

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CRIMINAL DIVISION

FILED

JUN 19 2018

Judge Domenica Stephenson-1967

PEOPLE OF THE STATE OF ILLINOIS,)
)
Plaintiff,)
)
vs.)
)
DAVID MARCH, JOSEPH WALSH, and)
THOMAS GAFFNEY,)
)
Defendants.)

Case No. 17 CR 9700

MOTION TO DISMISS INDICTMENT

NOW COME the Defendants, DAVID MARCH, JOSEPH WALSH and THOMAS GAFFNEY, by their attorneys, and pursuant to 725 ILCS 5/114-1 Moves this Honorable Court to Dismiss the Indictment. In support thereof, the Defendants state the following:

INTRODUCTION

On June 26, 2017, the Special Grand Jury returned a true bill of Indictment against the three Defendants, charging each of them with Conspiracy, Official Misconduct and Obstructing Justice. According to the transcripts tendered in discovery, eighteen (18) witnesses were presented to the Special Grand Jury by the Special Prosecutor, beginning on March 21, 2017 and ending on June 26, 2017. Three of those witnesses were presented on the date of the true bill, June 26, 2017. For the reasons set forth below, this Indictment should be dismissed because there was no evidence presented to support the charges, the Special Prosecutor failed to comply with 725 ILCS 5/112-4 (b) and the Special Prosecutor committed prosecutorial misconduct in the

Grand Jury, any one of these reasons or a combination of these reasons resulted in substantial injustice to the Defendants.

Please note: The Defendants do not know how the Special Grand Jury was selected. Indeed, the Defendants may never know. As such, this motion does not address whether the Indictment was in violation of 725 ILCS 5/114-1(a)(4). Be that as it may, the Defendants are reserving their right to address that issue in the future, if necessary.

ARGUMENT

I. NO EVIDENCE WAS PRESENTED TO THE GRAND JURY TO SUPPORT THE CHARGES

“A wrongful indictment is no laughing matter; often it works a grievous, irreparable injury to the person indicted. The stigma cannot be easily erased. In the public mind, the blot on a man’s escutcheon, resulting from such a public accusation of wrongdoing, is seldom wiped out by a subsequent judgment of not guilty.” *People v. Rodgers & Reed*, 92 Ill. 2d 283, 442 N.E. 2d 252 (1982), citing *In Re Fried*, 161 F. 2d 453, 458-59 (2d Dist. 1947), cert. dismissed, 332 U.S. 807 (1947), 92 L. Ed. 384, 68 S. Ct. 105. To require an individual to defend himself against an empty charge is to ignore one of the primary functions of a grand jury, which is to act as a “shield” against arbitrary prosecutions. (*Kamisar, LaFave & Israel, Modern Criminal Procedure* 1015 (5th Ed. 1980). “Historically, [the grand jury] has been regarded as a primary security to the innocent against hasty, malicious and oppressive persecution; it serves the invaluable function in our society of standing between the accuser and the accused, whether the latter be an individual, minority group, or other, to determine whether a charge is founded upon reason or was dictated by an intimidating power or by malice and personal ill will.” *Wood v. Georgia*, 370 U.S. 375, 390, 8 L. Ed. 2d 569, 580, 82 S. Ct. 1364, 1373 (1962).

Make no mistake about it; the Indictment in this case is the result of politics, not evidence. There was no evidence presented to the Special Grand Jury to support the charges in this case. The three Defendants in this case are actually innocent. To return a true bill where there is absolutely no evidence connecting them to the offenses charged is an abdication of the important responsibility with which the grand jury has been entrusted. See *United States v. Costello*, 221 F. 2d 668, 677 (2d Cir. 1955), aff'd on other grounds, 350 U.S. 359 (1956), 100 L. Ed. 397, 76 S. Ct. 406. This Special Grand Jury was misled.

