

STATE OF NEW YORK : COUNTY OF ULSTER

ULSTER COUNTY COURT

THE PEOPLE OF THE STATE OF NEW YORK,

- against -

NOTICE OF MOTION

ISMAIL SHABAZZ, a/k/a GARY FAULKNER,
Defendant.

PLEASE TAKE NOTICE, that upon the annexed affirmation of Joshua Povill, Esq., duly affirmed on the 13th day of May 2016, and upon the annexed affidavit of Defendant Ismail Shabazz, and upon all the papers and proceedings heretofore had herein, the defendant hereby moves this court for an order disqualifying the Ulster County District Attorney's Office from prosecuting this matter. The defense respectfully requests that this motion be set for oral argument at the Court's next available date.

Dated: May 13, 2016
Goshen, New York

SUSSMAN & WATKINS
By: Joshua Povill, Esq.
1 Railroad Avenue, 3rd Floor
P.O. Box 1005
Goshen, New York 10924
(845) 294-3991
jpovill_sussman1@frontier.com

STATE OF NEW YORK : COUNTY OF ULSTER

ULSTER COUNTY COURT

THE PEOPLE OF THE STATE OF NEW YORK,

- against -

ISMAIL SHABAZZ, a/k/a GARY FAULKNER,
Defendant.

AFFIRMATION IN SUPPORT
OF MOTION FOR
DISQUALIFICATION

JOSHUA H. POVILL, an attorney duly admitted to practice law before the Courts of the State of New York, hereby affirms the following:

I am of counsel with the firm of Sussman & Watkins, attorneys of record for Defendant Ismail Shabazz, and am familiar with the facts and circumstances of this case.

This motion is made upon information and belief, the source of such information being the affidavit of Defendant Ismail Shabazz attached hereto, and inquiries made by counsel to the clerk's offices of the Kingston City Court, Town of Saugerties Court, Town of Plattekill Court, Town of Olive Court, as well as the Ulster County Clerk's Office and the offices of the Ulster County Public Defender.

Defendant Ismail Shabazz hereby moves for the disqualification of the Ulster County District Attorney's Office as prosecuting attorney in this matter. This motion for disqualification is based upon the conflict of interest that endures due to District Attorney Holley Carnright's previous representation of the defendant in related criminal matters.

Factual Background

Prior to his election as District Attorney for Ulster County in 2007, Holley Carnright served for approximately 25 years as an Assistant Public Defender in the Ulster County Public Defender's Office. During his years with the Public Defender's Office, Mr. Carnright represented the defendant Ismail Shabazz, then known as Gary Faulkner, on a number of occasions. Although court records from the 1980s and 1990s are sparse and, in some cases, impossible to obtain, records do exist reflecting at least two of these representations: (1) 1983 arrest for Criminal Sale Controlled Substance 3rd, Criminal Possession Controlled Substance 3rd, and Possession of a Hypodermic Instrument; and (2) 1989 arrest for Assault 2nd and Robbery 2nd.

Attached to this affirmation are records from the Ulster County Clerk and Kingston City Court relating to the 1983 case. See Exh. 1 attached hereto. Based upon these records, it appears that Mr. Faulkner (now Shabazz) was arrested on August 13, 1983 and arraigned in Kingston City Court that same day. Since the charges were felonies, it appears that the matter was held for action of the Grand Jury. On August 25, 1983, Mr. Carnright, (noted as "PD"), filed a bail application, presumably in Ulster County Court, on behalf of Gary Faulkner and bail was set at \$1,500.00 cash or bond. During the case's pendency, the County Clerk's records reflect that Mr. Carnright, continuing to represent the defendant, filed a motion for a bail reduction in April 1986, which was denied. This matter remained open and pending for over 30 years before the charges were finally dismissed in Kingston City Court in June/July of 2014.

Attached to this affirmation are also records from the Ulster County Clerk relating to the 1989 case. See Exh. 2 attached hereto. Based on these records, it appears that Mr. Faulkner was arrested on September 16, 1989 and arraigned in the Town of Esopus Court, and bail was set in the amount of \$25,000. On September 22, 1989, Mr. Carnright, as an Assistant Public Defender

and attorney for the defendant, filed a motion by way of order to show cause for release on recognizance pursuant to CPL § 180.80. According to the handwritten notes on the document, it appears that Mr. Carnright's motion was granted.

As reflected in the attached affidavit, Mr. Shabazz recalls being represented by Mr. Carnright on these two and a number of other occasions as well, but no other court records could be obtained which reflect Mr. Carnright's personal appearance, as opposed to the Public Defender's Office generally (or other members of that office), in these matters. Unfortunately, the Public Defender's Office has not maintained any case files with respect to any of these representations because they did not result in felony convictions and, accordingly, were destroyed in the normal course of business after 6 years.

