

IN THE COUNTY COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

JUDGE: LEE JAY SEIDMAN

CASE NO.: 09-17759MM10A

STATE OF FLORIDA,
Plaintiff,

v.

GUYADUTT LILMAN,
Defendant.

RECEIVED
APR 07 2010
HONORABLE LEE J. SEIDMAN

DEFENDANT'S MOTION TO DISQUALIFY

COMES NOW the Defendant, Guyadutt Lilman, by and through undersigned counsel and pursuant to the Rule 2.330(c) of the Florida Rules of Judicial Administration, and files this, his Motion to Disqualify and as grounds therefore would state as follows:

1. The Defendant has been charged by duly filed information with, *inter alia*, Driving Under the Influence of Alcohol contrary to Section 316.193 of the Florida Statutes arising out of events that occurred on August 2, 2009.
2. The undersigned has the utmost respect for this Honorable Court and files this Motion to assist the Court in avoiding "an appearance of impropriety" prohibited by the Code of Judicial Conduct.
3. The Defendant received the State's discovery submission on approximately September 5, 2009.
4. The State's discovery initial discovery submission included a witness list featuring the names of BSO DUI Task Force Members Anthony Garcia and Robert Hager as well as that of CSA Irene Rolando.
5. The State's discovery submission also included the number of the in-car video that is pertinent to the Defendant's DUI case.
6. That videotape reflects the events that occurred between the Defendant and BSO DUI Task Force Deputy Robert Hager and the Defendant both inside and outside of his patrol car.

7. Toward the end of that video, Deputy Hager adjusts his camera in order to capture the events that occurred inside of the car.
8. The video reflects current felony ASA Katya Pisman grabbing and then subtly scratching Deputy Hager's arm in a manner inconsistent with a purely professional relationship.
9. Subsequently, it has been learned that ASA Pisman and Deputy Hager are currently involved in a romantic relationship and have been so for quite some time.
10. Their romantic relationship apparently evolved over time out of their professional relationship as Assistant State Attorney and witness for the State of Florida.
11. On February 26, 2010, The State Attorney's Office supplemented the initial witness list with the name of ASA Katya Pisman who is listed as an "A" witness to the defendant's case.
12. The Defendant has become aware of the actual listing of Ms. Pisman as an "A" witness.
13. ASA Pisman was the assigned Assistant State Attorney to this Honorable Court for an extended period of time, knows her well; and this court established a professional relationship with ASA Pisman over that period of time.
14. The undersigned intends to extensively and intensely cross-examine both Deputy Hager and ASA Pisman as to the nature and extent of their relationship up until the time each gives their testimony at the Defendant's eventual trial as to the above referenced charges.
15. Accordingly, this Honorable Court would, at trial, be required to make evidentiary determinations and rulings as to the admissibility of such testimony and as to the nature and extent that ASA Pisman and Deputy Hager may be cross-examined as to the nature and extent and growth of their romantic relationship.
16. The Defendant, Guyadut Lilman, fears that he will not receive a fair trial because of the Court's present and former quasi-social, personal and professional relationship with an essential witness listed by and for the State Florida.
17. More specifically, the Defendant, fears that he will not receive a fair trial because the Court knows an essential witness for the opposing and prosecuting party and could limit potentially exculpatory cross-examination and negate the strategy employed by his attorney as such examination may be of explicit subject matter and cause embarrassment to the witness.

18. Moreover, the Defendant fears that he could be more severely punished or punished differently than other Defendants with the identical charge whose cases do not involve persons with a relationship to the court based upon the ASA Pisman's relationship with the Court; her occupation as an active Assistant State Attorney in this judicial circuit; and based upon the Defense strategy and examinations that he intends to employ during trial.
19. Finally, Rule of Judicial Administration 2.330(i) permits (and may require) this Honorable Court to enter an order of disqualification on the Court's own initiative if the Court feels that it would violate a judicial canon by continuing to preside over the Defendant's case or if the court determines that "an appearance of impropriety" may exist based on the foregoing, notwithstanding any other provision of Rule 2.330 of the Florida Rules of Judicial Administration.

WHEREFORE the Defendant, Guyadutt Lilman, respectfully requests that this Honorable Court enter an Order granting the Motion for Disqualification, remove itself as the presiding judge over the Defendant's case and order that the Defendant's case be randomly reassigned by the Clerk of Courts.

