IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR PALM BEACH COUNTY

CASE NO.: 2010CF005829AMB

JUDGE JEFFREY COLBATH

STATE OF FLORIDA,

Plaintiff,

v.

JOHN B. GOODMAN,

Defendant.

_____/

DEFENDANT'S MOTION TO DISQUALIFY THE COURT AND INCORPORATED MEMORANDUM OF LAW

The Defendant, JOHN B. GOODMAN, respectfully moves this Court, for an order disqualifying the Court, pursuant to Section 38.10, Florida Statutes, Rule 2.330 of the Florida Rule of Judicial Administration 2.330, and Canon 3(B)(7) of the Florida Code of Judicial Conduct. This motion is based upon the Court's repeated failure to disclose to Mr. Goodman and his counsel a series of communications it has had with or about former jurors in which several strains of jury misconduct were reported to the Court.

First, on March 27 and 28, Alternate Juror No. 8, Ruby Mei Delano, called the Court's chambers directly to report jury misconduct but the Court did not return her calls or notify counsel about the attempted communication. Mr. Goodman only learned about the contact with the Court and the misconduct allegations when Ms. Delano called counsel directly.

Second, at some still undisclosed time before April 4, 2012, Juror No. 6, Dennis DeMartin, apparently sent the Court a letter, along with two chapters of a book he was writing about the trial. The Court has yet to disclose that material to Mr. Goodman and counsel and counsel only learned

about the contact when Mr. DeMartin wrote another letter to the Court, on April 18, 2012, discussing the earlier communication. And, the Court did not disclose Mr. DeMartin's letter of April 18th until it was reported by the media and undersigned counsel then requested a copy from the Court.

Third, and by far the most egregious, on April 18 or 19, 2012, the Court received a letter from a prominent citizen of Palm Beach County, Toni May, who reported to the Court that she had overheard statements by Juror No. 4, Teresa Lewis, which corroborated Ms. Delano's affidavit and contained additional allegations of misconduct. Instead of disclosing that communication to Mr. Goodman and counsel, the Court, on April 20, 2012, denied in substantial part Mr. Goodman's motion for full jury interviews, finding that Ms. Delano's affidavit was insufficient – an alleged insufficiency which would have been cured by the concealed letter from Ms. May.

As demonstrated below, this pattern of concealing evidence of jury misconduct requires the Court's disqualification and a reassignment of this case so that the allegations of jury misconduct can be fully and fairly exposed. The Court's concealment of evidence supporting his allegations of jury misconduct "create[s] in a reasonably prudent person a well-founded fear of not receiving a fair and impartial trial." *Kates v. Siedenman*, 881 So.2d 56, 75 (Fla. 4th DCA 2004), *citing MacKenzie v. Super Kids Bargain Store, Inc.*, 565 So.2d 1332, 1334 (Fla. 1990). *Accord Livingston v. State*, 441 So.2d 1083, 1087 (Fla. 1983); *State v. Thompson*, 79 So.3d 933, 933-34 (Fla. 1st DCA 2012) (per curaim); *Salters v. State*, 857 So.2d 977 (Fla. 4th DCA 2003); *Siegel v. State*, 861 So.2d 90, 92 (Fla. 4th DCA 2003); *Peterson v. Asklipious*, 833 So.2d 262 (Fla. 4th DCA 2002).

1. During the trial, on March 20, 2012, one of the jurors – Juror No. 6 Dennis DeMartin – wrote the Court a letter claiming that he was writing and apparently had substantially written, a book entitled "The Trials and Tribulations of a Senior Citizen getting a Date without a Car."[1] In the letter, Mr. DeMartin claimed he was informing the Court about his book plan because he had been in contact with some publishing companies "for my dating book" and had also told the other jurors "that I am writing my book on dating without a car..." *Id.* Mr. DeMartin did *not* reveal – and, therefore, by implication denied – that he was writing a book *about the trial.* Indeed, he said only that "if" he was successful in publishing his "dating book" he "would consider using the process to writing about the experience being a juror."

2. On March 23, 2012, the jury returned its verdict. As discussed in *Defendant's Motion For New Trial And/Or to Vacate His Conviction*, that same day, Mr. DeMartin gave live interviews to numerous television stations and news outlets. However, only portions of these interviews were broadcast, none of which included anything about Mr. DeMartin writing a book about this case.

