

Law Office of Mark A. Bederow, P.C.

Carnegie Hall Tower
152 West 57th Street, 8th Floor
New York, NY 10019
Tel: 212.803.1293 • Fax: 917.591.8827
mark@bederowlaw.com
www.bederowlaw.com

June 16, 2018

The Honorable Danny K. Chun
Acting Justice of the Supreme Court
Kings County Supreme Court, Part 19
320 Jay Street
Brooklyn, New York 11201

RE: *People of the State of New York v. John Giuca*
INDICTMENT NO. 8166/2004

Dear Justice Chun:

I write to supplement our June 12, 2018, motion to dismiss for the prosecution's deliberate failure to disclose exculpatory evidence. Since filing that motion, I have reviewed a portion of the trial transcript and recent disclosures made by the prosecution which further evince former ADA Nicolazzi's pattern of suppressing evidence from Giuca and then deliberately misleading the Court and defense about her conduct.

On September 14, 2005, shortly before Nicolazzi was scheduled to examine Meredith Denihan, Antonio Russo's counsel notified her that he believed the prosecution possessed a recorded interview of Denihan. Trial Transcript ("T.") 114-15. He was correct.

Nicolazzi inexplicably failed to provide the defense with a recorded sworn statement of Denihan taken by ADA Murphy, her then-colleague in the homicide bureau, on October 15, 2003, from approximately 3:40 p.m. to 4:05 p.m. Detective Garbarino also was present. The recording was catalogued as A03-645. A copy of

Law Office of Mark A. Bederow, P.C.

The Honorable Danny K. Chun

June 16, 2018

Page 2

ADA Murphy's Homicide Investigative Report, dated October 15, 2003, is annexed hereto.¹

After Russo's counsel raised his concern, Nicolazzi quickly "found" an almost two-year old recording, which she claimed she didn't even know existed. T. 114-15, 120.

Nicolazzi's actions and explanation for her failure to disclose this significant *Rosario* material support Giuca's contention that she deliberately suppressed the exculpatory recording of Joseph Ingram.² While defending her "inadvertent" error, Nicolazzi assured the Court and defense that she disclosed "every single statement" allegedly made by Giuca and Russo; she had "gone through everything myself. I know it's all there." T. 120-21. In light of Nicolazzi's nondisclosure of the Ingram recording, she knew this was untrue.

For more than one year, Nicolazzi led a team of several experienced prosecutors and detectives who methodically prepared the case against Giuca. Her absurd claim that she had no idea Denihan had given a sworn recorded statement until Russo's counsel called her on the nondisclosure is consistent with Giuca's allegation that Nicolazzi engaged in a pattern of conduct in which she deliberately suppressed evidence and then lied to the Court in order to conceal or excuse her misconduct.³

It seems impossible that Nicolazzi was truthful with the Court regarding her lack of knowledge of the Denihan recording. She provided the "lengthy" notes of

¹ The purpose of a "Homicide Investigative Report" is to notify other members of the homicide bureau of significant case developments and to ensure that the eventual case prosecutor is aware of all investigative steps taken by their colleagues.

² As noted in our June 8, 2018, motion, Nicolazzi also "forgot" to disclose Lauren Calciano's grand jury testimony until after she completed her testimony. Nicolazzi disclosed this *Rosario* material only after Giuca's former counsel told the Court he hadn't been provided with it.

³ In many aspects, the Denihan recording is favorable to Giuca. Denihan's sworn statement contradicts significant portions of her testimony, and it also contradicts statements and testimony given by Albert Cleary and Angel DiPietro.

Law Office of Mark A. Bederow, P.C.

The Honorable Danny K. Chun

June 16, 2018

Page 3


Detective Dunne to the defense. T. 121. She presumably reviewed these 11-page notes, which at the very end clearly document the "Audio w/ADA Murphy, DA Off, 15:40, A03-0645." Detective Dunne's Denihan notes are annexed hereto. It is similarly implausible that Nicolazzi wasn't aware of ADA Murphy's Homicide Investigative Report, which was prepared specifically to alert the case prosecutor—*her*—that Denihan had made a sworn statement.

Nicolazzi's effort to admit Denihan's prior statements as a past recollection recorded further undermined her claim of ignorance to the significant *Rosario* material. She personally prepped Denihan for trial and discussed the substance of her prior statements, including Detective Garbarino's interview of Denihan "within a day or two after the homicide." T. 116-17. It is hard to believe that any prosecutor, let alone an experienced homicide prosecutor, could have been unaware that the witness made a sworn statement to a colleague and case detective shortly after the same detective interviewed the witness.

In these circumstances, there is no reasonable basis to conclude that Nicolazzi didn't deliberately suppress the Denihan recording and mislead the Court about it.

Assuming, *arguendo*, that the Court credits Nicolazzi's astonishing claim that she was unaware of Denihan's sworn statement, it demonstrates her reckless indifference to her constitutional and ethical obligations to disclose evidence.

Respectfully submitted,



Mark A. Bederow

Cc: Melissa Carvajal, Esq.
Joseph Alexis, Esq.
Clerk of the Court, Part 19