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Court of Common Pleas

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By: MARTIN E. YAVORCIK 0070681

Confirmation Nbr. 670289

THE STATE OF OHIO

vs.

MARTIN YAVORCIK

CR 14 585428-C

Judge:

JANET R. BURNSIDE

Pages Filed: 48

COURT OF COMMON PLEAS
CUYAHOGHA COUNTY, OHIO

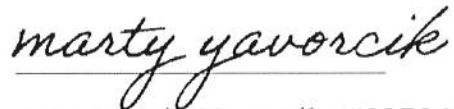
STATE OF OHIO)	CASE NO: CR-585428-C
PLAINTIFF)	JUDGE: BURNSIDE
Vs.)	
MARTIN E. YAVORCIK)	<u>Motion for Grand Jury Testimony</u>
DEFENDANT)	<u>and Documents Crim.R. 6(E) &</u>
)	<u>16 (B)(1) or in Alternative Motion</u>
)	<u>to Dismiss Crim.R. 12(C) & 5th</u>
)	<u>Amendment U.S. Constitution</u>
)	

The Defendant, *pro se*, moves this Court for an order directing that the testimony from the grand jury be transcribed and delivered to the Court for an in camera inspection and then to counsel for the Defendant, and that the same be done at the government's expense. Defendant moves the Court pursuant to Ohio Rules of Criminal Procedure 6(E) & 16 (B)(1). A brief in support showing this defendant's particularized need for the testimony and documents presented to the grand jury by the government in this case is attached and hereby incorporated by reference.

In the alternative, the defendant requests the Court to dismiss the indictment against this defendant pursuant to Crim.R. 12 (C) and the Ohio Supreme Court's

decisions in *State v. Jackson*, 125 Ohio St. 3d 218 and *State v. Conrad*, 50 Ohio St. 3d 1 for the government's blatant direct use of the defendant's proffered statements pre-indictment and in preparation for trial of this case.

Respectfully Submitted,



Atty. Martin Yavorcik (#0070681)

Pro Se Defendant

143 Boardman-Canfield Rd., Unit 185

Boardman, Ohio 44512

Tel. 330.518.8851

yavorcik@gmail.com

MEMORANDUM OF LAW

Ohio courts have historically protected the secrecy accorded the grand jury proceedings. *See State v. Rhoades*, 81 Ohio St. 397, 91 N.E. 186 (1910).

However, in more recent years, there has been a significant broadening of the law of the discretionary use of grand jury testimony by criminal defendants for discovery purposes. *State v. Greer*, 66 Ohio St.2d 139, 144, 420 N.E.2d 982 (1981). In *State v. Laskey*, 21 Ohio St.2d 187, 191, 257 N.E.2d 65 (1970),

vacated in part on other grounds by *Laskey v. Ohio*, 408 U.S. 936, 92 S. Ct. 2861, 33 L. Ed. 2d 753 (1972), the Ohio Supreme Court held that an accused may inspect grand jury transcripts either before or during trial when the ends of justice require it and there is a particularized need for disclosure which outweighs the need for secrecy. The court has acknowledged that a defendant's rights to inspection and due process may, in certain instances, outweigh the time-honored secrecy shrouding grand jury proceedings:

The reasons for the right of a defendant in a criminal case to inspect a statement of the prosecuting witness vary from the recognition that it is a procedural safeguard against the suppression of evidence material and capable of exculpating the accused to the idea that it provides additional material for impeaching the credibility of the prosecuting witness.

State v. White, 15 Ohio St.2d 146, 155, 239 N.E.2d 65 (1968).

In *Greer*, the Ohio Supreme Court held the following:

“1. Disclosure of grand jury testimony, other than that of the defendant and co-defendant, is controlled by Crim.R. 6(E), not by Crim.R. 16(B)(1)(g), and the release of any such testimony for use prior to or during trial is within the discretion of the trial court.

“2. Grand jury proceedings are secret, and an accused is not entitled to inspect grand jury transcripts either before or during trial unless the ends of justice

require it and there is a showing by the defense that a particularized need for disclosure exists which outweighs the need for secrecy. (Paragraph three of the syllabus in State v. Patterson, 28 Ohio St.2d 181, 277 N.E.2d 201, approved and followed.)

“3. Whether particularized need for disclosure of grand jury testimony is shown is a question of fact; but, generally, it is shown where from a consideration of all the surrounding circumstances it is probable that the failure to disclose the testimony will deprive the defendant of a fair adjudication of the allegations placed in issue by the witness' trial testimony.

“4. When defense counsel asserts and establishes to the satisfaction of the trial court a particularized need for certain grand jury testimony, the trial court, along with defense counsel and counsel for the state, shall examine the grand jury transcript in camera and give to defense counsel those portions of the transcript relevant to the state's witness' testimony at trial, subject to the trial court's deletion of extraneous matter, and issuance of protective orders where necessary.”

(Syllabus by the Court).

PROOF OF PARTICULARIZED NEED CRIM.R. 6(E)

1. “Marty Yavoreik Presentation”

Prior to the indictment on May 14th, 2014 the state of Ohio, through Ohio Assistant Attorney General Dan Kasaris, summoned defendant Yavorcik to the Office of the Attorney General in downtown Youngstown, Ohio and presented him with a power point presentation titled “Marty Yavorcik Presentation.” [See attached] The purported purpose of this presentation was an attempt to “offer a resolution of this matter pre indictment. *See “Yavorcik Presentation” at page 22.* Atty. Kasaris, along with FBI and BCI agents, proceeded to walk Yavorcik through a series of slides they compiled showing the evidence they were going to present to the grand jury if Yavorcik was unwilling to become a cooperating witness and plead guilty to some crimes.

