

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

UNITED STATES OF AMERICA, )  
 )  
 V. ) 02-CR-01237  
 )  
 ANGELO DIPIETRO )  
 )

**AFFIDAVIT OF WILLIAM CLUTTER**

1. I am a Board Certified Criminal Defense Investigator through The Criminal Defense Investigation Training Council, a national organization that trains and establishes standards for criminal defense investigators. I have specialized training and experience that qualify me as an expert in pre-trial and post-conviction investigations. (See Exhibit #1, Professional Vitae of William Clutter)

2. In addition to maintaining a private practice, I also work as Director of Investigations for the Downstate Illinois Innocence Project at the University of Illinois at Springfield. Over the last 25 years, I have been involved in a number of cases involving defendants who were convicted of crimes, but were subsequently exonerated in light of new evidence.

3. On August 18, 2009, Angelo DiPietro's son, Anthony, drove to Springfield, Illinois to meet with me. He provided me with transcripts and FBI reports relating to his father's conviction. Anthony said he found my website looking for a private investigator experienced in investigating claims of actual innocence. Anthony explained that he and his father were co-defendants relating to federal charges involving gambling. Anthony stated that he pled guilty to those charges and received a sentence of six months house arrest and five years probation. Anthony explained that his father, Angelo DiPietro, was convicted on other charges involving a conspiracy to commit a burglary on July 18, 2001 in Eastchester, New York, as well as charges alleging that he used a firearm to extort an individual named John Perrazo on June 29, 2001. According to Anthony, he was also accused by the witnesses who testified for the government against Angelo

Dipietro as being involved in the Eastchester robbery and the alleged extortion of John Perazzo. Anthony was adamant, however, that the government's witnesses lied about him, and about his father regarding these events. Anthony stated "None of that was true. To be honest, we were involved in gambling. I don't deny that."

4. During my interview with Anthony DiPietro, I was presented with contradictions in the statements of the government's key witnesses that led me to believe that his father's claim of actual innocence of these specific charges may have validity. After the conclusion of our meeting, I agreed to assist Mr. DiPietro and was retained by the family of Angelo DiPietro to review the evidence and to aid with a federal post-conviction investigation. Mr. Angelo DiPietro has and continues to maintain that he was not involved in a conspiracy to commit a burglary on July 18, 2001 in Eastchester, New York, and that he did not extort nor did he brandish a firearm or instruct others to brandish firearms in the alleged extortion of an individual named John Perrazo.

5. The government secured the conviction of Angelo DiPietro of the conspiracy to commit the Eastchester burglary and use of a firearm to commit extortion that was alleged in the indictment through alleged accomplice testimony; namely that of Din Celaj, Mark Nicholson, and Maurizio Sanginiti. All three witnesses had federal charges pending at the time of their testimony and received substantial leniency from the government in exchange for their cooperation. In addition, Celaj and Sanginiti received the benefit of avoiding deportation.

6. In Illinois, The Governor's Commission on Capital Punishment studied 13 death row exoneration cases and identified a number of common factors that lead to an innocent individuals being wrongly convicted. The Commission noted: "There are a number of cases where it appeared that the prosecution relied unduly on the uncorroborated testimony of a witness who has something to gain. . . In some cases this was an accomplice, while in other cases it was an in-custody informant." (Report of the Governor's Commission on Capital Punishment, State of Illinois, April 15, 2002, at p. 9)

7. From my review of the evidence and record in the instant case, it appears that federal prosecutors did unduly rely on the uncorroborated accomplice testimony of

Celaj, Nicholson, and Sanginiti to secure the conviction of Angelo DiPietro, despite evidence raising credibility issues with their pre-trial statements and trial testimony.

8. My investigation of these post-conviction claims has identified new evidence and witnesses who provide material evidence that disputes this accomplice testimony. This new evidence raises genuine factual issues that would lend support to an actual innocence claim under these post-conviction proceedings. An evidentiary hearing to compel witness testimony and place newly discovered evidence before the court would serve the interest of justice.

#### **Conspiracy to commit burglary**

9. At trial, Celaj and Nicholson provided the bulk of the testimony, implicating Angelo DiPietro as a participant in a conspiracy to commit burglary, and to aid and abet their attempt to commit the Eastchester burglary. The third man who was involved in the burglary attempt, Ded Nicaj did not testify, although he was also charged and convicted of this offense by the Westchester District Attorney's office in 2001.