3. As discussed in prior pleadings herein, on March 27 and 28, 2012, Alternate Juror No. 8, Ms. Delano, telephoned the Court's chambers, wishing to report the various forms of misconduct she had witnessed during the trial. When the Court did not respond to her inquiries, on the morning of April 4, 2012, she reported the misconduct directly to undersigned counsel.

4. As discussed *infra*, sometime before April 4, 2012, Mr. DeMartin wrote the Court a letter, attached the first and last chapters of a book he was writing about the trial. Despite the fact that the letter contradicted Mr. DeMartin's representations back on March 20, 2012, the Court did not disclose the letter or book chapters to Mr. Goodman or counsel.

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[1] A copy of the March 20, 2012, letter was attached as Exhibit 3 to Defendant's April 16, 2012, Motion For New Trial.

5. On April 16, 2012, counsel filed *Defendant's Motion For New Trial And/Or to Vacate His Conviction Based On Jury Misconduct.* In that motion, counsel recited the allegations from Ms. Delano concerning numerous forms of jury misconduct, including that Mr. DeMartin had been writing a book about the case during the trial and had informed the other jurors about that fact. Despite the fact that Mr. DeMartin's book-writing was being actively contested, the Court ***still*** did not disclose that it had in its possession prior correspondence from Mr. DeMartin about the book and two chapters of that book.

6. In response to the publicity generated by the motion, that evening, Mr. DeMartin gave televised interviews with the media. Although Mr. DeMartin claimed that he had not "start[ed]" the book during the trial, he admitted that he had been taking daily notes on the trial ***for that purpose*** "and ***I told them [the other jurors] about the notes that I was making every night.***" (Emphasis added.) He also admitted that he was "writing ***now*** about his trial experience." *Id.* (emphasis added).

7. On April 17, 2012, CBS12.com broadcast a story about the controversy, entitled *Could Juror Misconduct Hand John Goodman a New Trial?* In the article accompanying the broadcast, the station indicated that Mr. DeMartin "is writing the book" about the case. The article elaborated as follows, apparently referring back to the interviews Mr. DeMartin gave to the media immediately after the verdict on March 23, 2012: "We spoke with him after the trial. ***He told us <u>then</u> he's writing a book about his experience on the jury and showed us the daily notes.***" *Id.* (emphasis added). That same day, the Court convened a telephonic hearing in which the Court indicated that it might summon the jurors for interviews. During that hearing, the Court seemed to already have concluded that there was nothing wrong about Mr. DeMartin writing a book about the

case. "I mean, lots of jurors write books about their trial experience, so what? That's not grounds to excuse him...."[2]

8. The hearing drew considerable media attention, which prompted Mr. DeMartin to write the Court the following day. *See* Letter, April 18, 2012.[3] Mr. Goodman and counsel learned about the existence of this letter ***from the media***, not from the Court. *See* WPTV.com, April 18, 2012, *Only on 5: Goodman juror accused of misconduct fires back at polo mogul's attorney, alternate juror - Accused Juror files letter with judge, clears air.* Mr. Goodman and counsel only received a copy from the Court after calling the Court's chambers.

9. Mr. DeMartin's letter began by stating: "***I had sent you the first and last chapters of a book I have been writing*** on how I was chosen for the jury and what had happened since it was over." *Id.* (emphasis added). He also indicated that along with the book chapters he asked the Court for advice about whether he "should wait to try to publish a book on the trial until after sentencing and/or appeal." *Id.* Although he did not provide a precise date for this communication with the Court, he stated that he was going to give an interview with Court TV on April 4, 2012, but "**canceled that April 4, interview when you did not respond.**" (Emphasis in original). Accordingly, it appears that Mr. DeMartin corresponded with the Court about the book sometime ***before*** April 4. Yet, the Court informed no one at the time or even after Mr. Goodman's motion challenging Mr. DeMartin's book writing conduct. Instead, as noted above, the Court defended Mr.

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[2] A transcript has not yet been ordered of the hearing. However, the Court's comments were captured by the live television feed and broadcast on the evening news.