Even viewing the testimony of the eighteen witnesses presented to the Special Grand Jury in a light most favorable to the prosecution, there was no evidence presented that supports the charges of Conspiracy, Official Misconduct and Obstructing Justice. None. The witnesses include two men in a car far away from the shooting who **left the scene without talking to the police**; two Cook County Deputy Sheriffs both of whom arrived **after** the shooting and left eleven (11) minutes later **without talking to detectives**; three dispatchers from OEMC; an EMT who arrived after the shooting and took McDonald to the hospital; three CPD officials who had no personal knowledge of the case but generally testified as foundational witnesses for CPD General Orders, Special Orders, police records and the CHRIS system; a forensic computer expert who laid the foundation for his compilation of the videos played to the Grand Jury; a manager from Dunkin Donuts who wasn't there the night of the shooting; an employee of Dunkin Donuts who didn't see the shooting but let the police look at the store video; a drive thru customer of Dunkin Donuts who saw the shooting from a distance and then **left the scene without talking to the police**; and finally, the three witnesses who were presented the day of the true bill: an admitted perjurer and now civil rights plaintiff Alma Benitez, another perjurer Dora Fontaine who testified differently three times under oath, and a retired financial crimes

investigator hired by the Special Prosecutor to assist her in this case, who offered an unqualified opinion where one wasn't needed, thereby invading the province of the Grand Jury.

Nobody among these eighteen witnesses offered any evidence that a conspiracy existed between the Defendants and others. There is absolutely no evidence of an agreement between the Defendants and co-conspirators. There is no evidence that the Defendants conspired together with the intent to commit official misconduct and obstructing justice. It cannot be reasonably inferred nor even remotely inferred from the testimony that a conspiracy existed between the Defendants.

In fact, of the eighteen witnesses, no one had any knowledge, contact or conversation with any of the three Defendants except for Fontaine. Even Fontaine offered no testimony about an agreement between the Defendants "to conceal the true facts" of this case. She offered no evidence that the Defendants and others "coordinated their activities" to protect themselves or other members of CPD by furnishing false information, making false reports, obstructing justice or committing official misconduct.

No evidence was presented that the three Defendants agreed with one another to do anything illegal that night. The evidence presented simply showed that they filled out police reports, independent of each other, that an unqualified third party subjectively believed contained a few lines that were inconsistent with a small portion of the video. Even in a light most favorable to the prosecution, a few inconsistencies between a police report and a video, do not rise to the level of a conspiracy.

There was no evidence to support the underlying charges of obstructing justice and official misconduct either. No one presented any testimony or circumstantial evidence that the Defendants **with the intent to prevent the apprehension, obstruct the prosecution, and obstruct**

the defense of any person, knowingly furnished false information. Further, no one presented any testimony or circumstantial evidence that the Defendants, **intentionally or recklessly** failed to perform any mandatory duty required by law and **knowingly** performed an act which he knew was forbidden by law to perform.

Perhaps if the Special Grand Jury was given Illinois law that reflected the elements of Conspiracy, Obstructing Justice and Official Misconduct, the Grand Jurors would know what was lacking in terms of evidence and could have demanded additional evidence by subpoena and the questioning of any additional witnesses. See 725 ILCS 5/112-4(b). Sadly, the Special Prosecutor did not provide the law regarding these counts according to the transcripts provided in discovery. Indeed, the transcripts tendered in discovery revealed no Illinois law was provided to the Grand Jurors about issues like a peace officer's use of force, resisting arrest, forcible felonies, armed forcible felons, and when Ms. Benitez and Ms. Fontaine were presented to the Grand Jury, the law of perjury. CPD's general orders, special orders and rules and regulations, apply in an employment disciplinary hearing, not an Illinois criminal grand jury investigation.

