

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 2:16-cv-14072-ROSENBERG/MAYNARD

VIOLA BRYANT, as Personal Representative
of the Estate of GREGORY VAUGHN HILL, JR.,

Plaintiff,

v.

SHERIFF KEN MASCARA, in his Official
Capacity as Sheriff of St. Lucie County and
CHRISTOPHER NEWMAN,

Defendants.

/

PLAINTIFF’S AMENDED MOTION FOR DISQUALIFICATION

Plaintiff, VIOLA BRYANT, as Personal Representative of the Estate of GREGORY VAUGHN HILL, JR., by and through her undersigned counsel, and hereby files this Amended Motion for Disqualification of Judge Robin L. Rosenberg in this matter, and states:

LEGAL BASIS FOR RELIEF REQUESTED

1. In support of her motion, the Plaintiff cites 28 U.S.C. § 455. Thereunder, there are several grounds which are relevant to this matter;

- a. Under subsection (a), “Any justice, judge, or magistrate judge of the United States shall disqualify himself/herself in any proceeding in which his/her impartiality might reasonably be questioned.”
- b. Under subsection (b), “He/She shall also disqualify himself/herself in the following circumstances: (1) Where he/she has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding.”

- c. Under subsection (b)(4), “He/she knows that he/she, individually or as a fiduciary, or his/her spouse or minor child residing in his/her household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding.”
 - d. Under subsection (b)(5) “He/she or his/her spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person: (iii) Is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding.”
 - e. Under subsection (c), “A judge should inform himself/herself about his/her personal and fiduciary financial interests, and make a reasonable effort to inform himself /herself about the personal financial interests of his/her spouse and minor children residing in his household.”
2. The Eleventh Circuit has stated that:
- a. The test under § 455(a) is “whether an objective, disinterested, lay observer fully informed of the facts underlying the grounds on which recusal was sought would entertain a significant doubt about the judge’s impartiality.” Parker v. Connors Steel Co., 855 F.2d 1510, 1524 (11th Cir. 1988). Under § 455(a), a judge has an “affirmative, self-enforcing obligation to recuse /herself sua sponte whenever the proper grounds exist.”
 - b. Additionally, “a judge shall also disqualify himself/herself ‘[w]here he/she has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding.’ ” Johnson v. Stein Mart, Inc., No. 306-

CV-341-J-34TEM, 2009 WL 1424214, at *1 (M.D. Fla. May 20, 2009) (quoting 28 U.S.C. § 455(b)(1)).

3. As this court will see in the instant motion, Plaintiff not only has concerns about the past, but the future. Plaintiff does not, under any circumstances, want to face a third trial of this matter simply because the assigned judge's spouse has written a book and issued statements calling for an "inflection point of meaningful change and reform." Plaintiff strongly believes the death of her son is and should be such an "inflection point." The atrocities in this case should also be an inflection point. If a jury agrees, Plaintiff does not want the Sheriff's Office to point back at this book or these statements from within the judge's family to argue for a new trial based on bias. Matters of disqualification cannot readily be waived.

4. Further, the instant judge's husband has been attributed as saying, "that the erosion of trust in communities that occurs when the people with badges and guns and power abuse it by not following the rules that have been laid out to help them help us keep safe." These themes are within this case. We couldn't agree with Mr. McAuliffe more, but as he is the spouse of the sitting judge, and her former law partner, once again, Plaintiff does not want the Sheriff's Office to point back at this book or these statements from within the judge's family to argue for a new trial.

5. For these and other grounds, Plaintiff desires to bring these matters to the court's attention and to the attention of the Sheriff's Office and Officer Newman's attention. Based on past and future harms, they warrant disqualification under 28 U.S.C. § 455.

FACTS OF CASE

6. This is a civil rights case involving allegations of unconstitutional use of force and police brutality by a deadly police shooting. The primary witness was the decedent's daughter,

although many other witnesses link critical evidence, as well as evidence gathered from the scene indicates Mr. Hill was shot in his own home behind his closed garage door for no justifiable reason.

