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MMX-CR14-0675616-T *(Include prefix: for example, CI, CP, CR, CV, FA, HC, JV, MI, MV, SC, SP)*

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Date
01/22/2015

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DOCKET NO. MMX-CR14-0675616-T	:	SUPERIOR COURT
STATE OF CONNECTICUT	:	JUDICIAL DISTRICT OF MIDDLESEX
V.	:	AT MIDDLETOWN
EDWARD TAUPIER	:	JANUARY 22, 2015

MOTION FOR RECUSAL AND DISQUALIFICATION OF JUDGE

The Defendant Edward Taupier ("Taupier"), by and through his undersigned counsel and pursuant to Connecticut Practice Book (P.B.), § 1–22(a),[1] hereby moves to disqualify The Honorable David P. Gold from presiding at trial in the above-captioned matter.

I. FOUNDATION FOR DISQUALIFICATION

A. Pretrial Bond Argument: Predetermination of Facts Without Due Process

(1) September 8, 2014, Hearing Before Judge Gold

Taupier was arrested on August 29, 2014, a Friday preceding the Labor Day holiday weekend, by warrant alleging threatening in the first degree and harassment in the second degree at a $35k cash (only) bond set by the Court.[2] Taupier posted the bond and was initially informed that he was required to appear at the Superior Court in Hartford on September 12, 2014.

Nonetheless, Taupier was ordered to appear at the Superior Court in Hartford on Tuesday, September 2, 2014, upon an allegation that he had violated a family civil court order by transferring firearms. The Court ruled:

> I am going to increase the bond as requested by the state. Not to the amount that is alleged because it does appear that all of the guns are now accounted for. The bond is going to be increased by

[1] P.B. § 1-22(a) provides: "A judicial authority shall, upon motion of either party or upon its own motion, be disqualified from acting in a matter if such judicial authority is disqualified from acting therein pursuant to Canon 3(c) of the Code of Judicial Conduct ..."
"'[C]anon 3 of the Code of Judicial Conduct requires a judge to disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned.'" *Ajadi* v. *Commissioner of Correction*, 280 Conn. 514, 527 (2006).

[2] The term "Court" is used when the actions of a judge other than Judge Gold are referenced.

ORAL ARGUMENT REQUESTED

> forty thousand. It's cash only. So the total bail- is seventy-five thousand. That bail is now to be posted at court for an electronic monitoring. I do want a house arrest except for court appearances, medical emergencies and verified employment hours.

(09/02/2014 Hr'g Tr. 5:5-14) The Court informed Taupier and his counsel: "You'll be down in Middletown court with this case for a full bond review on the 4th if there was no posting. If it does post, he puts the monitor on." (09/02/2014 Hr'g Tr. 7:7-10) Taupier was able to post bond but was held until Wednesday, September 3, 2014, and brought back to the Superior Court in Hartford to be fitted for electronic monitoring. The matter was transferred to the Superior Court in Middletown where Taupier appeared on Thursday, September 4, 2014.

Taupier then appeared at the Superior Court in Middletown on Monday, September 8, 2014. Judge Gold explained:

> Well first, let me just note, the case had -- was not originally docketed for today, but the Court had received certain information about Mr. Taupier's level of compliance with earlier orders; and felt that a Court hearing today was required, so that certain issues could be addressed on the record.

(09/08/2014 Hr'g Tr. 1:15-21) In questioning Taupier's level of compliance Judge Gold alleged that Taupier had violated his conditions of release. Prior to this statement by Judge Gold, an off-the-record chambers discussion occurred on Monday, September 8, 2014, that Judge Gold summarized as follows:

> We met in chambers briefly this morning to discuss some additional requests by the State that I don't think are objected to. That's -- the case is on the docket for seeking these additional orders for his Intensive Pre-trial Supervision.

(09/08/2014 Hr'g Tr. 1:8-13) Judge Gold indicated:

> I asked Mr. Donovan and Mr. Jelly if they wished to respond as to why it appears their client cannot comply with Orders of the Court and the Court's designee's. Such as probation and the monitoring device company with regard to the charging of that device.

