STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: July 28, 2020)

STATE OF RHODE ISLAND	:	
	:	
VS.	:	**CASE No. P1-2019-3607AG**
	:	
JOSEPH LANCIA	:	
STATE OF RHODE ISLAND	:	
	:	
VS.	:	**CASE No. P1-2019-3607BG**
	:	
LANCE IMOR	:	

DECISION

K. RODGERS, J. Before this Court is Defendant Joseph Lancia's Motion to Stay this Court's entry of an order following this Court's April 29, 2020 decision denying an earlier Motion to Disqualify/Recuse that had been filed on March 16, 2020. Alternatively, the motion seeks to have this Court's April 29, 2020 decision (April Decision) vacated and to treat the latest pleadings as Defendants' Motion to Recuse. The original Motion to Disqualify/Recuse and the instant Motion to Stay were filed by Lancia and joined in by Co-Defendant Lance Imor.[1]

[1] Lancia also filed a Motion for Extension on June 2, 2020, seeking a two-month delay in this Court's adjudication of the instant Motion to Stay in order to obtain a transcript in *State v. Hiawatha Brown*, W3-2007-0044A, in which this Court's late father, then-Presiding Justice Joseph F. Rodgers, Jr., recused himself from presiding over the criminal matters arising from the controversial episode commonly referred to as the Smoke Shop Raid. Imor joined in that Motion for Extension. Defendants argued therein that the facts and circumstances leading to the recusal of Presiding Justice Rodgers (ret.) in 2007 is somehow relevant to the resolution of the pending motions before this Court. For the reasons set forth in the hearing held remotely on June 10, 2020, and made available to the public in real-time, the Motion for Extension was denied.

A public hearing on the Defendants' motions was conducted on June 10, 2020, via WebEx with all counsel and Defendants present and with public access to the audio portion of the proceedings. Thereafter, each Defendant and the State filed supplemental memoranda.

For all the reasons set forth herein, Defendants' Motion to Stay Entry of Order is denied in all respects, and this Court again denies Defendants' Motion to Disqualify/Recuse.

I

Travel

These cases arise from an alleged shooting in the area of 161 Messer Street in Providence on June 12, 2019. Members of the Rhode Island State Police (State Police) executed court-authorized search warrants at that same address, known to be the Hell's Angels' clubhouse, and a certain motor vehicle. The evidence seized by the State Police forms the basis of the various charges against Lancia, Imor, and Co-Defendant Amber Gill.[2] A grand jury returned an indictment on or about July 3, 2019, charging Lancia with felony assault, discharge of a firearm while committing a crime of violence, carrying a firearm without a license, and assault with intent to murder. Imor was charged in that same indictment with possession of a controlled substance, compounding or concealing a felony, and the common-law offense of misprision of felony.

In February 2020, Lancia filed lengthy discovery motions to which the State objected. As is typical of motions filed on cases appearing on the Providence County Gun Calendar, the discovery motions would be discussed at the next scheduled pretrial conference, which was on March 12, 2020. One day before that scheduled date, the parties agreed to continue the pretrial conference, and hence any discussion of the discovery motions, until March 16, 2020, which

[2] Gill has not joined in any of the recusal motions.

ultimately proved to be on the cusp of Rhode Island's shutdown in response to the novel coronavirus pandemic.

During that March 16, 2020 pretrial conference, this Court was advised orally that Lancia's counsel intended to file a motion seeking this Court's recusal based upon the past employment of this Court's husband, Scott N. Raynes, with the State Police from 1994 until February 2018, now Chief of Police in Little Compton (Chief Raynes). In the absence of a written motion, this Court continued the pretrial conference and all motions to April 6, 2020. Lancia's detailed Motion to Disqualify/Recuse was filed later in the day on March 16 and challenged, *inter alia*, numerous falsehoods and/or omissions made by members of the State Police in the pertinent search warrant affidavits; the egregious conduct of the State Police in executing the search warrant at 161 Messer Street; and the potential for Chief Raynes to have authored or supervised trooper(s) who authored documentation sought by the defense three years or more prior to Lancia's June 12, 2019 arrest. Lancia Mot. at 1-3 (Mar. 16, 2020). Citing Rules 1.2 and 2.11 of the Rhode Island Supreme Court Rules of Judicial Conduct, Lancia argued that this Court was required to recuse from this case based upon an appearance of impropriety and because Chief Raynes is an "officer of a party." *Id.* at 3-4.

On March 17, 2020, the Rhode Island Supreme Court issued the first of its many Executive Orders concerning the coronavirus pandemic and its impact on the operations of the state courts. Supreme Court Executive Order 2020-04 limited the matters that could be heard in any Rhode Island court to certain enumerated emergency matters from March 17, 2020 until April 17, 2020, or until such time as the Executive Order was revoked or amended. That Executive Order also extended any court-imposed filing deadlines to April 17. Lancia's Motion to Disqualify/Recuse and criminal discovery motions were not among the emergency matters identified.

