IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
IN AND FOR SEMINOLE COUNTY, FLORIDA

STATE OF FLORIDA

VS.

CASE NO.: 2012-001083-CFA
SA NO: 1712F04573

GEORGE ZIMMERMAN
_____/

STATE'S RESPONSE TO DEFENDANT'S VERIFIED MOTION TO DISQUALIFY TRIAL JUDGE

The State of Florida, by and through the undersigned Assistant State Attorney, files the following response to Defendant's Verified Motion to Disqualify the Court[1], filed on July 13, 2012.

SUMMARY OF ARGUMENT

Defendant, who has a website dedicated to this case, and his attorney, who has provided commentary about the case to the media on a regular basis, request disqualification of the Court. Defendant takes issue with the Court's determination following a second bond hearing that Defendant and family members who testified on his behalf had not been fully candid and forthright in their dealings with the Court. These findings were based on evidence presented to the Court.

All judges on a regular basis are asked to listen to evidence and make decisions on the evidence presented. If a party doesn't like a court's findings that doesn't mean they have the right to ask for a new judge. Furthermore, counsel for Defendant (who signed the instant Motion, along with his client) makes a similar complaint, despite the fact that ***counsel himself has, in public, to the media,***

[1] The State notes that this is the **second** judge which Defendant has moved to have disqualified.

on more than one occasion, proclaimed essentially the same things he now contends make he and his client "concerned" about being treated "fairly."

Defendant's Motion is long on conjecture and irrelevant and inaccurate bombast (Motion, Background section pages 2 & 3, fn. 1), short on actual fact, and **devoid of legal merit**. One might ponder the motive for including irrelevant material in such a Motion; is the design merely to get sympathy for Defendant and/or to prejudice potential jurors? As an example: among other things, Defendant asserts that he ***might*** have testified to a Grand Jury. However, he omits mention of the fact that when presented the ***actual opportunity*** to testify (at his second bond hearing) regarding the very matters germane to his credibility, he declined to do so. Defendant also refers to other extraneous matters.[2]

The State files this response to make sure the law as it applies on this issue is accurately described and so that any irrelevant and inaccurate misinformation in Defendant's Motion is identified as such and not wrongly believed by the public as being correct.

STANDARD OF REVIEW

> "[a] motion to disqualify shall be filed within a reasonable time ***not to exceed 10 days*** after discovery of the facts constituting the grounds for the motion and shall be promptly presented to the court for an immediate ruling." Fla. R. Jud. Admin. 2.160(e) (2004).

Doorbal v. State, 983 So. 2d 464, 475 (Fla. 2008).

[2] Defendant references that an Information was filed rather than presenting the case to a Grand Jury (as if something illegal or improper was done). As Defense Counsel is aware, legally the only crime required to be presented to a Grand Jury is First Degree Murder, all other crimes can and are routinely charged by the filing of an Information. Defendant also mentions that the affidavit used to establish probable cause failed to include Defendant's so-called self-defense claim. Again, as Defense Counsel is aware, under the law there is no legal requirement that it be done. Self-defense is an affirmative defense. Why this and other such matters is discussed in a motion to disqualify the Judge is an open question; perhaps so it could be published by the media and in Defendant's website, and-- without any response by the State -- be wrongly perceived as accurate.

Much of Defendant's Motion relates to matters which occurred substantially more than ten (10) days prior to the filing of the instant Motion. Despite the fact that he now claims to be in dire apprehension of unfair treatment, apparently none of this bothered him in the slightest until ***after*** this Court set his bond the second time. This Court, and any other, should be justifiably skeptical of such remarkable coincidence.

Indeed, the only matters contained in the Motion which occurred within the relevant time frame, are the Court's Order of July 5, 2012, which set a bond for Defendant. This too is a point Defendant apparently overlooks; despite supposedly being biased against him, the Court has TWICE granted him bond in this high-profile homicide case, and in fact has exercised its discretion on numerous occasions to grant Defendant benefits not ordinarily enjoyed by the criminal accused. For example, Defendant has been permitted to live outside the State of Florida, to have witnesses testify telephonically, and to appear in court in civilian clothing and without shackles even while he was incarcerated.