7. At the previous trial of this matter, which ended on May 24, 2018, a jury awarded a grossly offensive and unexplainable \$4 verdict to the family- \$1 for each of Mr. Hill's three children and \$1 for funeral expenses.

8. Subsequent to trial, this case received national and international media coverage on television, in print and on the radio. NFL Players and others have shared Greg Hill's story and there is substantial interest in the next trial of this matter.

9. Additionally subsequent to trial, Plaintiff engaged in a successful two-year battle to overturn the verdict. Plaintiff prevailed. We now await a new, fair trial.

ABUSES OF DISCRETION WERE CLEAR AND CONTINUE

10. In its opinion reversing Judge Rosenberg, the Eleventh Circuit Court of Appeal emphatically stated, "The District Court abused its discretion in admitting this evidence (of Mr. Hill's probation)." This "was prejudicial and not relevant to any disputed material fact." Further, the Court elaborated, "The danger of such evidence is that the jury may be swayed by the conclusion that Mr. Hill was a "bad man," and therefore more likely to point a gun at police officers, instead of by the evidence before it." Judge Brit C. Grant said at oral argument, "Probation sheds no light on anything in question." This was the exact warning Plaintiff's counsel argued repeatedly to deaf ears.

11. Further during oral argument, all three judges from the Eleventh Circuit were highly critical about allowing in the gun and other items of physical evidence which were never properly disclosed to Plaintiff, with Judge Lagoa saying, "How can you even have 'demonstrative evidence' that's really physical and real evidence?" And about the gun, she asked defense counsel, "you

didn't admit it, because you didn't disclose it." And, "it's not a free for all in federal court." "Did you disclose (the gun)," the judge asked. The response was "not that explicitly, your honor." In fact, they never listed the gun as physical evidence and thus never allowed Plaintiff to test it. Judge Lagoa further described the gun as, "the lynchpin of the whole case." Yet, the Judge not only allowed it in as a demonstration, but the in Court demonstration permanently changed the evidence by causing the DNA free gun to be rubbed against Mr. Hill's shorts repeatedly. It spoliated evidence.

12. In its conclusion, the Eleventh Circuit Court added, "The District Court abused its discretion in admitting evidence of Mr. Hill's probationary status at trial, and this error resulted in prejudice to Ms. Bryant's case against Deputy Newman and Sheriff Mascara." The written opinion did not address the gun ("the lynchpin of the whole case") and yet here we sit with court and Defendants mandated limited access to the gun and other physical items of evidence, including Mr. Hill's own shorts.

13. Because of the emphatic ruling on the improper admission of probation, the court did not reach our other challenges to this court's rulings. However, at oral argument, it was readily apparent that other rulings concerned the court, particularly non-disclosure of the "lynchpin" to the case. Now that "lynchpin" still remains solely in the custody of the Sheriff's Office, where there appears an intent to keep it there.

14. This case may already be headed back towards appellate issues as this court refuses to otherwise allow Plaintiff the same access to the subject firearm and Mr. Hill's shorts as Defendants, insisting each can only be inspected in its custody under its supervision. Our only viable relief is to obtain a different judge on this issue at this point.

RULINGS AGAINST PLAINTIFF

15. Prior to and during trial, numerous efforts to balance justice and prevent injustice were made by Plaintiff and Plaintiff's counsel. In nearly each instance, the sitting judge ruled against Plaintiff, introducing massive amounts of harmful evidence. Some of this evidence's introduction was deemed to be an "abuse of discretion" by the Eleventh Circuit Court of Appeals. Other actions of the Court and defense counsel were admonished during oral argument. Some remains unaddressed with Plaintiff having little faith that she will be able to change the sitting judge's mind absent more appellate intervention.