GOLD AND HOLLANDER, P.A.
d/b/a THE TICKET CLINIC
1580 South Federal Highway
Fort Lauderdale, Florida 33316
(954) 522-5926: Telephone
(954) 522-5197: Facsimile

Ted L. Hollander, Esquire
For the firm
Florida Bar No.: 0116106

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion was furnished via courier to: Judge Lee Jay Seidman, 201 Southeast 6th Street, Room 525, Fort Lauderdale, Florida 33301 and ASA Nicole Bloom, Office of the State Attorney, Room 730, Fort Lauderdale, Florida 33316 on this 5 day of April, 2010.

By: _____
Ted L. Hollander, Esquire.

CERTIFICATION UNDER OATH BY PARTY

I HEREBY SWEAR that the facts contained herein are true and correct under penalty of perjury and are made in good faith this 6th day of April, 2010.

G. Lilman
Guyadutt Lilman, Defendant

STATE OF FLORIDA }
COUNTY OF BROWARD }

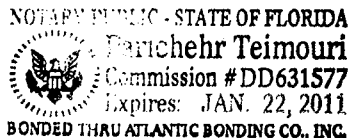
The foregoing instrument was acknowledged before me this 6th day of April, 2010 by the Defendant, Guyadutt Lilman, under oath.

Personally Known _____ OR

Produced the following type of identification FL DL

[Signature]
Notary Public, At Large
State of Florida

My Commission Expires:



CERTIFICATION BY ATTORNEY

I HEREBY CERTIFY that the Motion to Disqualify herein and the Defendant's Statement's and assertions included therein are made in good faith.

GOLD AND HOLLANDER, P.A.
d/b/a THE TICKET CLINIC
1580 South Federal Highway
Fort Lauderdale, Florida 33316
(954) 522-5926: Telephone
(954) 522-5197: Facsimile

[Signature]
Ted L. Hollander, Esquire
For the firm
Florida Bar No.: 0116106

IN THE COUNTY COURT OF THE 17TH
JUDICIAL CIRCUIT IN AND FOR
BROWARD COUNTY, FLORIDA

CASE NO: 09-17759MM10A

STATE OF FLORIDA,

Plaintiff,

v.

GUYADUTT LILMAN,

Defendant,

ORDER ON MOTION TO DISQUALIFY

THIS CAUSE having come on before the Court on the Defendant's Motion to Disqualify, dated April 5, 2010, and the Court having considered same and being otherwise advised in the premises, finds as follows:

This matter comes before the Court on Defendant's Motion to Disqualify this Court in the above county civil case.

A judge before whom a motion to disqualify is filed is forbidden from passing upon the question of whether the allegations therein are true or utterly false. See Florida Rule of Judicial Administration 2.330(f). Simply put, in ruling upon a motion to disqualify, truth is irrelevant. See Cave v. State, 660 So.2d 705 (Fla. 1995).

Further, when ruling upon a motion to disqualify, a trial judge may not investigate, challenge, rebut or evaluate the truthfulness or utter falsity of any allegations made. See Moss v. State, 700 So. 2d 799 (Fla. 4th DCA 2003).

Neither may the trial court in ruling upon a motion to disqualify, even if "baited", so much comment – even for the sole benefit of the appellate court – upon what is or is not contained within the transcripts of official proceedings. See Edward v. State, 689 So. 2d 1251 (Fla. 4th DCA 1997).

Finally, the absence of actual bias or prejudice of a judge toward a litigant is not sufficient under the law to deny a motion to disqualify.

The sole consideration the trial court is permitted to rule upon with respect to any motion to disqualify is whether the motion, on its face, true or false, meets the bare threshold of "legal sufficiency" as articulated in Rule 2.160(f), supra.

ORDERED AND ADJUDGED that in the instant case, based upon the above law, Defendant's Motion is hereby granted and this case shall be transferred by the Clerk out of Division MD to another Judge in County Court.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida this 8th day of April, 2010.

A handwritten signature in black ink, appearing to read 'Lee J. Seidman', is written over a horizontal line. The signature is stylized with loops and a long horizontal stroke extending to the right.

LEE J. SEIDMAN
COUNTY COURT JUDGE

cc:

Ted Hollander, Esq.
d/b/a The Ticket Clinic
1580 S. Federal Highway
Ft. Lauderdale, FL 33316

State Attorney's Office: Hussein El Rashidy, Esq.