> A motion to disqualify is governed by section 38.10, Florida Statutes (2011), and Florida Rule of Judicial Administration 2.330. See Parker v. State, 3 So.3d 974, 981 (Fla.2009) (citing Cave v. State, 660 So.2d 705, 707 (Fla.1995)). When ruling on the motion, the trial judge is limited to determining the legal sufficiency of the motion: ***The term "legal sufficiency" encompasses more than mere technical compliance with the rule and the statute***. The standard for viewing the legal sufficiency of a motion to disqualify is whether the facts alleged, which must be assumed to be true, would cause the movant to have a ***well-founded*** fear that he or she will not receive a fair trial at the hands of that judge. See Fla. R. Jud. Admin. 2.330(d)(1). Further, this fear of judicial bias ***must be objectively reasonable***. See State v. Shaw, 643 So.2d 1163, 1164 (Fla. 4th DCA 1994). ***The subjective fear of a party seeking the disqualification of a judge is not sufficient***. See Kowalski v. Boyles, 557 So.2d 885 (Fla. 5th DCA 1990). Rather, the facts and reasons given for the disqualification of a judge must tend to show "the judge's ***undue*** bias, prejudice, or sympathy." Jackson v. State, 599 So.2d 103, 107 (Fla.1992); see also Rivera v. State, 717 So.2d 477, 480–81 (Fla.1998). ***Where the claim of judicial bias is based on very general and speculative assertions about the trial judge's attitudes, no relief is warranted***. McCrae v. State, 510 So.2d 874, 880 (Fla.1987). Parker, 3 So.3d at 982.

Krawczuk v. State, SC10-680, 2012 WL 1207215 (Fla. Apr. 12, 2012).

Simply making findings averse to Defendant is not sufficient to warrant disqualification.

See Correll v. State, 698 So.2d 522, 525 (Fla.1997) ("[***A]n adverse ruling is not sufficient to establish bias or prejudice***."); Ramos v. State, 75 So. 3d 1277, 1282 (Fla. 4th DCA 2011.)

> In Waterhouse v. State, 792 So.2d 1176, 1192 (Fla.2001), the trial judge issued a much more egregious statement to the Florida Parole and Probation Commission to the effect that "***the subject is a dangerous and sick man and that many other women have probably suffered because of him***." We rejected the claim that such a statement by a trial court judge provided a basis for the recusal of the trial judge in subsequent proceedings:
>
> [T]he comment to the Commission ***did not constitute a prejudgment of any pending or future motions that the defendant might file, and was not made outside the official post-sentence investigative process in a manner indicating a predisposed bias against the defendant***. Given the facts in this case, the statement to the Commission ***indicates nothing more than the judge's opinion after having heard evidence*** relating to two exceedingly cruel and brutal murders of women who were sexually assaulted. The circumstances of these murders, coupled with Waterhouse's own admission that he had a "problem with sex and violence," would lead any reasonable person to conclude that Waterhouse is a "dangerous and sick man."Id. at 1195; see also Rivera v. State, 717 So.2d 477, 480-81 (Fla.1998) (finding that the ***written response by the trial judge to a parole commission inquiry that "I am inalterably opposed to any consideration for Executive Clemency and I believe the sentence of the court should be carried out as soon as possible"*** was insufficient to disqualify the judge from further presiding over the case).

Doorbal v. State, 983 So. 2d 464, 476-77 (Fla. 2008).

Likewise, the comments now complained of certainly do not indicate any predisposition as to future motions, and indicate nothing more than the Court's opinion after having heard evidence. Certainly, indications by this Court that Defendant took advantage of the bail system and the court system, and did not ensure that the Court was presented with the truth, do not constitute ***undue*** findings.