[3] A copy of this letter was attached to Defendant's recently filed motion to compel.

DeMartin's conduct on April 17 without even disclosing that Mr. DeMartin had sought the Court's advice about how to proceed.

10. In his April 18th letter, Mr. DeMartin also emphatically denied discussing his daily notes with other jurors: "The contents of these work sheets **WERE NOT DISCUSSED** with any juror." (Emphasis in original.) This assertion is difficult to square with what he told the cameras on April 16 ("I told them about the notes that I was making every night"). We, frankly, are not sure what is worse – (1) telling the jurors that he was taking notes about the trial every night but *not* telling them about the "contents" and thereby leaving them to speculate what he was saying *about them* in the book or (2) sharing the "contents" of his notes with the jurors.

11. On April 18 or 19, 2012, Ms. May hand-delivered to the Court a letter in which she described overhearing statements from Juror No. 4, Ms. Lewis which, as discussed below, both corroborated Ms. Delano and reported additional forms of jury misconduct. The Court did not disclose the letter or attempted communication, despite the material nature of the allegations made by Ms. May.

12. On April 20, 2012, the Court denied the motion for new trial and ordered that the jurors be questioned ***only*** about their comments about Mr. Goodman's wealth, holding that questions about Mr. DeMartin's book (as well as his mendacity about it) would be off limits.[4] The Court based its refusal to conduct questions about the book writing on a finding that Mr. Goodman did not "offer any support for his belief about Mr. DeMartin's purported frame of mind other than mere speculation

[4] During its discussion of the book-writing allegations, the Court stated that "Defendant seems to concede that Mr. DeMartin's literary exploits, in and of themselves, are not improper." Order, April 20, 2012, at p. 11. The Defendant has not made and does not make any such concession.

of bias." Order, at p. 13. The Court's order acknowledged Ms. Delano's allegation about calling the Court twice in March but did not affirm, deny or elaborate upon that allegation.

13. On April 24, 2012, counsel filed *Defendant's Motion To Compel All Communications Between Jurors and the Court*, seeking the disclosure of the letter and book chapters Mr. DeMartin had apparently sent to the Court weeks earlier, as well as any other communications the Court may have had with the jury.

14. At approximately 11 a.m. on April 25, 2012, defense counsel received a telephone call from Ms. May, Director of Community Relations/Communications at the Quantum Foundation in West Palm Beach. Ms. May is a former Emmy Award-winning host and executive director of South Florida Today, which airs on WXEL, a public television station. Ms. May informed counsel that she was at a restaurant on Saturday, March 24, 2012, and had overheard a juror sitting next to her at the restaurant's bar discussing the case and rampant jury misconduct that occurred. Ms. May also had apparently had a short conversation with the juror. Ms. May indicated that sometime after hearing about the Defendant's April 16th motion, she called the Court's chambers in an effort to report the misconduct but was told by the Court's staff that she could not speak to the Court or send an email about the misconduct but would have to send a letter. Following that conversation, Ms. May drafted a letter to the Court and personally hand-delivered it directly to the Court's mailbox on April 18 or 19, 2012, *i.e.*, before the Court entered its Order on April 20.

15. Ms. May informed counsel that she assumed that the juror she overheard was the same juror who had reported similar misconduct to counsel and was the basis for the April 16th motion for new trial. However, counsel asked Ms. May if the juror she overheard was of Asian descent (Ms. Delano being Asian). Ms. May responded that the juror she overheard was not Asian

but had identified herself as having worked for 20 years for the South Florida Water Management District. Therefore, the juror matches the description of Juror No. 4, Teresa Lewis.

16. Counsel asked Ms. May if she would telefax a copy of the letter she had written to the Court. She agreed and copies of the letter and telefax cover sheet are attached as **Exhibit 1** hereto.

