

# John Paff

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July 26, 2008

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Sean F. Dalton, Esq., Prosecutor  
Gloucester County Prosecutor's Office  
P.O. Box 623  
Woodbury, NJ 08096

RE: Michael S. Curwin, Esq.  
Violation of R.P.C. 8.4(g)

Dear Prosecutor Dalton:

The July 15, 2008 Gloucester County Times<sup>1</sup> reported on Nekiesha Williams settling her excessive force case against the West Deptford Township Police Department for \$600,000. After reading that article, I examined some of the documents in the case file<sup>2</sup> and found something that I believe warrants an investigation by your office.

Attached are the following exhibits, all of which were exhibits to Williams' opposition to the defendants' motion for summary judgment:

- March 15, 2005 Pretrial Intervention Order (Exhibits 1 – 2)
- Affidavit of Nekisha Williams (Exhibits 3 – 5)
- Certification of Troy A. Archie, Esq. (Exhibits 6 – 7)

At issue is the phrase "Defendant stipulates that there was probable cause for her arrest on this case. T. A. A." which is handwritten on the first page of the March 15, 2005 consent order (Exh. 1). Had Ms. Williams consented to probable cause, her civil suit would have probably failed and she would have not received the \$600,000 settlement.

Ms. Williams' affidavit claims that the handwritten stipulation was added to the form after she signed it and without her knowledge or consent. (Exh. 4 – 5, ¶¶ 5, 9 and 10). Ms. Williams' criminal defense attorney, Troy A. Archie, Esq., confirms that the handwritten stipulation was added without his client's knowledge or consent after she had signed the consent order and "walked away." (Exh. 6, ¶ 5). Mr. Archie also certifies that "Assistant Prosecutor Curwin asked [him] to stipulate to probable cause on the case and he wrote same on the previously prepared Consent Order" (Ibid).

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<sup>1</sup> "Twp. settles for \$600G in police suit" by Siobhan A. Counihan

<sup>2</sup> Nekiesha Williams v. Township of West Deptford (Docket No. 05-1805 (FLW-JBR)).

As a prosecutor, Mr. Curwin should not have been concerned with West Deptford's civil liability. Instead, he should have restricted his concern to the fair and just application of the criminal law.

Using a criminal action to gain an advantage in a civil action is a violation of R.P.C. 3.4(g). In New Jersey Attorney Ethics (GANN, 2008), § 29:2-2, Kevin H. Michels writes:

The Supreme Court's Advisory Committee on Professional Ethics has also consistently condemned the behavior forbidden by RPC 3.4(g). In Advisory Comm. Op. 661 (May 18, 1992) the Committee relied in part on RPC 3.4(g) to rule that a municipal prosecutor could not require, as a condition precedent to a plea bargain, that a defendant waive his right to sue the municipality and any police officer connected with the defendant's arrest based upon any circumstance surrounding the arrest, including suit based on the alleged absence of probable cause for the arrest. The defendant would be forced by threat of prosecution to waive certain constitutional and civil rights, giving improper civil advantage to both the police officers and the municipality in contravention of RPC 3.4(g).

If it is unethical for a municipal prosecutor to require a probable cause stipulation as a condition precedent to a plea bargain, would it not also be unethical for a county prosecutor to insist upon a probable cause stipulation as a condition precedent to agreeing to admission into the PTI program?

Would you please investigate this matter and advise me of the outcome?

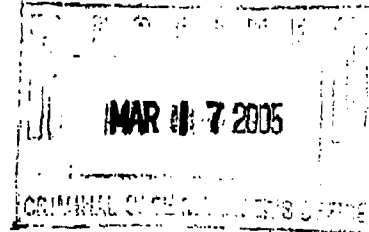
Thank you for your attention, and I look forward to hearing from you.

Sincerely,

A handwritten signature in black ink, appearing to read "John Paff", with a large, stylized flourish at the end.