By March 24, 2020, when it became clear that COVID-19 was not going away anytime soon and cases being heard in state courts would continue to be limited to certain emergency matters, this Court communicated with counsel by email to reassign the April 6 pretrial conference and pending motions to mid-May. The Court also instructed: "The state may file a response to the motion to recuse by April 17. A written decision will be issued thereafter, but in advance of the next scheduled date." By reply email on that same day, counsel selected May 20 as the next scheduled date for a pretrial conference. No objection was raised to the Court's stated intent to issue a written decision before May 20.

On March 27, 2020, the State filed its objection to the Motion to Disqualify/Recuse, and in doing so, conveyed to this Court in an email that Lancia's counsel had advised the State that he would be filing an amended or supplemental Motion to Disqualify/Recuse, and that the State intended to file a response to any such amended or supplemental motion filed by Lancia. The Court immediately responded by email as follows: "To the extent that there is a supplemental memo filed in support of the motion to recuse, please attach it in an email to me; the state will have 10 days from the date of filing to respond and a written decision will still be issued in advance of May 20." Again, there was no objection to the Court's stated intent to issue a written decision by May 20.

On April 8, 2020, the Supreme Court issued Executive Order 2020-09 and extended the COVID-19 emergency measures until May 17, 2020. All filing deadlines which would have expired between March 17 and May 17 were extended to May 29. By way of Administrative Order 2020-05, issued on April 14, 2020, the Presiding Justice of the Superior Court authorized judicial officers to conduct certain proceedings so long as they were conducted remotely by way of teleconferencing or the recently-initiated WebEx conferencing system.

An amended motion or supplemental memorandum was not forthcoming from Defendants, nor was any communication from counsel seeking to clarify whether their supplemental filing referenced in the State's March 27 email was subject to an extension in light of the Court's twice-stated intention to issue a written decision by May 20.

This Court issued a written decision denying Defendants' Motion to Disqualify/Recuse on April 29, 2020. In the April Decision, this Court responded to Defendants' assertions that Chief Raynes potentially had relevant information concerning this case by providing a general timeline and description of his assignments known to this Court while he was employed by the State Police up until his retirement in February 2018. This Court concluded that Chief Raynes' past employment with the State Police and his experience as a member of the State Police Tactical Team did not create an appearance of impropriety.[3]

Lancia filed the instant Motion to Stay the Entry of an Order on May 13, 2020, to which Imor joined.

II

A

Procedure

Before revisiting the central themes in Defendants' Motion to Disqualify/Recuse, it is necessary to address the procedural challenges that Defendants raise. Lancia maintains that the April Decision is void because it was filed in violation of rules and Executive Orders and that recusal is mandated. Lancia Post Hr'g Mem. at 3-4, 15-19 (June 22, 2020). Lancia further states that the April Decision was issued without notice, hearing or an opportunity to respond in violation of his right to due process. *Id.* at 5. Imor has argued a deprivation of due process as well, most

[3] The April Decision is incorporated herein by reference.

vigorously during oral argument on June 10, 2020. Finally, Lancia attaches "actual bias" to this Court by having issued its April Decision. *Id.* at 19-20.

The April Decision does not violate any rule, order or protocol. This Court twice advised counsel by email that a written decision would be issued *in advance of* May 20, 2020, to which no objection was made. Accordingly, Supreme Court Executive Order 2020-09, which extended filing deadlines to May 29, 2020, did *not impact or alter* this Court's intention to issue a written decision in advance of May 20. To the contrary, Administrative Order 2020-05, issued on April 14, 2020 by the Superior Court Presiding Justice, authorized the judicial officers of the Superior Court to conduct pretrial motions and pretrial conferences remotely during the coronavirus pandemic, including the scheduled May 20 pretrial conference. As of April 14, then, the scheduled pretrial conference on May 20 was a go, this Court had advised that a written decision would be issued in advance of that date, and at no time did defense counsel seek to clarify the deadline for any supplemental filing or to determine if this Court's intention to issue a written decision before May 20 had been modified for any reason. [4]

Had defense counsel communicated in any manner with the Court to clarify the deadline for any supplemental memorandum, this Court would have immediately responded and accommodated any reasonable request, bearing in mind that no advancement could be made on the lengthy discovery motions until the recusal motion was adjudicated. By the end of April, almost five weeks after the Court granted Lancia the opportunity to file an amended motion or

[4] Under these circumstances, this Court disagrees with Defendants' belief that a supplemental memorandum could be filed up until May 29, 2020. *See* Lancia Post Hr'g Mem. at 19 (June 22, 2020). This Court also disagrees with Lancia's position that, even absent Supreme Court Executive Order 2020-09, he had until May 10 to file a supplemental memorandum. *Id.* at 18. Factoring in the ten-day response time afforded to the State, Lancia's position would leave *no time* for the Court to consider the arguments of counsel *and* issue a decision on that same day, May 20.

supplemental memorandum, and bearing in mind the additional ten days allotted for the State's response, it was apparent to the Court that Lancia elected to not make that submission,[5] and this Court's Decision was issued on April 29.