17. The contents of the letter are, to say the least, startling. Ms. Lewis confirmed and elaborated upon the disclosures of jury misconduct previously made by Ms. Delano, including:

a. "[O]ther jurors talked about ***Goodman's money*** and ... ***they believed he was guilty before the trial ended***...." (Emphasis added.)

b. A juror named "Mike" was "'bullying' two other jurors" who disagreed with him and that "she went to someone, I thought she said ***the bailiff*** and complained about the situation ... that ***they were not following the judge's protocol***" but this person who she thought was the bailiff apparently did nothing. (Emphasis added.)

c. A juror, obviously Mr. DeMartin, "was offered ***$50,000 for a book deal*** and was continually taking notes and filled up 4-5 notepads during the trial... She knew details about the book deal and said it was clear he wanted to get it done...." (Emphasis added.)

18. The letter also explains how she felt the need to come forward after hearing about how Ms. Delano was being "ridiculed" by the media for coming forward:

> I felt the need to come forward to your Honor because I was raised by a former judge and attorney and have been taught you must do what is right at all times, no matter your own views. In addition, this

> alternate juror is being talked about, ridiculed and accused of taking bribes from Goodman's attorney. I can tell you that what I heard the day after she was released from jury duty doesn't match up to those accusations....

19. Despite having Ms. May's letter in its possession ***before*** the Court denied Defendant's motion for new trial and authorizing only limited jury interviews, the Court entered its April 20th order never mentioning or disclosing the letter. Nor did the Court promptly disclose the existence of the letter following the filing of the Defendant's motion to compel.

20. The letter reveals egregious forms of jury misconduct, including:

a. The bailiff's failure to report Ms. Lewis' complaint about the "bullying" and disregarding of the Court's protocols which constitutes *per se* reversible error under Rule 3.410 of the Florida Rules of Criminal Procedure, as construed by the Supreme Court of Florida in *State v. Merricks*, 831 So.2d 156 (Fla. 2002) (per curiam). *Accord Natan v. State*, 58 So.3d 948 (Fla. 2d DCA 2011); *Dixon v. State*, 768 So.2d 14 (Fla. 3d DCA 2000); *Thiefault v. State*, 655 So.2d 1277 (Fla. 4th DCA 1995). *See also* Fla. Stat. § 9918.07 (prohibiting officers in charge of jurors from communicating with jurors "on any subject connected with the trial").

b. Juror DeMartin had been at least "offered" a $50,000 advance ***during the trial*** for writing a book on the trial, while lying about it to the media and misrepresenting his conduct to the Court during the trial, was blatantly improper. The book advance itself may even be criminal. *See* Fla. Stat. § 918.12 ("Any person who influences the judgment ... of any ... petit juror on

any matter ... which may be pending ... before him ... as such jury, with intent to obstruct the administration of justice, shall be guilty of a felony of a third degree"). *See generally* Note, *Post-Trial Jury Payoffs: A Jury Tampering Loophole*, 15 ST. JOHNS J.L. COMM. 353 (Spring 2001). Certainly, the payment and Ms. Lewis' statements about Mr. DeMartin's conduct thoroughly corroborated Ms. Delano's affidavit and completely undermined the rationale this Court used to deny relief (that the Defendant did not "offer any support for his belief about Mr. DeMartin's purported frame of mind other than mere speculation of bias").

c. Ms. Lewis' statements, as noted above, revealed that Mr. DeMartin had been dishonest with the Court and the parties. That dishonesty constitutes an independent basis to find jury misconduct by Mr. DeMartin. S*ee DeFrancisco v. State*, 830 So.2d 131, 133 (Fla. 2d DCA 2002) ("If a juror answers a question falsely or conceals a material fact, that misconduct is prejudicial to one of the parties because it impairs his or her right to challenge the juror") (citations omitted). The evidence of Mr. DeMartin's dishonesty, which this Court concealed, supported Defendant's motion to interview the jurors. *See Gray v. Moss*, 636 So.2d 881 (Fla. 5th DCA 1994).[5]

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[5] Bias may be implied "where repeated lies in voir dire imply that the juror concealed material facts in order to secure a spot on the particular jury." *Fields v. Brown*, 503 F.3d 755, 770 (9th Cir. 2007); *see also Green v. White*, 232 F.3d 671, 677-78 (9th Cir. 2000) (holding that a juror was impliedly biased where he "lied twice to get a seat on the jury," provided misleading, contradictory, and false responses when questioned about those lies, and engaged in behavior that brought his impartiality into question); *United States v. Boney*, 977 F.2d 624, 634 (D.C. Cir. 1992) ("[L]ying or failing to disclose relevant information during voir dire itself raises substantial questions about the juror's possible bias."); *United States v. Colombo*, 869 F.2d 149, 152 (2d Cir. 1989) ("[H]er willingness to lie about it exhibited an interest strongly-suggesting (continued...)

