CRIMINAL DOCKET NUMBER 60600

THIRD JUDICIAL DISTRICT COURT, PARISH OF UNION

STATE OF LOUISIANA

STATE OF LOUISIANA

FILED
Union Parish Clerk of Court

VERSUS

JUN 19 2023

KORY YORK

FILED: Monet Frazier, Deputy Clerk
Third Judicial District Court : DY. CLK.

ORDER

The foregoing Motion to Quash and Request for *Kastigar* Hearing with Incorporated Authorities filed by the defendant Kory York having been considered,

IT IS ORDERED that an evidentiary hearing on the Motion be held on the 23rd day of June, 2023 at 1:30 o'clock P. m.

THUS DONE AND SIGNED, this 15th day of June, 2023.

HONORABLE THOMAS W. ROGERS
JUDGE, THIRD JUDICIAL DISTRICT COURT

RECEIVED
Union Parish Clerk of Court
JUN 15 2023
To Judge
3RD JUDICIAL DISTRICT COURT
Dy. Clerk:

CRIMINAL DOCKET NUMBER 60600

THIRD JUDICIAL DISTRICT COURT, PARISH OF UNION

STATE OF LOUISIANA

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VERSUS

KORY YORK

FILED: _____ : _____ DY. CLK.

MOTION TO QUASH and REQUEST FOR *KASTIGAR* HEARING with INCORPORATED AUTHORITIES

TO THE HONORABLE, THE THIRD JUDICIAL DISTRICT COURT, PARISH OF UNION, STATE OF LOUISIANA:

NOW INTO COURT, through undersigned counsel, comes KORY YORK (hereafter Mr. York), and for the purpose of this pleading respectfully represents the following:

1.

Mr. York is charged by Bill of Indictment and Amended Bill of Indictment with one count of negligent homicide in violation of La.R.S. 14:32 (Count One), and ten counts of malfeasance in office in violation of La.R.S. 14: 134A(1) or A(2) (Counts Two through Eleven). The charges in both Bills pertain to Mr. York's participation in the May 10, 2019 arrest of Ronald Greene.

2.

Mr. York now moves to quash the Bill of Indictment and the Amended Bill of Indictment, pursuant to La.C.Cr.P. Arts. 531 *et. seq.*

3.

In February 2020, the Federal Bureau of Investigation began what would become a years-long review of the arrest of Ronald Greene to determine whether the officers involved had committed any criminal acts, including possible civil rights violations.

4.

In the meantime, the Louisiana State Police Internal Affairs division conducted an administrative investigation (hereinafter referred to as the IA investigation) into the circumstances of Mr. Greene's arrest. Such administrative investigations are governed by the Rules of the Louisiana State Police Commission (hereinafter sometimes referred to as the Rules), as well as a manual titled Louisiana State Police Policy and Procedure (sometimes referred to as "P.O." followed by a number).

5.

Rule 14.1 mandates that, "Every classified member of the State Police shall...(b) Answer truthfully, whether under oath or otherwise, all proper questions put to him or her by authorized representatives of the State Police Commission and/or its Director."[1] Similarly, P.O. 901 "*Code of Conduct and Ethics*", provides in section 56: "It shall be the duty of every employee to cooperate with any administrative investigation conducted by the department."[2]

6.

Rule 12.2(a) provides that "A permanent employee may only be disciplined for cause."[3] Pursuant to Rule 12.2(b), "Disciplinary actions include only the following: dismissals, suspensions without pay, reductions in pay, and involuntary demotions."

7.

"Cause" for discipline is defined in Chapter 1 of the Rules as "conduct which impairs the efficient or orderly operation of the public service."[4] There can be little doubt that any refusal to cooperate in the IA investigation, in violation of specific rules requiring members

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[1] A copy the applicable portion of Chapter 14 of the Rules of the Louisiana State Police Commission, "Disciplinary Actions, Removals and Resignations" is attached hereto as Exhibit 1.

[2] A copy of the applicable portion of P.O. 901 is attached hereto as Exhibit 2.

[3] A copy of Chapter 12 of the Rules of the Louisiana State Police Commission, "Disciplinary Actions, Removals and Resignations" is attached hereto as Exhibit 3.

[4] A copy of the applicable portion of Chapter 1 of the Rules of the Louisiana State Police Commission, "Definitions", is attached hereto as Exhibit 4.

of the Louisiana State Police to cooperate and to answer truthfully, would constitute conduct which impairs the efficient operation of the State Police, and hence be "cause" for discipline, up to and including dismissal from the LSP.

8.