16. Plaintiff has lost nearly every substantive motion before the sitting judge. This includes:

- a. Granting Defendant's Motion for Protective Order as to Sheriff Mascara's deposition being set for Monday, October 3, 2016 and Memorandum of Law by Ken Mascara. [DE 30];
- b. Denying Plaintiff's Motion to Take the Deposition of Stefani Mills by Videography [DE 135];
- c. Denying Plaintiff's Motion to Exclude Deposition Testimony of Karen Stephens for use at Trial [DE 190];
- d. Overruling of Plaintiff's Objection to Defendants' Introduction of Evidence as to Mr. Hill's Intoxication [DE 185];
- e. Overruling Plaintiff's Objection to Defendants' Introduction of Evidence as to Mr. Hill's Probationary Status [DE 186];
- f. Overruling Plaintiff's Objection to Defendants' Exhibit Numbers 24 and 25 [DE 184];
- g. Overruling Plaintiff's Objection to Defendants' Exhibit Number 27 [DE 183];
- h. Order Granting Defendants' Motion to Allow Unloaded Firearm in Courtroom as An Exhibit During Trial, despite lack of disclosure of same [DE 192];
- i. Denying Plaintiff's Motion for Change of Venue [DE 235];
- j. Denying Plaintiff's Motion to Compel Release of Property [DE 236];

- k. Denying Plaintiff's Motion for New Trial [DE 237];
- l. Denying Plaintiff's Motion for Juror Interview [DE253] and Motion for Leave to file additional Evidence in Support of Plaintiff's Timely Filed Motion for New Trial [DE258];
- m. As well as numerous other adverse rulings at trial and post-trial. In fact, Plaintiff nearly lost every single major motion it presented.

17. Courts are occasionally reversed and this does not mean judges hold bias or prejudice. However, based on the court's recent rulings, we seem to be headed back to the same position about whether this trial will be fair and both parties will have equal standing and right to view the evidence. We must revisit these issues without bias.

JUDGE AS POTENTIAL WITNESS / INVOLVEMENT IN SPOILIATION & SANCTIONABLE CONDUCT

18. As the Eleventh Circuit Court of Appeals noted, the gun and other physical items of evidence were (1) the "lynchpin" on the case and (2) not properly disclosed by the Sheriff's Office.

19. Counsel for Plaintiff filed Motions and made objections to (1) bring this to the Court's attention and (2) try and prevent the severe prejudice of allowing the gun to not only be used as evidence, but part of a contemporaneous demonstration by someone who was not at the scene, not disclosed as someone who would do a demonstration and defense counsel and the witness only did such a sloppy, offensive demonstration after Plaintiff's experts had already testified, such that it was without remedy.

20. Making matters worse, all reports failed to link the gun to Mr. Hill. No fingerprints, no DNA, no registration and no other evidence. During the surprise demonstration allowed by Judge Rosenberg, the gun was repeatedly handled in conjunction with and rubbed against the bloody shorts. An expert will testify in this matter as to the spoliated evidence.

21. In essence, Judge Rosenberg's erroneous, overturned rulings permanently prejudiced Plaintiff as now she can't have the same tests done to a gun which may have been planted or at least never was in the presence of the bloody portion of the shorts. The evidence is forever contaminated.

22. Plaintiff will seek sanctions for this, may seek to introduce an inability to test the items, will seek possible other remedies related to spoliation and Judge Rosenberg now is at least factually involved and intertwined with the evidence in this case and any adverse rulings could be in her best interests. As such, the potential for bias and for her to be called as a witness in some format is real, prejudicial and immediate.

MICHAEL MCAULIFFE, ESQUIRE
"THE LAW ENFORCEMENT CANDIDATE" DURING THE SUBJECT TRIAL

23. Making matters worse, Judge Rosenberg has an additional, more unusual challenge to her appearance of impropriety and bias.

24. Judge Robin Lee Rosenberg is married to the former Florida State Attorney for Palm Beach County Michael McAuliffe. In addition to being partners in marriage, the two have repeatedly been law partners and shared experiences.