21. Pursuant to Rule 2.330(b)(4), no other motions to disqualify have been previously filed or granted.

22. The Defendant fears that he will not receive either a fair hearing on his pending motions or a fair sentencing because of the above-described prejudice or bias of the Court. *See* Florida Rule of Judicial Administration 2.330(d)(1).

MEMORANDUM

Of all the rights guaranteed by the due process clause, there is none more fundamental than the right to an impartial judge. An impartial tribunal free from bias or prejudice is a fundamental requirement of the due process clause. *See In re Murchison,* 349 U.S. 133, 136-37, 75 S.Ct. 623, 99 L.Ed 942 (1955). Rules of law, no matter how perfect, mean nothing unless they are administered and applied by a fair tribunal. Indeed, the "legitimacy of the Judicial Branch ultimately depends on its reputation for impartiality and nonpartisanship." *Mistretta v. United States*, 488 U.S. 361, 407, 109 S.Ct. 647, 102 L.Ed.2d 714 (1989). The Court apparently lost sight of these principles when it repeatedly concealed evidence of jury misconduct that the Court received either directly from the jurors themselves or by third parties at the same time that the Court was considering and then denying Defendant's motion for extensive jury interviews. The Court's concealment of material information has generated a well-founded fear that the Defendant "will not receive a fair" hearing or sentence in this matter "on account of the prejudice of the judge...." Fla. Stat. § 38.10.

Florida Rule of Judicial Administration 2.330(f) provides that a judge faced with a disqualification motion "shall determine *only* the legal sufficiency of the motion and shall not pass

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[5](...continued)
partiality.").

on the truth of the facts alleged" and "[i]f the motion is legally sufficient, the judge shall immediately enter an order granting disqualification and proceed no further in the action." (Emphasis added.)[6] Moreover, the rule expressly states that if the judge finds that the grounds are insufficient "[n]o other reason for denial shall be stated, and an order of denial shall not take issue with the motion."

The instant motion is certainly legally sufficient. Disqualification is required when the allegations made in disqualification, taken as true as required by Rule 2.330(f), "would create in a reasonably prudent person a well-founded fear of not receiving a fair and impartial trial." *Kates v. Siedenman*, 881 So.2d 56, 75 (Fla. 4th DCA 2004), *citing MacKenzie v. Super Kids Bargain Store, Inc.*, 565 So.2d 1332, 1334 (Fla. 1990). *Accord Livingston v. State*, 441 So.2d 1083, 1087 (Fla. 1983); *State v. Thompson*, 79 So.3d 933, 933-34 (Fla. 1st DCA 2012) (per curaim); *Salters v. State*, 857 So.2d 977 (Fla. 4th DCA 2003); *Siegel v. State*, 861 So.2d 90, 92 (Fla. 4th DCA 2003); *Peterson v. Asklipious*, 833 So.2d 262 (Fla. 4th DCA 2002). A party does not need to prove "actual prejudice." *Aberdeen Property Owners Assoc., Inc. v. Bristol Lakes Homeowners Assoc., Inc.*, 8 So. 3d 469, 472 (Fla. 4th DCA 2009). Thus, "[i]t is not a question of what the judge feels, but the feeling in the mind of the party seeking to disqualify and the basis for that feeling." *Aberdeen Property Owners*, 8 So. 3d at 471. *See also Goines v. State*, 708 So.2d 656, 659 (Fla. 4th DCA 1998) ("[T]he facts

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[6] Rule 2330(f) provides:

> The judge against whom an initial motion to disqualify under subdivision (d)(1) is directed shall determine only the legal sufficiency of the motion and shall not pass on the truth of the facts alleged. If the motion is legally sufficient, the judge shall immediately enter an order granting disqualification and proceed no further in the action. If any motion is legally insufficient, an order denying the motion shall immediately be entered. No other reason for denial shall be stated, and an order of denial shall not take issue with the motion.