Defendants next contend that a "Protocol for Requesting A Remote Hearing/Conference" issued by the Presiding Justice of the Superior Court on April 28, 2020 prohibited this Court from issuing its April Decision on the papers in the absence of request from counsel. That protocol begins:

> "There are motions which were *previously scheduled for hearing* on or after March 16, 2020 or which have been filed since March 16, 2020 and not assigned a hearing date. If such a motion remains unresolved, any party may request that such motion be decided on the pleadings or that a hearing on such a motion be held." Protocol, at ¶ 1 (Apr. 28, 2020) (emphasis added).

At no time was the Motion to Disqualify/Recuse, filed on March 16, 2020, scheduled for a hearing. There was no objection to this Court's twice-stated intent to issue a decision in advance of May 20, 2020, and without a hearing. It lies within the discretion of the Court whether or not to hold a hearing and allow oral argument, including on a recusal motion. *Ryan v. Roman Catholic Bishop of Providence*, 941 A.2d 174, 188 (R.I. 2008). Simply put, the Motion to Disqualify/Recuse was not subject to the protocol for requesting a hearing or agreeing to have the motion decided on the papers because it was not previously scheduled for a hearing and there had been no objection to the Court's stated intent to decide the matter on the papers.

[5] Imor failed to file any memorandum until June 19, 2020, and his "joining in" any motions filed by Lancia was unclear until the June 10, 2020 oral argument when asked directly by this Court. Without deciding, it is arguable that Imor's claim that he has been deprived due process by this Court issuing its April Decision, which he strenuously argued in the June 10, 2020 remote hearing, has been waived.

In this case, this Court did not deviate from any rule, order or protocol by issuing its April Decision. Moreover, this Court did not deprive Defendants of notice, hearing, or an opportunity to supplement filings. The parties were at all times advised that a written decision would be issued, this Court allowed Lancia the opportunity to amend his motion or supplement his memorandum, but he failed to do so after five weeks. Nonetheless, and importantly, Defendants have now had a hearing and filed additional memoranda both before and after said hearing. To the extent any part of any rule, order or protocol was mistakenly overlooked by this Court or due process was infringed upon, any such violation is now moot.

On all of these procedural grounds, Defendants' motion to recuse is denied.

B

Appearance of Impropriety

The Preamble to the Supreme Court Rules of Judicial Conduct states:

> "Judges should maintain the dignity of judicial office at all times, and avoid both impropriety and the appearance of impropriety in their professional and personal lives. They should aspire at all times to conduct that ensures the greatest possible public confidence in their independence, impartiality, integrity, and competence" Sup. Ct. R. Jud. Conduct, Preamble (Eff. June 12, 2018).

The Supreme Court Rules of Judicial Conduct governing the integrity of judges in general and the grounds for recusal are found in Rules 1.2 and 2.11. Rule 1.2 states:

> "**Promoting Confidence in the Judiciary**. – A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety." Sup. Ct. R. Jud. Conduct, Art. VI, Rule 1.2 (internal references to defined terms omitted).

Rule 2.11 provides in pertinent part:

> "**Disqualification –** (A) A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to the following circumstances:

> "(1) The judge has a personal bias or prejudice concerning a party or has demonstrated an actual bias towards a party's lawyer, or personal knowledge of facts that are in dispute in the proceeding.
> "(2) The judge knows that the judge, the judge's spouse or domestic partner. . . is:
> (a) a party to the proceeding, or an officer, director, general partner, managing member, or trustee of a party;
> (b) acting as a lawyer in the proceeding;
> (c) a person who has more than a de minimis interest that could be substantially affected by the proceeding; or
> (d) likely to be a material witness in the proceeding." Sup. Ct. R. Jud. Conduct, Art. VI, Rule 2.11 (internal references to defined terms omitted).

As discussed in the April Decision, our Supreme Court has repeatedly held that a judicial officer must recuse *only* if he or she is unable to render a fair or an impartial decision. *See, e.g.*, *State v. McWilliams*, 47 A.3d 251, 260 (R.I. 2012); *State v. Mlyniec*, 15 A.3d 983, 998–99 (R.I. 2011); *Mattatall v. State*, 947 A.2d 896, 902 (R.I. 2008); *Kelly v. Rhode Island Public Transit Authority*, 740 A.2d 1243, 1246 (R.I. 1999); *State v. Cruz*, 517 A.2d 237 (R.I. 1986). It is equally well settled that a judge has as great an obligation *not* to disqualify himself or herself when there is no sound reason to do so as he or she has to do so when the occasion does arise. *State v. Washington*, 189 A.3d 43, 64 (R.I. 2018); *McWilliams*, 47 A.3d at 260; *Mlyniec*, 15 A.3d at 999; *Ryan*, 941 A.2d at 185; *State v. Clark*, 423 A.2d 1151, 1158 (R.I. 1980).