(09/08/2014 Hr'g Tr. 2:1-6) Judge Gold then addressed Taupier's counsel:

> Mr. Donovan or Mr. Jelly, do you care to offer anything or not? And I don't ord -- I mean, I'm not requiring you to, but because of the concerns that I have, I am going monitor -- I am going to be modifying certain of the conditions.

(09/08/2014 Hr'g Tr. 1:15-21) Taupier's counsel responded to Judge Gold:

> Your Honor, I think at this point in time if the Court is inclined to modify the conditions, in the way that it had indicated in chambers then, I think at this point in time it's best not to respond. I don't want to murk -- make the waters any murkier than they are.

(09/08/2014 Hr'g Tr. 2:7-12) In an October 10, 2014, motion filed by Taupier to modify the financial and non-financial conditions of release Taupier argued that the Court had imposed an order modifying the conditions of Taupier's bond "[w]ithout testimony or evidence offered under Oath." Judge Gold rejected Taupier's argument and imposed further restrictions without testimony or evidence offered under Oath:

> Thirdly, because of this non-compliance and not withstanding Judge Alexander's carve-out that allowed the defendant to go to work. I am, effective immediately, stripping the defendant of that right to leave his home to go to work. So the employment carve-out is revoked. The defendant therefore must remain in his home 24/7.

(09/08/2014 Hr'g Tr. 5:3-9)

General Statutes § 54-64f and Practice Book §§ 38-19, 38-20 require the Court to afford defendants specific due process protections prior to imposing different or additional conditions upon release when the modification arises from an allegation that a defendant violated conditions of release. When Judge Gold modified Taupier's conditions of release on September 8, 2014, in the absence of a probable cause finding, evidentiary hearing, or finding that the modification was based on clear and convincing evidence of a violation, Judge Gold and the State, together, denied Taupier due process.

(2) January 15, 2015, Hearing Before Judge Gold

Judge Gold scheduled a hearing for January 15, 2015, on Taupier's motion to dismiss the November 14, 2014, six-count, long-form amended information filed by the State. The State served Taupier's counsel by email on January 13, 2015, a motion to increase bond submitting that "the defendant has violated the conditions of his release." In its motion the State drafted a proposed Order for Judge Gold to sign: "The State's motion to increase the defendant's bond, having been reviewed by the Court, is hereby ordered." Similar to Judge Gold's September 8, 2014, modification of Taupier's conditions of release founded in an alleged violation, the State's January 13, 2015, motion and proposed Order ignored General Statutes § 54-64f and simply asked Judge Gold to enter an Order absent a finding of probable cause, absent an evidentiary hearing, and absent a finding of clear and convincing evidence.

B. Bias Favoring Prosecution

(1) State's Duty to Refrain From Prosecuting Charges Not Supported By Probable Cause

Taupier filed a motion to vacate protective orders issued by Judge Gold in the above-captioned matter and in docket number MMX- CR-13-0200821-T on October 24, 2014. In the course of oral argument held on November 18, 2014, Judge Gold ruled:

> So, then I think what the Court, without objection from the state, is going to do today is that there is currently a protective order in each file. Those protective orders are vacated. The conditions of the defendant's release are modified. (11/18/2014 Hr'g Tr. 6:18-23) ... In the so-called threatening file the same orders issue. But the protected party, in that order, the party protected by the released conditions in that file shall be Judge Bozzuto.

(11/18/2014 Hr'g Tr. 7:20-27) Four days prior to the November 18, 2014, hearing the state filed an amended information alleging:

<u>Count One</u> – Threatening in the First Degree against Judge Bozzuto;
<u>Count Two</u> – Threatening in the Second Degree against Judge Bozzuto;
<u>Count Three</u> – Harassment in the Second Degree against Judge Bozzuto;
<u>Count Four</u> – Disorderly Conduct against Judge Bozzuto;
<u>Count Five</u> – Disorderly Conduct against Jennifer Verraneault; and
<u>Count Six</u> – Breach of Peace in the Second Degree against Judge Bozzuto.