A trial court has authority to review grand jury transcripts to determine whether any evidence was presented which tends to connect the accused to the offense charged. *People v. Rodgers & Reed*, 92 Ill. 2d 283, 290, 442 N.E. 2d 252 (1982). If no such evidence was presented, the trial court may properly dismiss the indictment. *Id.* at 290. When it is alleged that no evidence was presented to the grand jury in support of the charges, the State shall direct the trial judge's attention to any direct or circumstantial evidence in the transcript from which an inference of criminal conduct could be derived. *Id.*

The Defendants respectfully request this Honorable Court to exercise her authority and dismiss this Indictment due to the lack of evidence to support it. In addition, since each of the

three counts of the Indictment are dependent on each other, if this Court dismisses one count, then all counts must be dismissed.

II. THE SPECIAL PROSECUTOR FAILED TO COMPLY

WITH 725 ILCS 5/112-5(b)

should be
4(b)

Illinois law mandates that “the Grand Jury has the right to subpoena and question any person against whom the State’s Attorney is seeking a Bill of Indictment, or any other person, and to obtain and examine any documents or transcripts relevant to the matter being prosecuted by the State’s Attorney.” 725 ILCS 5/112-5(b). According to the transcripts tendered in discovery, this declaration was never given by the Special Prosecutor. The Special Prosecutor’s failure to provide this declaration to the Special Grand Jury, intentional or unintentional, violated Illinois law and consequently, violated the Defendants’ due process. It must be given. The statute continues with, “Prior to the commencement of its duties and, again, before the consideration of each matter or charge before the Grand Jury, the State’s Attorney shall inform the Grand Jury of these rights. 725 ILCS 5/112-4(b). (Emphasis added). According to the transcripts tendered in discovery, at no time did the Special Prosecutor inform the Special Grand Jury of these rights and powers bestowed upon them by Illinois law. Based on the record available to the defense, it can only be inferred that this Grand Jury did not know that they possessed broad powers of its own to inquire into alleged crime and corruption in its jurisdiction. They did not know that they had a right under the law to make its own investigation unaided by the Court or any prosecutor. They did not know that neither the Court nor the Special Prosecutor could limit the scope of their grand jury investigation.

The failure to inform the Special Grand Jury at the commencement of the proceedings, before each witness and certainly before a true bill was requested, misled the Special Grand Jury

and as a result, violated the due process rights of the Defendants. Had this Grand Jury been told they could subpoena witnesses, documents and prior transcripts on their own, and question witnesses as they saw fit and not accept what was force-fed to them by the Special Prosecutor, the proceedings would have been a more meaningful search for the truth. Instead, without the benefit of this statutorily mandated declaration and other Illinois laws relevant to this case, this Special Grand Jury was forced to believe a political theory that if a line from a police report didn't match up with a video the police reporter must be lying, and if there's two or more police reporters, there must be a conspiracy.

The Defendants submit that the Special Grand Jury's critical independence was compromised by the failure of the Special Prosecutor to comply with 725 ILCS 5/112-4(b) and as a result, actual and substantial prejudice was suffered by the Defendants in the form of an Indictment rendered by an uninformed and powerless grand jury misled to believe that a political theory rises to the level of evidence.

III. PROSECUTORIAL MISCONDUCT IN THE GRAND JURY COMPELS

DISMISSAL OF THE INDICTMENT

Assuming *arguendo* that the failure to comply with 725 ILCS 5/112-4(b), standing alone, does not require dismissal of the indictment, instances of prosecutorial misconduct may warrant dismissal of an indictment especially where the prosecutor deliberately or intentionally misled the grand jury, knowingly used perjured testimony, or presented deceptive or inaccurate evidence. *People v. Fassler*, 153 Ill. 2d 49, 58, 605 N.E. 2d 576 (1992); *People v. DiVicenzo*, 183 Ill. 2d 239, 257-258, 700 N.E. 2d 981 (1998). Further, the prosecutor does not have to deliberately attempt to deceive the grand jury. *People v. Oliver*, 368 Ill. App. 3d 690, 696, 859 N. E. 2d 38 (2nd Dist. 2006). Our courts have held that the State's presentation of deceptive

evidence may violate due process “regardless whether the deception was intentional.” *People v. Oliver* at 696. Although deliberate introduction of perjured testimony is perhaps the most flagrant example of misconduct, other prosecutorial behavior, even if unintentional, can also cause improper influence and usurpation of the grand jury’s role. *U.S. v. Hogan*, 712 F.2d 757, 762 (2nd Dist. 1983); *U.S. v. Asdrubal-Herrera*, 470 F. Supp. 939, 943 (N.D. Ill. 1979).