On Pages 6, 7, 15, 16, 17 and 18 of the “Yavorcik Presentation” the government cited specific statements Yavorcik made during his oral proffer sessions. Those statements are the following: Page 6 “C. 3-11-10 YOU ADMIT THAT THE YOU INTENDING ON USING THE 15K TO PAY FOR THE POLL.”; Page 7 “MARTY YAVORCIK ADMITTED IT TO FBI IN FEB OF 2011 YAVORCIK ACKNOWLEDGED THERE WERE TIMES DURING THE 2008 RACE WHERE HE WOULD BE AT EVENTS IN WHICH PEOPLE GAVE HIM CASH IN SUPPORT OF HIS CAMPAIGN FOR PROSECUTOR AND THAT YAVORCIK DID NOT REPORT THOSE AMOUNTS ON HIS CAMPAIGN

FINANCE REPORTS. WHILE YAVORCIK COULD NOT REMEMBER THE NAMES OF EVERYONE WHO GAVE HIM CASH, HE SAID IT DID HAPPEN.”; Page 15 “ADMITTED RECEIVED IT FROM FLORA CAFARO”; Page 16 “YOU ADMITTED IN DECEMBER OF 2010 THAT THE MONEY FLORA CAFARO GAVE YOU WAS FOR THE POLL AND NOT FOR LEGAL SERVICES RENDERED OR TO BE RENDERED.”; Page 17 “YOU ADMITTED IT”; and Page 18 “YAVORCIK acknowledges he did promise to LISA ANTONINI that he would try to influence a case involving KURT WELSH in the County Court in Canfield. YAVORCIK acknowledged that he promised LISA ANTONINI that if elected prosecutor, he would then represent WELSH.”

On page 23 of the “Yavoreik Presentation” under the heading of “What Can I say” the government then detailed the charges Yavoreik was looking at facing. They were: (1) Engaging in a Pattern of Corrupt Activity -F1; (2) Money Laundering-1 and 5 Counts at least – F-3; (3) Tampering with Records -Campaign Finance Reports -1 and 24 Counts All F-3 one for creating it and one for passing it; (4) Tampering with Records and or Evidence – Fake Legal Fee Receipt F-3; (5) Filing False Tax Returns – F-5; and (6) Bribery – Lisa, Reardon, McNally, Sciortino, Cafaro Minimum 5 Counts All F-3.

At this meeting Yavorcik was specifically told by Kasaris that he was going to present this power point presentation to the grand jury and that he would be indicted if he chose not to cooperate at that time. Yavorcik did not agree to become a cooperating witness, has pled not guilty in this matter, and Kasaris did exactly what he said he would do and, upon information and belief, presented the power point presentation to the grand jury along with Yavorcik's statements in direct violation of his oral proffer agreement and *Kastigar* rights.

The power point presentation is direct evidence of the government's illegal and unlawful use of Yavorcik's proffered statements in several potential ways. First, the use of Yavorcik's oral statements to the FBI against him with the grand jury makes his indictment tainted and pursuant to *Kastigar* demands that the indictment be dismissed. Second, the government most likely used Yavorcik's statements in deciding non evidentiary issues as well. The prohibitions of *Kastigar* also extend to non-evidentiary uses as well. Non-evidentiary use has been defined as "assistance in focusing the investigation, deciding to initiate prosecution, refusing to plea bargain, interpreting evidence, planning cross-examination, and otherwise generally planning trial strategy." *United States v. McDaniel*, 482 F.2d 305, 311 (8th Cir. 1973). As previously pointed out, After Yavorcik's oral proffer the government interviewed at least forty (40) potential witnesses and generated

over sixty (60) interview reports. Numerous documents were gathered after Yavorcik's proffer and, presumably, presented to the grand jury along with witness testimony and/or summaries of their interviews by FBI agents in direct violation of the proffer agreement.

Lastly, and perhaps most disturbingly, the state has already informed the defendant and this Court that it intends to use Yavorcik's proffered statements in the trial of this matter. On August 10th, 2015 that state filed its "Second Notice of Intent to Use Evidence Pursuant to Crim.R. 12(E)(2)." On page 5 under number heading thirty-two (32) titled "Conversations" the state wrote it intended to use the following:

"F. **Interview with Martin Yavorcik** conducted by FBI Agents on March 3, 2010. On at least one occasion, Yavorcik admitted that 'their [Sciortino, McNally, Reardon, and others] asses are on the line in this election' and made other comments about unindicted members of the criminal enterprise; and

G. A February 8, 2011 **interview with Martin Yavorcik** conducted by FBI Agents discussing who can go see Businessman 1 to obtain campaign funds, as well as statements about quashing the "Oakhill" investigation after Yavorcik is elected County Prosecutor in 2008." (emphasis added)

There could not be clearer evidence of the government's illegal use and intended illegal use of Yavorcik's statements. The government has most likely previously presented Yavorcik's statements to the grand jury causing an irreconcilable taint,

and now the state has said to this court it intends to further break the promise it made to Yavorcik in not using his statements against him in its case-in-chief at trial. This is exactly the type of particularized need the Ohio Supreme Court discussed in *Greer*:

2. Original Indictment and Bill of Particulars

Additional, evidence of the government's illegal use of Yavorcik's proffer can also be found in the original indictment filed in this case. On Page 9 of the original indictment the state wrote in explaining Yavorcik's finance campaign strategy that "the money [from Cafaro] would be withheld until the end of the campaign so no one would know that the money had been promised and was to be paid until after the election." This information was told by Yavorcik to the FBI directly on 12-4-2010. In that FBI 302 investigative report under the heading of "Meeting with Anthony Cafaro confirming support" Yavorcik stated the following: "CAFARO said they would support Yavorcik, but not until after the deadline of the last campaign finance report was due before the general election." *See Page 4 FBI 302 12-4-2010 attached*. This is additional direct proof that the state violated the terms of the proffer agreement. Most importantly, at the begging of the 12-4-10 proffer the FBI specifically promised that **"the interviewing agents verbally agreed to not share the contents of this interview report with any prosecuting**

attorney that would not agree to be bound by similar proffer terms.”