John Paff

**TROY A. ARCHIE, ESQUIRE, P.C.**  
Attorney At Law  
Old Firehouse #6  
339 Front Street, Suite D  
Camden, New Jersey 08102  
(856) 963-5300  
Counsel for Defendant



STATE OF NEW JERSEY, :  
 :  
 Plaintiff, :  
 :  
 v. :  
 :  
 NEKIESHA WILLIAMS, :  
 :  
 Defendant. :  
 \_\_\_\_\_ :  
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SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION - CRIMINAL PART  
GLOUCESTER COUNTY  
INDICTMENT NO. B-04-06-00496 I  
  
Criminal Action  
Unique Case Identifier #: 03001870  
  
**PRETRIAL INTERVENTION  
ORDER OF POSTPONEMENT**

**THIS MATTER** having been opened by Troy A. Archie, Esquire on behalf of the Defendant Nekiesha Williams and the Plaintiff, State of New Jersey, by Gloucester County Assistant Prosecutor Michael S. Curwin, Esq. And upon the recommendation of the PTI Director in accordance with the provisions of NJSA 2C:43-12&13 & R.3:28 hereby consent to the entry of this CONSENT ORDER admitting the defendant Nekiesha Williams into the PTI program without trial or admission of any issue of law or fact regarding the charges of aggravated assault, attempting to prevent a public servant from lawfully performing an official function and effecting a lawful arrest, and for good cause shown,

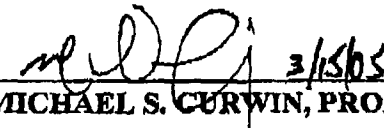
*Defendant stipulates that there was probable cause for her arrest on this case.*

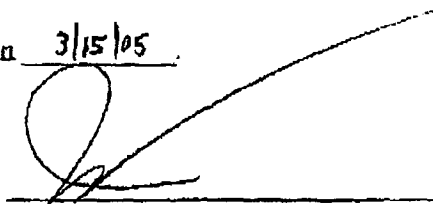
IT IS ON THIS 15 day of MARCH 2005,

*T.A.A*

**State v. Nekiesha Williams**  
**Pretrial Intervention**  
**Order of Postponement**  
**Page 2, cont.**

**ORDERED** that upon consent of the parties hereto, defendant Nekiesha Williams is hereby admitted into the PTI program henceforth and all further proceedings be and are postponed for a period of 12 MONTHS beginning on 3/15/05.

  
\_\_\_\_\_  
MICHAEL S. CURWIN, PROSECUTOR

  
\_\_\_\_\_  
HON. JOHN TOMASELLO, P.J.S.C.

  
\_\_\_\_\_  
TROY A. ARCHE, ESQ

\_\_\_\_\_  
PTI DIRECTOR.

  
\_\_\_\_\_  
NEKIESHA WILLIAMS, DEFENDANT




advised that if I entered this program my criminal case will be over without the risk of me having to go to jail or have a criminal record. I have always maintained my innocence and Mr. Archie assured me that I would not have to admit to guilt or to testify in court about any aspect of the crimes for which I was charged. He told me that the arrangement will have no adverse effect upon a civil case of which I was contemplating. Mr. Archie recommended that I agree to the PTI program. I reviewed the document presented by Mr. Archie and agreed to the program with the understanding that in the end I would not have any criminal record and my civil matter would not be affected.

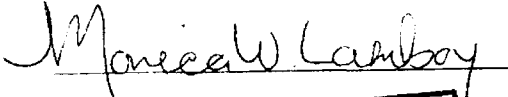
5. I signed the document and returned it to Mr. Archie. The document I consented to and signed was completely typewritten and had no handwritten statements on it.
6. When our criminal case was called, the lawyers advised the judge of our PTI resolution.
7. At the end of the hearing, I understood this matter to be resolved except that I would need to fulfill the requirements of the PTI program.
8. Following the hearing, Mr. Archie never advised me of a proposed change to the agreement. If I was advised that changes to the original order were being negotiated, I would have been curious about the changes and the significances of them. If the changes appeared odd, I would have contacted my civil lawyers and ask for their advice.
9. I am now aware that there was a handwritten change to the original consent order I signed, presumably initialed by Mr. Archie. I do not know at what time the change was added to the order. However, it definitely was not there when I signed that

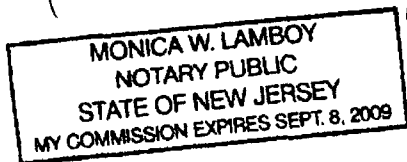
document. Mr. Archie did not ask for my permission or agreement before modifying the typed order. Mr. Archie did not bring this modification to my attention. He also did not advise me about the significance of that hand written statement.

