

SUPREME COURT OF THE STATE OF NEW YORK
RENSSELAER COUNTY

-----X
THE PEOPLE OF THE STATE OF NEW YORK, :

-against- :

JOEL ABELOVE, :

Defendant, :
-----X

Indictment No.

AG 17-1200

Attorney General of New York State
NON-ALIGNED

Penal Law § 195.00(2)

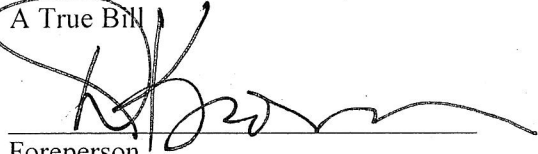
OFFICIAL MISCONDUCT (2 counts)

Penal Law § 210.15

PERJURY IN THE FIRST DEGREE (1 count)


ERIC T. SCHNEIDERMAN
ATTORNEY GENERAL

A True Bill


Foreperson

COUNT ONE

THE GRAND JURY OF THE COUNTY OF RENSSELAER, by this indictment, accuses the defendant of the crime of OFFICIAL MISCONDUCT, in violation of Penal Law § 195.00(2), committed as follows:

The defendant, a public servant, on or about April 22, 2016, at the Rensselaer County Courthouse in the City of Troy, County of Rensselaer, did knowingly refrain from performing a duty which was imposed upon him by law or was clearly inherent in the nature of his office, with the intent to obtain a benefit or to deprive another person of a benefit, to wit:

Defendant, in his capacity as District Attorney, with the intent of obtaining a benefit or depriving another person of a benefit, knowingly withheld material evidence from a grand jury investigating the death of Edson Thevenin [“the Thevenin grand jury”], thereby impairing the grand jurors’ ability to make an informed decision about the matter before them.

COUNT TWO

THE GRAND JURY OF THE COUNTY OF RENSSELAER, by this indictment, further accuses the defendant of the crime of OFFICIAL MISCONDUCT, in violation of Penal Law § 195.00(2), committed as follows:

The defendant, a public servant, on or about April 22, 2016, at the Rensselaer County Courthouse in the City of Troy, County of Rensselaer, did knowingly refrain from performing a duty which was imposed upon him by law or was clearly inherent in the nature of his office, with the intent to obtain a benefit or to deprive another person of a benefit, to wit:

The defendant, in his capacity as District Attorney, with the intent of obtaining a benefit or depriving another person of a benefit, knowingly failed to secure a waiver of immunity from Person 1, a member of the Troy Police Department known to the grand jury, as a condition of his testifying before the Thevenin grand jury.

COUNT THREE

THE GRAND JURY OF THE COUNTY OF RENSSELAER, by this indictment, further accuses the defendant of the crime of PERJURY IN THE FIRST DEGREE, in violation of Penal Law § 210.15, committed as follows:

The defendant, in the County of Rensselaer, on or about October 27, 2017, at the Rensselaer City Court in the City of Rensselaer, County of Rensselaer, did swear falsely by intentionally making a false statement which he did not believe to be true, while giving testimony under oath that was material to the action, proceeding, or matter in which it was made, to wit:

A grand jury of the County of Rensselaer, having been duly and properly impaneled on September 20, 2017, was conducting an investigation into the defendant's conduct relating to a prior, April 22, 2016, grand jury presentation before the Thevenin grand jury, during which the defendant, the District Attorney of Rensselaer County, did not seek a waiver of immunity pursuant to Criminal Procedure Law § 190.45 from Person 1, who had fired the gunshots that had caused Mr. Thevenin's death, as a condition of Person 1's testifying before the Thevenin grand jury.

On October 27, 2017, the defendant appeared as a witness and testified before the grand jury of the County of Rensselaer, after swearing under oath that he would testify truthfully. The defendant testified falsely that, in connection with a November 4, 2015, grand jury investigation into the death of Thaddeus Faison ["the Faison grand jury"], a different member of the Rensselaer County District Attorney's Office had likewise elected not to secure a waiver of immunity pursuant to Criminal Procedure Law § 190.45 from Person 2, a second member of the Troy Police Department known to the grand jury, who had fired the gunshots that had caused Mr. Faison's death, as a condition of Person 2's testifying before the Faison grand jury. During his October 27,

2017, testimony, the defendant was asked the following questions and gave the following answers:

Q You still –

A You asked me about the previous shooting. That was done in that case as well, and I didn't present it but my office did. That was a shooting that was caught on video. The officer got shot first by Mr. Faison, and then another officer returned fire. They engaged in a gun battle. That officer got shot in both legs. The entire shooting was caught on video. All of the evidence was overwhelming. Mr. Faison succumbed finally to his injuries. They actually had to tase him after he was shot numerous times and that officer was not asked to sign a Waiver of Immunity either, because in that case the proof again was overwhelming.

Q The officer who shot and killed Mr. Faison did not sign a Waiver of Immunity, is that what you're testifying to?

A That's exactly what I'm telling you, yes.

Whereas, in fact, as the defendant knew, that testimony was false, and the truth was that Person 2 had been asked to waive immunity pursuant to Criminal Procedure Law § 190.45, and had subscribed and sworn to a waiver of immunity in the Faison grand jury, in the defendant's presence.