Despite the sparse records, it is clear that Mr. Carnright previously represented the defendant in criminal matters. As specified in Mr. Shabazz's affidavit, as part of these representations, Mr. Shabazz met with and provided confidential information to Mr. Carnright regarding his allegedly criminal acts. These confidences and secrets were shared by Mr. Shabazz under the attorney/client privilege which existed at that time, and continues to exist *ad infinitum* for all confidential material.

Mr. Carnright, and his assistant district attorneys, are now prosecuting the very same man under the present indictment. District Attorney Carnright was originally handling this case himself; he apparently presented the matter to the Ulster County Grand Jury and prepared the People's original response to the Court's standing discovery order. Mr. Carnright also personally issued a number of inflammatory press statements in connection with this prosecution. See, e.g., "Kingston civil rights activist Ismail Shabazz indicted in weapons case," Daily Freeman, July 1, 2015 ("Carnright has said Shabazz . . . was advocating violence against

police officers. . . .Also, Carnright said, federal agents intercepted a conversation involving Shabazz about training members of the New Black Panthers Party in how to disarm police officers and use the firearms against them.”); attached at Exh. 3.

Argument

The Court of Appeals has determined that a public prosecutor must be disqualified when it is necessary “to protect a defendant from actual prejudice arising from a demonstrated conflict of interest or a substantial risk of an abuse of confidence.” Matter of Schumer v. Holtzman, 60 N.Y.2d 46, 55 (1983). The Schumer court went on to explain that the Federal courts have adopted similar rules, which call for the disqualification of an attorney where an appearance of impropriety exists because, for example, “the attorney is at least partially in a position to use privileged information concerning the other side through prior representation, thus giving his client an unfair advantage.” Id. When disqualification is appropriate, the Court must appoint a private attorney, or a district attorney from a nearby county, to act as special prosecutor. See N.Y. County Law § 701(1).

The New York Rules of Professional of Professional Conduct (22 NYCRR Part 1200) specify that an impermissible conflict of interest exists in the following situation: “A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person’s interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing.” See Rule 1.9(a) – Duties to Former Clients. The rule goes on to specify that a lawyer shall not use confidential information of a former client to the disadvantage of the former client. See Rule 1.9(c). Rule 1.6 specifies: “‘Confidential information’ consists of information gained

during or relating to the representation of a client, whatever its source, that is (a) protected by the attorney-client privilege, (b) likely to be embarrassing or detrimental to the client if disclosed, or (c) information that the client has requested be kept confidential.” Thus, the conversations between the defendant and his former attorney, now District Attorney Carnright, resulted in the disclosure of confidential information which is substantially related to the present matter.

Although the present criminal indictment would not appear to be facially related to the criminal matters upon which District Attorney Carnright previously represented the defendant, the defense’s well-known intention to raise an entrapment defense in this case renders the cases and, more importantly, the confidential information passed by Mr. Shabazz to his then attorney, Mr. Carnright, during the course of those representations, highly relevant.

In this instance, the defense has announced its intention to employ the affirmative defense of Entrapment, as provided for in Penal Law § 40.05. The defense requires a showing that a government agent induced Mr. Shabazz to engage in the proscribed conduct, in this case, selling guns, and that the agent did so with the intention of obtaining evidence against him in a criminal prosecution. More importantly, entrapment also requires the defense to demonstrate that “the methods used to obtain such evidence were such as to create a substantial risk that the offense would be committed by a person not otherwise disposed to commit it.” Penal Law § 40.05. The examination of this issue necessarily injects the issue of Mr. Shabazz’s own criminal predispositions into the proceedings.

As the Court of Appeals has explained, in judging an entrapment defense, “[w]hether a defendant is predisposed to commit an offense or was induced to commit the offense is a question of fact.” People v. McGee, 49 N.Y.2d 48, 61 (1979). Thus, the defendant’s own criminal proclivities will become a disputed evidentiary fact in these proceedings. The defense

expects that there will be significant evidence regarding the discussions that occurred between the government agent and Mr. Shabazz and that there is likely to be disputed evidence regarding these interactions. Mr. Shabazz intends to demonstrate that he, an otherwise law-abiding citizen, was induced into the alleged criminal acts by the persistently exploitative methods employed by the government's agent. Mr. Shabazz's state-of-mind, that is, his personal beliefs and willingness to violate the law will very likely, in essence, become the issue. See, e.g., People v. Minor, 69 N.Y.2d 779 (1987) (defendant's "state of mind" is relevant to entrapment defense because it goes to his contention that he engaged in criminal conduct because he was induced or encouraged to do so). The People are likely to place Mr. Shabazz's own criminal history into evidence in an attempt to demonstrate that the government agent merely afforded Mr. Shabazz the opportunity to engage in criminal conduct in which he was likely to engage anyway. The dispute over this key issue is likely to be the crux of the entire trial. And it is because of the primacy of this disputed evidentiary issue that Mr. Carnright's personal knowledge of confidential information regarding Mr. Shabazz's past criminal behavior is rendered inappropriate.