In the instant case, a combination of various acts or omissions, committed by the Special Prosecutor, rose to the level of prosecutorial misconduct sufficient enough to establish actual and substantial prejudice, which but for the misconduct, the Special Grand Jury would not have indicted the Defendants. *People v. Oliver*, 368 Ill. App. 3d 690, 697, 859 N. E. 2d 38 (2nd Dist. 2006). Certainly, the misconduct in this case, coupled with the failure to comply with 725 ILCS 5/112-4(b), created a cumulative effect of prejudice against the Defendants who are now forced to defend against an indictment based on misleading and inaccurate information, instead of real evidence supported by Illinois law.

The glaring examples of prosecutorial misconduct occurred with the last three witnesses presented to the Special Grand Jury on the day of the true bill, June 26, 2017. For purposes of this motion they are addressed separately as follows:

A. Alma Benitez

The first witness presented on June 26, 2017, wasn’t really a “witness,” she was a “reader.” Alma Benitez was presented by the Special Prosecutor and allowed to read a statement to the Special Grand Jury *that was prepared and edited by her and her lawyer*. (Emphasis added.) Attached as **Exhibit A** is the Special Grand Jury Transcript of Alma Benitez. In the prepared statement, Benitez claimed she was at the Burger King the night of October 20, 2014 and saw the shooting. After the shooting she went to Area Central with a female detective.

Benitez claimed to talk to some male detectives at the Area. Benitez claimed these detectives suggested answers to her she didn't agree with. (Ex. A, page 9). A few hours later Benitez was driven back to the Burger King. Benitez did not name or identify these male detectives, but the Special Prosecutor left a false inference that Detective David March was one of them. This presentation was blatantly misleading. The Special Prosecutor knew David March did not interview Benitez. The prosecutor had the police reports that identified Benitez' interviewer and knew it wasn't David March. The Special Prosecutor knew David March never met Benitez. The prosecutor had a duty to correct the record but failed to do so, leaving this false inference hanging for the Grand Jury to believe. Intentional or not, allowing Benitez to read a prepared statement with this false inference was deception on the part of the Special Prosecutor. Even assuming Benitez' allegations about the police at the Area are true, Benitez cannot connect David March or the Co-Defendants to these allegations and the Special Prosecutor knew this - but did nothing.

This was no candid testimony presented to the Special Grand Jury. Benitez' statement was prepared by her lawyer *after Benitez filed a civil rights lawsuit against the City of Chicago and the police.* (Emphasis added.) This was not evidence. Benitez would never be allowed to read a prepared statement at a trial.

Most troubling about Benitez' prepared statement was her attempt to cover up her federal crimes. Benitez claimed she "minimized" what she saw and told the FBI things that were not accurate. (Ex. A, page 11). As this Court knows, lying to the FBI is a crime. Worse, Benitez knowingly made these false statements to a Federal Grand Jury. This Court knows perjury is a crime as well.

The Special Prosecutor knew about these crimes but allowed Benitez to cover them up by describing the prior statements as "minimizing." (Ex. A, page 11). At no time did the Special Prosecutor present Benitez' Federal Grand Jury transcript to the Special Grand Jury for their consideration and allow them to judge for themselves Benitez' under oath testimony before a Federal Grand Jury versus her self-serving, lawyer prepared, post-lawsuit statement. Of course, the Special Prosecutor failed to tell the Special Grand Jury that they had a right to that transcript per 725 ILCS 112/45-4(b). (See Argument II, *supra*.)