Therefore, either the Attorney General’s Office and the Cuyahoga County Prosecutor’s Office have agreed to the terms of the original proffer agreement OR the FBI agents have directly violated their agreement with this defendant. Regardless, it is crystal clear that the government has violated the proffer agreement and have used and intend to further use Yavorcik’s immunized proffered statements in direct violation of the agreement and *Kastigar*. Additional illegal use of Yavorcik’s statements can also be found at pages 10, 24, 25, 32, and 35 of the original indictment along with Pages 57, 80, 86, and 88 of the bill of particulars the government provided to the defense in this case.

Kastigar prohibits the government from making any use of immunized statements. The prohibited uses include not simply direct use of immunized statements but also their indirect use as well. *North I*, 910 F.2d at 861 (*Kastigar* does not prohibit simply “a whole lot of use,” or “excessive use,” or “primary use” of compelled testimony. It prohibits “any use,” direct or indirect.) (emphasis in original). “For each **grand jury** and trial witness, the government must show by a preponderance of the evidence that no use whatsoever was made of any of the immunized testimony either by the witness or by the [government] in questioning the witness. *North I*, 910 F.2d at 872 (emphasis added). The requisite inquiry “must

proceed witness-by-witness; if necessary it will proceed line- by-line or item-by-item.” *Id.*

DISMISSAL CRIM.R. 12(C) & FIFTH AMENDMENT UNITED
STATES CONSTITUTION

Ohio Rule of Criminal Procedure 12 (C) provides:

(A) Pretrial motions. Prior to trial, any party may raise by motion any defense, objection, evidentiary issue, or request that is capable of determination without the trial of the general issue. The following must be raised before trial:

(1) Defenses and objections based on defects in the institution of the prosecution;

(2) Defenses and objections based on defects in the indictment, information, or complaint (other than failure to show jurisdiction in the court or to charge an offense, which objections shall be noticed by the court at any time during the pendency of the proceeding);

(3) Motions to suppress evidence, including but not limited to statements and identification testimony, on the ground that it was illegally obtained. Such motions shall be filed in the trial court only.

In *State v. Conrad*, 50 Ohio St. 3d 1, the Ohio Supreme Court established the rule that use of a compelled statement by a prosecutor pre-indictment cannot be harmless. The Court wrote “whenever compelled testimony is used against the witnesses who provided it, any error cannot be harmless.” *Id* at 5.

In *State v. Jackson*, 125 Ohio St. 3d 218, officer Jackson was on leave from the Canton police department and was involved in an incident that eventually led to his indictment for possession of a firearm in a bar. During Jackson's questioning by investigating officers the police department assured him that his statements nor the "fruits" would be used in a later criminal proceeding. Jackson gave detailed answers to questions and disclosed the name of a potential witness that was not previously known to law enforcement. After Jackson's interview officer Davis of the Canton Police Department internal affairs unit continued to investigate and interviewed the previously unknown witness.

At the grand jury Officer Davis gave testimony and acknowledged the existence of Jackson's previous statements, however, he declined to divulge its contents. The grand jury returned an indictment against Jackson for having a firearm in a liquor establishment. The trial court prosecutor, who was not the same as the grand jury prosecutor, admitted that he also had obtained a copy of Jackson's statements. Jackson filed a motion to dismiss arguing that the state had improperly used the "fruits" of his previous statement. The trial court agreed and dismissed the case against Jackson finding that Officer Davis's testimony before the grand jury violated Jackson's Fifth Amendment rights because Officer Davis had knowledge of Jackson's compelled statements.

The Fifth District Court of Appeals agreed that Jackson's Fifth Amendment rights had been violated. However, the court of appeals reversed the portion of the trial court opinion that dismissed the indictment and held that Jackson's statement was not used to obtain the indictment but was used by the trial prosecutor after the indictment. The appeals court held the proper remedy for the violation was to purge the prosecutor's file of the internal-affairs file and try the case with a new prosecutor. The Ohio Supreme Court disagreed with the appellate court and found that Officer Davis's testimony before the grand jury constituted "derivative use" of Jackson's statements and reinstated the dismissal of the indictment.

The Court noted "[W]hen Jackson claimed his immunized testimony was used in violation of his constitutional rights, it was **the state's burden** to satisfy both prongs of the *Kastigar* test: first, to deny that it had made any use of his immunized testimony, and second, to affirmatively prove that all the evidence to be used at trial was derived from wholly independent sources." *Jackson* at 21. [emphasis added]. The Court held the state failed both prongs of the test and cautioned: "the prosecutor, who admitted having reviewed Jackson's statement, was afforded an impermissible advantage in trial preparation. A defendant's version of events provides the prosecutor with invaluable information, including

the name of witnesses, potential defenses, and other information that could influence trial strategy. **In other words, the prosecutor possessed the type of information that the United States Supreme Court was most concerned about in *Kastigar*.**” *Id* at 24.