The courts have explained: "In dealing with the issue of attorney disqualification, particularly in criminal cases, a predominating concern has been whether privileged or confidential information has been communicated by the defendant in the course of a prior professional relationship from which the risk of prejudice or the potential for abuse exists at the time the disqualification is sought." Matter of Morgenthau v. Crane, 113 A.D.2d 20, 22 (1st Dep't 1985). Both the risk of prejudice and the potential for abuse exist under the present state of affairs.

The People may suggest that disqualification is not necessary because ADA Matthew Grimes has now assumed primary responsibility for prosecution of this matter. However, a conflict of interest of the District Attorney is imputed to all of his assistants because it is rightly assumed that they operate under the authority of, and subject to the direction of, the District Attorney himself. See also, N.Y. Rule of Professional Conduct 1.10(a) (“While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rule 1.7, 1.8 or 1.9.”). A so-called ethical wall (or “Chinese wall”) has never been established, and would not be sufficient at this stage of the litigation anyway in light of Mr. Carnright’s substantial personal involvement. C.f. People v. Shinkle, 51 N.Y.2d 417 (1980) (district attorney’s office disqualified when defendant’s former attorney on same matter joined the office, despite use of ethics wall, because his presence “gave both defendant and the public the unmistakable appearance of impropriety and created the continuing opportunity for abuse of confidences entrusted to the attorney”).

In addition, District Attorney Carnright’s own personal involvement in this matter cannot be gainsaid. He likely presented the case to the grand jury and was handling the matter himself for some time. In addition, it appears from discussions with ADA Grimes that Mr. Carnright continues to hold the final authority over all decisions with respect to this case. As the Court of Appeals has explained, a prosecutor exercises his authority all throughout the process of a criminal case and all of his actions must be free from the possibility for abuse or the appearance of impropriety. See People v. Zimmer, 51 N.Y.2d 390 (1980). In the Zimmer case, the Court found that the District Attorney should have recused himself and, not having done so, his indictment must be dismissed, because of a conflict of interest occasioned by his position as counsel for the complainant corporation. Although the conflict of interest presented by District

Attorney Carnright's prior representation of this defendant is obviously of a different nature, the Court of Appeals's admonitions are fully applicable to the present case. The Zimmer court explained:

Unlike other participants in the traditional common-law adversarial process, whose more singular function is to protect and advance the rights of one side, a District Attorney carries an additional and more sensitive burden. It is not enough for him to be intent on the prosecution of his case. Granted that his paramount obligation is to the public, *he must never lose sight of the fact that a defendant, as an integral member of the body politic, is entitled to a full measure of fairness.*

...

[A]lmost invariably it is the prosecutor who decides whether a case is to be pressed or dropped and what the nature of the specific offense or offenses to be lodged against a defendant is to be. As a vital partner in the plea bargaining process or via his sentencing input (e.g., Penal Law, § 65.00), he heavily influences the sanction meted out. . . .

It would be simplistic therefore to think of the impact of a prosecutor's conflict of interest merely in terms of explicit instances of abuse. Even our thumbnail description of prosecutorial power is enough to indicate that resulting prejudice can at least as easily flow from an act of omission as from one of commission, from discretion withheld as from discretion exercised. In this context, whether abuse is express or implied may be difficult to determine. Suffice it to say that any presumption of impartiality tends to be undermined when there is a clear conflict of interest.

...

Thus, the practical impossibility of establishing that the conflict has worked to defendant's disadvantage *dictates the adoption of standards under which a reasonable potential for prejudice will suffice.*

...

Moreover, even if the actuality or potentiality of prejudice were absent, what of the appearance of things (see Code of Professional Responsibility, Canon 9)?

...

It was important that these [prosecutorial] responsibilities, carried out in the name of the State and under the color of the law, be conducted in a manner that

fostered rather than discouraged public confidence in our government and the system of law to which it is dedicated. This concern, that those occupying prosecutorial office be jealous of the evidences as well as the substance of integrity, was not to be discounted. In particular, the District Attorney, as guardian of this public trust, should have abstained from an identification, in appearance as well as in fact, with more than one side of the controversy.

Zimmer, 51 N.Y.2d at 393-96 (emphasis added). All of the Court's well-founded concerns and admonitions should be heeded in this matter, and District Attorney Carnright and his staff must be disqualified from prosecution of this case.

Conclusion

The continued prosecution of Mr. Shabazz by a District Attorney who previously represented him in related criminal matters, and through which confidences regarding Mr. Shabazz's criminal proclivities were shared, should not be permitted. The substantial risk of an abuse of confidence, the reasonable expectation of actual prejudice, and the overwhelming appearance of impropriety, cannot be removed from the present state of affairs and, therefore, disqualification is required. Accordingly, the defense respectfully requests that this Court grant the instant motion disqualifying the Ulster County District Attorney's Office from prosecuting this matter and, pursuant to County Law § 701, appoint a special prosecutor.

