

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE
CRIMINAL DIVISION

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff,

v.

Case No: 10-1232
Hon. Michael Hathaway

TIGH CROFF,
Defendant,

Elizabeth J. Walker (P32517)
Assistant Prosecuting Attorney
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PEOPLE'S MOTION TO DISQUALIFY JUDGE PURSUANT TO MCR 2.003

Now come the People of the State of Michigan, Wayne County Prosecuting Attorney, Kym L. Worthy, by and through Assistant Prosecuting Attorney, Elizabeth J. Walker, and, pursuant to Michigan Court Rule 2.003, move for disqualification of this Honorable Court in the instant case. In support of their motion, the People state as follows.

1. Defendant Croff was charged with murder 2 and felony firearm for chasing down a burglar

and shooting him in the chest after the victim had surrendered by putting his hands up in the air and asking for mercy.

2. The Defendant confessed to the police and stated that after he caught up with Mr. Silas, Silas had that "mercy look" but Croff told the victim "you are going to die" and shot him in the chest. Defendant Croff could not have been in reasonable fear for his life because the victim had put up his hands to surrender and Croff acknowledged he had nothing in his hands.
3. Before trial there had been some plea discussions with the Defendant and there were in-chambers discussions with the court and defense counsel about the status of the plea discussions. In the context of plea negotiations there was a discussion with the court of the possibility of the jury finding the Defendant guilty of the less serious offense of manslaughter. At the close of that discussion the Court stated: "I wouldn't lose any sleep if the Defendant was acquitted all together." The case proceeded to trial and during the course of the trial the court failed to act as an impartial arbiter but to impose his own view of the facts of this case through his comments and his rulings. **Canon 2 B.**, of the Michigan Code of Judicial Conduct states that "A judge should respect and observe the law. At all times, the conduct and manner of a judge should promote public confidence in the integrity and impartiality of the judiciary." The Judge in this instance failed to live up to the Canons Of Judicial Conduct and should be disqualified pursuant to MCR 2.003 (C) (1) (a) and/or (b).
4. The court based on objective and reasonable perceptions acted as an advocate for the defendant rather than an impartial jurist. The Court solicited a motion for directed verdict from the Defendant at the close of the People's case in chief. The defendant had failed to file any pretrial motion to quash because it is clear from the facts that this case could have gone

to the jury on a Murder 1 if the People had so chosen to charge the Defendant. This case should have been allowed to go to the jury on a Murder 2 but this court took that option from the jury because he decided to act as the 13th juror and imposed his own view of the facts on the case. The Court then granted a motion by the Defendant to reduce the Second Degree Murder charge to Manslaughter. In making this ruling, the Court very clearly did not follow legal authority which required it to take all of the evidence in the light *most favorable to the People*. For example, in justifying its ruling, the court selected between conflicting testimony, clearly usurping the province of the jury, and plainly not taking the evidence in the light most favorable to the people. In deciding to reduce the charges to Manslaughter, the Court repeatedly referred to the complainant in the case as the, "so-called victim," and a, "perpetrator." He also stated that anyone who failed to see the adequacy and reasonableness of the provocation in this case has no common sense. He also stated that not many prosecutors would have charged Second Degree Murder. The court failed to recognize that charging is an executive and not a judicial act. That responsibility is within the province of the prosecuting attorney. "He failed to respect and observe the law" as required by the judicial Canons..

5. When it came time to discuss jury instructions, the Court *sua sponte* suggested that the Defendant request what it called a cognate offense of the misdemeanor Injuring a Person By Discharging a Firearm Intentionally Aimed Without Malice, though that offense contains an element not included within the charged offense---the use of a firearm---and by law could not be an included offense. See *People v Smith*, 478 Mich 64 (2007).
6. The Court also allowed the Defendant to present the testimony of the Defendant's parents on

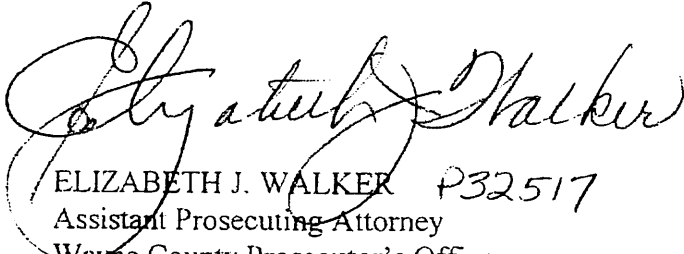
issues which were clearly probative of nothing relevant to the case. For example, Defendant's father was permitted to testify, over objection, to the fact that he had worked at Ford for thirty five years, and that he drives a Ford. Defendant's mother was permitted to testify that she had worked at, and retired from Detroit Public Schools. This testimony has nothing more than thinly veiled attempts to invoke sympathy for the Defendant. It had absolutely nothing to do with any "fact of consequence" and was inadmissible under MRE 401 and MRE 402.

7. During deliberations the court called out the jury to inquiry if there was any point in further deliberations when the Jury had not send out a note.
8. The court also would not allow the parties to discuss the jury's deliberation in the privacy of the jury room.
9. The court, however, did speak to the jury, and while knowing that this case has to be retried, admitting to the jurors that he had been talking to the public about their perception of this case and stated, according to one juror "everyone is talking to me about this case. People are telling me to give the guy a medal." This has been reported in the media, and can only work to taint the jury pool for the retrial.
10. MCR 2.003(C)(1) has been amended so that the grounds for disqualification include not only bias for or against a party, but an "appearance of impropriety" under Canon 2 of the Judicial Code. The rule has yet to be construed in any decision, but the under the federal rule it is noted that the rule there "addresses the appearance of impropriety rather than actual bias . . . Recusal . . . should follow if the reasonable man, were he to know all the circumstances, would harbor doubts about the judge's impartiality." *In re BellSouth*

Corp. 334 F.3d 941, 969 (C.A.11, 2003). Here “public confidence in the integrity and impartiality of the judiciary” requires recusal.

WHEREFORE, the People respectfully request that this Honorable Court disqualify itself for the reasons discussed, and authorities cited herein.

Respectfully submitted,



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