Accordingly, the Rules of the Louisiana State Police Commission recognize that statements made during the course of an administrative investigation of a law enforcement officer are inadmissible against him in any criminal proceeding, and the officer must be advised of this immunity from the use of his compelled testimony. See Rule 12.17: "No statement made by the Louisiana State Police Trooper during the course of an administrative investigation shall be admissible in a criminal proceeding against him/her and he/she shall be so advised at the beginning of the interview or interrogation."

9.

Additionally, state law immunizes law enforcement officers from the subsequent use, in any criminal proceeding, of their compelled statements. La. R.S. 40: 2531, Paragraph B(5) provides: "No statement made by the police employee or law enforcement officer during the course of an administrative investigation shall be admissible in a criminal proceeding".

10.

The Fifth Amendment to the United States Constitution, made applicable to the States through the Fourteenth Amendment, guarantees that no person "shall be compelled to be a witness against himself in any criminal case". Similarly, Article I, Section 16 of the Louisiana Constitution provides, in part, that "No person shall be compelled to give evidence against himself."

11.

The United States Supreme Court has made it crystal clear that the use of statements compelled by the threat of possible loss of employment are inadmissible in evidence, and that neither the statements nor their fruits may be used against the accused.

12.

In *Garrity v. State of New Jersey*, 385 U.S. 493, 87 S.Ct. 616, 618, 17 L.Ed.2d 562 (1967), the Supreme Court summarized the law pertaining to compulsion: "Coercion that vitiates a confession ... can be mental as well as physical; the blood of the accused is not the only hallmark of an unconstitutional inquisition. Subtle pressures may be as telling as coarse and vulgar ones. The question is whether the accused was deprived of his free choice to admit, to deny, or to refuse to answer." (Internal citations omitted). The Court in *Garrity* specifically noted that, "The option to lose their means of livelihood or to pay the penalty of self-incrimination is the antithesis of free choice to speak out or to remain silent...the statements were infected by the coercion inherent in this scheme of questioning and cannot be sustained as voluntary." *Id.*

13.

The High Court has also repeatedly ruled that the "fruits" of compelled statements are likewise inadmissible. For instance, in *United States v. Hubbell*, 530 U.S. 27, 120 S.Ct. 2037, 2045, 147 L.Ed.2d 24 (2000), the Court reiterated the teachings of *Kastigar v. United States*, 406 U.S. 441, 92 S.Ct. 1653, 32 L.Ed. 2d 212 (1972) in which it "particularly emphasized the critical importance of protection against a future prosecution 'based on knowledge and sources of information obtained from compelled testimony.'" 120 S.Ct. at 2045.

14.

Mr. York submitted to an Internal Affairs investigation interview concerning the arrest of Ronald Greene (hereinafter sometimes referred to as the IA interview) on September 15, 2020.

15.

In compliance with *Garrity* and its progeny, as well as La. R.S. 40: 2531 B(5) and the Louisiana Sate Police Commission Rules, at the outset of his September 15, 2020 interview by Internal Affairs Mr. York was advised that nothing he said could be used against him "in

any way, shape or form". The following exchange between Michael Talley (MT) and Kory York (KY) confirms that he was explicitly told, and fully understood, that while he was "compelled" to answer truthfully, his statements could not be used against him:

Mr. Talley: Are you aware that this interview is being recorded?

Kory York: Yes.

MT: Very good. Okay. You were provided a copy of your administrative rights, which you've signed acknowledging that you read and understand your rights?

KY: Yes.

MT: Okay. You were also provided a copy of the LSPC rules and the law enforcement bill of rights, in which you have the right to have an attorney present.

KY: Correct.

MT: Remember, I asked you about that?

KY: Yeah.

MT: But however, for the purpose of this interview, you are waiving that right?

KY: Yes.

MT: And also, I want to make sure that you understand this is an administrative investigation?

KY: Yes.

MT: Okay. What we find out or what we - - all the information in this stuff, is not gonna be used against you, criminally, in any way, shape or form.

KY: Yes.

MT: It cannot be - -

KY: Yes.

MT: - - due through Garrity.

KY: Correct.

MT: Okay. But you are compelled to tell us the truth - -

KY: Yes.

MT: - - and what you know?

KY: Yes.

MT: All right. I just want to make sure that you know about Garrity.[5]

16.

After Mr. York was interviewed by Senior Trooper Talley, Talley generated and filed an Internal Affairs report pertaining to Mr. York's participation in the arrest of Ronald Greene. Dated October 20, 2020 and identified as Case # 20-018, it states, on page 2, that M/T Kory York was interviewed. In a section entitled "Investigative Findings" the author of the report notes "The following information [referring to the contents of his report] was obtained from M/T York's interview, as well as, video footage from Tpr. DeMoss and Lt. Clary's Body-Worn Cameras."[6] Throughout Talley's report, statements made by Mr. York during his IA interview were quoted.[7]

17.

