

STATE OF LOUISIANA

* PARISH OF UNION *

THIRD DISTRICT COURT

STATE OF LOUISIANA

FILED:
Union Parish Clerk of Court

Versus No. 60,600

OCT 09 2023

Division B

KORY YORK

Monet Frazier, Deputy Clerk
Third Judicial District Court

DEPUTY CLERK OF COURT

RULING

Kory York filed a Motion for a Kastigar Hearing on June 19, 2023. He followed this up with another Motion for Kastigar Hearing and Motion to Quash on July 24, 2023. The State filed its reply Memorandum on July 27, 2023. The Hearing was held on August 22, 2023, with both sides submitting on their briefs after questioning from the Court. The Court left the record open until it received an affidavit from the State's expert witness, Mr. Seth Stoughton, as to whether or not he had listened to an audio tape of a Louisiana State Police Internal Affairs interview with Mr. York indicating what, if any, effect the tapes had on his testimony before the Grand Jury. The affidavit was filed on August 28, 2023. Mr. Stoughton admitted to having listened to the tapes, although he said that his opinion would have been the same whether he listened to the tape or not. Defendant filed a supplemental memorandum on August 30, 2023 in response. The Court took the matter under advisement and will now make its ruling.

Mr. York was involved in the arrest of Ronald Greene on May 10, 2019, where Mr. Greene died in the custody of law enforcement officers at the scene. Mr. York was one of the Louisiana State Troopers present at the scene. As a result of his involvement with the arrest, Mr. York was interviewed by Louisiana State Police Internal Affairs, on October 20, 2020. This was a compelled Internal Affairs interview, constitutionally protected under the Supreme Court's ruling in *Kastigar v. United States*, 406 U.S. 441, 92 S.Ct. 1653, (1972), and should not have been part of the information used in any criminal investigation of Mr. York.

In the lead up to the indictment of Mr. York for his alleged involvement in the death of Mr. Greene, the State retained a Use of Force Expert, Seth Stoughton. Mr. Stoughton was provided with body cam videos and other materials by the State, which included both the transcript and audio recording of Mr. York's Internal Affairs interview. The State acknowledges this was a mistake and shouldn't have occurred. Regardless, it is admitted that Mr. Stoughton listened to the audio recording of the Internal Affairs interview, as he confirmed in his affidavit filed on August 28, 2023. The Interview is cited in a report written by Mr. Stoughton for the State in footnote 359 on page 110. This report was not provided to the Grand Jury. Mr. Stoughton did testify before the Grand Jury about what he considered the appropriate standards for use of

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force when arresting a suspected criminal and his conclusions as to whether Mr. York violated those standards.

Mr. York argues that the fact Mr. Stoughton reviewed the interview taints the results of the Grand Jury indictment and violated his constitutional rights. As a result, the entire indictment must be quashed. The State argues that while the interview should not have been made available to Mr. Stoughton, it did not affect his testimony before the Grand Jury. In addition, the weight of the other evidence, in particular the body cam videos showing the incident, were sufficient to justify the Grand Jury indictment.

The Court has reviewed the multitude of cases submitted by both sides in support of their arguments. The Court found that *State v. Foster*, 845 So.2d 392 (La. App. 1st Cir. 2003) provides a thorough analysis of the law as it applies to this case. The Court has taken particular note of the following portions of the “*Foster*” decision:

“In *Kastigar*, the United States Supreme Court established a mechanism for insuring that the state does not make direct or indirect use of compelled testimony. Once a defendant demonstrates that he has testified under a grant of immunity, a heavy burden shifts to the prosecution to prove that the evidence it proposes to use is derived from a legitimate source wholly independent of the compelled testimony. *Kastigar*, 406 U.S. at 461–462, 92 S.Ct. at 1665. In *United States v. Hubbell*, 530 U.S. 27, 120 S.Ct. 2037, 147 L.Ed.2d 24 (2000), the United States Supreme Court reiterated its holding in *Kastigar*:

[A] person who is prosecuted for matters related to testimony he gave under a grant of immunity does not have the burden of proving that his testimony was improperly used. Instead, ... the statute imposes an affirmative duty on the prosecution, not merely to show that its evidence is not tainted by the prior testimony, but “to prove that the evidence it proposes to use is derived from a legitimate source wholly independent of the compelled testimony.”

“While the court in *Kastigar* did not mandate the state to bear its burden of proof at a hearing conducted *prior* to trial, courts routinely consider this issue in the context of a pre-trial motion to quash an indictment or in the context of a motion to suppress evidence, depending on the circumstances of the case. A trial court may hold a *Kastigar* hearing pre-trial, post-trial, mid-trial (as evidence is offered), or it may employ some combination of these methods. *United States v. De Diego*, 511 F.2d 818, 823–824 (D.C.Cir.1975).”

“*Kastigar* explicitly holds that one raising a claim under an immunity statute need only show that he testified under a grant of immunity in order to shift to the government the heavy burden of proving that all of the evidence it proposes to use was derived from legitimate, independent sources.”