The Special Prosecutor knowingly presented the perjured "testimony" of Alma Benitez and allowed false inferences to be drawn. The prosecutor has a duty to seek justice, not deceive.

B. Officer Dora Fontaine

The Special Prosecutor's intent to indict the Defendants despite the lack of evidence is blatantly obvious in the presentation of Officer Dora Fontaine on June 26, 2017. Prior to that date, Fontaine testified under oath three times: once in the Federal grand Jury and twice before the Inspector General of Chicago. In addition, she was interviewed once by the FBI and the twice by the Special Prosecutor. Do you think the Special Grand Jury was given any of these statements to review? Do you think the Special Grand Jury was given any of the transcripts of her under oath testimony to review? Of course not. This despite the fact that these prior statements and testimonies fly in the face of her testimony of June 26, 2017. There is a mountain of substantive impeachment with Fontaine, yet the Special Prosecutor intentionally withheld these prior statements from the Special Grand Jury and tried to paint Fontaine as a victim by way of misleading the Special Grand Jury several times. Attached as **Exhibit B** is the Special Grand Jury Transcript of Dora Fontaine.

It should be noted that Fontaine is the only witness of the eighteen witnesses presented to the Special Grand Jury that knew Officers Walsh and Gaffney. Fontaine is the only witness of the eighteen witnesses that spoke to Detective March. At no time in her prior statements or testimonies did she ever state anything that supported a charge of conspiracy, obstructing justice or official misconduct against any of the three Defendants.

One of the most egregious acts of prosecutorial misconduct during Fontaine's testimony was when the Special Prosecutor cut off a Grand Juror in the middle of his relevant question and forbade the Grand Jury from focusing on an important issue like the interest, bias or motive of a witness to testify. (Ex. B, page 97). The Special Prosecutor's actions, which can be described as an interruption of a grand juror at best, or a scolding of a grand juror at worst, directly violated 725 ILCS 5/112-4(b), which mandates that grand jurors have the right to question any person on any relevant matter. No statute allows a prosecutor to cut off a grand juror's question.

Long before Fontaine became the Special Prosecutor's star witness, Fontaine was supposed to be fired from the Chicago Police Department. Like the Defendants, she wrote a police report in this case too. Mysteriously, that decision to fire Fontaine was changed. Then later before the Special Grand Jury, the Special Prosecutor asked Fontaine how she was treated in her new assignment. Fontaine testified that unknown people within the Department referred to her as a "rat" because she was the only officer that wasn't fired. (Ex. B, pages 92-93). Clearly, this was an attempt by the Special Prosecutor to garner sympathy for Fontaine. When a Grand Juror was attempting to ask Fontaine why she wasn't fired, the Grand Juror was cut off by the Special Prosecutor. (Ex. B, page 97). The Grand Juror was denied an answer to his relevant question by the overzealous actions of the Special Prosecutor. Despite opening the door, the Special Prosecutor wasn't about to let the Grand Jurors know the whole truth. The Special

Grand Jury, like any fact finder, had an unconditional right to know if Fontaine had any interest, bias or motive to testify. 725 ILCS 112/4(b). See further, I.P.I. Criminal 1.02. The Special Prosecutor violated that right, and in doing so violated the due process rights of the Defendants.

Further, there is no evidence whatsoever to connect the Defendants to this perceived harassment of Fontaine. This was irrelevant and prejudicial to the Defendants. The Special Prosecutor had no good faith basis to bring this to the Special Grand Jury's attention knowing full well the Defendants had nothing to do with Fontaine and any alleged harassment.

Another example of prosecutorial misconduct occurred when Fontaine mentions that certain officers were listed on a police report as a "victims." (Ex. B, pages 69-70). Fontaine never said "injured." Nevertheless, the Special Prosecutor misleads the Special Grand Jury **when the prosecutor, not the witness, equates "victims" with "injuries."** (Ex. B, page 70, lines 6-7).