The Court specifically held that the prosecutor’s possession of Jackson’s statements during trial preparation constituted improper use and that the state makes derivative use of a statement both when the prosecutor presents to the grand jury testimony from a witness’ immunized statement and when the prosecutor reviews the statement for use at trial. *Id* at 25. **“The prosecutor’s use of the statement during trial preparation not only violated Jackson’s constitutional rights, but also revealed that the police department broke its promise to Jackson that neither the statement nor the fruits of the statement would be used in a later criminal proceeding.”** *Id* at 26.

In the case at bar, Yavorcik has shown direct evidence that the government has used his immunized statements pre-indictment and in preparation for trial. The “Yavorcik Presentation”, Bill of Particulars, and Original Indictment all contain statements Yavorcik made to FBI agents during his proffer agreement. The FBI and state prosecutors have broken their promise to Yavorcik that his statements would not be used against him. *See 3-10-10 FBI 302 attached as exhibit*

to *Kastigar Motion*. This is a direct violation of Yavorcik's Fifth Amendment Rights of the United States Constitution. It is undeniable, pre-indictment, that prosecutor Kasaris had Yavorcik's statements in his possession and used those statements both in preparation for the grand jury and in preparation for trial. See "State's Second Notice of Intent to Use Evidence Pursuant to Crim.R. 12(E)(2)." As *Jackson* cautioned, Kasaris holds "**the type of information that the United States Supreme Court was most concerned about in *Kastigar*.**" *Id* at 24.

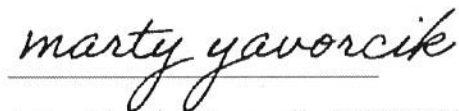
WHEREFORE, careful scrutiny of Yavorcik's oral proffer statements made to the FBI against the grand jury testimony, original indictment, bill of particulars, and all evidence gathered and presented to date is required in this case. "*Kastigar* and its progeny require dismissal of an indictment" if there is any violation of the proffer agreement by the government. *North I*, 910 F.2d 870 (quoting *Hampton*, 775 F.2d at 1489) Defendant Yavorcik has conclusively shown a particularized need in this case for the production of the grand jury transcripts in this matter and for a dismissal pursuant to Crim.R. 12 (C) and the Fifth Amendment to the United States Constitution.

At a hearing on this matter the defendant should be permitted to call as witnesses Prosecuting Attorneys Mike DeWine, Dan Kasaris, Matthew Donahue, William Schenk, Christopher Schroeder, Adam Chaloupka, and FBI agents Dean

Hassman and Wally Sines and inquire of them both prongs of *Kastigar*. In preparation for that hearing, this Court should ORDER the government to produce the grand jury transcripts and allow the Court and the defendant to inspect them to determine if Yavorcik's statements or any derivative information or evidence was used in obtaining Yavorcik's indictment.

In the alternative, the Court should examine all of the evidence Yavorcik has presented regarding impermissible use, question the government if it denies using Yavorcik's statements, and if the government admits that it did use Yavorcik's statements, immediately ORDER the indictment dismissed against this defendant.

Respectfully Submitted,



Atty. Martin Yavorcik (#0070681)

