion to Vacate the Judgment of Conviction based upon Jury Misconduct which is being filed simultaneously with this Motion.

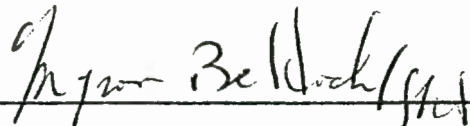
In support of this Motion, defendants rely upon the affidavit of Lewis M. Steel, sworn to on April 3, 1979 and all the prior proceedings and especially those relating to the question of jury misconduct.

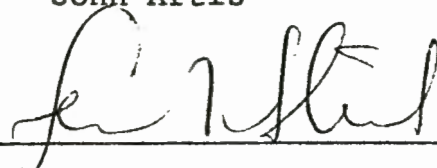
Dated: April 3, 1979

Yours, etc.,

MYRON BELDOCK, ESQ.
Attorney for Defendant
Rubin Carter

LEWIS M. STEEL, ESQ.
Attorney for Defendant
John Artis





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(212) 966-9620
Attorneys for Defendant
John Artis

STATE OF NEW JERSEY)

v.)

RUBIN CARTER and)
JOHN ARTIS,)

Defendants.)

PASSAIC COUNTY COURT
LAW DIVISION - CRIMINAL
INDICTMENT NO. 167-66

AFFIDAVIT IN SUPPORT OF MOTION
FOR DISQUALIFICATION OF JUDGE

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss:

LEWIS M. STEEL, being duly sworn, deposes and says:

1. I am a member of the Bar of the State of New York and represent the defendant John Artis in the above captioned case. I am authorized to state that this affidavit is also being submitted in behalf of counsel for defendant Rubin Carter, who joins in this Motion for Disqualification of Judge.

2. Pursuant to a decision of the Superior Court of New Jersey, Appellate Division, dated February 21, 1979, this Court questioned certain jurors concerning allegations of jury misconduct.

3. At the very outset of those proceedings, which commenced on March 12, 1979, the Prosecutor launched a theory that the alternate juror who had come forward with charges of jury misconduct, John Adamo, was somehow acting in the service of the defendants. In his arguments in support of that theory, Assistant Prosecutor Marmo propounded analogies in which he made innuendoes of bribes (T. 14-18, 23). In short order, Mr. Marmo was soon accusing Mr. Beldock of "sitting there holding back information that the Court should have," and of being dishonest (T. 35). Within the first half hour of the commencement of the proceedings, Marmo was darkly speculating, "what if Adamo was paid off to make those allegations." (T. 44).

4. As the questioning of the jurors progressed, it became increasingly clear that the Court would have to decide credibility issues, pitting Adamo against other jurors.

5. Counsel for the defense are convinced that Judge Leopizzi, without any evidentiary basis whatsoever, at some point during these proceedings began to operate on the same conceptions which permeated Assistant Prosecutor Marmo's opening remarks. Thus, in considering how to make credibility resolutions, the

Judge appeared to be operating on conceptions which had no evidentiary basis and which constituted pre-judgment and bias. Two examples are set forth below.

6. By the proceedings of March 14, 1979, the conflict between jurors was obvious. On that date, the Court recalled juror Alario. At the conclusion of the Court's examination of Alario, the Court asked that juror whether he had seen Adamo since the Fall of 1978. Alario answered in the negative, and then was excused. At this point, Assistant Prosecutor Marmo placed on the record that during Alario's last answer, "Mr. Beldock looked at Mr. Meyerson as if to say is that so, and Mr. Meyerson nodded in the affirmative." (T. 55). Mr. Marmo drew the conclusion from this look and nod that defense counsel indeed were withholding information (T. 55-6). Defense counsel protested vigorously concerning this accusation. The Court responded by indicating its concurrence in the accusation:

What I said is, Mr. Marmo's observation related to the fact that -- and that's what I have to interpret -- to the fact that the attorneys have some other information. If that's so, then I say that should be dealt with later, this isn't the forum for it. (T. 57).