Finally, other examples of prosecutorial misconduct during Fontaine's testimony included the Special Prosecutor telling the Special Grand Jury that Fontaine was given immunity for her testimony on June 26, 2017 subject to perjury but failed to mention the several instances of Fontaine's prior inconsistent under oath statements. (Ex. B, pages 3-4). A due process violation certainly may occur when what makes the evidence deceptive is the *concealment* of its nature. *People v. DiVincenzo*, 183 Ill. 2d 239, 257, 700 N.E. 2d 981 (1998). (Emphasis added). Even more egregious, the Special Prosecutor falsely led Fontaine to state that her testimony had never changed! (Ex. B, page 95). The Special Prosecutor had these prior statements. The prosecutor knew the prior statements were different. This line of questioning was intentionally misleading. The Defendants submit that the Special Prosecutor was concealing crucial, substantive and

impeaching evidence from the Special Grand Jury, that but for this misconduct, would have resulted in a no bill.

Granted, the State has no general duty to present exculpatory evidence to the grand jury, however the possibility exists that under certain circumstances a prosecutor's intentional withholding of such evidence could result in a denial of a defendant's right to due process. *People v. Torres*, 245 Ill. App. 3d 297, 301 (2nd Dist. 1993). This is such a case.

The prosecutorial misconduct committed during the testimony of Fontaine, alone, compels this Court to dismiss the indictment.

C. Vincent Williams

The testimony of Vincent Williams was a fraud upon the Special Grand Jury. Hired by the Special Prosecutor to assist in the investigation, this former IRS financial crimes investigator with no experience in violent crime investigation, violent crime reporting, Chicago Police reports and Chicago Police procedure, was presented to the Special Grand Jury on the day of the true bill. His job for the Special Prosecutor was to opine that the video didn't match up with a few lines in the police reports he read, and further, to criticize something he knew nothing about: a police-involved shooting investigation. His opinion, unqualified as it is, doesn't make any inconsistencies he subjectively perceived a crime, and certainly not the crimes of Conspiracy, Obstructing Justice and Official Misconduct. His opinion is not evidence of criminal conduct, yet through his testimony the Special Prosecutor was misleading the Grand Jury into thinking that if Mr. Williams believed the video doesn't match up perfectly with police reports, it must be a crime. Attached as **Exhibit C** is the Special Grand Jury Transcript of Vincent Williams.

The Special Prosecutor did not call a use of force expert. The prosecutor did not call a violent crime investigator with experience in police-involved shootings. Instead, the prosecutor

called a contract employee to opine about something the Special Grand Jury didn't need help on. The Grand Jurors can watch the video, read the reports and draw their own conclusions. What the Special Grand Jury needed, but did not get, was evidence that any inconsistencies between the video and the reports, in light of all of the other facts that night, rose to the level of a criminal conspiracy between the Defendants and others to conceal the true facts of the shooting of McDonald. What Williams' and the Special Prosecutor's misdirection ignore is that police reports are summaries and not evidence, created by human beings that perceive things differently from devices like cameras.

Most confusing of the Special Prosecutor's theory and Williams' useless opinion, was that the video they perceived as the whole truth was collected and preserved by the same police department they alleged conspired to keep the truth from "independent criminal investigators." Indeed, Detective David March and other police officers inventoried the videos and preserved them for others like the FBI and IPRA to view. In fact, IPRA investigators saw the video that night. Further, there is no good faith basis to even remotely suggest that the Defendants have the authority to decide whether the inventoried video would be released to the public, yet the Indictment charges the Defendants conspired so "the public would not see the video recordings of the events."

Williams misled the Special Grand Jury into believing that the Chicago Police Department didn't attempt to collect all of the video in this case, and only collected what they thought was relevant. (Ex. C, page 46). There is no evidence to support Williams' opinion. He unfairly suggests that other video actually existed but was ignored by the police. (Ex. C, page 46). Not true. Nobody, including the FBI and IPRA, found any credible evidence that other video actually existed but was ignored by the Chicago Police.