10. During the course of my criminal matter, Mr. Archie had always kept me abreast of the developments of my case. He had always advised me that he could only recommend a particular course of action, and that the final decision was mine. On this particular instance, I was not presented with an opportunity to make a decision on the proposed change. I never waived my right to make decisions affecting my criminal case.
11. The first page of the document that I signed states that I was being admitted into the PTI program without trial or admission of any issue of law or fact regarding the charges. I have never signed or initialed any subsequent change. Lastly, any statement or document that would contradict the proposed typewritten PTI order was done without my knowledge or approval, actual or implied.

  
Nekiesha Williams

Subscribed and sworn to before me  
on this 4<sup>th</sup> day of December, 2007



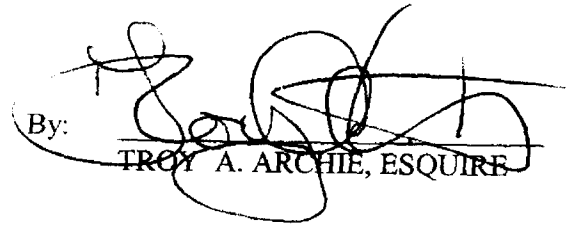




6. At no time during the defense of Ms. Williams did she indicate that she committed an offense as charged or provoked the police under Indictment No. B-04-06-00496-I, Case No. 03001870.

I hereby certify that above information is true to the best of my recollection. I understand that if any of the above is willfully false I am subject to punishment.

Dated: December 4, 2007

By:   
TROY A. ARCHIE, ESQUIRE



## Gloucester County Prosecutor

SEAN F. DALTON  
Prosecutor

STEVEN S. SAND  
First Assistant Prosecutor

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THOMAS H. SULLIVAN  
Chief of Investigators

ANDRE L. BAY  
Deputy Chief of Investigators

August 25, 2008

Mr. John Paff  
PO Box 5424  
Somerset, NJ 08875-5424

**RE: State of New Jersey v. Nekiesha Williams**

Dear Mr. Paff:

Thank you for your letter dated July 26, 2008 regarding the above matter. I have had the opportunity to review your letter along with the documents provided. In your letter, you inquired whether an ethical issue was presented by the including of a probable cause stipulation in the Consent Order allowing Ms. Williams to be placed in the PTI Program.

The Gloucester County Prosecutor's Office takes any such allegations seriously. Our goal is to ensure that there is a fair and just disposition regardless of whether there is a conviction or an acquittal on the criminal charges. In this matter, I have had the opportunity to review the Consent Order along with the Affidavits of Nekisha Williams and Troy A. Archie which were prepared by her civil attorney and I can report the following.

There is no indication from the documents provided or any facts surrounding this incident that Mr. Curwin attempted to use this criminal proceeding to benefit a party in the subsequent civil action. I note the PTI Order is dated March 15, 2005 which was 2½ years prior to the Affidavits signed by Ms. Williams and Mr. Archie. There is no indication the probable cause stipulation was a precedent to admission into the PTI Program. Rather, based upon Ms. Williams' Affidavit, this language was placed in the order after she had already signed the document and left. There is no information from Mr. Archie or anyone else indicating that if this language was not included in the order that Ms. Williams would not be admitted into the PTI Program.

Mr. Curwin has been an Assistant Prosecutor for over 20 years. He has had an exemplary career and handles his assignments with the utmost integrity. I have no questions of his ethical standards and believe he embodies the high level of fairness and justice found in this office. I am pleased that you brought this matter to my attention but I do not believe there has been an ethical violation based upon the information presented to me.

Thank you very much for bring this matter to my attention.

Very truly yours,

A handwritten signature in black ink, appearing to read "Sean F. Dalton". The signature is written in a cursive style with a large initial "S" and "D".

SEAN F. DALTON  
Gloucester County Prosecutor

SFD:las