After the federal government's thorough review of Mr. Greene's arrest apparently revealed no basis for a federal prosecution, the Union Parish District Attorney took control of the matter. At some point after the United States Attorney declined to prosecute and Mr. Belton took over, the State hired Mr. Seth Stoughton to render an expert opinion in the case.

18.

Mr. York now shows that despite the United States and Louisiana constitutions, the rulings of the U.S. Supreme Court, state law, the Louisiana State Police Commission Rules and the specific assurances made to Mr. York that nothing he said during his

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[5] Attached hereto as Exhibit 5 is a certified transcript of the audio recording of Mr. York's IA interview.

[6] A copy of the IA Report pertaining to the "allegation of use of force on the part of Master Trooper Kory York, LSP - Troop F" dated October 20, 2020 and identified as Case # 20-018 is appended hereto, marked Exhibit 6, under seal.

[7] On October 28, 2020, Senior Trooper Talley filed a Supplemental Report, "#20-018 [Supplemental]" in which he outlined the findings of the disciplinary review committee which had considered the allegations against Mr. York. Statements made by Mr. York during the IA interview are not quoted in the Supplemental Report.

state police interview would "be used against [him] criminally in any way, shape or form", the responses Mr. York gave during the Internal Affairs investigation have already been used by the State to develop evidence against him, and in the presentation of the case to the Grand Jury.

19.

The State has provided the defense a copy of Mr. Stoughton's report, which was signed on November 19, 2022. In it, the State's expert made specific reference to the compelled testimony of Mr. York, and to the IA report (#20-018) pertaining to Mr. York's involvement in the arrest of Mr. Greene. At p. 110 of Mr. Stoughton's report, the following language appears: "Mst. Trp. York later specifically stated...." , followed by footnote 359. That footnote reads as follows: "Memorandum from Master Trooper Kevin Ducote to Captain Christopher Eskew re: Allegation of Use of Force on the part of Master Trooper Kory York - Troop F, 20-018, p.4." [Report #20-018 (appended hereto under seal as Exhibit 6) pertaining to Mr. York was actually from Senior Trooper Talley to Eskew, not Ducote to Eskew.][8]

20.

In addition to providing the prosecution with his report, the State's expert appeared before the grand jury which indicted Mr. York. According to the State's "Response to Defendant's Request for Bill of Particulars with Incorporated Memorandum", paragraphs V and VI, Mr. Stoughton "testified before the Grand Jury."

21.

In its latest pleading, the State again demonstrated its reliance on Mr. Stoughton to obtain an indictment. At page 4 of the State's "Memorandum in Opposition to Defendant's Supplemental Objection to State's Failure to Respond to Defendant's Motion for Bill of Particulars and Motion to Quash with Incorporated Memorandum", filed on May 24, 2023 (hereinafter referred to as the State's "May 24 Memo"), the State first quotes from its earlier

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[8] Copies of pages 1 [cover page] and 110 of Mr. Stoughton's report are appended hereto, marked Exhibit 7, under seal.

Response, that the expert "testified before the Grand Jury" and then drops footnote 3: "Stoughton's report is replete with specific references to individual videos and time stamps." Not mentioned by the State is the fact that Stoughton's report is also replete with references to statements made during the IA investigations, including Mr. York's statement (referenced on page 110 of the expert's report).

22.

Later on page 4 of its May 24 Memo, the State explicitly points out the prosecutorial importance of the Stoughton report: "The reference to the expert report, which of course has been provided to the defendant in discovery, not only highlights portions of the video constituting what the State alleges are the batteries, but provides the factual basis upon which the State will rest in proving that the batteries were not justified." (Emphasis added).

23.

The State's "use" of Mr. York's compelled statements could hardly be more clearly demonstrated. Such use is prohibited by law.

24.

In *Chavez v. Martinez*, 538 U.S. 760, 123 S.Ct. 1994, 2001, 155 L.Ed.2d 984 (2003) the High Court stated: "We have ... recognized that governments may penalize public employees and government contractors (with the loss of their jobs or government contracts) to induce them to respond to inquiries, so long as the answers elicited (and their fruits) are immunized from use in any criminal case against the speaker." (Internal citations omitted).[9]

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[9] *Dicta* in *State v. Buckley*, 120 So.3d 819, 826 (2011-1811) (La. App. 4 Cir. 7/3/13) to the effect that La.R.S. 40: 2531(B) contains no threat to an officer's employment in the event that he refuses to answer an incriminating question is neither dispositive nor persuasive. It is clear that Mr. York was interviewed as part of an Internal Affairs investigation in which he was required to cooperate, and it is equally clear that failure to do so could result in disciplinary action. In *Buckley*, there were both administrative and criminal investigations pending, but the NOPD officer was fully aware that he was being questioned in connection with the criminal investigation, not an administrative proceeding. Buckley had his attorney present, and he was advised of his *Miranda* rights, which he waived. That the NOPD officer conducting the criminal investigation also advised Buckley of the "policeman's bill of rights" did not alter the fact that the statements were made in connection with the criminal investigation, after the

25.

