

8/14/12
GCA

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

Hon. Nancy G. Edmunds
Case No. 10-20403

v.

KWAME M. KILPATRICK, et al

Defendant.

_____ /

AFFIDAVIT OF KWAME M. KILPATRICK

STATE OF MICHIGAN)
COUNTY OF WAYNE)

Deponent being first duly sworn, deposes and says as follows:

1. My name is Kwame Malik Kilpatrick. I am of sound mind and over the age of 21. I give this affidavit freely and voluntarily and without any duress.
2. I am submitting this affidavit independently of my counsel. In submitting this affidavit, I do not intend to waive any claim of privilege that I may have between myself and Mr. Thomas and any other attorney, except on the specific issue of the conflict of interest arising from Mr. Thomas' representation of Witness A and myself, and the destruction of the Attorney/Client relationship between Mr. Thomas and myself.
3. It is not currently clear what, if anything, my counsel is filing with the court on the issue of Conflict of Interest and his continued representation of me.

Since the discovery of a conflict of interest a couple of weeks ago, my relationship with my counsel has steadily deteriorated. It is now at the point that we are no longer communicating and there has been a total erosion of trust and confidence. I do not know whether my attorney is protecting my interests or his interests. My last conversation with my counsel literally ended in a shouting conversation.

4. Although I provide more details below, one of the questions that deeply concern me is why my attorney did not tell me that there was a possibility of a problem when we received the Fourth Superseding Indictment. He saw that his former client was named in a substantive count. It seems to me, although I am not a criminal defense attorney but a layperson, that circumstance should have, at a minimum, caused my attorney, and even possibly the government's attorney, *at that time* to at least consider the possibility that there would be a conflict. Why wasn't a question raised then, by either my counsel or the government? Wasn't Witness A always going to be needed to testify about those allegations?
5. That there is a conflict of interest has now been recognized by my attorney. He has told me that there is a conflict of interest; that he would not be able to cross-examine Witness A; and that the government is now even considering dropping that count from the case. As stated above, I am a layperson, but from my perspective, there is a conflict of interest and my attorney has confirmed that to me.

6. At the *in camera* Hearing, held by this Honorable Court on August 7th, I learned for the first time, that in approximately 2005, James C. Thomas, P.C. began representation of a person, who I call Witness A. I do not know what the scope of the representation of Witness A was or what various matters Mr. Thomas has handled for Witness A.
7. In March of 2008, James C. Thomas, P.C. was retained as my attorney in a State matter filed by the Wayne County Prosecutor. Since that time, Mr. Thomas and his firm have undertaken representation in multiple collateral matters relating to the State charges as well as federal civil and State administrative proceedings. It is my recollection, that in 2009, we were both aware of the Federal Criminal Investigation, and that Mr. Thomas was advising me during this time with these matters as well.
8. The Court appointed Mr. Thomas,, to represent me on the first federal Indictment on July 13, 2010. He has continued to represent me through successive iterations of that Indictment, culminating in the Fourth Superseding on February 15, 2012.
9. I only recently learned, during the August 7th *in camera* Hearing, that my Counsel apparently provided advice to Witness A regarding a federal investigation that bears upon allegations in my case. My Counsel has never disclosed to me any details of that representation. He has always preserved the confidentiality of the representation of Witness A.
10. I am informed that my Counsel continued to have an attorney-client

relationship with Witness A until sometime before January 2011 when he suggested he obtain other counsel. I have not been told the reasons that my Counsel suggested that Witness A obtain other counsel. I do know that my Counsel would have been actively representing me on the federal indictment for a number of months before this said suggestion of new counsel was made.

11. My recollection is that the first time I learned that Mr. Thomas represented Witness A was most likely some time during 2010, and before any Federal Indictment. At that time, we were discussing a Michigan Secretary of State inquiry into my campaign finances. During a conversation, Mr. Thomas talking about the merits of my position mentioned that he represented Witness A and his lawyer concerning a check that was given to my campaign account. There were no details about the representation, and certainly no conversation about how this would bear on any Federal Investigation, Indictment or Trial. There was also no mention about when this representation occurred or its duration.

12. I was presented a waiver and signed it on or about January 2011. At that time, while there was a disclosure of the representation of Witness A, it was represented to be in an unrelated matter. I certainly never knowingly, intentionally and willingly waived any conflict of interest as it relates to Mr. Thomas representation of me in a Federal Criminal Proceeding. Mr. Thomas has also acknowledged this as well. At no time did my Counsel

tell me that he represented Witness A, and his business interest, in response to a Federal Subpoena or any criminal investigations.

