

**People v. Ralph Tancredi - 07-60256 - SUPREME COURT OF NEW YORK,
WESTCHESTER COUNTY**

2008 N.Y. Misc. LEXIS 1631; 239 N.Y.L.J. 54

March 6, 2008, Decided

COUNSEL: [*1] Attn: Audrey Stone, Esq., Honorable Janet DiFiore, Westchester County District Attorney, White Plains, New York.

Jonathan Lovett, Esq., Lovett & Gould, LLP, Attorney for Plaintiff, White Plains, New York.

Gustavo L. Villa, Esq., Kuczinski Vila & Associates LLP.

JUDGES: Justice Walker - OPINION BY: Walker

OPINION

DECISION & ORDER

Defendant is charged with one (1) count of Menacing in the Second Degree, one (1) count of Petit Larceny and one (1) count of Harassment in the Second Degree. The charges stem from two incidents that occurred on June 15, 2007 and August 8, 2007. The victim, Sofia Saenz, and the defendant, Ralph Tancredi, had been involved in an intimate relationship for several years. After the defendant and the victim ended their relationship, defendant contacted Ms. Saenz and pleaded with her to spend some time with him. The victim agreed to meet defendant on June 15, 2007. The victim and defendant met, talked and the victim returned to her home. Shortly after she arrived at home, the victim left the residence planning to meet her friend, Joshua Clark. As the victim was leaving her house the defendant, who had been hiding himself from view, came running towards her. Defendant confronted the victim and yelled [*2] "I knew you were going out." Defendant then attempted to take the victim's car keys and cellular phone. The victim resisted and as a result defendant bent back the victim's arm and fingers and then pulled down her tube top dress ex-posing her breasts. Defendant then stated "I knew you weren't dressed like that for me." Defendant called the victim a "slut" and a "whore" in the midst of this confrontation. Shortly thereafter, defendant took away the victim's cellular phone and used it to place a call to Mr. Clark. Defendant told Mr. Clark that the victim was his fiancée and that they were engaged in sexual behavior at the present time. The defendant called Mr. Clark once more and left a message stating that he and the victim were engaged and going to get married. Defendant continued to push and shove the victim while attempting to take away her car keys. The defendant was able to over-come the victim's and take her car keys. Defendant then drove away in the victim's car leaving her hysterically crying outside her place of residence. The following day the defendant returned the car keys to the victim and asked her not to report the incident. The victim agreed and continued to communicate [*3] with the defendant with hope that such an incident would not recur.

The second incident involving defendant and Sofia Saenz, occurred on August 8, 2007. The Harrison Police Department responded to a dispute involving a police officer at Annie's Cafe, located at 235 Harrison Avenue in the Town of Harrison. Harrison police officers observed the

defendant and the victim with her friend, Joshua Clark, all standing inside the cafe. The responding officer questioned the victim and Mr. Clark and learned that the defendant had driven past Annie's Cafe, which is also the victim's place of employment, when he saw the victim and Mr. Clark standing on the sidewalk. Defendant pulled his car over and confronted the victim and Mr. Clark. Defendant began to argue with Mr. Clark and asked the victim why did she allow Clark to touch her. Mr. Clark then attempted to pull the victim inside the cafe, in an effort to keep her away from the defendant. As Mr. Clark took the victim's hand in his, defendant slapped Mr. Clark's hand. Mr. Clark brought the victim inside Annie's Cafe and then went to retrieve a small baseball bat from his car. Mr. Clark stood with the bat in his hand, until the police arrived. [*4] As a result of this incident the defendant was charged with Harassment in the Second Degree (N.Y. Penal Law 240.26[1]) in the Harrison Town Court, and a Temporary Order of Protection was issued. The Order of Protection, directed the defendant, inter alia, to stay away from the home, business and person of Sofia Saenz and Joshua Clark and to refrain from communicating with the protected parties. Between August 10, 2007 and August 23, 2007 the defendant violated the Order of Protection by text messaging the victim several times and having his mother, Rose Tancredi, call the victim repeatedly. Defendant's mother requested that the victim drop the charges because of the negative effect a criminal prosecution would have on the defendant's career as a police officer.

As a result of his violations of the Harrison Town Court temporary order of protection, the defendant was charged with one count of Criminal Contempt in the Second Degree (N.Y. Penal Law 215.50) as a continuing crime.

In connection with the prosecution of these offenses the victim provided the People with detailed written depositions outlining the history and circumstances of the altercations between the victim and the defendant. [*5] On October 29, 2007, the defendant was arraigned on all three dockets in the integrated Domestic Violence Court where he entered a plea of not guilty. The People subsequently filed a motion to consolidate the three pending interrelated cases.