"Before a judge is required to recuse in order to avoid the appearance of impropriety, facts must be elicited indicating that it is reasonable for members of the public or a litigant or counsel to question the trial justice's impartiality. However, recusal is not in order by a mere accusation that is totally unsupported by substantial fact." *Clark*, 423 A.2d at 1158 (citing *Marr v. Marr*, 383 So.2d 194, 196 (Ala. Civ. App. 1980)). It is the party seeking recusal who '"bears the burden of establishing that the judicial officer possesses a personal bias or prejudice by reason of a preconceived or settled opinion of a character calculated to impair his [or her] impartiality seriously and to sway his [or her] judgment.'" *Washington*, 189 A.3d at 64 (quoting *State v.*

Howard, 23 A.3d 1133, 1136 (R.I. 2011)); *see also Mattatall*, 947 A.2d at 902; *Cavanagh v. Cavanagh*,118 R.I. 608, 621, 375 A.2d 911, 917 (1977). The party seeking recusal "must show that there are facts present such that it would be 'reasonable for members of the public or a litigant or counsel to question the trial justice's impartiality.'" *In re Jermaine H.*, 9 A.3d 1227, 1230 (R.I. 2010) (quoting *In re Antonio*, 612 A.2d 650, 653 (R.I. 1992)); *see also Washington*, 189 A.3d at 65. It is a "substantial burden of proof" that the moving party must meet to prevail on a motion to recuse. *In re Jermaine H.*, 9 A.3d at 1230; *see also Washington*, 189 A.3d at 65.

Our judicial counterparts in the federal system have had many opportunities to elucidate the important considerations when a trial judge is faced with a motion to recuse under 28 U.S.C. § 455(a).[6] In *In re United States*, 666 F.2d 690, 694 (1st Cir. 1981), the First Circuit Court discussed the competing policies embedded in a recusal:

> "The first and most obvious policy is that courts must not only be, but must seem to be, free of bias or prejudice. To ensure that the proceedings appear to the public to be impartial and hence worthy of their confidence, the situation must be viewed through the eyes of the objective person. . . .
>
> "A second and less obvious policy is that a judge once having drawn a case should not recuse himself on a unsupported, irrational, or highly tenuous speculation; were he or she to do so, the price of maintaining the purity of appearance would be the power of litigants or third parties to exercise a negative veto over the assignment of judges." *Id.* (internal citation omitted).

In that case, the government posited that recusal was required where the trial judge maintained a close personal and professional relationship with a governor, including as legal counsel, and that the defendant had provided some manner of political help to the governor in

[6] 28 U.S.C. § 455, entitled "Disqualification of justice, judge or magistrate judge," is substantially similar to the pertinent provisions of Rule 2.11 of our Supreme Court Rules of Judicial Conduct. *See* 28 U.S.C. § 455(a) and (b)(5); R.I. Sup. Ct. R. Jud. Conduct 2.11 (A) and (A)(2).

years past. The government argued that the trial judge had the incentive to return a favor to the defendant for protecting his friend politically. *Id.* at 693. The First Circuit rejected the government's argument after careful analysis, and in doing so, observed:

> "If the receipt by a judge's friend of a favor long ago from one who is a present litigant should disqualify the judge, judges could hope to preside without challenge solely in communities in which they are strangers. For when a judge presides in an area where he and his family have lived for one or more generations, the numbers of people who have, directly or indirectly, helped family members, relatives, close friends, and friends of friends would form a large and indeterminate community. So also are there bound to be indefinite numbers of people who have been critical of or been on opposite sides of controversies with families, relatives, and friends. Not only would the role of judges be severely constricted by requiring disqualification under these circumstances but the result would reflect a more jaundiced view as to when there should be a reasonable doubt about a judge's impartiality than accords with the public perception." *Id.* at 696-97.

In another prosecutorial challenge to a trial judge's impartiality, the First Circuit upheld the denial of a recusal motion where the trial judge and her husband had a delinquent loan at the defendant bank. *In re United States*, 158 F.3d 26 (1st Cir. 1998). There, the government painted a picture of coziness and preferential treatment for the benefit of the trial judge and her spouse which would have reasonably established an appearance of impropriety; however, the facts upon which the government relied were not proven. *Id.* at 34-35. In rejecting the government's contentions, the Court cautioned:

> "Just as a judge must assiduously avoid participating 'in any proceeding in which h[er] impartiality might reasonably be questioned,' 28 U.S.C. § 455(a), so, too, a judge must avoid yielding in the face of unfounded insinuations. A party cannot cast sinister aspersions, fail to provide a factual basis for those aspersions, and then claim that the judge must disqualify herself because the aspersions, *ex proprio vigore*, create a cloud on her impartiality. *See FDIC v. Sweeney*, 136 F.3d 216, 219 (1st Cir. 1998) (per curiam); 13A Charles Alan Wright, Arthur R. Miller & Edward H. Cooper, Federal Practice and Procedure § 3542 (2d ed.