The State did not request and Judge Gold did not impose any condition of release prohibiting Taupier from contacting the newly-named alleged victim, Jennifer Verraneault, on November 18, 2014, as the State had requested and Judge Gold had imposed with respect to Judge Bozzuto, the person named in the warrant as the only alleged victim. The addition of a new victim on November 14, 2014, months after Taupier was arrested, corroborated information offered by Taupier at the November 18, 2014, hearing to demonstrate that the State had doubts about proving the original threatening count and harassment count which alleged Judge Bozzuto as the sole victim. To reinforce its doubtful case of threatening and harassment naming Judge Bozzuto as the sole victim, the State added Jennifer Verraneault as a victim. Taupier attempted to present this evidence on November 18, 2014:

ATTY. BAIRD:	It's somewhat of an unusual posture. But information did come to me that there was an individual who was in the courthouse on November 5th --
THE COURT:	November 5th, okay.
ATTY. BAIRD:	-- when for a completely different proceeding, not relating to Mr. Taupier. But this individual does know Mr. Taupier. And that he overheard a conversation in the courthouse hallway between Ms. Hans, the prosecutor, and a marshal with regard to the strength or validity of the threatening charge that's being brought against Mr. Taupier. We would offer it as an exception to hearsay under the party opponent exception, a declaration.
THE COURT:	I still don't see, even if such a conversation were to have occurred, how that would assist the Court in determining -- you're suggesting as if the Court can, of its own, determine the strength of the case sufficient to make an accurate assessment of the bond conditions. And I don't think, I certainly wouldn't allow the State to introduce evidence that your client was overheard saying they've got a pretty strong case against me, if the shoe was on the other foot. I don't think I would allow that. So, I don't see why I should treat the opposite situation any differently. I think determining the strength of the case is a responsibility that the Court must undertake and the offer of testimony of one claiming to have

overheard a conversation wouldn't be of any assistance in that regard. Even if a prosecutor were to assume that the case wasn't strong, it doesn't mean -- and I'm not suggesting that that was said or wasn't said. But, the Court has to make its own determination of that. And just because the prosecutor would tell me this is a strong case I'm not bound by that. If I thought it was a weak case then I would factor that into the mix.
So I don't -- unless you have a more persuasive offer of proof to make I don't think I would allow testimony of that kind.

...

THE COURT: ... If your offer of proof is that you have a witness who is prepared to testify that he or she overheard Attorney Hans saying to a marshal that he case was weak, then I will not permit that testimony.

(11/18/2014 Hr'g Tr. 12:26-15:5) In accordance with Rule 3.8(a) of the Rules of Professional Conduct a hearing was required but, instead, Judge Gold compared the admissibility of the evidentiary offer made by Taupier to an admission made by a defendant of culpability. However, the former is subject to a Rule of Professional Conduct and the latter is not. Rule 3.8(a) compels the State to refrain from prosecuting a charge that the State knows is not supported by probable cause. Taupier offered evidence to Judge Gold that not only should the bond be modified in Taupier's favor because of the enumerated statutory and Practice Book factors but also that the State's view of the case was admissible to show that the case should not be prosecuted at all. Judge Gold ignored the applicability of the State's duty and Rule 3.8 to the proceedings.

(2) The Court's Presumption of Motive

In ruling on Taupier's motion for modification of bond on November 18, 2014, Judge Gold supported his conclusions with inaccurate factual findings:

> The State became aware of the fact that the defendant had sent an email within, probably within hours of the issuance of an order by Judge Bozzuto. The order issued by Judge Bozzuto impacted on the defendant's ability to parent his children. Hours later an email is sent by the defendant. It includes a direct reference to Judge Bozzuto, a direct reference to her town of residence, a direct reference to the fact that she has children, that a nanny resides in the home with them.

(11/18/2014 Hr'g Tr. 35:2-11) In fact, Judge Bozzuto denied a family court motion filed by Tanya Taupier for immediate hearing on August 22, 2014. Taupier's alleged August 22, 2014, email followed Judge Bozzuto's denial of Tanya Taupier's motion for immediate hearing. Tanya Taupier then completed an Application for Emergency *Ex Parte* Order of Custody dated Sunday, August 24, 2014, that was signed by Judge Bozzuto on Monday, August 25, 2014, ordering only that the parties follow a previous court order entered on August 13, 2013, an order entered not by Judge Bozzuto but by Judge Carbonneau. A hearing on Tanya Taupier's Emergency Application was scheduled for Tuesday, September 2, 2014, but Taupier's arrest on August 29, 2014, prevented Taupier from challenging the application. Judge Gold's determination of a motive based on an inaccurate timeline of motive predetermined the remainder of Judge Gold's conclusions:

> Certainly one can interpret this email to suggest that the defendant was prepared to bring harm to Judge Bozzuto, had staked out her home, had measured distances from areas of covered concealment near, by her home, and was in a position to attempt to harm her from a distance of 245 yards by using a particular type of firearm in a particular type of armor piercing ammunition.