25. According to his biography, "Michael Mcauliffe has been a practicing lawyer for over thirty years. He was a federal prosecutor serving both as an assistant U.S. Attorney in the Southern District of Florida and an honors program trial attorney in the Criminal Section of the Civil Rights Division at the Department of Justice in Washington, D.C. In 2008, Michael was elected and served as the State Attorney for Palm Beach County, leading an office of over 120 prosecutors".

26. Mr. McAuliffe recently, continuously and publicly is expressing positions regarding civil rights cases, the "Black Lives Matter Movement," and a career of relationships with

law enforcement same has and will create additional issues of an appearance of bias, impropriety and spouse caused familial conflict in the future.

27. It was recently discovered that Judge Rosenberg’s husband, Michael McAuliffe, ran an unsuccessful campaign for a state court judicial seat at the same time this case was approaching trial. It is worth noting, Mr. McAuliffe:

- a. Was a prominent elected prosecutor and wrote and spoke about his excellent working relationships with law enforcement during the campaign;
- b. Was accused in 2011 by “a retired police officer and radio show host has filed an ethics complaint against Palm Beach County State Attorney Michael McAuliffe, alleging he dropped official misconduct charges against two West Palm Beach police officers in hopes of getting political support from the local police union.” (see <https://www.palmbeachpost.com/article/20111013/NEWS/812022804>);
- c. Had a history with the Sheriff Mascara (a defendant), including working with him in the prosecution of cases¹. For instance in 2010, a task force of Michael McAuliffe, State Attorney for Palm Beach County; Ric Bradshaw, Sheriff, Palm Beach County Sheriff’s Office; and Ken J. Mascara, Sheriff, St. Lucie County Sheriff’s Office, announced the federal indictment of sixteen (16) individuals in connection with a long-term undercover corruption investigation involving Florida state prison guards. (See <https://archives.fbi.gov/archives/miami/press-releases/2010/mm021110.htm>);
- d. Ran for judge at the very time this case was tried, promoting himself as “a law enforcement candidate,” including prominently featuring sheriff endorsements and commenting to media editorial review committees about his support of and by law enforcement. Of course, a substantial civil rights verdict from within his family may have created issues for his election and his endorsements.
- e. Prominently featured, “[Sheriff Bradshaw Endorses Michael McAuliffe for Circuit Court Judge](#)”, as a feature of his campaign alongside photos of his wife and children and description of his wife as a sitting judge.
- f. Prominently featured a web page entitled, “police endorsements,” which is no longer available but was at the following link (<http://www.mcauliffeforjudge.com/2018/04/27/police-endorsement>).
- g. Ran a Facebook page which featured many photos of the judge in this matter and pro law enforcement statements, endorsements and photos.

¹ This Court prevented his deposition from being taken in this case.

28. On his campaign materials and websites, Judge Rosenberg was prominently described as a sitting federal judge, including wearing her husband's campaign shirt.

29. Under "Major Endorsements," McAuliffe prioritized two entities, "Palm Beach County Police Benevolent Association," and the "Fraternal Order of Police, Florida State Lodge." The support of the highest law enforcement union in the state would have been nice if disclosed before trial. That information is still located on a website archive located at <https://web.archive.org/web/20180626213003/http://www.mcauliffeforjudge.com/endorsements/> A litany of government officials are also listed, although none from Ft. Pierce, but definitely within the southern district.

30. This was all learned during the pendency of the appeal. By the time the case was reversed and remanded, Mr. McAuliffe was no longer running for office. It certainly presents questions about whether Judge Rosenberg stood as the best judge, at the time, to hear this matter and certainly presented evidence her impartiality might reasonably be questioned. For instance, would a large, highly reported verdict have hurt her husband's potential election? Did the endorsement by the Fraternal Order of Police influence rulings? We hope and suspect not, but a reasonable question exists.

AUTHOR AND CIVIL RIGHTS PROPONENT

31. However, it gets even more complex and impartiality might reasonably be questioned further, even by the Defendants herein, given Mr. McAuliffe's recent statements which could give either side grounds for disqualification.