> 1984). To hold otherwise would transform recusal motions into tactical weapons which prosecutors and private lawyers alike could trigger by manipulating the gossamer strands of speculation and surmise." *Id.* at 35.

Our Supreme Court has adhered to the same policies and rationale espoused by the First Circuit. In *Clark*, the prosecutor had rented office space from the trial judge's then-law partnership roughly eighteen months before trial. 423 A.2d at 1157. Finding the association between the prosecutor and the trial judge to be insignificant, the Court stated, "[m]ere acquaintanceship between members of the bench and bar, particularly in a state the size of Rhode Island, is not a ground for recusal. If it were, the state's judicial system might well grind to a halt." *Id.* at 1158. In *State v. Romano*, 456 A.2d 746, 753-54 (R.I. 1983), the Court dismissed the argument that an appearance of impropriety existed whereby the trial justice had a personal, professional and business relationship with the Attorney General and his uncle. Citing *In re United States* from 1981 and *Clark*, our Supreme Court declined to create a per se rule that a trial judge must recuse because of such relationships. *Id.* at 754.

Lastly, in *Cruz*, 517 A.2d 237, the Supreme Court reflected upon the evidence presented at hearing, as well as the voir dire examination to which the trial judge submitted himself, in response to the State's motion to recuse based upon the trial judge and an officer of the corporate defendant belonging to the same country club. The Court held that the basis for the State's motion was "flimsy" and that it "borders upon the frivolous to suggest that membership in an organization consisting of approximately 365 persons in common with an individual whom the trial justice would not recognize without assistance would create any actual or apparent impartiality on the part of a trained and experienced trial judge." *Id.* at 241. The Court went on to explain:

> "The underlying concept of our judicial system is based upon the assumption that judges, by education, training, and experience, are able to surmount the possession of information and other mental and

> emotional constraints which may well preclude a juror from rendering a fair and impartial verdict based solely on the evidence produced in court." *Id.* (citing *Jackson v. Denno*, 378 U.S. 368 (1964)).

Against this legal backdrop, the Court now returns to the central question presented to this Court, of which Defendants apparently agree, *see* Lancia Mem. at 1 (May 13, 2020): whether Chief Raynes' past employment with the State Police has "any connection, real or reasonably perceptible, to the conduct of the trial" that would create the appearance of impropriety. *State v. Oliveira*, 774 A.2d 893, 913 (R.I. 2001). After ample time to contemplate the issues and generate multiple filings, Defendants have not advanced their argument much further than in their original filing on March 16, 2020, aside from making unsupported or inconsequential claims. Defendants provide a litany of additional challenges to Chief Raynes' tenure with the State Police which they argue support this Court's disqualification. Among those challenges are that Chief Raynes served (1) in the Wickford Barracks in 2008 under the supervision of then-Sergeant Michael Reynolds, Jr., the father of Michael Reynolds III, the affiant of the search warrant applications at issue in this case; (2) in the Wickford Barracks and on the Tactical Team in 2008 under then-Lieutenant James Manni, the present Superintendent of the State Police; (3) in a supervisory capacity over Michael Reynolds III on the Tactical Team in 2013; and (4) as a prosecution officer. Lancia Mem. at 5-6 (May 13, 2020). Further, Defendants state that Chief Raynes was "involved in Tactical Team training and tactics during State Police investigations into the activities of Hell's Angels members, and trained Tactical Team members regarding surveillance, investigative techniques, and entry into the building located at 161 Messer Street in Providence." *Id.* at 7. When pressed during the June 10, 2020 remote hearing what support Defendants have for this detailed statement, defense counsel offered rank speculation that the Hell's Angels and 161 Messer Street must have been

something that the Tactical Team continually considered and for which they continually prepared. There is no support whatsoever for this bald assertion.

The fact still remains that Chief Raynes' tenure with the State Police until his retirement in February 2018 and whatever past association he had as a member of the State Police Tactical Team provide him no insight into the June 12, 2019 shooting outside 161 Messer Street, the investigation and arrest of these Defendants, the execution of the search warrants in this case, or the installation of or monitoring of the so-called pole camera outside 161 Messer Street. There is no reasonable basis to believe that Chief Raynes is "likely to be a material witness in the proceeding,"[7] and Chief Raynes is not and never was an "officer . . . of a party" in this case as Defendants have contended. *See* Sup. Ct. R. Jud. Conduct, Art. VI, Rule 2.11(A)(2)(a), (d).