On November 21, 2007, Defendant's counsel, Lovett & Gould who represents the defendant on the single charge docket of Harassment in the Second Degree, filed a federal action on behalf of the victim alleging that the Town of Harrison and ADA Barbara Egenhauser, chief of the domestic violence bureau, violated the victim's civil rights. In the suit the victim, seeks compensatory damages and injunctive relief preventing the district attorney's office from contacting, threatening, intimidating or imprisoning her. Facts contained in the federal action summons and complain, allege that on August 20, 2007 the victim was detained several times by the Harrison police and coerced to offer evidence against the defendant. The victim's complaint states that ADA Egenhauser and Harrison Police Officer Edward Lucas threatened the victim with deportation if she did not assist them. The victim claimed that the reason ADA Egenhauser and Police Officer Edward Lucas [*6] wanted her to bear witness against defendant Tancredi is in retaliation for the defendant's previously filed federal civil rights actions against the Town of Harrison, the Town of Harrison Chief of Police and other members of the Harrison Police Department.

The People have filed a motion to Appoint an Attorney for the victim Sofia Saenz. Defendant's response consists of a Memorandum of Law in Opposition. Upon consideration of these papers,

the motion is disposed of as follows:

A. MOTION TO APPOINT INDEPENDENT COUNSEL FOR VICTIM

The People's motion to provide the victim with independent counsel is granted. Defense counsel's mutual representation of the victim in the federal civil rights suit and the defendant in a related criminal matter poses a conflict that warrants the appointment of independent counsel to meet with and advise the victim. Given the serious allegations present in the case at bar it is a very proper exercise of this Court's discretion to assure that the victim has been fully informed of the potential for conflict that exists in selecting counsel who also represents the defendant in this criminal prosecution.

The allegations in this case suggest that defendant has a history [*7] of abusive and unlawful conduct towards the victim. In addition, the allegations in the victim's civil action suggest that she may not be a legal resident in the United States. In light of the facts presented, the victim's particular vulnerability to coercion and manipulation must be taken into consideration. Furthermore, in addition to the menacing and harassing acts that he is charged with committing, defendant is also charged with criminal contempt for violating an order of protection. Despite his professional experience and understanding of the serious repercussions that result from criminally contemptuous conduct, it may be established that defendant engaged in persistent unlawful behavior in an effort to contact the victim. Also alleged, is that the defendant used his own mother in his campaign to dissuade the victim from cooperating with the prosecution. Without pre judging the defendant's case, this Court cannot ignore the People's serious allegations that defendant has engaged in coercion and conduct intended to intimidate a witness.

This Court is part of the community's coordinated response to domestic violence. It would be contrary to our purpose and mission, if individuals [*8] charged with domestic violence offenses are permitted to utilize such a questionable attorney client relationship, as a sword, and thereby strategically block the prosecution of their cases. In such a perverse fashion, defendants would be permitted to proceed, aided by their attorneys in complete disregard of the lawyer's ethical obligations.

The State of New York has a long standing and strong commitment to the issue of domestic violence. Westchester County Integrated Domestic Violence Court was established more than ten years ago to specifically preside over domestic violence cases and address the profound impact these offenses have on families, communities and individual lives. 1 The Unified Court System currently operates 37 Integrated Domestic Violence Courts in New York, with the goal to create several more before the end of this year. Critical components of the mission of this and all the New York Domestic Violence Courts are judicial monitoring, offender accountability and victim safety. 2

1 The first New York Supreme Court dedicated to hear Domestic Violence cases, was opened in Brooklyn, NY in June 1996. Westchester County IDV Court was established in June 1999, Administrative [*9] Order of the Chief Administrative Judge of the Courts, AO/255/99, dated June 7, 1999

2 See Mission Statement, Integrated Domestic Violence Courts, NYS Unified Court System available at <http://www.nycourts.gov/ip/domesticviolence/mission.shtml> (last visited February 28, 2008)

Victims of domestic violence often fail to follow through with their initial willingness to cooperate with the People's prosecution. Many victims return to their abusive partners due to financial concerns. For others, they return due to fear for their safety or that of their family and children. And for some women, having become so entrenched in a cycle of abuse and violence, they return out of habit. 3 By inducing, or by merely permitting a victim to enter into an attorney-client relationship with them, it is conceivable that the attorney participates knowingly or otherwise in the defendant's "strategy of coercive control" 4

3 Cronin, Elizabeth, Prosecuting a Domestic Violence Case: Looking beyond Victim's Testimony. (Lawyers Manual on Domestic Violence, 5th Edition 2006)