32. Mr. McAuliffe recently published a book, "No Truth Left to Tell" and sought publicity for same.

33. The book features a noose on its cover. This conjures up strong feelings for the family which cannot be denied and ignored. It uses words like the actual spelling of the “N-word” to set the stage of a racially conflicted town. No matter Mr. McAuliffe’s intent, it is a book about race, policing and injustice, themes which are lived by Plaintiff and her family. Plaintiff’s experiences are not fiction.

34. Upon notice to the family, they were immediately concerned and asked we file this motion. Making matters worse, the book features numerous issues we must point out:

- a. A young black girl witnessed the horrid acts of the murder of a black male, which she carries with her for life in the form of fear and intimidation. Destiny Hill saw her father murdered and struggles with it daily.
- b. Further, there are multiple passages about the trustworthiness of law enforcement, including misconduct, again, which is alleged here in the instant case.
- c. There is a debate among the characters within the book, “Do you charge the cop for the extra hit when he just ran half a mile chasing down a fleeing scumbag? When does the extra hit go from questionable -but maybe understandable- to criminal? The line exists, but even when you grabbed on, it squirms like a slippery eel.” As a reminder, Defendant (former Deputy Newman) chased Mr. Hill into a home and entered the home and used force on him for simply allegedly violating a hurricane curfew in a separate encounter prior to shooting him. Former Deputy Newman simply responded to a noise complaint here, shooting Mr. Hill behind a closed garage door. Former Deputy Newman has had other claims and lawsuits against him. This eel analogy is McAuliffe’s, not ours, but certainly presents questions of justice in America and intersect his words with this trial in a manner that cannot be denied.
- d. McAuliffe also writes, “the victims in the police cases aren’t active members of the PTA.” It is understood that this purports to be a work of fiction, but that conclusion is a problem with racial justice in America and Mr. Hill had every right to be considered as the “most active member of the PTA” when deputy Newman responded to a noise complaint, but clearly he was not. Even the Eleventh Circuit said Judge Rosenberg’s rulings lead to an unfair characterization of him as a “bad man”.
- e. McAuliffe also writes, “How many times did I represent someone who was guilty as hell but also got a cop’s summary punishment or had an officer lie on the stand to help get that guilty verdict a little faster.” This case involves a change of story three times by the shooting officer.

- f. In McAuliffe's book, prosecutors use illegal, inappropriate acts to get evidence. Here, they held evidence which later wasn't disclosed by the police who continued to hold it for unexplained reasons and other misdeeds.
- g. In McAuliffe's book, a detective falsified evidence and extorted a witness to get a conviction. Here, St. Lucie County Sheriff's Office caused a mistrial in a prior civil rights case (the case of the Estate of Craig Ferguson) because they pulled over a sitting juror during trial and separately a Defendant officer spoke with a juror during trial.
- h. In McAuliffe's book, he recognizes a grand jury's reluctance to indict police officers, comparing it to a "high-wire act." Plaintiff contends the actions by this grand jury certainly was a circus, including relying on evidence later admitted as "misleading".
- i. Most concerning however, the lead lawyer at trial is followed to his hotel by partners of the Defendant, which both scares him and intimidates him. Our office has previously filed affidavits in support of a denied motion to change venue, exhibiting they were followed to their hotel by marked patrol cars of the Defendant. After verdict, members of the Defendant's office stood by our cars in another sign of intimidation.
- j. In one passage, McAuliffe addresses another similarity to the issues here- officers not logging in guns to use them as "a planted weapon." McAuliffe writes, "A planted weapon can make a simple drug possession case a minimum mandatory." There was nothing to trace the subject gun to Mr. Hill.
- k. McAuliffe describes law enforcement as, "a hell of a close-knit group. They stick together... (and) with no real oversight, it goes rogue." This "fiction" is told by a former acclaimed federal prosecutor and elected state prosecutor. He tells the experiences, which he admits are partially based on real life, in horrifying detail, especially in light of all of the issues in this case.
- l. McAuliffe writes, "You've got officers robbing and beating their victims." Making matters worse, his character notes, "I know you know that, but it's still a shock when you realize no one seems to care, or worse, the jury ignores the evidence because they're unwilling to convict a cop of a crime." Once again, these themes are part of Plaintiff's concerns and personal experiences in this very case.
- m. While these themes and abuses may be grotesquely universal, the similarity to this case is too close for comfort for the Plaintiff. She would prefer to have a judge whose family was not simultaneously ruling against her while personally profiting over a story way too similar to theirs.