Moreover, any familiarity that Chief Raynes has with the process of executing search warrants, the present members of the State Police Tactical Team, or members of any other division within the State Police, past or present, is not imputed to this Court. Defendants have presented no legal support for such rhetorical suppositions. Nor would Chief Raynes' impression or feeling of any member of the State Police called to testify—if ever he had any such impression or feeling[8]— have any influence over this Court's assessment of the witnesses and evidence presented

[7] Lancia's assertions that, by virtue of the April Decision, Chief Raynes has become a necessary witness, that all statements and documents referenced in the decision are discoverable under Super. R. Crim. P. 26.1, and that an evidentiary hearing is required are entirely without merit. *See* Lancia Post Hr'g Mem. at 14 (June 22, 2020).

[8] To be clear, this Court is unaware if Chief Raynes has any such impressions or feelings concerning members of the Tactical Team or detectives present on June 12, 2019, others involved in this investigation or the arrests, or any present or past members of the State Police who have or had involvement with the installation or monitoring of the so-called pole camera. Moreover, the suggestion that Chief Raynes and every member of every SWAT team in the country form a "formidable brotherhood that stick together and dissent is not tolerated," as evidenced by actions taken by members of a Buffalo, New York SWAT team, *see* Lancia Post Hr'g Mem. at 2 n.2, and 8 (June 22, 2020), is entirely specious and without any relevance to this Court's consideration of the instant issues.

and the lawfulness of law enforcement actions in this case, including whether Defendants are entitled to a *Franks* hearing and, if so, the outcome thereof.

It is also important to note that the cases relied upon by Defendants that found that recusal was necessary involved the judge's own relationships with witnesses, parties or attorneys. *See Williams v. Pennsylvania*, 136 S. Ct. 1899, 1908-09 (2016) (judge had earlier significant involvement as prosecutor seeking death penalty for defendant); *Caperton v. A.T. Massey Coal, Co.*, 556 U.S. 868, 886-87 (2009) (executive officer of defendant contributed three million dollars to appellate judge's election campaign at time when judgment likely to be appealed to his court); *In re Bulger*, 710 F.3d 42, 48-49 (1st Cir. 2013) (judge had been in United States Attorney's office sharing investigative information with other agencies concerning defendant). Here, however, Defendants' focus is on this Court's *spouse's* relationships or interactions with the investigating agency and witnesses. Thus, the present case is one significant step removed from the considerations in *Williams*, *Caperton* and *Bulger*, and each of those holdings are distinguishable.

For these reasons, and those set forth in the April Decision, there remains no basis for this Court's recusal based upon an appearance of impropriety.

C

Actual Bias

Beyond the appearance of impropriety, Lancia now asserts that this Court has demonstrated an actual bias against him because (1) the April Decision was filed in violation of a Superior Court Executive Order and without permitting Defendant to file his supplemental memorandum; (2) this Court failed to reveal Chief Raynes' professional interaction with Michael Reynolds III or Michael Reynolds, Jr.; and (3) because of this Court's understanding of when Chief Raynes resigned from the State Police Tactical Team. *See* Lancia Post Hr'g Mem., at 19-20 (June 22, 2020). Imor also

now argues that should this Court fail to afford Defendants an evidentiary hearing, it would "impute an actual bias, at a minimum, regarding the issue of recusal and certainly implicate the Defendants' due process guarantees." Imor Suppl. Mem. at 3 (June 19, 2020).

Wholly separate from the analysis of an appearance of impropriety based upon Chief Raynes' past employment with the State Police, the focus now is on this Court's actions. It is Defendants' burden of proving that this Court '"possesses a personal bias or prejudice by reason of a preconceived or settled opinion of a character calculated to impair . . . [her] impartiality seriously and to sway . . . [her] judgment.'" *Washington*, 189 A.3d at 64 (quoting *Howard*, 23 A.3d at 1136; *see also Mattatall*, 947 A.2d at 902; *Cavanagh*, 118 R.I. at 621, 375 A.2d at 917. It is a substantial burden that Defendants must satisfy. *Washington*, 189 A.3d at 65.

As discussed *supra*, the April 28, 2020 Administrative Order issued by the Superior Court Presiding Justice governed "motions which were previously scheduled for hearing," which did not apply to the March 16, 2020 Motion to Disqualify/Recuse. Thus, the April Decision did not violate any rule, order or protocol. Even if there were an unintentional and mistaken violation of any such order or protocol, recusal is not warranted by the filing of the April Decision. Rule 2.11(A)(4) (positions taken by judge in judicial decision or opinion not grounds for disqualification). Since a judicial decision cannot serve as a basis for disqualification under the Code of Judicial Ethics, it stands to reason, then, that a judicial decision cannot serve as a basis for establishing actual bias. Put another way, if every judicial decision, including pretrial matters, which favored one party over the other established "actual bias" warranting immediate recusal, there would be an unending merry-go-round of transferred cases between judges, thus paralyzing the judicial system. Such an extreme result is not authorized and cannot stand.

Next, this Court was and continues to be unaware of every superior or subordinate member of the State Police with whom Chief Raynes had been on assignment over his twenty-four-year career.[9] Included among those with whom this Court is unfamiliar by name, face or otherwise are Michael Reynolds III and/or Michael Reynolds, Jr. This Court stated as much at the June 10, 2020 remote hearing in response to Lancia's May 13, 2020 memorandum in support of his Motion to Stay, yet Lancia now claims that this Court's failure to identify those individuals in advance demonstrates this Court's actual bias.