10. On Nov. 11, 2009, I conducted a phone interview of Ded Nicaj. He stated that he had never met Angelo DiPietro and that DiPietro was not involved in the plan to commit the Eastchester robbery. Nicaj further stated that he was familiar with the work of Barry Scheck at the innocence project and that Angelo DiPietro is innocent of the allegation involving the Eastchester robbery. (See Exhibit #2, Memorandum of Interview of Ded Nicaj).

11. On November 21, 2009, I conducted an interview of Bashkim Mustafaj at his home. He stated that he was friends with Maurizio Sanginiti through their mutual interest in basketball. I explained to Mr. Mustafaj that Din Celaj testified at Mr. DiPietro's trial about a meeting at the Raceway Diner in Yonkers in which Mr. DiPietro allegedly initiated discussions about a plan to rob a home in Eastchester. I asked Mr. Mustafaj if he was ever present at the Raceway Diner with Angelo DiPietro. He stated that he was introduced to DiPietro by Sanginiti at the Raceway Diner, but that there was never any discussion of committing robberies. He further stated that there was never any discussion at the diner about committing a burglary in Eastchester. Mr. Mustafaj stated that Celaj was able to get out of prison by making up lies, and he went on to commit other crimes. (See Exhibit #3, Interview report of Bashkim Mustafaj).

12. On Nov. 21, 2009, I conducted an interview of Marty Vuksanaj. Mr. Vuksanaj stated the he grew up in the same neighborhood as Ded Nicaj and Din Celaj. Mr. Vuksanaj learned about Din Celaj's testimony in Angelo DiPietro's case through Mr. DiPietro's son, Anthony, who worked for him at his construction company. Mr. Vuksanaj stated that while he working on 42<sup>nd</sup> Street in Manhattan he had seen Ded Nicaj at Grand Central Station. He asked Nicaj about Celaj's testimony against Angelo DiPietro. Nicaj told him that Din Celaj lied in court about DiPietro being involved in the Eastchester burglary and that he had been personally visited by the FBI when he was in prison. Nicaj said that he also told the FBI that he did not know Angelo DiPietro. In the summer of either 2006 or 2007, Mr. Vuksanaj had recalled that while stopping into a McDonalds near his home, with his nephew George and his cousin Danny, he was confronted by Din Celaj's brother, Xhavit Celaj, aka "Jerry." Marty told "Jerry," that he heard that his brother Din had been making statements against people that were untrue. "Jerry" replied, "He's not talking about any Albanians. He's leaving everything on the Italian." (See Exhibit #4, Interview of Marty Vuksanaj).

13. On January 20, 2001, John Perazzo wrote a letter to his former attorney, Ted Brundage, claiming that he was currently imprisoned with two participants (Celaj & Nicholson) in the Eastchester robbery. Perazzo noted that one of the individuals told him the whole story, including who was responsible for planning the robbery. The individual identified in Perazzo's letter as being responsible for setting up the Eastchester robbery was not Angelo DiPietro, but Angelo Capalbo. Upon information and belief, this document was never disclosed by the government to defense counsel. (See Exhibit #5, Letter of John Perazzo).

#### **Extortion of John Perazzo**

14. At trial, the government's only evidence concerning DiPietro's culpability in the alleged extortion of John Perazzo on June 29, 2001 was elicited from cooperating witness Maurizio Sanginiti. Sanginiti alleged that Perazzo was abducted from the parking lot of Applebee's by himself, Frank Taddeo, Joseph Genua, and Rick Whalen. According to Sanginiti, the parties brought Perazzo to DiPietro's basement in a single white van, where he was allegedly threatened with a firearm.