“Louisiana courts have not yet addressed the findings required by a trial court or the standard of review for a trial court's ruling on a motion to quash an indictment or on a motion to suppress evidence held in compliance with the principles announced in *Kastigar*. However, federal jurisprudence interpreting the analogous federal use and derivative use immunity statute provides us with ample guidance. Under the rationale used in *Kastigar*, the court should make specific findings of fact with regard to the evidence presented to the grand jury by the government to determine whether it was tainted directly or indirectly by the immunity provided to the defendant. The burden is on the government to show by a preponderance of the evidence that each item of evidence presented to the grand jury was derived from sources wholly independent of the compelled testimony. *United States v. Brothers*, 856 F.Supp. 380, 383 (M.D.Tenn.1993). The prosecution need not negate all abstract possibility that its evidence was tainted by exposure to the defendant's immunized testimony, but it must show by a preponderance of the evidence that the evidence it used was derived from legitimate sources independent of the immunized testimony. *United States v. Byrd*, 765 F.2d 1524, 1529 (11th Cir.1985). When the court uses the correct legal principles, its determination of taint is a factual finding subject to review under the clearly erroneous standard. *United States v. Harris*, 973 F.2d 333, 337 (4th Cir.1992).”

“The Louisiana Supreme Court has not yet addressed the precise question of the propriety of an order quashing an indictment as a remedy for a violation of La.Code Crim. P. art. 439.1.9 However, since a grant of statutory immunity in exchange for compelled testimony implicates federal constitutional guarantees, and since our statute is identical in all material respects to the federal immunity statute, federal jurisprudence on this issue is particularly instructive.

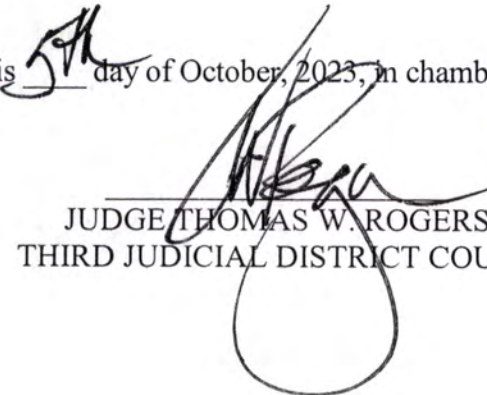
The fundamental rule set forth in *Kastigar* is that in order for a statute granting “use plus derivative use immunity” to be constitutionally valid, the witness must be in the same position after testifying that he or she would have been if the testimony had not been compelled. Where the witness asserts that he would not have been indicted but for the direct or indirect use of his previously compelled testimony, and where the government cannot affirmatively prove the contrary, arguably the only manner of restoring the witness to the pre-immunity position is to quash the indictment.”

There is no dispute that the testimony Mr. York provided at the La. State Police Internal Affairs interview was compelled and therefore protected under “*Kastigar*”. It is further acknowledged that Mr. Stoughton heard a recording of the testimony as part of the evidence provided to him to assist in analyzing Mr. York’s actions and determining whether he used excessive use of force or deviated from established standards and protocols for handling subdued prisoners. The only issue for the Court to decide is whether the prosecution has proven that the testimony of Mr. Stoughton was based on legitimate sources independent of Mr. York’s Internal Affairs interview.

The Court has carefully studied the transcripts of Mr. Stoughton’s testimony before the Grand Jury and of Mr. York’s internal affairs interview. It was clear that Mr. Stoughton’s testimony was based on his experience and knowledge of appropriate use of force standards and protocols by law enforcement officers in subduing a prisoner and in handling a prisoner after he has been subdued. He then applied this experience and knowledge to his review of the multiple body cam videos showing Mr. Greene’s treatment by the state troopers and deputy sheriffs. Having read both transcripts, the Court can find nothing in the “compelled/protected” interview that was referenced in Mr. Stoughton’s Grand Jury testimony. It is clear that the body cam videos were the evidence Stoughton relied on to come to his conclusions as to improper use of force. His reference to specific frames of the videos throughout his testimony is confirmation of the fact that his conclusions were independent of the “compelled/protected” interview. Furthermore, Stoughton’s credentials and experience coupled with his affidavit belie the possibility that he would allow the “compelled/protected” interview to influence his conclusions. One final consideration is the interview itself. The Court finds that there was little, if anything, Mr. York said in his interview that could conceivably be used by Mr. Stoughton that wasn’t more conclusively shown in the body cam videos. The Court finds that the conclusions Mr. Stoughton voiced before the Grand Jury were “wholly independent” of Mr. York’s Internal Affairs interview; therefore, Mr. York’s Motion to Quash is denied.

The Clerk of Court is directed to notify the District Attorney, Mr. York and Mr. York's counsel of record, by certified copy hereof.

THUS DONE and SIGNED this 5th day of October, 2023, in chambers at Ruston, Louisiana.



JUDGE THOMAS W. ROGERS
THIRD JUDICIAL DISTRICT COURT