Dated: May 13, 2016
Goshen, New York



Joshua H. Povill, Esq.
Sussman & Watkins
Attorneys for Defendant

Exhibit 1

LOCAL COURT CRIMINAL DISPOSITION REPORT

REV. OCA-540 (1/82)

SERIAL # 22490064	COURT CODE, NAME OF COURT (NAME OF T, J, V, J) 3255017 KINGSTON CITY COURT	DOCKET/CASE #
DEFENDANT'S NAME (LAST, FIRST, M.I.) FAULKNER, GARY		D.O.B. OR AGE 11/03/54
ALIAS (AKA)	COURT CONTROL # (501 CARD) 8782602-K	NYSID #
ARREST DATE 8/13/83	ARRGN. DATE 8/13/83	COUNSEL TYPE PD
DISP. JDG (IF DIFE.) HON. J. MICHAEL BRUH		

1) INTERIM DISPOSITION BW - BENCH WARRANT ISSUED TRANS - CASE TRANSFERRED (SPECIFY COURT)
 ROW - RETURNED ON WARRANT

DATE	DISP. CODE	TRANSFER TO COURT	DISP. DATE	DISP. CODE	DISP. DATE	DISP. CODE
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(3) CHARGES AND DISPOSITIONS

CHARGE # 1				CHARGE # 2			
# CODE	SECTION #	ATTEMPT. (PL ART. 110) <input type="checkbox"/>	# OF COUNTS	LAW CODE	SECTION #	ATTEMPT. (PL ART. 110) <input type="checkbox"/>	# OF COUNTS
PT.	220.16		1	PT.	220.39		1
DESCRIPTION			<input type="checkbox"/> ALL OTHER COUNTS DISM.	DESCRIPTION			<input type="checkbox"/> ALL OTHER COUNTS DISM.
CRIM. POSS. CONTR. SUB. 3rd				CRIM. SALE CONTR. SUB. 3rd			
DATE	DISP. CODE	ALL OTHER COUNTS COVERED BY CHG. #		DATE	DISP. CODE	ALL OTHER COUNTS COVERED BY CHG. #	
3/18/83	HGJ			8/18/83	HGJ		
DEEMED DISM. DATE	COVERED BY CASE #			DEEMED DISM. DATE	COVERED BY CASE #		

SENTENCE ON CHARGE # 1				SENTENCE ON CHARGE # 2			
DATE SENTENCED	SENTENCE CODE	FINE AMOUNT	PROBATION TIME	DATE SENTENCED	SENTENCE CODE	FINE AMOUNT	PROBATION TIME
		\$	<input type="checkbox"/> 1 YEAR <input type="checkbox"/> 3 YEARS			\$	<input type="checkbox"/> 1 YEAR <input type="checkbox"/> 3 YEARS
CUSTODY TIME		CUSTODY TIME		CUSTODY TIME		CUSTODY TIME	
<input type="checkbox"/> CONCURRENT <input type="checkbox"/> CONSECUTIVE <input type="checkbox"/> INTERMITTENT		<input type="checkbox"/> CONCURRENT <input type="checkbox"/> CONSECUTIVE <input type="checkbox"/> INTERMITTENT		<input type="checkbox"/> CONCURRENT <input type="checkbox"/> CONSECUTIVE <input type="checkbox"/> INTERMITTENT		<input type="checkbox"/> CONCURRENT <input type="checkbox"/> CONSECUTIVE <input type="checkbox"/> INTERMITTENT	
ADJUDICATED Y.O. (PL 720.20) <input type="checkbox"/>		DRIVER'S LICENSE SUSPENDED <input type="checkbox"/>		ADJUDICATED Y.O. (CPL 720.20) <input type="checkbox"/>		DRIVER'S LICENSE SUSPENDED <input type="checkbox"/>	
		DRIVER'S LICENSE REVOKED <input type="checkbox"/>				DRIVER'S LICENSE REVOKED <input type="checkbox"/>	

CHARGE # 3				CHARGE # 4			
# CODE	SECTION #	ATTEMPT. (PL ART. 110) <input type="checkbox"/>	# OF COUNTS	LAW CODE	SECTION #	ATTEMPT. (PL ART. 110) <input type="checkbox"/>	# OF COUNTS
PT.	220.45		1				
DESCRIPTION			<input type="checkbox"/> ALL OTHER COUNTS DISM.	DESCRIPTION			<input type="checkbox"/> ALL OTHER COUNTS DISM.
CRIM. POSS. HYPODERMIC INSTRUMENT							
DATE	DISP. CODE	ALL OTHER COUNTS COVERED BY CHG. #		DATE	DISP. CODE	ALL OTHER COUNTS COVERED BY CHG. #	
3/18/83	HGJ						
DEEMED DISM. DATE	COVERED BY CASE #			DEEMED DISM. DATE	COVERED BY CASE #		