Florida Rule of Judicial Administration 2.330(d)(1) states: "A motion to disqualify shall show: (1) that the party fears that he or she will not receive a fair trial or hearing because of specifically described prejudice or bias of the judge...."

underlying the well-grounded fear must be judged from the perspective of the moving party."), *disagreed with on other grounds by Thompson v. State*, 949 So.2d 1169 (Fla. 1st DCA 2007), *quashed*, 990 So.2d 482 (Fla. 2008).

The Florida rule parallels the rule governing federal judges in 28 U.S.C. § 455(a), in that it imposes a "reasonable man" or objective standard in determining whether a judge must disqualify himself. Therefore, a judge faced with a potential ground for disqualification ought to consider how his participation in a given case looks "to the average man on the street." *Potashnick v. Port City Const. Co.*, 609 F.2d 1101, 1111 (5th Cir. 1980). *Accord Moran v. Clarke* 296 F.3d 638, 648 (8th Cir. 2002); *Home Placement Serv., Inc. v. Providence Journal Co.*, 739 F.2d 671, 676 (1st Cir. 1984). *See also United States v. Alabama*, 828 F.2d 1532, 1540 (11th Cir. 1987), *cert. denied sub nom. Alabama State Univ. v. Auburn Univ.*, 487 U.S. 1210, 108 S.Ct. 2857, 101 L.Ed.2d 894 (1988).

The rule is thus concerned as much with appearances as with reality. Where it is reasonable for the public to believe that a judge is not impartial, a judge is deemed to possess a disabling conflict *whether or not* the public is correct. *See Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868, 129 S.Ct. 2252, 173 L.Ed.2d 1208 (2009) ("The Court asks not whether the judge is actually, subjectively biased, but whether the average judge in his position is likely to be neutral, or whether there is an unconstitutional potential for bias.") (internal quotation marks omitted); *Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847, 860, 108 S.Ct. 2194, 100 L.Ed.2d 855 (1988) (whether § 455(a) is violated "does not depend upon whether or not the judge actually knew of facts creating an appearance of impropriety, so long as the public might reasonably believe that he or she knew"). Doubts must be resolved in favor of disqualification, since "[t]he very purpose of § 455(a)

is to promote confidence in the judiciary by avoiding even the appearance of impropriety whenever possible." *United States v. Kelly*, 888 F.2d 732, 744-45 (11th Cir. 1989) (citations omitted).

Judges may properly form impressions and opinions about a case during the course of hearing the issues and the evidence ***in the record***. However, "[w]hen the judge enters into the proceedings and becomes a participant, a shadow is cast upon judicial neutrality so that disqualification is required." *Asbury v. State*, 765 So.2d 965, 966 (Fla. 4th DCA 2000) (per curiam), quoting *Chastine v. Broome*, 629 So.2d 293, 295 (Fla. 4th DCA 1993). When "the court transforms itself into one of the litigants, it creates a well-founded fear that a party will not be dealt with in a fair and impartial manner. The court's quest for information in this case crossed the line of neutrality." *Chillingworth v. State*, 846 So.2d 674, 676 (Fla. 4th DCA 2003). A similar rule also applies in the federal system. Under 28 U.S.C. § 455(b)(1), a judge must disqualify himself where, among other things, he or she "has ... personal knowledge of disputed evidentiary facts concerning the proceeding." Disqualification under this standard is required where a judge conducts an extrajudicial investigation of the facts. Such "[o]ff-the-record" investigations, of course, "leave no trace in the record." *In the Matter of: James R. Edgar*, 93 F.3d 256, 259 (7th Cir. 1996) (per curiam).

In *Edgar* the Seventh Circuit ordered a judge disqualified under § 455(b) for a number of extrajudicial meetings with appointed experts, including a letter he received from one of the experts. *Id.* at 261. Florida courts also routinely require disqualification when trial courts engage in *ex parte* communications. *See, e.g., Howell v. State*, 80 So.3d 441 (Fla. 4th DCA 2012) (reversing conviction and remanding for a new trial, holding that "the trial court erred by engaging in an ex-parte communication in which the trial judge indicated how he would rule on the State's motion in limine to preclude the defendant from claiming a mental health defense") (citation omitted); *Frengel v.*

Frengel, 880 So.2d 763 (Fla. 2d DCA 2004) (per curiam) (requiring disqualification when judge assigned to child custody dispute gave her telephone number to the children, invited them to communicate with her and then failed to disclose emails with the children to the mother).

