

STATE OF MISSOURI)
) SS
CITY OF ST. LOUIS)

FILED
MAR 24 2014

MISSOURI CIRCUIT COURT
TWENTY-SECOND JUDICIAL CIRCUIT
(City of St. Louis)

22ND JUDICIAL CIRCUIT
CIRCUIT CLERK'S OFFICE
BY _____ DEPUTY

STATE OF MISSOURI,)
)
Plaintiff,)
) No. 1322-CR04042-01
vs.)
) Division No. 16
ANTONIO WITHERSPOON,)
)
Defendant.)

STATE OF MISSOURI,)
)
Plaintiff,)
) No. 1322-CR04045-01
vs.)
) Division No. 16
LARRY THOMAS,)
)
Defendant.)

ORDER

The State's motion to disqualify defendants' attorney has been argued and submitted. The Court now rules as follows.

Antonio Witherspoon and Larry Thomas have been charged jointly with assault first degree based on their allegedly attempting to kill or cause serious physical injury to T.C. by shooting him. They have also been charged with armed criminal

action based on the shooting. Robert Taaffe has entered his appearance as counsel for both defendants.

The State asserts that neither defendant has waived a conflict of interest that exists by Mr. Taaffe's representation of both. The State further asserts that Mr. Taaffe previously represented the victim here in a 2009 case in which the victim was charged with leaving the scene of an accident, and subsequently pleaded guilty to the charge in 2011. The State asserts that the victim will be subject to cross-examination by Mr. Taaffe and have his credibility questioned by defense counsel. The State refers to Rules 4-1.7 and 4-1.9.

Rule 4-1.7 provides that a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

- (1) the representation of one client will be directly adverse to another client; or
- (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client, or a third person or by a personal interest of the lawyer.

The disqualification of an attorney is a matter that lies within the sound discretion of the trial court. State ex rel. Horn v. Ray, 325 S.W.3d 500, 504 (Mo.App.E.D. 2010). Courts

generally recognize that resolving questions of conflict of interest is primarily the responsibility of the lawyer undertaking the representation and motions to disqualify can be misused as a pretrial stratagem of litigation. See Comment to Mo. Sup. Ct. Rule 4-1.7. Therefore, the Court should view such motions with caution. State ex rel. Wallace v. Munton, 989 S.W.2d 641, 645 (Mo.App. S.D. 1999).

A criminal defendant has a Sixth Amendment right to be represented by the counsel of his choice. In Wheat v. United States, 486 U.S. 153, 159 (1988), the Court said there are limitations on this right such as where there is a serious risk of a conflict of interest. In State v. Kretzer, 898 S.W.2d 639, 643 (Mo.App.W.D. 1995), the Court of Appeals noted that the United States Supreme Court has said the constitution does not impose on trial judges the obligation to *sua sponte* inquire whether a defendant has waived any conflict of interest in every case of multiple representation, and the Court of Appeals said there is no procedural requirement that the trial courts of this state inquire into the waiver issue in every case involving multiple representation. Such a duty arises only if the trial judge knew or reasonably should have known that a particular, real conflict of interest existed.

The Court finds that Mr. Taaffe's representation of the co-defendants does not alone create a conflict of interest that requires that he be disqualified from representing one of the defendants in this case. While no waiver of a conflict has been shown, there also has been no showing of a serious conflict that would warrant the Courts' disqualifying Mr. Taaffe from dual representation in this case.

The Court also does not believe Mr. Taaffe's representation of the victim in this case in a totally unrelated criminal matter that resulted in a guilty plea is sufficient to disqualify Mr. Taaffe in the present case. Rule 4-1.9 provides,

(a) 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.

(b) A lawyer shall not knowingly represent a person in the same or a substantially related matter in which a firm with which the lawyer formerly was associated had previously represented a client:

(1) whose interests are materially adverse to that person; and

(2) about whom the lawyer had acquired information protected by Rules 4-1.6 and 4-1.9(c) that is material to the matter; unless the former client gives informed consent, confirmed in writing.

(c) A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:

(1) use information relating to the representation to the disadvantage of the former client except as these Rules would permit or require with respect to a client or when the information has become generally known; or

(2) reveal information relating to the representation except as these Rules would permit or require with respect to a client.


In Hickey v. State, 328 S.W.3d 225 (Mo.App.E.D. 2010), the Court of Appeals held that the post-conviction movant was not denied effective assistance of counsel where counsel previously represented a witness who testified against movant. The Court noted that counsel's representation of the witness had concluded before the crime the movant was charged with had occurred,¹ the witness was not a co-defendant of the movant, and none of the charges against movant were related to the charges against the movant. The Court further noted that cases in which a conflict of interest had been found "involved more than previous representation of a prosecution witness in unrelated matters. Rather, these cases involved related offenses or other facts,

¹ The crimes at issue here allegedly occurred in August 2013, more than two years after the guilty plea by the victim/witness.

such as a favorable plea bargain for the witness, that evidenced an actual conflict of interest—something done or not done by counsel and lost to the movant, that was detrimental to the movant and advantageous to another." Id., at 230-231.

THEREFORE, for the foregoing reasons, it is Ordered and Decreed that the State's motion is denied.

SO ORDERED:



Bryan L. Hettenbach, Judge

Dated: 3/24/14

cc: Krista Boston, Assistant Circuit Attorney
Robert Taaffe, Attorney for Defendants