SENTENCE ON CHARGE # 3				SENTENCE ON CHARGE # 4			
DATE SENTENCED	SENTENCE CODE	FINE AMOUNT	PROBATION TIME	DATE SENTENCED	SENTENCE CODE	FINE AMOUNT	PROBATION TIME
		\$	<input type="checkbox"/> 1 YEAR <input type="checkbox"/> 3 YEARS			\$	<input type="checkbox"/> 1 YEAR <input type="checkbox"/> 3 YEARS
CUSTODY TIME		CUSTODY TIME		CUSTODY TIME		CUSTODY TIME	
<input type="checkbox"/> CONCURRENT <input type="checkbox"/> CONSECUTIVE <input type="checkbox"/> INTERMITTENT		<input type="checkbox"/> CONCURRENT <input type="checkbox"/> CONSECUTIVE <input type="checkbox"/> INTERMITTENT		<input type="checkbox"/> CONCURRENT <input type="checkbox"/> CONSECUTIVE <input type="checkbox"/> INTERMITTENT		<input type="checkbox"/> CONCURRENT <input type="checkbox"/> CONSECUTIVE <input type="checkbox"/> INTERMITTENT	
ADJUDICATED Y.O. (CPL 720.20) <input type="checkbox"/>		DRIVER'S LICENSE SUSPENDED <input type="checkbox"/>		ADJUDICATED Y.O. (CPL 720.20) <input type="checkbox"/>		DRIVER'S LICENSE SUSPENDED <input type="checkbox"/>	
		DRIVER'S LICENSE REVOKED <input type="checkbox"/>				DRIVER'S LICENSE REVOKED <input type="checkbox"/>	

(4) COMPLETED BY	(5) SEAL ORDER	(6) REMARKS 22490064
1 Denzler	RETURN PRINTS AND PHOTOS TO: NAME	<p style="font-size: 2em; font-weight: bold;">FILED</p> <p style="font-size: 1.5em; font-weight: bold;">9 H - M</p> <p style="font-size: 1.5em; font-weight: bold;">FEB 2 1984</p> <p style="font-size: 1.2em; font-weight: bold;">ALBERT SPADA ULSTER COUNTY CLERK</p>
2	ADDRESS	
3	CITY, STATE, ZIP	
4	<input type="checkbox"/> CPL 160.50 <input type="checkbox"/> CPL 160.55 <input type="checkbox"/>	
TO: DR UNIT OFFICE OF COURT ADMINISTRATION 10 BROADWAY	AUTHORIZED SIGNATURE DATE	

AUGUST 25, 1983

EMILIE HAIRSTON - bail application - bail set at \$1,000.00 cash or bond. Attorney Carnright, PD; ADA Williams.

GARY FAULKER - bail application - bail set at \$1,500.00 cash or bond. Attorney Carnright, PD; ADA Williams.

CHARLES WILLIAMS - bail application - bail set at \$1,000.00 cash or bond. Attorney Carnright, PD; ADA Williams.

CHARLES MCCOMB - bail application - bail set at \$2,500.00 cash or property bond. Attorney Carnright, PD; ADA Williams.

REGINALD HARRIS - bail application - bail set at \$ 5,000.00 cash or bail bond or \$10,000.00 property bond - Attorney Carnright, PD; ADA Williams.

CHARLES LINDSAY - bail application - bail set at \$ 5,00.00 cash or bail bond. Attorney Carnright, PD; ADA Williams.

JORGE PALMA - bail application - bail set at \$ 2,500.00 cash or bail bond. Attorney Carnright, PD; ADA Williams.

FILED

~~W.H.M~~

AUG 30 1983

ALBERT SPADA
ULSTER COUNTY CLERK

CASE NO. C83-22

0001680

COUNTY COURT : ULSTER COUNTY

At a Regular Term of the Ulster County Court held in the Ulster County Court House in the City of Kingston and County of Ulster, State of New York on the 14 day of April 1986.

Present: Hon. Francis J. Vogt

Indict. No. Order to Show Cause

People of the State of New York

vs.

M. Weiss
District Attorney

Gary Hawkins

P.D. Carwright
Attorney

Action Taken: Defendant: Present Not Present

Bail reduction order denied

FILED
APR 20 1986
ALBERT SPAE
ULSTER COUNTY CLERK

Adjourned Date / /

For: _____

Steno: K Nesner

Bail: \$ _____

R.O.R. _____

Remanded: _____

Bail Cont'd: _____

Clerk: C. Beach

State of New York
County of Ulster - City Court of Kingston
Certificate of Disposition

I, Nicole Murphy, certify that a judgment of conviction and/or disposition has been entered in this Court (CPL 60.60) against:

MARY FAULKNER, DOB: 11-03-1954
DOCKET:#14-71069

VIOLATION DATE: 08-13-1983, ARREST DATE: 08-13-1983 ARRAIGNED: ,
JUDGE: HON. LAWRENCE E. BALL

OFFENSE 1: 3-CRIM, POSS NARCO DRUG INT/ PL-220.16-01 -BF-
Reduced to: 7-CRIM POSS CONTRL SUBST-7TH PL-220.03 -AM-
Disposition: DISMISSAL Date: 06-26-2014