This inconsistent contention is mystifying. On one hand, Defendants insist that this Court's inclusion of *any* information concerning Chief Raynes' tenure with the State Police constitutes a violation of Sup. Ct. R. Jud. Conduct 2.9(C), which provides that "[a] judge shall not investigate facts in a matter independently, and shall consider only the evidence presented and any facts that may properly be judicially noticed." On the other hand, Lancia maintains that this Court's *failure* to investigate and disclose something (of which the Court was otherwise unaware) somehow demonstrates actual bias. Lancia Post Hr'g Mem. at 20. This awkward boot-strap asseveration is precisely what Judge Selya long ago condemned in *In re United States*, which bears repeating:

> "A party cannot cast sinister aspersions, fail to provide a factual basis for those aspersions, and then claim that the judge must disqualify herself because the aspersions, *ex proprio vigore* [of their own strength], create a cloud on her impartiality." *Id.* at 35.

So too, it is improper to restrict a court from responding to a party's remonstrations, hollow as they may be, in order to properly and fully address a disqualification motion. If a trial judge were so restrained from providing an adequate factual context to address the concerns raised by

[9]It "borders upon the frivolous" to suggest that the appearance before this Court of any one of the hundreds of men and women who served on the State Police during Chief Raynes' tenure from 1994 through 2018 would create an appearance of impropriety. *Cruz*, 517 A.2d at 241.

the moving party, then the mere filing of a recusal motion would "confer a veto power on the assignment of his trial judge to any heckling [litigant] who merely levels a charge that implicates" a judge's bias or partiality. *In re Bulger*, 710 F.3d at 47. No judicial canon nor case law invites such an unwarranted result.

In any event, this Court did not conduct an independent investigation into facts but rather provided an appropriate and necessary response to the very issues that Defendants raised. This Court laid bare all the relevant background of Chief Raynes' tenure with the State Police and the decades-old, brief connection that Chief Raynes had with 161 Messer Street and the Hell's Angels. That this Court did not identify the affiant and his father as having had a past professional relationship with Chief Raynes simply supports the lack of any independent investigation by this Court. Furthermore, the fact remains that the Reynoldses remain unknown to this Court and any testimony offered by the younger Reynolds—and any other member of the State Police—will be considered in the same manner as every other witness in every case who has appeared before this Court.

Next, Lancia claims that this Court's own misstatement of the year in which Chief Raynes ceased being a member of the State Police Tactical Team—whether it was in 2015 as referenced in the remote hearing,[10] in 2017 as disclosed in the April Decision, or sometime in between—is evidence of this Court's actual bias. *See* Lancia Post Hr'g Mem. at 20 (June 22, 2020). This assertion is also without merit. Again, no independent investigation was conducted; certainly, if it had then a specific date of Chief Raynes' resignation from the Tactical Team would have been provided. Instead, it was and remains this Court's understanding that the last Tactical Team

[10] Lancia points to a particular time during that remote hearing as support of what was said. This Court reminds all counsel and listeners alike that the official record of a judicial proceeding is the transcript created by the court reporter, not any other type of recording.

involvement by Chief Raynes was sometime in the year or two, or three, prior to his retirement in February 2018. Additionally, this Court's reference to Capt. Borek being *the* Tactical Team leader and more superior to Chief Raynes has no affect on this Court's impartiality.[11] *Id.* That very information derives from Lancia's own exhibit attached to his May 13, 2020 memorandum. *See* Lancia Mem., Ex. D (May 13, 2020) (2013 State Police Annual Report listing Tactical Team members in ranking order). This Court fails to see how such a minor discrepancy has any bearing on this Court's ability to be fair and impartial.

Finally, Imor maintains that actual bias exists and due process will be violated if this Court declines to grant an evidentiary hearing, presumably with Chief Raynes as the star witness. Imor Suppl. Mem. at 3 (June 19, 2020). This assertion begs the question of whether the law requires an evidentiary hearing. Imor relies on *Cruz* for the proposition that the proponent of recusal in a criminal matter is entitled to develop an evidentiary record for full consideration by the court. 517 A.2d at 241 n.1. There is no such support for that proposition in *Cruz.* Instead, the Supreme Court expressly *declined* to impose guidelines concerning procedures to be adopted in response to a motion to disqualify a judge. *Id.* (relying instead on case law and Canons of Judicial Ethics to establish standard to be applied rather than guidelines or procedures). Notably, the *Cruz* Court offered the following guidance on procedures in responding to a recusal motion: "the trial justice would have been justified in denying the motion to recuse *simply by examining the face of the affidavit* without the requirement of any additional testimony." *Id.* (emphasis added).