4 Cronin, Lawyers Manual on Domestic Violence supra, 12-13 citing Julie Blackman, Intimate Violence: A Study of Injustice (1989)

The right to effective [*10] counsel guarantees not only meaningful representation but the assistance of counsel that is conflict free and single mindedly devoted to the client's best interest. See, *People v. Longtin*, 92 N.Y.2d 640, 642, 707 N.E.2d 418, 684 N.Y.S.2d 463 (N.Y. 1998). That right may be impaired when an attorney represents the interests of both a defendant in a criminal prosecution while simultaneously representing the complaining witness/victim. See, *In re David D.*, 6 Misc. 3d 1008(A), 800 N.Y.S.2d 344, 2004 NY Slip Op 51753(U), [N.Y. Misc. 2004]. (The court appointed independent counsel for the defendant, where the attorney provided by the defendant's parents represented both the defendant and victim). Suffolk Family Court declined to adopt a bright-line rule, however, the opinion recognizes the Court's obligation to carefully weigh the ethical and constitutional issues which impact defendant's right to the counsel of his choice and the victim's right to counsel who is free of any conflicting interests or loyalties. Citing the Code of Professional Responsibilities EC 5-16, 5-19; DR 5-105[C], the court in "*In Re David D.*" supra, notes that it is defense counsel's burden to recognize the existence of a potential conflict of interest. *People v. Lloyd*, 51 N.Y.2d 107, 412 N.E.2d 371, 432 N.Y.S.2d 685 (1980). [*11] While multiple representation is not per se, ineffective assistance, such representation should be entered into very cautiously because of the danger of conflicting interests. It is clear that defense counsel has an ethical obligation to avoid conflicting representations and to notify the court if such a conflict occurs during the course of a trial. Given the facts presented, it is practically guaranteed that should the victim testify at trial defense counsel would be placed in the irregular position of having to cross examine his own client.

However, the prosecution is also obliged to alert the court when facts exist from which a potential conflict can be inferred. Given that the instant motion effectively accomplishes such notice, this Court agrees that it can reasonably be anticipated that the victim /witness may give self-incriminating testimony. See, *People v. Siegel*, 87 N.Y.2d 536, 542, 663 N.E.2d 872, 640 N.Y.S.2d 831 (1995). If the victim does not receive conflict free advice, she is at risk of ill advisedly committing perjury.

The People's motion presents another interesting and unique facet of the potential conflict of interest between attorney and client. The People requests that independent counsel be assigned [*12] to the victim for the purpose of advising her on how her attorney's simultaneous representation of the defendant in the pending criminal prosecution while also pursuing her federal claims, may be contrary to her interests. This Court agrees that the potential for improper influence to bear on this victim is particularly high. It is conceivable and highly probably that the victim has been or will be convinced to withhold testimony or alter her testimony in favor of her attorney's other client.

This Court is specialized in that we function in a fashion which enhances the environment in which a victim comes to seek justice. Any lawyer who intentionally attempts to thwart that purpose, is in effect interfering with the Domestic Violence Court's stated purpose. See, DR 1-102 (A) (5). (A lawyer or law firm shall not engage in conduct that is prejudicial to the administration of justice). In the case at bar, the victim has reported a significant history of abuse at the hands of the defendant. It is inconceivable that counsel for defendant was not aware of the serious potential for conflict even prior to the moment of his first contact and communication with the victim. See, DR 7-104 (A) (2). [*13] (During the course of the representation of a client a lawyer shall not give advice to a party who is not represented by a lawyer, other than the advice to secure counsel, if the interests of such party are or have a reasonable possibility of being in conflict ! with the interests of the lawyer's client).

This Court will provide the victim with a list of advocate organization for her to arrange for an independent and experienced attorney who is fully familiar with the special and unique dynamics of representing a victim of domestic violence, to meet and consult with her. As part of the consultation the attorney will be directed to inform and counsel Ms. Saenz regarding the potential for conflict that may exist and to advise her of all the potential consequences should the victim recant her previous statements or refuse to testify. Defense counsel is directed to facilitate in the communication to Ms Saenz with a copy of this order and will explain to her the sub-stance of this Court's directive. The Court will provide defense counsel with a list of advocate organizations. Ms. Saenz is expected to meet with the assigned attorney at least ten (10) days prior to the date the trial of these [*14] proceedings is to commence.

This constitutes the decision and order of the Court.

5 My Sisters Place -- 914-683-1333; Pace Women's Justice Center -- 914-422-4069; North-ern Westchester Shelter -- 914-747-0828.