In *Kastigar v. United States, supra*, the Court reiterated its holding in *Murphy v. Waterfront, supra*, that once a defendant demonstrates he has testified under a grant of immunity, the prosecution has "the burden of showing that their evidence is not tainted by establishing that [it] had an independent, legitimate source for the disputed evidence." The Court continued, "This burden of proof, which we affirm is appropriate, is not limited to a negation of taint; rather, it imposes on the prosecution the affirmative duty to prove that the evidence it proposes to use is derived from a legitimate source wholly independent of the compelled testimony." 406 U.S. at 460.

26.

The"total prohibition" on the use of compelled testimony "provides a comprehensive safeguard" barring its use as an "'investigatory lead' and also barring the use of any evidence obtained by focusing investigation on a witness as a result of compelled disclosures." *Kastigar, supra.*

27.

"The fundamental rule" in order for a grant of immunity to be valid is that "the witness must be in the same position after testifying that he or she would have been if the testimony had not been compelled. Where the witness asserts that he would not have been indicted but for the direct or indirect use of his previously compelled testimony, and where the government cannot affirmatively prove the contrary, arguably the only manner of restoring the witness to the pre-immunity position is to quash the indictment." *State v. Foster*, 845 So.2d 393, 403-404, 2002-1259 (La. App. 1 Cir. 2/14/03).

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defendant had been informed of and waived his *Miranda* rights, and while accompanied by counsel. The trial court's denial of the motion to suppress was upheld by the appellate court. The facts clearly make this distinguishable from *Garrity* and its progeny (as well as from the case at bar) and the Fourth Circuit's gratuitous attempt to distinguish *Garrity* on the basis that officers can refuse to answer questions in an administrative proceeding, without incurring consequences, is simply incorrect, at least with respect to Louisiana State Troopers.

28.

The State in this case not only failed to immunize Mr. York's statements from use, it made his statements available to its expert, relied on the expert's report to obtain an indictment, and has stated on the Record that the expert's report constitutes the "factual basis upon which the State will rest" in proving its case.

29.

Mr. York asserts that had it not been for Mr. Stoughton's use of his statements in preparing his report, and during his subsequent expert testimony before the grand jury, he would not have been indicted.

30.

The violation of Mr. York's constitutional right against compelled self-incrimination requires that the indictments be quashed. "Direct, indirect, or derivative use of compelled testimony in obtaining an indictment justifies dismissal of the indictment." *State v. Foster, supra*, 845 So.2d at 404, citing *United States v. Hubbell, supra.*

31.

"It is the duty of the courts to strike down such prosecution where it is manifestly violative of a defendant's constitutional rights, as in this case." *State v. Peterson*, 451 So.2d 1131, 1135 (La. App. 5th Cir. 1984) (quashing the indictment where the State made use of the defendant's statements given under a grant of federal immunity).

32.

Mr. York is aware that the State must be afforded an opportunity to prove that Mr. York's compelled statements have not been used against him in the obtaining of the indictments in this case. Accordingly, Mr. York now moves for an evidentiary hearing, pursuant to *Kastigar v. United States, supra* and *United States v. Hubbell, supra*, 120 S.Ct. at 2048.

WHEREFORE, Mr. York prays that a *Kastigar* evidentiary hearing be set, and that after due proceedings, the Bill of Indictment and the Amended Bill of Indictment pending against him be dismissed, and for all other relief to which he is entitled in the premises.

Respectfully submitted,

LAW OFFICES OF J. MICHAEL SMALL

BY: _____

J. MICHAEL SMALL
STATE BAR ROLL # 8810
KATHRINE S. WILLIAMSON
STATE BAR ROLL # 08554
POST OFFICE BOX 12720
ALEXANDRIA, LOUISIANA 71315
TELEPHONE: (318) 487-8963
EMAIL: jmikesmall@aol.com

BY: _____

T. TAYLOR TOWNSEND
POST OFFICE BOX 784
NATCHITOCHES, LA 71458
TELEPHONE: (318) 238-3612
STATE BAR ROLL # 20021

CERTIFICATE

I hereby certify that a copy of the above Motion to Quash and Request for *Kastigar* Hearing with Incorporated Authorities has been served on Special Assistant District Attorney Hugo Holland by United States Mail with proper postage affixed.

Alexandria, Louisiana, this 13 day of June, 2023.

_____
J. MICHAEL SMALL