Pro Se Defendant

143 Boardman-Canfield Rd., Unit 185

Boardman, Ohio 44512

Tel. 330.518.8851

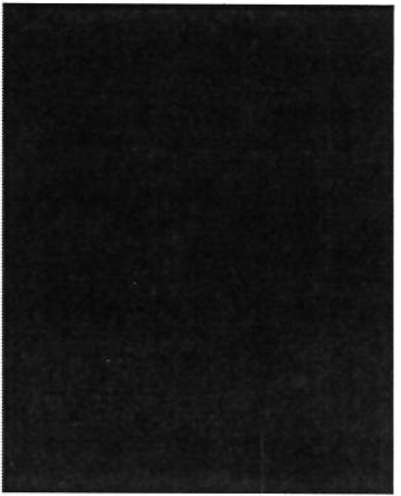
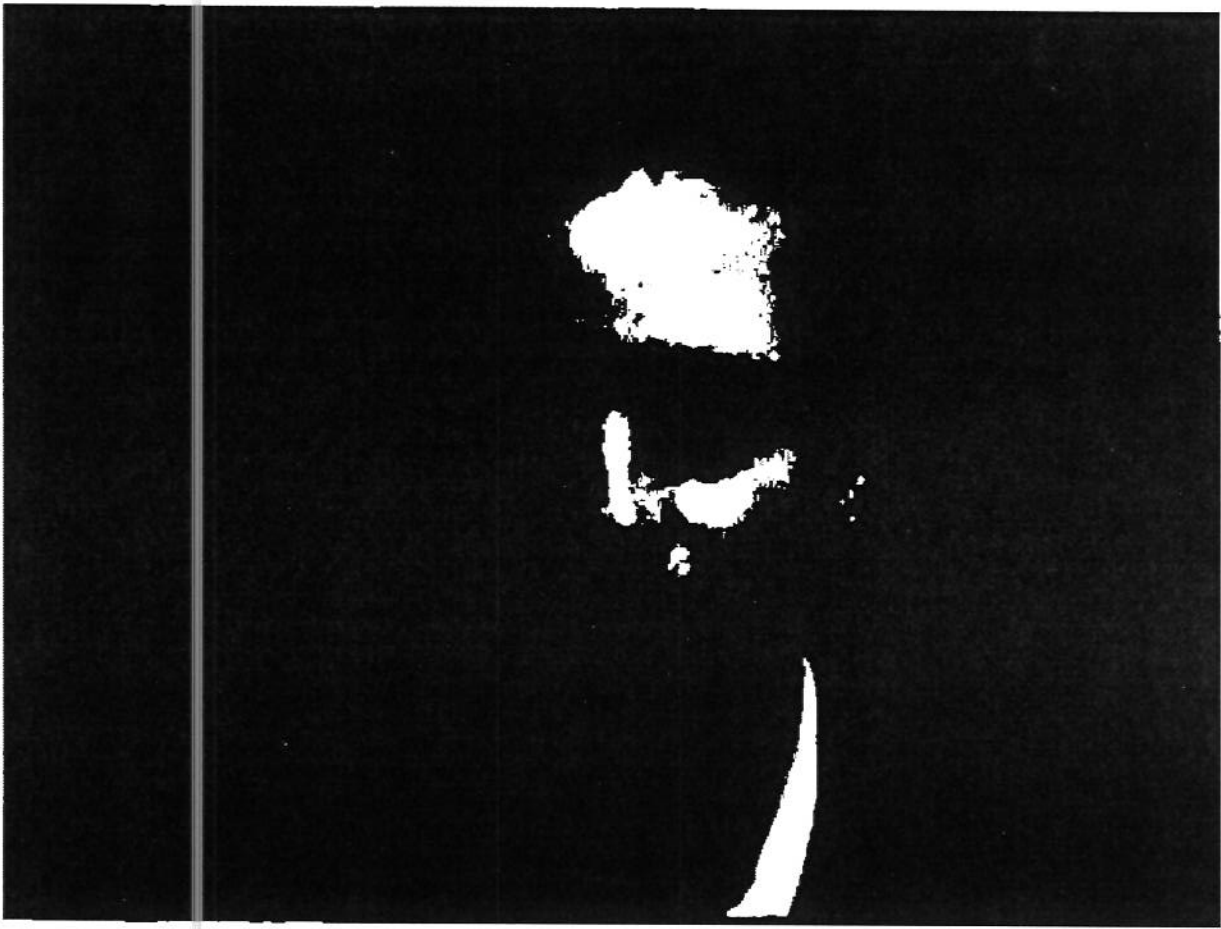
yavorcik@gmail.com

CERTIFICATE OF SERVICE

A copy of the foregoing has been served via electronic mail on this 15th day of February to: Office of Prosecuting Attorney Daniel C. Kasaris, 615 W. Superior Avenue, 11th Floor, Cleveland, Ohio 44113, Cuyahoga County Prosecuting Attorney, Timothy McGinty, 615 W. Superior Avenue, 11th Floor, Cleveland, Ohio 44113, Attorney Lynn Maro, 7081 West Blvd., Ste. 4, Youngstown, Ohio 44512, *Attorney for John McNally*, and Attorney John Juhasz, 7081 West Blvd., Ste. 4, Youngstown, Ohio 44512, *Attorney for Michael Sciortino*.

marty yavorcik

Atty. Martin Yavorcik (#0070681)
Pro Se Defendant



MARTY YAVORCIK PRESENTATION

CRIMES THAT CAN BE PROVED

1. ENGAGING IN PATTERN OF CORRPUT ACTIVITY

- TAMPERING WITH RECORDS
- WIRE FRAUD
- MONEY LAUNDERING
- BRIBERY

2. TAMPERING WITH RECORDS,

3. FILING FALSE TAX RETURNS

4. MONEY LAUNDERING

5. BRIBERY,

6. CONSPIRACY

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TAMPERING WITH RECORDS

knowing the person has no privilege to do so, and with purpose to defraud or knowing that the person is facilitating a fraud, shall do any of the following:

- 1) Falsify, destroy, remove, conceal, alter, deface, or mutilate any writing, computer software, data, or record;
- 2) Utter any writing or record, knowing it to have been tampered with as provided in Division (A)(1) of this section

"Fraud" is defined as a false statement, or misrepresentation made by a person with the knowledge that the deception, false statement, or misrepresentation could result in some unauthorized benefit to oneself or another person

"Defraud" means to knowingly obtain, by deception, some benefit for oneself or another, or to knowingly cause, by deception, some detriment to another.

Tampering with records requires the falsification, destruction, removal, concealment or alteration of some record—STATE V. GRAY 2006 CASE OUT OF GREEN COUNTY

WHAT RECORDS ARE WE TALKING ABOUT ?

2008 PRE GENERAL CAMPAIGN FINANCE REPORT

2008 POST GENERAL CAMPAIGN FINANCE REPORT

EVIDENCE

LISA ANTONINI

- 1. 10-03-08 LOAN FROM LISA ANTONINI-11 TIMES SHOW OR INCLUDE A PURPORTED LOAN FROM LISA ANTONINI ON YOUR CAMPAIGN FINANCE REPORT**

	01/30/2014
	07/29/2013
	01/17/2013
	04/14/2012
	05/07/2012
	05/23/2011
	05/22/2011
	07/31/2009
	12/12/2008
	12/12/2008
	10/23/2008

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2. SINCE DECEMBER OF 2013 WE HAVE INTERVIEWED HER TWICE- AND TWICE SHE HAS STATED THE FOLLOWING 2500 YOU SAY WAS LOANED TO YOU IN OCTOBER OF 2008

- A. 2500 REARDON GAVE—MOST LIKELY A LOAN
- B. 2500 SCIORTINO GAVE—NOT SURE WHAT IT WAS
- C. 2500 SHE GAVE YOU WAS A BRIBE, AND NO RETURN OF MONEY EXPECTED