35. An article described Mr. McAuliffe's book-writing ambitions as, "Mr. McAuliffe has relished the opportunity afforded by recent BLM (Black Lives Matter) protests to discuss the novel's themes of criminal justice and civil rights."

<https://vineyardgazette.com/news/2020/08/24/first-time-author-long-time-lawyer-puts-racial-justice-center-stage>.

36. Mr. McAuliffe said, “I think it’s always a needed time to talk about these issues,” he said. “Race and power and injustice—that’s a volatile mix of issues, but it’s necessary that we keep talking. Then maybe we finally reach an inflection point of meaningful change and reform.”

<https://vineyardgazette.com/news/2020/08/24/first-time-author-long-time-lawyer-puts-racial-justice-center-stage>.

37. Mr. McAuliffe also said, “I just hope that ends up being one of the themes we can talk about,” McAuliffe said. “Because we are at this inflection point in discussing police brutality, and we now know the harm that the erosion of trust in communities that occurs when the people with badges and guns and power abuse it by not following the rules that have been laid out to help them help us keep safe.” <https://www.law.com/dailybusinessreview/2020/06/26/an-inflection-point-ex-florida-prosecutor-talks-anti-racism-protests-new-legal-thriller-on-white-supremacy/>

38. Greg Hill’s case stands as one of those reforms- a case which has grabbed national attention as a result of a, now reversed, \$4 verdict as a result of clear and overturned abuses of discretion by the judge.

39. This ethical quagmire is one which concerns the decedent’s mother and the estate’s personal representative, Mrs. Bryant. With Judge Rosenberg’s husband as an advocate for social change and desirous of an inflection point, it would be unfair and prejudicial to justice for Judge Rosenberg to be called in judgment of such a case, which could be and should be that inflection point.

40. If so, it also stands to increase Mr. McAullife's audience and book sales, which would bring profit to the very judge in this case. Mr. McAuliffe also plans to teach classes on these issues.

41. The open account of policing, even written as "fiction," is important. The problem is it now puts Plaintiff, Plaintiff's counsel, Defendants, Defense's counsel and this case in a one-of-a-kind dilemma. Ignore it or bring the issues to the court's attention. Plaintiff chooses to latter.

42. The fact is the book and rulings, to date, create and continue a system out of balance, partial, biased and unfair. Maybe Mrs. Bryant should sit down with an expert like Mr. McAullife and explore whether his fiction is her fact.

WHEREFORE, Plaintiff respectfully requested that this Honorable Court enter an Order disqualifying Judge Robin L. Rosenberg from this matter and any other relief the Court deems just and fair.

CERTIFICATION PURSUANT TO LOCAL RULE 7.1(a)(3)

The undersigned hereby certifies he has conferred with Defendants' counsel, Summer Barranco, in a good faith effort to resolve the issues raised by this motion and counsel for Defendants object to the relief requested in Plaintiff's Motion for Disqualification.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I electronically filed the foregoing with the Clerk of the Court using the CM/ECF and a copy hereof has been furnished to Summer M. Barranco, Esquire, Purdy, Jolly, Giuffreda & Barranco, P.A., 2455 East Sunrise Boulevard, Suite 1216, Fort Lauderdale, FL

33304, by email to summer@purdylaw.com, and melissa@purdylaw.com, this **31st** of August, 2020.

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/s/ John M. Phillips

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