Williams misled the Special Grand Jury by stating that all witnesses were not identified and located by the police at the scene, inferring that this is indicative of criminal conduct on the part of police investigators. (Ex. C, page 47). Williams failed to mention that any so-called witnesses, assuming they were real witnesses, left the scene on their own and never reached out to the Chicago Police. When some people came forward days later, these so-called witnesses reached out to a reporter or IPRA. How can a police detective identify and locate a witness who left the scene and won't talk to the police, or whose name won't be shared by the reporter or another agency days later? Worse, how is any of that criminal conduct on the part of the police? It's not criminal conduct, but Williams and the Special Prosecutor misled the Special Grand Jury into believing it was.

The Special Prosecutor allowed Williams to mislead the Special Grand Jury when jurors asked about the forcible felonies (of burglary, attempt murder, etc.) committed by McDonald against the innocent citizen who called 911 that night, and further when McDonald used his knife to puncture the tire on the police vehicle driven by Defendant Gaffney, enabling McDonald to continue to his escape from these forcible felonies. Williams denied knowledge of the photos of the inventoried, punctured tire and further denied knowledge of the reports that McDonald burglarized vehicles in the truck yard near 40th and Keeler. (Ex. C, pages 51, 59). The Special Prosecutor had a duty to correct the record and failed to do so. Both the prosecutor and Williams had pictures of the punctured tire and the inventory report of that tire. In addition, the prosecutor and Williams had the police reports and the OEMC communications of the civilian victim who was attacked by McDonald at knifepoint after calling 911. That civilian victim and his wife, who witnessed the attack, gave statements to the police and testimony before a Federal Grand Jury about McDonald's armed, forcible criminal conduct that night. Williams and the

Special Prosecutor knew about these statements and testimonies but kept it from the Special Grand Jury. Not surprising, when Williams and the Special Prosecutor interviewed this couple after the true bill, they did not present these real witnesses to the Special Grand Jury which had not been discharged from service yet.

CONCLUSION


Opinions about what a video shows and what a human being in a police uniform is thinking at the time of the event may differ. What a police officer is thinking, from his perspective at a fixed position much different than a camera's fixed position, during an event that lasts a few seconds, coupled with fear and adrenaline and everything that makes him human, may seem different to someone looking at the video later. But his report of what he saw and felt and thought is not a lie. It's just different...and it certainly is not a crime.

This Indictment is not based on evidence. It's based on the false assumption that if the video does not match the police reports the police reporter is lying. And further, if there's two or more police reporters there must be a conspiracy. This Indictment is void of any evidence and is merely the product of a politically motivated investigation that was driven not by evidence and the law, but by politics and false assumptions.

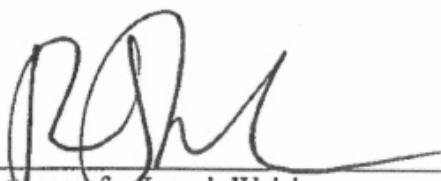
In addition, the Special Grand Jury was compromised when their statutory powers were severely limited by the non-compliance of 725 ILCS 5/112-4(b) by the Special Prosecutor.

Finally, the prosecutorial misconduct committed by the Special Prosecutor, intentional or not, amounted to an actual and substantial prejudice to the Defendants resulting in a wrongful indictment. For all of the above reasons, the Defendants respectfully request this Honorable Court dismiss this Indictment.

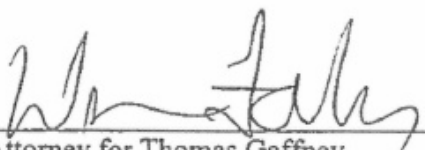
Respectfully submitted,



Attorney for David March



Attorney for Joseph Walsh



Attorney for Thomas Gaffney