

## MEMORANDUM

SUPREME COURT, SUFFOLK COUNTY

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THE PEOPLE OF THE STATE OF NEW YORK

CASE NO. 03122A-2012

V.

HON. RICHARD AMBRO  
PART 5

CHRISTOPHER LOEB,

Defendant.

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By: William T. Ferris, III, Esq.  
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Defendant moves to dismiss the above referenced indictment pursuant to Criminal Procedure Law (CPL) §§ 210.20 (1) (a) and § 210.35 (5) claiming misconduct by the police impaired the integrity of the Grand Jury proceeding and prejudice to defendant may have resulted. The Special Prosecutor opposes.

This prosecution was tainted by the actions of former Police Chief James Burke who, even as a presumed victim in this case, nonetheless inserted himself into the investigation. In so doing, Burke grossly abused his position as Chief of Police<sup>1</sup> and his corrupting influence was pervasive<sup>2</sup>. Ex. E, 14-18; Ex. F, 2<sup>3</sup>.

Specifically, during the investigation, detectives and police officers permitted Burke access to the active crime scene at defendant's home and to remove certain evidence therefrom.

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<sup>1</sup>Chief Burke was convicted in federal court on February 26, 2016, of Deprivation of Civil Rights and Conspiracy to Commit Obstruction of Justice. Ex. G; Ex. H.

<sup>2</sup>For example, as alleged by the federal prosecutors, the police union pressured a member officer to withhold information concerning Burke's actions in this case. Ex. E, 11-12.

<sup>3</sup>"Ex." Refers to Exhibits (followed by page numbers) attached to defendant's Motion to Dismiss the Indictment. H refers to pages of the suppression hearing conducted by the Hon. Martin I. Efrman.

PEO. V. LOEB

Indictment No.: 03122A-2012

Page 2

H 10/23/13 44, 89; H 10/24/13 90, 93; Ex. F, 2. Moreover, other evidence allegedly recovered and removed from the house by subordinate officers was later reintroduced by them for the purpose of photographing that scene. Ex. E, 10; Ex. F, 2. After defendant was arrested, Burke and "others" extracted defendant's confessions at the 4<sup>th</sup> precinct by use of threats and physical force, which resulted in "bodily injury" to defendant.<sup>4</sup> Ex. E, 7-8; Ex. H, 13-14. However, later at the Grand Jury, a police witness falsely assured the Grand Jurors that defendant's confessions were freely and voluntarily given.

What is clear is that the evidence tying defendant to the crimes charged in the indictment (i.e., defendant's confessions and the property alleged to have been discovered in his house) was either illegally obtained and falsely testified to, or tampered with. Ex. E, 10; Ex. F, 2; Ex. H, 13. A critical responsibility of the Grand Jury is to evaluate the evidence, i.e., assess the credibility of the witnesses and the weight, if any, to be given that evidence. *E.g., People v. Haney*, 30 NY2d 328, n 8 (1972). To assure accuracy in that assessment, the Courts have "long condemned any Grand Jury practice that might incline a witness to give an inaccurate account of [their] knowledge of a crime." *People v. Huston*, 88 NY2d 400, 407 (1996). That edict was violated here, spirit and letter.

Clearly, the deliberate and pervasive tactics employed by the police in this case impaired the integrity of the grand jury proceeding and, at the very least, prejudice to defendant may have resulted. CPL § 210.35 (5). "In rare cases such as this where irregularities in presenting the case to the Grand Jury rise to the level of impairing those proceedings and creating the risk of prejudice, 'the indictment [can]not be permitted to stand even though it is supported by legally sufficient evidence.'" *Houston, supra, quoting People v. Calibud*, 49 NY2d 389, 395 (1980). Accordingly, defendant's motion to dismiss the indictment is granted.

Due to the limited information available from the federal prosecution of Burke, et al, the extent and scope of the misconduct in this prosecution is uncertain and thus, any re-presentation of this case to another Grand Jury cannot be guaranteed to be free of similar impairments. Moreover, defendant has completed the jail sentence previously imposed and it is unlikely that he would be further punished in any subsequent prosecution. Consequently, the Special Prosecutor's request to resubmit this case to another Grand Jury is denied. CPL § 210.20 (4).



J.S.C.

Dated: November 8, 2017

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<sup>4</sup>According to the United States Attorney, approximately 11 officers were prepared to testify about this use of force and coercion. Ex. H, 14.