3. WHEN YOU LIST HER TRANSACTION WITH YOU AS A LOAN YOU HAVE FASLIFIED A RECORD TO HIDE THE FACT THAT THE TRANSACTION WAS A BRIBE –BENEFIT YOU –RECORD IS A GOVERNMENT RECORD— TAMPERING WITH RECORDS AND F-3 LIST IT THAT WAY 11 TIMES ON THAT ALONE 11 F-3

12-08-CAMPAIGN FINANCE REPORT FAILED TO REPORT A 100.00 CAMPAIGN CONTRIBUTION FOR FORMER MAHONING COUNTY PROSECUTOR GARY VAN BROCKLIN ON 10-23-08 FILING

12-08 FAILED TO REPORT THE PAYING OF CAMPAIGN POLL WORKERS WHO WORKED FOR YAVORCIK DURING THE 2008 GENERAL ELECTION ON 12-8 POST GENERAL ELECTION FILING

10-23-08 PRE GENERAL ELECTION FILING FLORA CAFARO CHECK—AND THE IN-KIND CONTRIBUTION

A. WROTE YOU A CHECK FOR 15K—WROTE ON MEMO LINE AMERICAN GLADIATORS FITNESS CENTER

1. RECEIPT THAT YOU RECEIVED FROM WILLIAM FARRARO 15K FOR THE GLADIATORS GYM

2. DID NOT REPORT THAT ON YOUR LAW FIRM BUSINESS LEDGER

3. NOT INCLUDED IN YOUR 2008 TAXES FILED IN 2009

4. PUT IT INTO YOUR PERSONAL BANK ACCOUNT

5. WILLIAM FERRARO AND JOHN FARRARO OWNERS OF THE CENTER NEVER HEARD OF YOU AND SAID YOU DID NOT WORK

B. TAKE THAT 15K CHECK PUT IT IN PERSONAL BANK ACCOUNT THEN WRITE CAMPAIGN COMMITTEE A CHECK FOR 15K AND DEPOSIT IT AND ON YOUR REPORT SHOW IT AS AN INKIND CONTRIBUTION WRITE A CHECK TO A COMPANY TO PAY FOR A POLL

C. (3-11-10—YOU ADMIT THAT THE YOU INTENDING ON USING THE 15K.)
(TO PAY FOR THE POLL)

12-08 POST GENERAL ELECTION REPORT FAILED TO REPORT THAT SCIORTINO, REARDON, AND ANTONINI RAISED CASH FOR YOU TO PAY THE CAMPAIGN WORKERS WHO WORKED THE POLLS AT THE NOVEMBER ELECTION

A. LISA TOLD US

B. RECORDINGS TELL US—WHERE IT IS DISCUSSED THAT MONEY IS BEING RAISED AND HAS BEEN RAISED FOR YOU TO PAY POLL WORKERS WHO WORKED ELECTION DAY—NOT REPORTED

**(C. MARTY YAVORCIK ADMITTED IT TO FBI IN FEB OF 2011)
(YAVORCIK ACKNOWLEDGED THERE WERE TIMES DURING THE 2008)
(RACE WHERE HE WOULD BE AT EVENTS IN WHICH PEOPLE GAVE HIM)
(CASH IN SUPPORT OF HIS CAMPAIGN FOR PROSECUTOR AND THAT)
(YAVORCIK DID NOT REPORT THOSE AMOUNTS ON HIS CAMPAIGN)
(FINANCE REPORTS. WHILE YAVORCIK COULD NOT REMEMBER THE)
(NAMES OF EVERYONE WHO GAVE HIM CASH, HE SAID IT DID HAPPEN.)**

2008 INCOME TAX RETURNS –FEDERAL AND OR STATE RETURNS

5747.19 FILING , FALSE, AND FRAUDULENT TAX RETURNS



- **DID NOT CLAIM \$15,000.00 IN INCOME RECEIVED FROM FLORA CAFARO WHEN FILED IN APRIL OF 2009**
- **LEDGER OF HIS LAW OFFICE FAILS TO DISCLOSE THE 15,000.00 PAYMENT**

MONEY LAUNDERING

- (1) No person shall conduct or attempt to conduct a transaction knowing that the property involved in the transaction is the proceeds of some form of unlawful activity with the purpose of committing or furthering the commission of corrupt activity.
- (2) No person shall conduct or attempt to conduct a transaction knowing that the property involved in the transaction is the proceeds of some form of unlawful activity with the intent to conceal or disguise the nature, location, source, ownership, or control of the property or the intent to avoid a transaction reporting requirement under section 1315.53 of the Revised Code or federal law.
- (3) No person shall conduct or attempt to conduct a transaction with the purpose to promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on of corrupt activity.
- (4) No person shall conduct or structure or attempt to conduct or structure a transaction that involves the proceeds of corrupt activity that is of a value greater than ten thousand dollars if the person knows or has reasonable cause to know that the transaction involves the proceeds of corrupt activity.

- 1) No person shall conduct or attempt to conduct a transaction knowing that the property involved in the transaction is the proceeds of some form of unlawful activity with the purpose of committing or furthering the commission of corrupt activity.
- Person
- Attempting to or doing a transaction
- Knowing the property involved is proceeds of unlawful activity –any crime
- Purpose to further corrupt activity—limited number of crimes 2923.31.