(11/18/2014 Hr'g Tr. 35:25-36:37)

> But in your client's case one could certainly interpret the defendant's words when coupled with his continued possession of guns as reflecting an express intent, and importantly one that he could fulfill, to commit another crime while on release, specifically, to bring harm to the judge, who at hours or maybe a day before, issued orders that I suspect the defendant believed, using his words, that stole his kids. So he was prepared to deal with the party that might steal his kids by firing all of the rounds from a 60-round mag and then changing out to the next 30-round magazine and his kids would have to be dragged from his cold, dead, bleeding, cordite filled fists. Certainly, a fair reading of that is that he was going to have his kids, in his arms as this happened, and that was the only way his kids were going to be taken.

> So certainly harm to Judge Bozzuto, harm to the kids, were all fair readings, or interpretations, of this statement that the defendant included in his email.
>
> So, with regard to your claim that Judge Alexander inappropriately raised the bond I respectfully disagree given the circumstances I've noted.

(11/18/2014 Hr'g Tr. 37:24-38:21)

C. Email Communication Addressing Evidentiary Matters

Taupier adopts the position set forth in an email sent by undersigned counsel to the State on January 9, 2015, addressing the State's communication by email with Judge Gold. *See* email correspondence including senders and recipients: The Honorable David P. Gold, Attorney Brenda Hans, Attorney Rachel M. Baird, and Criminal Matters Court Officer Evelyn Vargas-Rondon. Both emails were read by Judge Gold into the record on January 15, 2015.

II. LEGAL ARGUMENT

Canon 3(c) of the Code of Judicial Conduct, *Disqualification*, states:

> (1) A judge should disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where: (A) the judge has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding
> ...

Courts apply an objective rather than a subjective standard in deciding whether there has been a violation of Canon 3(c)(1).

> Any conduct that would lead a reasonable [person] knowing all the circumstances to the conclusion that the judge's impartiality might reasonably be questioned is a basis for the judge's disqualification. Thus, an impropriety or the appearance of impropriety ... that would reasonably lead one to question the judge's impartiality in a given proceeding clearly falls within the scope of the general standard.... The question is not whether the judge is impartial in fact. It is simply whether another, not knowing whether or not the judge is actually impartial, might reasonably question his ... impartiality, on the basis of all of the circumstances....

Abington Ltd. P'ship v. *Heublein*, 246 Conn. 815, 820 (1998). In Connecticut, the disqualification of judges is governed by General Statutes § 51–39 and Canon 3(c) of the Code of Judicial Conduct.

> The question is not whether the judge is impartial in fact. It is simply whether another, not knowing whether or not the judge is actually impartial, might reasonably question his [or her] impartiality, on the basis of all of the circumstances.

Papa v. *New Haven Fed'n of Teachers*, 186 Conn. 725, 744-46 (1982). Recusal is required even when there is no showing of actual bias:

> A fair trial in a fair tribunal is a basic requirement of due process. Fairness of course requires an absence of actual bias in the trial of cases. But our system of law has always endeavored to prevent even the probability of unfairness. ... Such a stringent rule may sometimes bar trial by judges who have no actual bias and who would do their very best to weigh the scales of justice equally between contending parties. But to perform its high function in the best way 'justice must satisfy the appearance of justice.'

In re Murchison, 349 U.S. 133, 136 (1955).

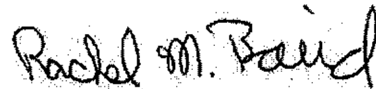
"The question presented here is not whether the judge could render an impartial decision, but whether…" *Dubaldo v. Dubaldo*, 14 Conn. App. 645, 650 (1988), Judge Gold's actions and statements as described above, "… created in the minds of observers, particularly the defendant, an appearance of impropriety." *Id.*

In consideration of all the statements, actions, and circumstances set forth in Section I, above, Judge Gold's continued assignment as trial judge "... inevitably raises in the minds of litigants, as well as counsel… a suspicion as to the fairness of the court's administration of justice." *Krattenstein v. G. Fox & Co.*, 155 Conn. 609, 615 (1967). "Justice must satisfy the appearance of justice." *Offutt v. United States*, 348 U.S. 11, 14 (1954).