[11] The April Decision references Chief Raynes as having been "*a* member and ultimately [a] team leader of the State Police Tactical Team." April Decision, at 2.

In following both *Cruz* and *Ryan*, not only is an evidentiary hearing not mandated,[12] but it is within the discretion of this Court to conduct oral argument on a motion to recuse. *Ryan*, 941 A.2d at 188; *Cruz*, 517 A.2d at 241 n.1. This Court's adherence to legal precedent cannot form the basis of actual bias.

D

Distinction with *State v. Eddy*

Finally, Defendants assert that this Court's decision in *State v. Eddy*, PM-2008-6752 (July 23, 2010) (State v. Eddy Decision) supports recusal in the instant case. *See* Lancia Mem. at 2, 12 (May 13, 2020); Lancia Post Hr'g Mem. at 21 (June 22, 2020). In that case, the defendant was seeking this Court's recusal because a State Police investigation led to the defendant's conviction for first-degree sexual assault and first-degree child molestation. This Court was sitting on the daily criminal calendar at the time that the defendant sought postconviction authorization for additional DNA testing beyond the Y-STR DNA testing that had already been conducted. At the time of that motion, Chief Raynes was a corporal in the State Police. This Court discussed in its decision each of the elements under then-Canon 3E governing disqualification and concluded there were no grounds to recuse. The Court then considered whether there was an appearance of impropriety in ruling upon the motion for additional testing. Mindful that then-Corporal Raynes was then and would be employed by the State Police for many years to come, this Court—perhaps

[12] This Court also rejects Defendants' request that the matter be transferred to the Presiding Justice or her designee for hearing. Lancia Mot. at 2 (May 13, 2020). Recusal motions "customarily are decided by the judge whom the movant seeks to disqualify, almost always involve the actions or relationships of the judge and almost always require the judge to appraise her own situation." *In re United States*, 158 F.3d at 34 (citing *In re Martinez-Catala*, 129 F.3d 213, 220 (1st Cir. 1997); *see also United States v. Foley*, No. 3:18-cr-333 (VLB), 2020 WL 137227, at *4 (D. Conn. Jan. 13, 2020) (no reported case or principal of law compels trial judge to leave motion to recuse to different judge).

inartfully—sought to dispel any notion that this Court's limited consideration of the pending motion would serve to benefit her husband, her husband's employer or her husband's career because this Court was not being called upon to consider the propriety, conduct or results of a State Police investigation or the credibility of any member of the State Police. State v. Eddy Decision, at 4. In other words, there was no reason to believe that then-Corporal Raynes would receive favorable treatment within the State Police because his wife ruled in a manner that somehow favored the State Police or any of its members.

Ten years later, those very concerns no longer exist. There is no benefit or detriment to Chief Raynes or to this Court that would inure as a result of any decision made by this Court presiding over Defendants' criminal cases. Chief Raynes has long since retired from the State Police and there is no impact that any rulings in this case—which either reflect favorably or unfavorably on the State Police or any of its members—would have on Chief Raynes or this Court. Under these markedly different circumstances than what existed in 2010, no reasonable member of the public can question this Court's impartiality in deciding matters relating to the propriety, conduct or results of a State Police investigation into the Hell's Angels generally or these Defendants specifically, or in assessing the credibility of members of the State Police.

III

Conclusion

After consideration of five memoranda filed by Defendants, the State's objections, hearing and argument of all counsel, and applicable case law, Defendants have failed to satisfy their substantial burden of proving that this Court possesses a personal bias or prejudice by reason of a preconceived or settled opinion of a character that impairs this Court's impartiality seriously and would sway this Court's judgment. Nor are there any facts present such that it would be reasonable

for members of the public, a litigant or counsel to question this Court's impartiality. Chief Raynes' past employment with the State Police, ending over one year before the events leading to the criminal charges in this indictment, has no connection, real or reasonably perceptible, to the conduct of this trial or the pretrial proceedings that would create the appearance of impropriety. Thus, there is no grounds for this disqualification based upon either actual bias or the appearance of impropriety.

For all these reasons, as well as the reasons set forth in this Court's April Decision, Defendants' Motion to Stay is denied in all respects, and Defendants' Motion to Disqualify/Recuse is denied.

Counsel for the State shall submit an order consistent with this Decision.

RHODE ISLAND SUPERIOR COURT
Decision Addendum Sheet

TITLE OF CASE:	**State of Rhode Island v. Joseph Lancia** **State of Rhode Island v. Lance Imor**
CASE NO:	**P1-2019-3607AG** **P1-2019-3607BG**
COURT:	**Providence County Superior Court**
DATE DECISION FILED:	**July 28, 2020**
JUSTICE/MAGISTRATE:	**K. Rodgers, J.**
ATTORNEYS:	
For Plaintiff:	**Joseph J. McBurney, Esq.** **Katelyn M. Revens, Esq.**
For Defendant:	**Joseph J. Voccola, Esq.** **Jason Dixon Acosta, Esq.**