15. On November 21, 2009, I conducted an interview of Frank Taddeo, who was an alleged co-conspirator to the events that transpired on June 29, 2001. Taddeo confirmed that he was a witness to the events that occurred at Applebee's and at the home of Angelo DiPietro. Taddeo informed that had Maurizio Sanginiti testified that John Perazzo was grabbed against his will and taken in Angelo DiPietro's white van, that would be a lie. Taddeo stated that Angelo DiPietro's white van was not at Applebee's that day, nor was DiPietro present at Applebee's. Taddeo explained that Angelo DiPietro was at his wife's house in Yonkers attempting to reconcile their separation at the time that the parties met at Applebee's. Taddeo stated that he arrived at Applebee's driving his white SUV, accompanied by Joseph Genua and Rick Whalen. Taddeo stated that he observed Maurizio Sanginiti and John Perazzo leaving Applebee's Restaurant and that both men got into Sanginiti's vehicle. Taddeo stated that Perazzo was not kidnapped against his will. Mr. Taddeo stated that he followed Sanginiti and they drove around for quite a while waiting for Angelo DiPietro to arrive at his home in Mr. Vernon, New York. While they were driving around, Taddeo stated that he made several phone calls to Sanginiti using his cell phone, because DiPietro was not answering his cell phone. He stated that his cell phone records would therefore prove that he and Sanginiti traveled from Applebee's in separate vehicles. When they arrived at DiPietro's home, they entered through the garage, into the basement. DiPietro didn't have his keys, so he had his tenant unlock the garage door. He was present during the meeting at DiPietro's house, at which the parties discussed the investments that Sanginiti and Capalbo had given to Perazzo. Taddeo stated that Perazzo was not threatened. Taddeo stated that neither DiPietro nor any of the other individuals present possessed or brandished a firearm during this meeting with Perazzo. Taddeo explained that he had told the FBI that no firearms were displayed. His attorney, Anthony Siriano, was present when he was interviewed by the government. (See Exhibit #6, Interview of Frank Taddeo).

16. On February 16, 2010, Frank Taddeo and his attorney Anthony Siriano, signed an authorization for the disclosure of attorney client work product notes that were prepared by his attorney during his representation of Frank Taddeo in this matter. With the consent of both Taddeo and his attorney, I received the notes taken by Taddeo's

attorney during his proffer with the government on December 10, 2004, and a subsequent meeting held between Taddeo and his attorney on January 19, 2005. (See Exhibit #7, Authorization dated 2/16/2010, and attached attorney notes of Anthony Siriano dated 1/19/05 and 12/10/04)

17. The notes of attorney Anthony Siriano document a December 10, 2004, meeting between his client, Frank Taddeo, and the government. Present for the government were assistant United States Attorneys, Timothy Treanor and Jennifer Rodgers, Federal Bureau of Investigation Special Agent Rico Falsone, and New York State Police Investigator Stephen Haggerty. Attorney Soriano's notes reflect the statements that his client, Frank Taddeo, provided to the government that day under the provisions of an executed proffer agreement. As reflected by such notes, the information provided by Mr. Taddeo to the government clearly do not support the trial testimony of the government's witness Maurizio Sanginiti nor do they corroborate the government's theory presented at Mr. DiPietro's trial. Particularly, Taddeo told the government that "Maurizio was driving his jeep," while "he followed in his own car." Taddeo stated that "Maurizio was annoyed with Perrazo," as he "owed money to Sanginiti in the amount of \$300,000 and Capalbo in the amount of \$90,000." Taddeo stated that "JP [John Perrazo] said I've got all these deals going on I'm going to pay you all off," which "Maurizio was not happy about." The only conceivable threats Taddeo described came from Angelo Capalbo, who stated if he didn't get his money back, "I'll have you put in jail." Taddeo told the government they were in the basement 30 to 40 minutes and "Anthony DiPietro was not present." (See Exhibit #7, attorney notes of Anthony Siriano dated 12/10/04)

18. The notes of attorney Anthony Siriano of a subsequent meeting with his client, Frank Taddeo, on January 19, 2005, indicate that he "discussed case in detail" with his client. Taddeo disclosed to his attorney under the cloak of attorney client privilege that he "never saw gun—never handled gun." (See Exhibit #7, attorney notes of Anthony Siriano dated 1/19/05)

19. On March 3, 2010, I conducted a phone interview of Anthony Siriano. He stated that he represented Frank Taddeo in a proffer meeting with the government on Dec. 10, 2004. During this meeting, his client told the government that he never saw a

gun during the June 29, 2001 incident involving John Perazzo. Mr. Siriano stated that he had a subsequent meeting with his client on January 19, 2005. During this meeting, Mr. Taddeo again insisted that he never saw a gun and he never handled a gun. "His story never deviated," said Siriano. (See Exhibit #7 Memorandum of Anthony Siriano interview).