OFFENSE 2: 3-CSCS-3RD:NARCOTIC DRUG PL-220.39-01 -BF-
Reduced to: PL-220.03 -AM- 7-CRIM POSS CONTRL SUBST-7TH
Disposition: DISMISSED Date: 07-10-2014
DISMISSED ON:

OFFENSE 3: POSSESSION HYPODERMIC INS PL-220.45 -AM-
Disposition: DISMISSED Date: 07-10-2014

(H=Hours, D=Days, M=Months, Y=Years, TS=Time Served)

Remarks:

Penalty Assessment/Fines: .00 Mandatory Surcharge: \$.00

Witness my hand and the seal
of said Court

Dated: July 10, 2014

(1)
Nicole Murphy
Chief Clerk

*Sentencing Codes:

C = Custody - Jail
CD = Conditional Discharge
CH = Custody - House Arrest
CS = Community Service
F = Fine
OP = Order of Protection
P = Probation
R = Restitution
ACD = Adjourment Contemplating Dismissal

RECORD SEALED PURSUANT TO CPL160.50

Exhibit 2

INDEX

CASE NO. C89-466

At a Term of the County Court in and for the County of Ulster at the Courthouse, 285 Wall Street, Kingston, New York on the 22nd day of September, 1989.

PRESENT: HON. FRANCIS J. VOGT
County Court Judge

9/25
ROR'd
[Signature]

STATE OF NEW YORK
COUNTY COURT : COUNTY OF ULSTER

-----X
THE PEOPLE OF THE STATE OF NEW YORK,

-against-

ORDER TO SHOW CAUSE

GARY FAULKNER,

Defendant.

-----X
Upon the reading and filing of the annexed affirmation of HOLLEY CARNRIGHT, ESQ., duly affirmed on the 22nd day of September, 1989, and upon all the proceedings heretofore had herein, it is

ORDERED that the District Attorney of the County of Ulster, at a term hereof to be held at the Ulster County Courthouse, 285 Wall Street, Kingston, New York, on the 25th day of September, 1989, at ^{9:30} ~~10:30~~ o'clock in the forenoon of that day, or as soon thereafter as counsel may be heard, show why an Order should not be entered herein releasing the defendant on his own recognizance pursuant to Section 180.80 of the Criminal Procedure Law.

LET service of a copy of this Order, together with the supporting papers, upon the District Attorney of Ulster County on or before the 22 day of September, 1989, be deemed sufficient service thereof.

Dated: September 22, 1989

FILED
M M

SEP 28 1989

ALBERT SPADA
ULSTER COUNTY CLERK

[Signature]
FRANCIS J. VOGT
County Court Judge

STATE OF NEW YORK
COUNTY COURT : COUNTY OF ULSTER

-----X
THE PEOPLE OF THE STATE OF NEW YORK,

-against-

AFFIRMATION

GARY FAULKNER,

Defendant.

-----X

STATE OF NEW YORK)
COUNTY OF ULSTER) ss.:

HOLLEY CARNRIGHT, ESQ., an attorney duly licensed to practice
before the Courts of the State of New York, affirms the following
under penalties of perjury:

1. I am assistant Public Defender for the County of Ulster,
attorney for the above-named defendant, and make this affirmation in
support of his application for an Order releasing the defendant in his
own recognizance, pending the disposition of the charges herein.

2. The defendant was arrested on or about September 16, 1989 and
charged with the crimes of ASSAULT IN THE SECOND DEGREE and ROBBERY IN
THE SECOND DEGREE. He was arraigned before the Hon. Robert Jordan,
Town of Esopus Court Judge.

3. The defendant is presently confined to the Ulster County Jail
in the custody of the Sheriff of Ulster County with bail set at
\$25,000.00 His 144 hours have expired.

4. The defendant represents that there are no warrants lodged
for him.

5. Assistant Public Defender Timothy Murphy was at the Town of
Esopus Court on the night of September 21 prepared to go forward with
a preliminary hearing for defendant. The District Attorney's Office
refused to provide a stenographer for the hearing, as did Judge

Jordan. Mr. Murphy refused to conduct the preliminary hearing without the benefit of a stenographer, especially since the charges are so serious. No previous application for recognizance in this action has been made by the defendant.

WHEREFORE, your affiant prays for an Order pursuant to Section 180.80 of the Criminal Procedure Law and for reasons stated above, releasing the defendant on his own recognizance pending disposition of the charges herein, or in the alternative, setting bail at a reasonable amount, and for such other and further relief as the Court deems just and proper.

