

Prosecution's Witness' Contradictory Testimony Dismisses Charges Against Retired FBI Agent

Justice Gustin L. Reichbach

PEOPLE v. R. LINDLEY DEVECCHIO, 6825/05, Decided 11/01/07—

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Friedrich Nietzsche sagely observed at the end of the 19th Century "that he who fights with monsters might take care lest he thereby become a monster...and if you gaze for long into an abyss, the abyss gazes also into you..." I will not comment much on the specific evidence in this case in light of the fact that the record is not yet complete. I do, however, feel obliged to make some observations based on the evidence revealed to date. These observations based on the testimony and exhibits introduced so far in this case, particularly by the defendant's own colleagues, is directed not so much to defendant's individual actions but to the institutional question raised by the evidence.

I was particularly struck by the testimony of Carmine Sessa, former Consigliere of the Colombo family and multiple murderer, and who testified that when he and his fellow mobsters were discussing the possibility that Greg Scarpa was an FBI informant, they ultimately discounted the idea, reasoning that it was impossible for Scarpa to be an FBI informant: that it would be antinomic for the FBI, charged with fighting crime, to employ as an informer a murderer as vicious and prolific as Greg Scarpa. Apparently, and sadly, organized crime attributed to the FBI a greater sense of probity than the FBI in fact possessed.

It is certainly true that through the years, Greg Scarpa provided valuable and, in some instances, unique information on the workings and structure of the organized crime families in New York and the Colombo family in particular. Interestingly, and perhaps inexplicably, Scarpa provided information not only on others, but also on his own son, Greg Scarpa Jr., and, indeed, on himself as well. Scarpa readily admitted to his own involvement in loan-sharking, gambling and bank burglaries. He informed on rivals and those closest to him, including members of his own crew. And in keeping with his treacherous nature, he also provided information to the FBI that was purposely deceptive and untrue in an attempt to point the finger of accusation away from his own misdeeds and on to that of gang rivals. He provided information on the murder of Joe "Brewster" DeDomenico and the attempt to kill Joe "Waverly" Cacace without indicating that he himself was involved in both. Similarly, he blamed on others the murder of Nicky "Black" Grancio that he had committed. On the limited evidentiary record provided to the Court, it is impossible

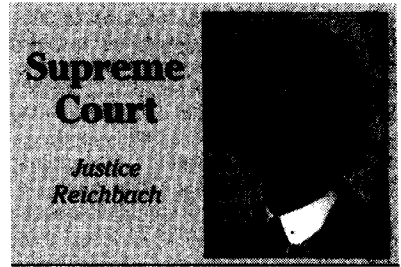
and valuable and how much was not.

What is undeniable was that in the face of the obvious menace posed by organized crime, the FBI was willing, despite its own formal regulations to the contrary, to make their own deal with the devil. They gave Scarpa virtual criminal immunity for close to 15 years in return for the information, true and false, he willingly supplied. Indeed, this Court is forced to conclude that Scarpa's own acknowledgment of criminal activity to the FBI could only be explained by his belief that the agency would protect him from the consequences of his own criminality, which the record suggests is what they did.

Not only did the FBI shield Scarpa from prosecution for his own crimes, they also actively recruited him to participate in crimes under their direction. That a thug like Scarpa would be employed by the federal government to beat witnesses and threaten them at gunpoint to obtain information regarding the deaths of civil rights workers in the south in the early 1960s is a shocking demonstration of the government's unacceptable willingness to employ criminality to fight crime. It is redolent of the current mindset of some in the government who argue that the practice of terror and torture can be freely employed against those the government claims are terrorists themselves: that it is permissible to make men scream in the name of national security. These are shortcuts that devalue legitimate police work, their yield is insignificant and the cost to the fundamental values they debase is enormous.

This court is not unaware of the delicate balancing act required in the waltz that must be danced between informant and handler. A relationship of trust must be established, but the handler must not lose sight of with whom he is dealing. As Detective Sergeant Fred Santoro so colorfully but accurately put it, informants were "the scum of the earth, that one had to assume they lied, that they were not to be trusted, they gave false information and false leads and that it was necessary to confirm what they tell you."

The Court would be remiss if it did not single out for praise Special Agents Favo, Tomlinson and Andjich. In the face of what must have been enormous institutional pressure to turn a blind eye when they grew increasingly concerned that the defendant had lost the necessary perspective and had grown too close to his informant, they stepped forward, risking the opprobrium of their colleagues. There was no evidence presented at this trial, save the now discredited testimony of Linda Schiro, that the defendant committed any of the acts charged in the indictment. On the other hand, credible



evidence was presented that indicated that the defendant was so eager to maintain Scarpa as an informant that he was willing to bend the rules, including sending misinformation to headquarters in order to re-open him as an informant.

However, the inappropriate relationship with Scarpa and the FBI's maintenance of him as an informant cannot be attributed solely to this defendant. Any sentient being reading Scarpa's informant file could divine that Scarpa was involved in illegal and violent acts. While lying about his involvement in murders, Scarpa freely acknowledged a host of other criminal activities including, as noted, loan-sharking. It is a belief bordering on thaumaturgy to think that a loan-shark operation could be conducted without violence; both threatened and actual. Under all the circumstances it would have been impossible for the FBI not to appreciate that Scarpa was involved in violence. And if the Bureau was not aware of it, it would suggest a level of incompetence that this Court is not prepared to attribute to this vital law enforcement agency. At best, the FBI engaged in a policy of self-deception, not wanting to know the true Facts about this informant-murderer whom they chose to employ. There was testimony at this trial that informant files were to be reviewed at the highest levels of the Agency at least once a month. Even the most cursory review would have revealed the extent of Scarpa's criminality, which, as the Court has observed, it appears obvious the Bureau was not interested in knowing.

A top echelon informant, that is, a made member of organized crime who is willing to provide valuable intelligence, presents a difficult challenge to those who are sworn to fight crime. It is the inescapable aporia of law enforcement that they must sometimes turn a blind eye to criminality in order to prevent or combat greater criminality. It is a difficult balancing act but one, this Court is forced to conclude, the Bureau failed miserably to accomplish in their dealings with Greg Scarpa. I have great respect for the decision of the District Attorney's office to dismiss this prosecution in the face of the contradictions between the testimony here at trial of their chief witness with statements she's made previously on the matters in issue. Even more, the Court must pay tribute to Tom Robbins of the Village Voice, who came forward at considerable professional risk to reveal Schiro's perfidy. Whatever improprieties the defendant may have committed to protect and keep his informant operational, that is far different than joining Scarpa in his criminal undertakings. It was only the discredited testimony of Linda Schiro that tied the defendant to any of the crimes charged in the indictment. The Court agrees with the District Attorney's conclusion that this was insufficient to establish the defendant's guilt on the crimes charged. Indictment dismissed, bail exonerated, defendant discharged.

This constitutes the Decision and Order of the Court. ■