III. CONCLUSION

For the reasons stated above, Taupier respectfully moves for the disqualification and recusal of The Honorable David P. Gold from presiding at trial in the above-captioned matter.

EDWARD T. TAUPIER



BY: ______________________________

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ORDER

The Court, after due consideration, hereby orders the Defendant's Motion:

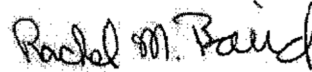
GRANTED / DENIED.

____
Judge of the Superior Court / Clerk

CERTIFICATION OF SERVICE

I hereby certify that a copy of the forgoing Motion was electronically transmitted on January 22, 2015 to counsel of record as follows:

Brenda Hann, A.S.A.
Office of the State's Attorney
One Court Street,
Middletown, Connecticut
Email: Brenda.Hans@ct.gov



Rachel M. Baird
Commissioner of the Superior Court

Rachel Baird

From: Edward Peruta <edperuta@amcable.tv>
Sent: Tuesday, January 20, 2015 9:17 PM
To: Rachel Baird
Subject: FW: long guns as evidentiary exhibits at trial- Taupier

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From: Rachel Baird [mailto:rbaird@rachelbairdlaw.com]
Sent: Friday, January 9, 2015 3:28 PM
To: Hans, Brenda
Cc: David.Gold@jud.ct.gov; Vargas-Rondon, Evelyn (Evelyn.Vargas-Rondon@jud.ct.gov)
Subject: RE: long guns as evidentiary exhibits at trial- Taupier

Ms. Hans

I am not aware of any practice which allows the prosecuting authority in a criminal matter to discuss evidentiary trial matters with a Superior Court Judge by email. My understanding is that you have directed an email to a Superior Court Judge, The Honorable David Gold who is anticipated to be the trial judge, for the purpose of asking Judge Gold a question about an evidentiary /procedural matter that is properly a matter for counsel to discuss and then bring before the court by motion to be followed by discussion on the record if necessary to resolve.

I am concerned that your email to a Superior Court Judge which omits any salutation whatsoever, when one would expect a salutation befitting the respect due a judge from an attorney practicing in the courts, lends itself to an impression of impropriety and familiarity between the prosecuting authority and the judge. I predict that Mr. Taupier will reasonably draw this conclusion and rightfully not grant the benefit of the doubt which I or other counsel may. You have placed Judge Gold in a compromised position. This is why we have rules to follow as attorneys in communicating with each other and with judges – to prevent appearances of impropriety that diminish respect for the courts.

In my 21 years of practice as an AAG, an ASA, and as private counsel in both state and federal courts I have never been involved in a case in which an attorney sent an email to a judge in the absence of prior discussion with all counsel, in the absence of any format denoting the import of a communication with a judge, or in apparently a quest for information about court procedure.

I object to any and all further communications between you and any Superior Court Judge regarding Mr. Taupier's cases in the absence of my consent and am prepared to take further action as my client directs and is allowed by the Practice Book and Rules.

Rachel M. Baird, Attorney

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SJ Talkshow: www.sjtalkshow.com, www.youtube.com/user/sjtalkshow/videos

Rachel Baird

From: Hans, Brenda <Brenda.Hans@ct.gov>
Sent: Friday, January 9, 2015 2:38 PM
To: David.Gold@jud.ct.gov; Vargas-Rondon, Evelyn (Evelyn.Vargas-Rondon@jud.ct.gov)
Cc: Rachel Baird
Subject: long guns as evidentiary exhibits at trial- Taupier

There are multiple firearms seized as evidence in the Taupier case that is set to start trial February 2nd or 3rd. There are four firearms that are capable of shooting 250 yards as stated in the defendant's email. What is Middletown's policy on moving the actual firearms into evidence as full exhibits and sending them back to the jury deliberation room if they are requested? . There are apparently photographs of all of the firearms seized. I will get them on Monday (1/12) and give a copy to Rachel.

Brenda L. Hans
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