Dated: Kingston, New York

September 22, 1989



HOLLEY CARNRIGHT

June 11, 1980

Hon. Edward V. Regan, Comptroller
State Capitol
Albany, New York 12224

Dear Sir:

I am asking for your official opinion as to who is charged with the cost of paying for a court stenographer in local town courts.

I am aware of your Opinion #79-719, that the County must pay for the stenographer's charges at felony preliminary hearings. Would you please forward to me your official opinion as to the following two situations?

- (1) If a Town Court has not budgeted for funds for a stenographer, is it proper to charge the County for these funds on a misdemeanor trial?
- (2) If the County Court transfers a misdemeanor case to a local court from the Grand Jury, is the stenographer's fee a charge to the County?

Thank you for your time and consideration. I await your official opinion.

Very truly yours,

Robert W. Jordan
Town Justice

RWJ:fb

*THIS OPINION
APPEARS TO BE
A BURDEN ON DA
TO PRODUCE
STENO!*



STATE OF NEW YORK
DEPARTMENT OF AUDIT AND CONTROL
ALBANY
12236

EDWARD V. REGAN
State Comptroller

In Replying Refer To

September 16, 1980

Opn No. 80-490

UNIFORM JUSTICE COURT ACT, §2021: A town justice is not required to employ a stenographer to take testimony in a criminal proceeding. However, if he does so, the stenographer's compensation must be paid by the town even if the case was transferred by the county court.

Hon. Robert W. Jordan
Town Justice
Town of Esopus
Port Ewen, New York 12466

Re: Town of Esopus

Dear Judge Jordan:

This is in reply to your letter and as a follow up to a telephone conversation with a staff member of August 22, 1980. You advise us that the county court has been transferring a number of cases to the town court. The increased load on the court means it may have to expend funds far in excess of the amount anticipated by Town officials when the budget was prepared. You ask whether the Town court is required to employ a stenographer to take testimony in these proceedings. You also ask if the county, rather than the Town, might be properly chargeable with the cost if a stenographer is employed.

As we stated in Opns St Comp, 1978, No. 78-316, unreported, there is no requirement that a court stenographer be used in every criminal proceeding. Uniform Justice Court Act, §2021 provides that the justice of a local court may employ a stenographer to take testimony in a contested criminal proceeding and County Law, §703-a provides that the district attorney may employ a stenographer in a contested criminal proceeding in a local criminal court where a stenographer is not regularly employed. The employment of a stenographer pursuant to both of these statutes is optional rather than mandatory.

Whenever a town justice does decide that a stenographer shall take testimony in a criminal proceeding, the cost is chargeable to the town rather than the county (see Uniform Justice Court Act, §2021; Opns St Comp, 1974, No. 74-1197, unreported).

We trust that the above will be of assistance to you.

Sincerely,

EDWARD V. REGAN
State Comptroller

By *Kenneth F. Hartman*
Kenneth F. Hartman
Associate Counsel

Smith/gj

ACCUSATOR INSTRUMENT + 100.05-100.05 PLAINT (SEC. 100.05-100.05)

KINGSTON CITY COURT, CITY OF KINGSTON, COUNTY OF ULSTER, STATE OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK)
vs.)
Garry Faulkner)
-----) ss.
-----)

I, C. Tremper am the COMPLAINANT herein and am a Police Officer in the city of Kingston, State of New York.

I ACCUSE Garry Faulker, the DEFENDANT in this action and charge that on about the 16th day of September, 1989, at in front of 10 VanBuren Street the City of Kingston, County of Ulster, New York, at about 06:10 o'clock the beforenoon said DEFENDANT did intentionally, knowingly, and unlawfully COMMIT the felony of Assault in the Second degree contrary to the provisions of Article 120, Section 120.05, Subdivision 6 of the Penal Law of the State of New York.

THE FACTS ON WHICH THIS ACCUSATION IS MADE ARE OF MY OWN KNOWLEDGE AND ON INFORMATION AND BELIEF AS FOLLOWS:

OF MY OWN KNOWLEDGE

A person is guilty of assault in the second degree when, in the course and the furtherance of the commission or the attempted commission of a felony, he causes physical injury to another person, he causes such injury to each person or to a third person,

INFORMATION AND BELIEF

WIT: The said defendant did on the on the above said time, date and place commit the crime of assault in the second degree. The defendant did hit Rayfield Parker several times in the head and face area as he was stealing money from his pocket. Rayfield Parker was taken to the Benedictine Hospital Ambulance for treatment.

The source of your deponents information and the grounds for his belief is derived from an investigation conducted by him and other members of this department,

J. C. Tremper
Complainant

NOTE: False statement made herein are punishable as a Class A misdemeanor pursuant to section 210.45 of the Penal Law.

Sworn to before me this 16th day of September, 1989.

[Signature]
(Signature)

Desk Officer
(Title)

Index No.

Year 19

STATE OF NEW YORK
COUNTY COURT : COUNTY OF ULSTER

INDEX

CASE NO. C89-466

THE PEOPLE OF THE STATE OF NEW YORK,

-against-

GARY FAULKNER,

Defendant.