While there is no evidence that this Court invited the communications it received from jurors and third parties concerning the jury, the Court received multiple contacts – first from Ms. Delano, then from Mr. DeMartin and finally from Ms. May – none of which the Court disclosed on its own. Moreover, all three sets of communications either alleged or exhibited various forms of jury misconduct during the time period in which the Defendant was seeking to interview the jurors. By not disclosing these communications, the Court has allowed itself to be "transform[ed] ... into one of the litigants," thereby "creating a well-founded fear that a party will not be dealt with in a fair and impartial manner." The Court then compounded its error by denying the Defendant's motion to conduct broad-based jury interviews, in part, by finding that his motion was not sufficiently supported when, all along, the Court had in its possession that very support – the letter from Ms. May. The appearance of impartiality was destroyed by the Court's suppression of material evidence that supported the Defendant's motion.

An analogous situation occurred in *United States v. Van Griffen*, 874 F.2d 634 (9th Cir. 1989). In that case, a magistrate (presiding at trial) came into possession *ex parte* of a police report concerning the case before him. He kept the report at the bench during trial, although he denied ever having looked at it prior to the trial. The Ninth Circuit found that this conduct was improper:

> If it was not good practice to receive the communication, it was equally not good practice to retain it. We have no assurance from the magistrate that he did not subsequently look at the communication. Certainly he might have been tempted to do so. The rule requiring disqualification when there is an appearance of partiality is a rule designed to remove the possibility of temptation. Tumey v. Ohio, 273 U.S. 510, 532 . . .(1927). It is not an imputation against the honesty of the magistrate to say that a reasonable person could doubt his impartiality when he kept with him at trial this *ex parte* communication. If a jury had received such an *ex parte* communication that had a reasonable possibility of affecting the verdict, its verdict would be tainted.... Here, the magistrate was the trier of fact and he did not dispose himself of a communication which he himself implicitly acknowledges he should not have had. A reasonable person could doubt his impartiality.

874 F.3d at 637 (emphasis added).

The instant case is far more egregious than *Van Griffen*. There was no suggestion in *Van Griffen* that anything exculpatory or of evidentiary benefit to the defendant was contained in the concealed police report. Here, in sharp contrast, the Court did not voluntarily disclose that it had received material information that directly supported the Defendant's allegations of jury misconduct ***while the Defendant's motion was pending***. Worse, the Court then denied the motion, in substantial part, based on criticisms about the Defendant's insufficient factual showing – an alleged deficiency that the concealed evidence would have remedied. A reasonable person could not but doubt the Court's impartiality under these circumstances.

CONCLUSION

Wherefore, the Court should disqualify itself from this case.

JOHN B. GOODMAN

STATE OF FLORIDA
COUNTY OF PALM BEACH

Before me, personally appeared, John B. Goodman, who, being of sound mind and after being properly sworn, states that I have read the foregoing and, under penalty of perjury, swear that the foregoing is true.

JOHN B. GOODMAN

SWORN TO AND SUBSCRIBED before me this 26th day of April, 2012, at Palm Beach County, Florida.

NOTARY PUBLIC-STATE OF FLORIDA
Guy P. Fronstin
Commission # DD844957
Expires: DEC. 14, 2012
BONDED THRU ATLANTIC BONDING CO., INC.

NOTARY PUBLIC, STATE OF FLORIDA

CERTIFICATE OF GOOD FAITH

I HEREBY CERTIFY, pursuant to Fla. Stat. § 38.10 ~~and Fla. R.~~ Jud. Admin. 2.330(c), that the foregoing motion and statements by Mr. Goodman are made in good faith.

By: _____
Roy Black, ESQ.