Defense counsel again protested, but the Court persisted and responded with its own observation:

The fact is that I made the observation that you were shocked when the man said he hadn't spoken to Mr. Adamo since that night (T. 58).

When defense counsel again protested, the Court responded

that all three defense counsel "indicated they were shocked."
(T. 58).

Defense counsel at that point asked the Court to excuse
itself on the ground of bias. The Court simply ignored the re-
quest, but eventually backed away under pressure from his agree-
ment with Mr. Marmo that counsel must be withholding something.
(T. 65-7).

The incident reveals, however, that the Court was operat-
ing on a premise similar to the prosecutor's and was sitting in
judgment on defense counsel, watching their reactions during the
testimony of jurors and reaching conclusions from their expres-
sions. This was an obvious indication of pre-judgment and bias.
Counsel were not witnesses. Their demeanor was not in issue.
Yet the Court obviously was viewing them with suspicion which was
precisely what the prosecutor had been urging the Court to do from
the very beginning of the hearing.

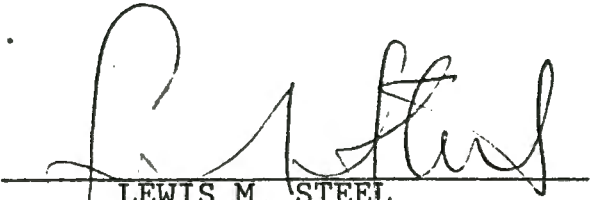
6. The second incident occurred after the taking of testi-
mony of the jurors. On March 16, 1979, defense counsel wrote
Judge Leopizzi, asking that he call additional witnesses, includ-
ing Barbara Hoekja, the person to whom Adamo first revealed his
charges of jury misconduct. On March 27, 1979, Judge Leopizzi
rendered a decision with regard to this and other defense requests.
Judge Leopizzi decided not to call Ms. Hoekja as a witness be-
cause, among other reasons, Adamo had testified that Ms. Hoekja
had biased personal views about the outcome of the case and was

not objective when questioning him. From this, Judge Leopizzi concluded:

Furthermore, Ms. Hoekja's testimony would be tainted due to her obvious interest in the outcome of this case. Consequently, calling Ms. Hoekja as a witness would serve no purpose whatsoever. (p. 6).

This comment is a clear example of the Court's pre-judgment and bias in this matter. Interest does not "taint" a prospective witness' testimony, let alone establish in advance of the witness' testimony that it would serve no purpose whatsoever. A witness may be interested, yet tell the truth. Only a court which had already made up its mind about a witness before hearing that witness' testimony would make such a statement.

7. The above examples demonstrate that the Court is, in fact, biased and that the Court's thinking is infected with pre-judgment with regard to the Motion pending before it. The issues raised by this Motion concern fundamental questions of due process. Therefore, the Court should disqualify itself at this time, prior to rendering a decision on the pending Motion to Vacate the Convictions because of Jury Misconduct.


LEWIS M. STEEL

Sworn to before me this

3rd day of April, 1979.


NOTARY PUBLIC

PATRICIA M. COOPER
Notary Public State of New York
No. 31-4628957
Qualified in New York County
Commission Expires March 30, 1980

AFFIDAVIT OF SERVICE

BY MAIL

STATE OF NEW YORK)

ss:

COUNTY OF NEW YORK)

ELAINE LEVINE, being duly sworn, deposes and says: deponent is not a party to the action, is over 18 years of age and resides at 351 Broadway, New York, New York. On April 3, 1979, deponent served the within Notice of Motion for Disqualification of Judge and supporting Affidavit upon Burrell Ives Humphreys, the Prosecutor in this action, at the Court House, Paterson, New Jersey 07505, the address designated for said purpose by depositing a true copy of same enclosed in a post-paid properly addressed wrapper in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York.

Elaine Levine

ELAINE LEVINE

Sworn to before me this

3rd day of April, 1979.

Patricia M. Cooper

NOTARY PUBLIC

PATRICIA M. COOPER
Notary Public State of New York
No. 31-4628957
Qualified in New York County
Commission Expires March 30, 1980