20. In a letter dated February 23, 2005, the government informed all defense counsel that they may wish to interview Frank Taddeo. The government disclosed: "When questioned by the Government, Frank Taddeo indicated, in substance and in part, that he was present during the specific events charged in Counts Three and Four of the above-referenced superseding indictment and that he did not see anyone threaten the victim." (See Exhibit #8, 2/23/05 letter from AUSA Timothy J. Treanor; see also 4/15/05 letter from Treanor to All Defense Counsel) However, the government did not disclose the details of Frank Taddeo's statements, instead stating that it did not believe Mr. Taddeo was being truthful.

21. On June 13, 2005, the trial prosecutor stated to the court and the defense attorneys: "I know that I've had opportunity to speak to Mr. Taddeo myself, and Mr. Taddeo has indicated things that would lend the government to believe that there might have been phone communications that are consistent with the story told by Mr. Sanginiti." (emphasis added) (Tr. 4200).

22. I have reviewed Frank Taddeo's cell phone records from June 29, 2001. The records provided by Cingular Wireless Inc., indicate that between 8:30 p.m. and 9:13 p.m. there were numerous phone calls between Frank Taddeo (917-678-3176) and Maurizio Sanginiti (914-420-9773). In particular, between 8:48pm and 9:13pm, Taddeo had telephoned Sanginiti six times within a span of twenty five minutes. (See Exhibit #9, Frank Taddeo's Cingular cell phone records).

23. According to the trial testimony of an investigator for the Westchester District Attorney's Office, who surveilled John Perazzo at Applebee's on June 29, 2001, Perazzo was observed entering Applebee's at 8:24 p.m. (See Trial Tr. 2863). Approximately 10 minutes later, the investigator went into the restaurant and discovered that Perazzo was gone. (See Trial Tr. 2867). This timeline is consistent with the time period Taddeo was calling Sanginiti's cell phone as they were driving separate vehicles.

24. The cell phone records of Frank Taddeo corroborate the fact that there were two vehicles present on the evening of June 29, 2001. These records entirely undermine Maurizio Sanginiti's trial testimony that he and Frank Taddeo traveled together that evening in a white van from Applebee's.

25. Contrary to the government's claim to the court and defense attorneys, Frank Taddeo's cell phone records and proffer with the government on December 10, 2004 do not corroborate Sanginiti's testimony on this subject.

#### Discovery Issues

25. In a March 11, 2005 internal memo by defense counselor William Aronwald, the prosecutors appear to have taken the position that any Brady materials in the files of the Westchester District Attorney's Office would not be discoverable unless they were turned over to the US Attorney. (See Exhibit #10, Memo from WIA to file 3/11/2005).

26. On August 20, 2009, I mailed a Freedom of Information Act request to both the Eastchester Town Clerk and to the Westchester County District Attorney's Office requesting the pre-trial interviews of Din Celaj, Marc Nicholson, and Ded Nicaj, including but not limited to any statements they may have made pursuant to their cooperation agreements. (See Exhibit # 11, FOIA requests).

27. On or about September 1, 2009, the Town of Eastchester denied my FOIA request. (See Exhibit #12, Linda Doherty letter dated 9/1/09). On or about September 21, 2009, Westchester Assistant District Attorney John Carmody replied that he was unable to locate any document that could reasonably be described as a cooperation agreement or any statements made by these individuals pursuant to a cooperation agreement. (See Exhibit #13 John Carmody letter dated 9/21/09).

28. This response to my request ignores the fact that "agreements" existed between the Westchester District Attorney's Office and Din Celaj and Mark Nicholson as to the Eastchester burglary. (See Exhibit #14; 12/6/01 cooperation agreement with Mark Nicholson and 5/16/02 cooperation agreement with Din Celaj). Accordingly, the response to my demand appears to be materially inaccurate.

29. To properly address Mr. DiPietro's claims of actual innocence and the unreliability of his underlying conviction, it is recommended that all of the undisclosed materials mentioned above be produced.



WILLIAM R. CLUTTER

Signed and sworn to before me on this 16th, day of March, 2010

Michelle L Tomlin

Notary Public