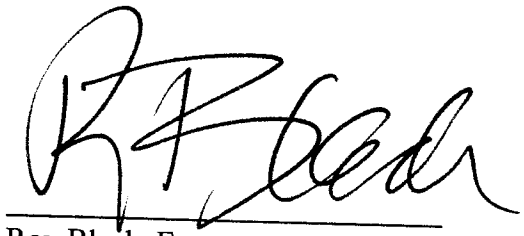
BLACK, SREBNICK, KORNSPAN, & STUMPF, P.A.
201 South Biscayne Boulevard, Suite 1300
Miami, Florida 33131
Ph. (305) 371-6421 – Fax (305)358-2006
E-mail RBlack@RoyBlack.com
E-mail Mshapiro@RoyBlack.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 26, 2012, my office hand-delivered a true copy of the foregoing to:

Ellen Roberts
Assistant State Attorney
West Palm Beach State Attorney's Office
Traffic Homicide Unit
401 North Dixie Hwy.
West Palm Beach, FL 33401

The Honorable Jeffrey Colbath
Circuit Court Judge
Fifteenth Judicial Circuit
205 North Dixie Highway
West Palm Beach, FL 33401

By: 
Roy Black, Esq.

QUANTUM FOUNDATION

Advancing Health & Education

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DATE:

COMPANY: Roy Black

ATTENTION:

FAX #: (305)3580092 TELEPHONE:

FROM: Toni May

COMMENTS:

Please call with questions
Clearly I was confused in
my assumption it was
alternate juror —

Toni May

Phone 561-832-7497 • Fax 561-832-5794 • 2701 N. Australian Avenue • Suite 200 • West Palm Beach, Florida 33407

Exhibit 1

On Saturday March 24, 2012, at about 1:00 pm, my husband and I were dining at the bar at Rocco's Tacos on PGA Blvd and I overheard the woman right next to me talking about jurors in the John Goodman trial. As a journalist, my interest was piqued and I began listening to her concerns. It was clear to me after a few moments that she had been one of the jurors. It was also extremely clear to me that she was stressed out and frustrated with what had occurred during the trial. She kept saying that other jurors talked about Goodman's money and, in her opinion, they believed he was guilty before the trial ended. She continually mentioned a juror named "Mike". She said at one point he was 'bullying' two other jurors who were clearly not agreeing with what he believed should be the verdict. What I heard her say was she went to someone, I thought she said the bailiff and complained about the situation. She said that at one point she even asked the bullying juror to stop as she felt sorry for the other woman on the jury. She said something like, "I'm tough, I can take it but some of them can't."

She mentioned a juror was offered $50.000 for a book deal and was continually taking notes and filled up 4-5 notepads during the trial which she said the juror kept. She knew details of the book deal and said it was clear he wanted to get it done. I don't know if she meant the book deal or the trial. She also mentioned that one of the jurors kept referring to a boating trip, but I wasn't sure in what context.

Her demeanor was one of pure exhaustion and stress, she repeatedly said it was very tiring and she was just glad to be 'free'. I did NOT get the feeling she was saying Goodman was innocent , but I did clearly understand she did not feel the jury acted properly and that she tried to convince them , and someone outside the jury room but never sure who she was referring to, that they were not following the judge's protocol.

Because of the importance of what she was saying, I texted my husband exact quotes throughout part of her conversation. I was concerned about what I heard and called a friend who is a lawyer on the Monday following the conversation. This was purely a friendly inquiry and I didn't give him details of what I heard but asked about juries and what could overturn a verdict. He told me to look up case law so I found Baptist Hospital of Miami, Inc. v. Maler, and Devoney v. State that showed juries are protected and that made me feel like it wasn't worthy of pursuing with you, the prosecutor or Goodman's attorney. I left it at that until I heard the news that an alternate juror had filed an affidavit which clearly is the same women I heard talking less than 24 hours after the verdict.

I felt the need to come forward to your Honor because I was raised by a former judge and attorney and have been taught you must do what is right at all times, no matter your own views. In addition, this alternate juror is being talked about, ridiculed and accused of taking bribes from Goodman's attorney. I can tell you that what I heard the day after she was released from jury duty doesn't match up to those accusations. I don't know this woman. She said a few words to me about the food because we were literally sitting arm to arm at the bar eating, but it was a few brief words and we never exchanged names. I have no agenda other than to share this as I feel it may be pertinent to your review of her claims.