> The judge who presides at a trial may, upon completion of the evidence, be exceedingly ill disposed towards the defendant, who has been shown to be a thoroughly reprehensible person. But the judge is not thereby recusable for bias or prejudice, since his knowledge and the opinion it produced were properly and necessarily acquired in the course of the proceedings, and are indeed sometimes (as in a bench trial) necessary to completion of the judge's task. As Judge Jerome Frank pithily put it: "***Impartiality is not gullibility. Disinterestedness does not mean child-like innocence.*** If the judge did not form judgments of the actors in those court-house dramas called trials, he could never render decisions." *In re J. P. Linahan, Inc.*, 138 F. 2d 650, 654 (CA2 1943). . . .
>
> It is enough for present purposes to say the following: First, judicial rulings alone almost never constitute valid basis for a bias or partiality motion. See *United States v. Grinnell Corp.*, 384 U. S. 563, 583 (1966). In and of themselves (*i. e.*, apart from surrounding comments or accompanying opinion), they cannot possibly show reliance upon an extrajudicial source; and can only in the rarest circumstances evidence the degree of favoritism or antagonism required (as discussed below) when no extrajudicial source is involved. Almost invariably, they are proper grounds for appeal, not for recusal. Second, opinions formed by the judge on the basis of facts introduced or events occurring in the course of the current proceedings, or of prior proceedings, do not constitute a basis for a bias or partiality motion unless they display a deep-seated favoritism or antagonism that would make fair judgment impossible. ***Thus, judicial remarks during the course of a trial that are critical or disapproving of, or even hostile to, counsel, the parties, or their cases, ordinarily do not support a bias or partiality challenge***. . . .
>
> ***Not establishing bias or partiality, however, are expressions of impatience, dissatisfaction, annoyance, and even anger, that are within the bounds of what imperfect men and women, even after having been confirmed as federal judges, sometimes display.*** A judge's ordinary efforts at courtroom administration—even a stern and short-tempered judge's ordinary efforts at courtroom administration—remain immune."

Liteky v. United States, 510 U.S. 540 (1994).

In similar vein, counsel for Defendant complains of "misinformation" being conveyed regarding the case (Motion pages 1, 9). It is, of course, Defendant who was responsible for the "misinformation" conveyed at the hearing he requested, both through his active presentation of a witness who is now charged with perjury, and his intentional omission of any corrective measure at the hearing. Defendant's self-serving statements to police following the crime are no different.

> In any event, the fact that a judge has previously made adverse rulings is not an adequate ground for recusal. Nor is the mere fact that a judge has previously heard the evidence a legally sufficient basis for recusal. Likewise, we recently pointed out that a "mere 'subjective fear' of bias will not be legally sufficient; rather, the fear must be objectively reasonable." We do not find Mansfield's allegations of fear to be objectively reasonable.

Mansfield v. State, 911 So. 2d 1160, 1171 (Fla. 2005).

DEFENDANT MISREPRESENTS THE LEGAL STANDARD

It should also be noted that Defendant cites, several times, to the case of Brown v. St. George Island, 561 So.2d 253 (Fla. 1990) for the general proposition that "a statement by a judge that he believes a party has lied indicates a bias against the party." (Def. Motion, p. 5). Defendant fails to present the context of, and limiting language of, that opinion:

> Stocks asserted that in a hearing in suit I directed toward determining whether certain land was subject to the lien of the prior judgment, an attorney sought to submit an affidavit signed by Stocks. According to the motions, which were corroborated by the deposition of an attorney who attended the hearing, Judge Rudd, ***without having heard testimony*** from Stocks, tossed the affidavit back and said, "If Mr. Stocks were here I wouldn't believe him anyway." . . .
>
> We hasten to add that our holding ***should not*** be construed to mean that a judge is subject to disqualification under section 38.10 simply because of making an earlier ruling in the course of a proceeding ***which had the effect of rejecting the testimony of the moving party***. At the very least, before section 38.10 can be successfully invoked in this context, ***there must be a clear implication that the judge will not believe the complaining party's testimony in the future***.