- 1315.55 (a)(1) We don't have this form or money laundering here—why
 - We have a person—you
 - Transaction—check deposit, or check withdrawal, check deposit
 - Knowing property (flora Cafaro money came from bribery)
 - What do you do with it it—spend it on a poll—that is not an unlawful activity—don't have this form of money laundering. Had you spent the money for a corrupt activity—bribery, gambling, theft by deception then would have money laundering—not what happened here

1315.55 (a)(3)

- (3) No person shall conduct or attempt to conduct a transaction with the purpose to promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on of corrupt activity.
- We have a transaction
- For the purpose of running for office—NOT a corrupt activity
- Don't have 1315.55(a)(3)
- Requires one to spend money on a corrupt activity don't have that here—spending money on a law ful activity—HAD YOU SPENT MONEY ON BUYING GAMBLING SUPPLIES FOR EXAMPLE OR PRY BAR TO BREAK INTO A HOUSE OR A TOOL TO COMMIT A CORRUPT ACTIVITY ---WE WOULD HAVE THIS BUT WE DON'T.

1315.55(a)(2)

- (2) No person shall conduct or attempt to conduct a transaction knowing that the property involved in the transaction is the proceeds of some form of unlawful activity with the intent to conceal or disguise the nature, location, source, ownership, or control of the property
- Person you
- Taking a 15k check from flora Cafaro
- Evidence we have proceeds of bribery—(get to that later—ACCEPT THIS AS A FACT)
- With intent to conceal the nature, source, ownership or control of the money

- By taking the 15k check—putting it into your personal account then transferring it from your personal account to campaign account you have hidden the source of the money, and the ownership of the money
- You didn't put it into your campaign account directly –took dirty money, put it in two accounts and used it for a legitimate purpose-Money laundering--

What you say

- **LEGITIMATE LEGAL FEES YOU PUT IN TO YOUR ACCOUNT THEN YOU NEEDED TO PAY FOR A POLL SO YOU PUT THE MONEY INTO YOUR CAMPAIGN ACCOUNT**
- PROBLEMS WITH THAT
- 1. CREATE A RECEIPT—OFFICE LETTER HEAD—LEGAL SERVICES RENDERED TO WILLIAM FERRARO AND THAT YOU RECEIVED THE MONEY FROM WILLIAM CAFARO
 - ADMITTED RECEIVED IT FROM FLORO CAFARO
 - WILLIAM CAFARO NEVER HEARD OF YOU
 - IF FLORA GIVING YOU MONEY FOR THE GYM YOU WOULD HAVE WRITTEN ON THE RECEIPT IT WAS FROM FLORA—YOU DIDN'T

- FERRARO stated that he did not recognize the name MARTY YAVORCIK. FERRARO was shown a photograph of MARTIN YAVORCIK. FERRARO stated that he did not recognize the individual in the photograph. FERRARO stated that YAVORCIK never did any legal work for him (FERRARO). FERRARO stated that he never filed any suits against his father, and added that he would never sue his father.
- JOHN FARARRO—DIDN'T KNOW WHO YOU WERE AND FURTHER STATED: As far as FERRARO is concerned, there are no loose ends with him regarding the gym and everything is fine. FERRARO received a small salary when he worked at the gym and helped pay for some of the furniture in the gym.
- 2. YOU FAILED TO REPORT THE 15K AS INCOME—DIDN'T INCLUDE IT IN YOUR LAW FIRM LEDGER AS INCOME
- 3. (YOU ADMITTED IN DECEMBER OF 2010 THAT THE MONEY FLORA CAFARO GAVE YOU WAS FOR THE POLL AND NOT FOR LEGAL SERVICES RENDERED OR TO BE RENDERED.)

bribery

2921.02(a) promise or give anything of value to public official to improperly influence or corrupt

2921.02(b) either before or after the person is elected, appointed, qualified, employed, summoned, or sworn as a public servant Knowingly solicit or accept for self or another person any valuable thing or valuable benefit to corrupt or improperly influence the person or another public servant or party official with respect to the discharge of the person's or the other public servant's or party official's duty.

KURT WELSH

- 1. ON A RECORDING YOU TELL KURT WELSH THAT YOU WILL TAKE CARE OF DUI HE HAD IN SCOTT HUNTER'S ROOM ONCE HE BECOMES PROSECUTOR BY TELLING HIS WOULD BE FUTURE ASSISTANT COUNTY PROSECUTOR TO DISMISS IT OR AT LEAST TO MAKE SURE DOENST GOT TO JAIL**
- 2. ON A RECORDING YOU TELL KURT WELSH THAT YOU WILL ALSO TAKE CARE OF A POTENTIAL PROBATION VIOLATION THAT HE HAD IN YOUNGSTOWN MUNI COURT BECAUSE YOU HAD REPRESENTED THE PROBATION OFFICER**
- 3. BECAUSE HE IS HELPING YOU WITH YOUR CAMPAIGN.**
- 4. (YOU ADMITTED IT)**

ADMISSION—INTERVIEW WITH DEANE HASSMAN

- While denying that YAVORCIK promised to fix any pending cases if elected prosecutor in 2008, **YAVORCIK acknowledges he did promise to LISA ANTONINI that he would try to influence a case involving KURT WELSH in the County Court in Canfield.** YAVORCIK acknowledged that he promised LISA ANTONINI that if elected prosecutor, he would then represent WELSH. So, what would assistant prosecutor NICK MODARELLI be able to do about it because YAVORCIK would soon become MODARELLI's boss. **YAVORCIK understood that his offer to ANTONINI to intervene in the case was for the purpose of trying to create influence on how the case might be resolved.**
- CONSISTENT WITH WHAT YOU SAID IN A WIRE RECORDING

2. LISA ANTONINI


A. LISA HAS DISCLOSED TO LAW ENFORCMENT ON TWO OCCASIONS THAT HER

1. HER \$2,500.00 DONATION TO YAVORCIK CAMPAIGN WAS A BRIBE

2. THAT HER WORK ON THE CAMPAIGN WAS A BRIBE

B. MARTY YAVORCIK TOLD HER HE WOULD DROP ANY INVESTIGATION OF HER AND HER INVOLVEMETN IN THE OAK HILL MATTER AND NOT PROSECUTE HER IF HE WAS ELECTED COUNTY PROSECUTOR AND IN RETURN SHE DID THE ABOVE.