ORDER TO SHOW CAUSE

OFFICE OF PUBLIC DEFENDER
COUNTY OF ULSTER

Attorney for Defendant

COURT HOUSE
285 WALL STREET
KINGSTON, NEW YORK 12401
(914) 339-5680

FILED
H M

SEP 28 1989

ALBERT SPADA
ULSTER COUNTY CLERK

To:

Attorney(s) for

Service of a copy of the within

is hereby admitted.

Dated:

.....
Attorney(s) for

PLEASE TAKE NOTICE

Check Applicable Box

NOTICE OF ENTRY that the within is a (certified) true copy of a entered in the office of the clerk of the within named Court on 19

NOTICE OF SETTLEMENT at that an Order of which the within is a true copy will be presented for settlement to the Hon. one of the judges of the within named Court, on 19, at M.

Dated:

OFFICE OF PUBLIC DEFENDER
COUNTY OF ULSTER

Attorney for

COURT HOUSE
285 WALL STREET
KINGSTON, NEW YORK 12401
(914) 339-5680

To:

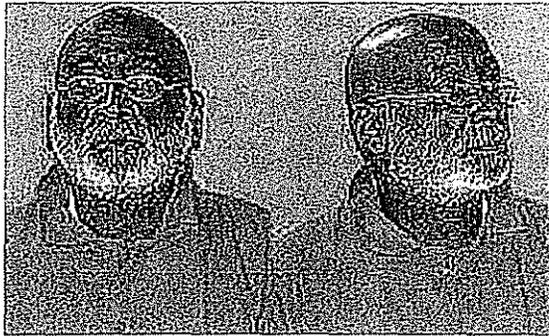
Exhibit 3

The Daily Freeman (<http://www.dailyfreeman.com>)

Kingston civil rights activist Ismail Shabazz indicted in weapons case

By Freeman staff

Wednesday, July 1, 2015



KINGSTON >> An Ulster County grand jury has handed up a 16-count indictment against local civil rights activist Ismail Shabazz, who was arrested last week after allegedly selling illegal weapons to undercover federal agents.

Shabazz, 60, of Kingston, whose given name is Gary Faulkner, was indicted Wednesday morning on six felony counts of sale of illegal weapons to agents of the FBI's Joint Terrorism Task Force on four occasions between May 2014 and May 2015, the Ulster County District Attorney's Office said Wednesday. He also was indicted on nine felony counts of criminal possession of a weapon.

Shabazz additionally was charged with one count of endangering the welfare of a child, a misdemeanor, because one of the sales was carried out while a young child was sitting on his lap, District Attorney Holley Carnright said.

The weapons sales took place at 80 Prospect St. in Midtown Kingston, where Shabazz lives, the District Attorney's Office said.

The investigation by the Terrorism Task Force began in 2013, when Shabazz, a leader in the New Black Panther Party, approached an individual regarding the sale of weapons, Carnright said. Unbeknownst to Shabazz, the DA said, that individual passed information about those conversations to the task force.

Carnright has said Shabazz became a person of interest to federal investigators in 2013, when information was developed that he had recruited members of the Bloods street gang into the New Black Panthers Party in Kingston and was advocating violence against police officers.

Purchased from Shabazz, authorities said last week, were two assault rifles, two loaded handguns, an unloaded revolver and a sawed-off shotgun that had its serial number defaced. Also, Carnright said, federal agents intercepted a conversation involving Shabazz about training members of the New Black Panthers Party in how to disarm police officers and use the firearms against them.

Carnright said last week that federal charges against Shabazz were possible but that none were pending.

Shabazz, who is chairman of the Kingston chapter of Black Panthers for Justice and a past president and vice president of the Ulster County Chapter of the NAACP, is a frequent critic of police and has participated in recent local demonstrations regarding attacks on black suspects by white officers in other cities.

Shabazz has a criminal history that includes convictions on numerous misdemeanor counts. He told the Freeman in 2013, during his unsuccessful bid for a seat on the Kingston Common Council, that he turned to crime around age 19, becoming a “gang banger” and making money on the streets.

He said converted to Islam in 1992 and started counseling young people.

“God saved me from myself, from my criminal mentality,” he said in the 2013 interview. He also said he was “fighting for the community to rid the streets of drugs, gangs.”

Shabazz has been in the Ulster County Jail in lieu of \$50,000 bail since his arrest last Friday. He is expected to be arraigned on the indictment in Ulster County Court next week, the district attorney said.

• • •

Related stories

[“Ulster County grand jury hears evidence against activist Ismail Shabazz in weapons case.” June 30, 2015](#)

[“Kingston civil rights activist Ismail Shabazz arrested in weapons probe.” June 26, 2015](#)

URL: <http://www.dailyfreeman.com/general-news/20150701/kingston-civil-rights-activist-ismail-shabazz-indicted-in-weapons-case>

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