Brown v. St. George Island, Ltd., 561 So. 2d 253, 257 and fn.7 (Fla. 1990).

Here, the Court most certainly ***did*** hear testimony, and while it may have rejected Defendant's implication that his admitted deception of the Court was not intentional, there is no implication at all regarding future hearings.

Parenthetically, the State would point out that Defendant's apparent fixation on the characterization of the evidence of the crime as "strong" is misguided; indeed, as the Court correctly noted, the evidence that Defendant shot and killed the Victim is virtually undisputed. The Court is not required to consider his supposed "affirmative defense" in determining whether the evidence of Defendant's killing of the Victim is strong. Defendant himself has certainly not testified in support of such a defense.

Indeed, Defendant in this Motion cites facts that are inaccurate, misleading, and/or incomplete (Motion, pages 1, 2, 3, 8 and 9). Defendant engages in the selective presentation of portions of evidence while simultaneously disregarding other evidence which by right the Court considered, though Defendant may wish it had not.[3]

[3] Some examples include Defendant not mentioning in the Motion that witnesses describe a chase; neglecting to mention that witnesses describe a struggle before the yelling; claiming that Defendant is heard calling for help on a 911 call when there are witnesses who stated that it is in fact Victim who is so calling; and asserting that Defendant's statements to police were "consistent" with the other evidence despite not mentioning any of the myriad ***inconsistencies*** within those statements, and between those statements and the statements of witnesses and physical evidence, which counsel himself even acknowledged during final argument at the second bond hearing.

COUNSEL FOR DEFENDANT HAS MADE SIMILAR STATEMENTS

IN NUMEROUS PUBLIC FORUMS (a few examples)

"There is no question that they knew about the money, actually in a previous correspondence to the Judge, we had acknowledge that. The Question of whether or not they presented properly, I think it was somewhat misleading to the court. I've gone over that with George."

CNN, Anderson Cooper interview 6/1/2012

O'Mara acknowledged the problem his client faces in securing a new bond. "There is a credibility question that needs to be explained away," he said. O'Mara added that Zimmerman's "credibility has been tarnished, and he will have to rehabilitate it."

Orlando Sentinel, 6/3/2012

"This prosecutor has made a very specific showing that this case is strong," O'Mara said. "It was important for us to counter that."

ABC Action News, 6/29/2012

"While Mr. Zimmerman acknowledges that he allowed his financial situation to be misstated in court.....
"The audio recordings of Mr. Zimmerman's phone conversations while in jail make it clear that Mr. Zimmerman knew a significant sum had been raised by his original fundraising website."

Gzlegalcase.com 6/4/2012

Despite these and other comments peppered throughout his numerous public media appearances in the instant case, interspersed with pleas for donors to add to the fund which Defendant initially took such pains to conceal from the Court, counsel for Defendant now claims that he and his client fear that the Court has a negative impression of Defendant's credibility. "Ironic" is perhaps an understatement in that context.

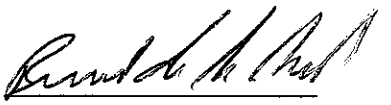
Defendant has enjoyed the benefit of numerous rulings of this Court without complaint; he has sought on several occasions the very relief which he now complains about. His claim that the Court has done anything to engender a ***reasonable*** fear of ***undue*** prejudice is absurd on its face.

WHEREFORE, the State requests this Honorable Court DENY Defendant's Motion.

CERTIFICATE OF SERVICE

I HERBY CERTIFY that a copy of the foregoing has been furnished by email to Mark O'Mara, Esq., Don West, Esq., and the Honorable Judge Kenneth R. Lester Jr. (Judicial Assistant Marilyn McAllister), this 17th day of July, 2012.

ANGELA B. COREY
STATE ATTORNEY

By: 

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