13. I was never given any information about Mr. Thomas' representation of Witness A in a matter that is directly related to the Fourth Superseding Indictment.
14. On June 1, 2012, the Government provided a witness list to defense counsel that confirmed that Witness A and a representative from the political action committee were indeed going to be called as witnesses in this matter.
15. While the Government has been investigating me since at least 2005, the Government recently conceded in the August 7th *in camera* hearing before this Honorable Court that Witness A only became relevant four months ago. I am just a layperson, but it seems to me that this statement about "Witness A being relevant for 4 months" is very curious to me. The Government obtained documents earlier than 4 months ago, added him to the 4th Superseding Indictment, and also made decisions regarding this count prior to the Indictment being announced. This process would seem to have taken longer than 4 months.
16. Upon information and belief, Mr. Thomas has information based on his representation of Witness A that he cannot give me due to his attorney client relationship with Witness A. Contrary to the representations of the Government in the *in camera* proceeding, Witness A's attorney has indicated that he will not waive the attorney-client privilege that he holds

with Mr. Thomas, according to Mr. Thomas.

17. In addition to the actual conflict of interest that I believe exists between my Counsel's representation of Witness A and myself, this situation has created a breakdown in communication and trust that prohibits me from having confidence in my Counsel.

18. First, it is now obvious that my Counsel represented Witness A and that there is a serious conflict of interest. That information was never made known to me. The description of the nature of the representation of Witness A that was given to me by my Counsel is not the same description of the representation that was described in the *in camera* proceeding. I was never told that the representation related to a federal investigation. I was never told that production of documents relating to me was involved. Based upon the description that I heard at the *in camera* hearing, it is my belief that my Counsel either misrepresented the nature of the representation or omitted disclosure of material aspects of the representation. In either case, I did not have the accurate and necessary information to evaluate any conflict of interest.

19. Secondly, I believe that my Counsel should have been more aware of this potential conflict. When Witness A was named in the Fourth Superseding Indictment, in light of what I have only recently learned, it is my belief that if my Counsel was acting with a duty of loyalty to me, he would have immediately had a conversation with me about the potential conflict. It is

my belief that he, as an attorney, had an obligation to keep me informed of issues that would impact my case, my representation, and the trial of this case. My Counsel never brought to my attention any concern when the Fourth Superseding Indictment was returned.

20. Thirdly, since I have become aware of this conflict of interest, I have been quite candid and frank of my objection to the use of an independent counsel to cross-examine Witness A. I notified my attorney that I wished to discuss my concerns with him in person. Unbeknownst to me, even after I had directly expressed my opposition, my Counsel negotiated with the Assistant United States Attorney the use of an independent counsel as a means to avoid the conflict. Again, it is my belief that the duty of loyalty owed to me by my Counsel requires, at a minimum that we have that in-person discussion prior to his entering into an agreement with the government.

21. It has become apparent to me that I can no longer communicate effectively with my attorney. It is also obvious to me that my attorney is now putting his interests before mine. We had conversations about this situation, reached decisions as to how we would proceed, and I made my position on issues clear. Then, in direct contradiction of the course of action that we had agreed upon, Mr. Thomas publicly stated on a news broadcast words to the effect that he was going to be on this case. Mr. Thomas' public statements were in direct contradiction of the course of action that we had agreed upon.

22. It is my belief that going forward, the confidentiality of the relationship with Witness A as well as the circumstances surrounding this issue will continue to undermine my ability to present my defense. I know that I will second-guess Mr. Thomas on his representation of me. . I no longer trust that any of his legal advice to me will be given for my benefit, or the benefit of my defense. As a result, I need for Mr. Thomas to be replaced pursuant to Rule 1.16(a)(3) of the American Bar Association's Rules of Professional Conduct.

23. At this point, I do not know whether this was a strategic tactic by the government to cause a dissolution of the relationship with my present counsel or a lack of loyalty by my Counsel. I do know that these circumstances have left me unable to communicate with my attorney. I no longer have the confidence that he is putting my interests first.

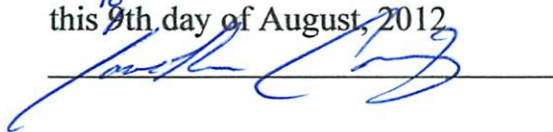
24. I respectfully request that the Court allow me the opportunity to obtain new counsel.

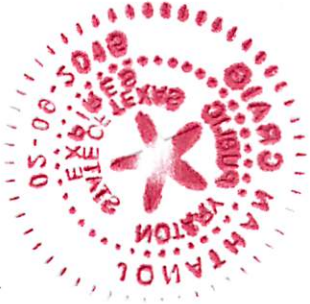
25. Further, affiant sayeth not.




Kwame M. Kilpatrick

Subscribed and sworn to before me
this 9th day of August, 2012





ΚΑΤΑΧΩΡΗΤΟ ΚΑΤΑΛΟΓΟΣ

ΕΛΛΗΝΙΚΗ ΔΗΜΟΚΡΑΤΙΑ
ΥΠΟΥΡΓΕΙΟ ΠΑΙΔΕΙΑΣ, ΕΡΕΥΝΑΣ ΚΑΙ ΘΡΗΣΚΕΥΜΑΤΩΝ
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