3. CAFARO

1. MARTY YAVORCIK IN APRIL OF 2008 IN A RECORD  ACKNOWLEDGES THAT THE PROMISE HE MADE TO SECURE SUPPORT FROM CAFARO, LISA, SCIORTNIO, MCNALLY WAS THE PROMISE NOT TO PROSECUTE THEM OR INVESTIGTE THEM FOR THE OAK HILL MATTER.

2. ANY MONEY RECEIVED AND SUPPORT RECEIVED WOULD BE RETURNED IN THE FORM OF NOT PROSECUTING OR INVESTIGING THE OAK HILL MATTER.

3. OTHER RECORDS SUPPORT THE BRIBE

921.02(B) EITHER BEFORE OR AFTER THE PERSON IS ELECTED

MARTY YAVORCIK

BEFORE HE BECOMES THE MAHONING COUNTY PROSECUTOR(A PUBLIC SERVANT)

KNOWINGLY ACCEPTING FOR HIMSELF

A VALUABLE THING—CAMPAING SUPPORT, MONEY AND ASSISTANCE TO CORRUPT OR IMPROPERLY INFLUENCE HIM—TO NOT PROSECUTOR AND OR INVESTIGATE—

- 1. DON'T KNOW WHAT EVIDENCE IS**
- 2. DON'T KNOW WHAT WITNESSES ARE SAYUING**
- 3. CANT POSSIBLY SAY DECISION BASED ON EVIDENCE**

WITH RESPECT TO THE DISCHARGE OF THE PERSON'S OFFICIAL'S DUTY.

ENGAGING IN PATTERN OF CORRUPT ACTIVITY

- BRIBERY, TAMPERING WITH RECORDS, MONEY LAUNDERING, AND WIRE FRAUD ARE ALL INCIDENTS OF CORRUPT ACTIVITY THAT FORM THE BASIS OF A CRIMINAL ENTERPRISE COUNT
- EVIDENCE SUPPORTS THE CONCLUSION THAT THESE INCIDENTS OCCURRED
- FELONY OF THE FIRST DEGREE

WHAT CAN I SAY

- **CHARGES LOOKING AT**
 - **ENGAGING IN A PATTERN OF CORRUPT ACTIVITY—F1**
 - **MONEY LAUNDERING—1 AND 5 COUNTS AT LEAST—F-3**
 - **TAMPERING WITH RECORDS—CAMPAIGN FINANCE REPORTS -1 AND 24 COUNTS ALL F-3**
 - **ONE FOR CREATING DOCUMENT**
 - **ONE FOR PASSING IT**
 - **TAMPERING WITH RECORDS AND OR EVIDENCE—FAKE LEGAL FEE RECEIPT F-3**
 - **FILING FALSE TAX RETURNS—F-5**
 - **BRIBERY—LISA, REARDON, MCNALLY, SCIORTINO, CAFARO MINIMUM 5 COUNTS ALL F-3**

Y ARE WE HERE

OFFER A RESOLUTION TO THIS MATTER PRE
INDICTMENT WE VIEW YOU AS A
COOPERATING WITNESS AND NOT THE
BRAINS BEHIND THE ENTRPRISE AND
OFFENSES

- DON'T KNOW WHAT INFORMATION YOU HAVE
THAT YOU HAVE NOT TOLD US REGARDING
 - OAKHILL
 - 2008 ELECTION
 - OTHER MATTERAS
- CAN PROPERLY STATE WHAT OFFENSES WE
WOULD INSIST THAT YOU PLEA TO

CONCLUSION

- IT IS UP TO YOU AS TO WHAT TYPE OF PLEA ARRANGMENT WE ENTER INTO
- WE DO NOT KNOW ALL THAT YOU KNOW
- TAKE UNDER CONSIDERATION AND GET BACK TO US WITHIN 10 DAYS.

FEDERAL BUREAU OF INVESTIGATION

Date of transcription 12/05/2010

MARTIN YAVORCIK was interviewed under terms of a Federal proffer agreement at his attorney's office located at 7330 Market Street, Boardman, Ohio 44512. YAVORCIK's attorneys GERALD INGRAM and ROBERT DUFFRIN were both present. YAVORCIK was previously aware of the identities of the interviewing agents. (Prior to the start of the interview, the interviewing agents verbally agreed to not share the contents of this interview report with any prosecuting attorney that would not agree to be bound by similar proffer terms contained in the agreement) signed with the U.S. Attorney's office. YAVORCIK then provided the following:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [REDACTED] [REDACTED] [REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Meeting with Anthony Cafaro confirming support:

[REDACTED]

CAFARO said they would support YAVORCIK, but not until after the deadline of the last campaign finance report was due before the general election.

[REDACTED]

[REDACTED]

[REDACTED]

FOIA b (7) - (C)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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