

Savage, Mr. El-Shabazz, Mr. Jones, and Mr. Aboul-Rahman. After the hearing, the Court appointed new counsel for Mr. Jones. The Court held additional hearings on October 29, 2004, and November 5, 2004, to consider any objections to Mr. El-Shabazz's continued representation of Mr. Savage by Mr. Jones, represented by new counsel, or by Mr. Wilks.

The Court concludes that Mr. El-Shabazz may continue to represent Mr. Savage. There is currently no actual conflict of interest on the part of Mr. El-Shabazz. Mr. El-Shabazz never received any attorney-client or otherwise privileged communications from Mr. Aboul-Rahman or from either Mr. Jones or Mr. Wilks. Nor does the Court think that there is any appearance of conflict that would arise from Mr. El-Shabazz's continued representation of Mr. Savage. In reaching these conclusions, the Court makes the following findings of fact.

I. Findings Of Fact

Mr. Aboul-Rahman is an associate with the law firm of El-Shabazz & Harris, LLC., of which Mr. El-Shabazz is a partner. Mr. Aboul-Rahman handles certain legal subject matter areas. He handles domestic cases and he does some criminal work. He is also a judicial clerk. His involvement in the major cases that the firm handles is limited because his time is limited. When Mr. Aboul-Rahman first started to work as an associate in Mr. El-

Shabazz's firm, he was a member of the bar of the State of Florida but was not a member of the bar of the Commonwealth of Pennsylvania.

A. Representation of Mr. Wilks

Qawi Aboul-Rahman is a life long friend of Mr. Wilks. Mr. Wilks contacted Mr. Aboul-Rahman to ask him to represent him based on their childhood relationship in connection with a case that arose in 1996 ("the 1996 case"). Mr. Wilks had been a fugitive in the 1996 case until approximately three years ago. Because Mr. Aboul-Rahman had not yet been admitted to the bar of Pennsylvania, Mr. El-Shabazz petitioned the Court of Common Pleas to allow Mr. Aboul-Rahman to represent Mr. Wilks in that matter pro hac vice. The Court of Common Pleas granted the petition. The 1996 case had nothing to do with this case.

On the day that Mr. Wilks' case was listed for a hearing on his motion to suppress in the 1996 case, Mr. Aboul-Rahman was present to represent him. Mr. El-Shabazz was on trial in another courtroom. The court ordered Mr. El-Shabazz to appear at the motion to suppress. He did so.¹ Mr. El-Shabazz, however,

¹ The memories of Mr. El-Shabazz and Mr. Wilks (through his counsel) differed somewhat on Mr. El-Shabazz's representation of Mr. Wilks in the 1996 matter; but, the differences are immaterial.

had never talked to Mr. Wilks about the case. He has never had a one-on-one conversation with Mr. Wilks.

Mr. Aboul-Rahman never represented Mr. Wilks in connection with this case post-indictment. When Mr. Aboul-Rahman was representing Mr. Wilks on the 1996 case, Mr. Wilks told Mr. Aboul-Rahman that he had received a card from an FBI agent in connection with this case. The agent asked Mr. Wilks to call him. Mr. Aboul-Rahman talked with the agent on behalf of Mr. Wilks about a car that had been taken in connection with the investigation. He checked to see how he could get the car back for Mr. Wilks' girlfriend. He never had any substantive discussion with the agent or any other law enforcement people about the substance of this indictment with respect to Mr. Wilks.

Mr. Aboul-Rahman has not had any discussions with Mr. Wilks about the substance of this case. He has talked with Mr. Wilks post-indictment but only about how the case would proceed and possible penalties for the crimes charged.² Mr. Aboul-Rahman has never had any discussion with Mr. El-Shabazz about anything having to do with Mr. Wilks or this case.

Mr. Wilks does not object to Mr. El-Shabazz's continued representation of Mr. Savage.

² Counsel for Mr. Wilks stated that Mr. Wilks believed that Mr. El-Shabazz was also present at this meeting with Mr. Aboul-Rahman. Whether or not Mr. El-Shabazz was present does not change the analysis.

B. Representation of Ronald Jones

Mr. Aboul-Rahman has also known Mr. Jones for many years. About a year to a year and a half ago -- prior to indictment, Mr. Jones contacted Mr. Aboul-Rahman about the investigation that led to this indictment. The only discussions Mr. Aboul-Rahman had with Mr. Jones at that point were hypotheticals. Mr. Aboul-Rahman spoke with Agent Lewis prior to indictment. Agent Lewis wanted Mr. Jones listen to some of the tape communications the government had allegedly involving Mr. Jones. Mr. Aboul-Rahman and Mr. Jones met with Agent Lewis once for fifteen minutes. Mr. Aboul-Rahman spent about an hour on the case pre-indictment. He had no discussions with Mr. El-Shabazz about Mr. Jones nor about the meeting he had with Mr. Lewis and Mr. Jones.

Mr. Aboul-Rahman did have a substantive discussion with Mr. Jones after the indictment and prior to the pre-trial detention hearing. They discussed the pre-trial services report and prepared for the detention hearing. Mr. Aboul-Rahman went before Judge Rueter and at that time explained that he was only representing Mr. Jones for purposes of the pre-trial detention hearing. Post-indictment, he told Mr. Jones that he had received some of the discovery but they did not discuss it. They did not listen to the CDs together. Since indictment, he has spent less

than one hour on this case. He has not discussed with Mr. El-Shabazz any of the discovery either one of them has received in connection with this case.

Mr. Jones does not object to Mr. El-Shabazz's continued representation of Mr. Savage.

C. Representation of Mr. Savage

The Court went through an extensive hearing and colloquy with Mr. Savage, and Mr. Savage remained steadfast that he wanted to retain Mr. El-Shabazz as his lawyer. He waived any possible conflict argument as to Mr. El-Shabazz. Mr. El-Shabazz's relationship with Mr. Savage goes back six to seven years. Mr. El-Shabazz also has a relationship with Mr. Savage's family. Mr. El-Shabazz previously represented Mr. Savage in another case.

II. Discussion

The Sixth Amendment to the Constitution guarantees that a criminal defendant shall have the right to the effective assistance of counsel for his defense. Wheat v. United States, 486 U.S. 153 (1988). A part of that right is that a defendant "should be afforded a fair opportunity to secure counsel of his own choice." Powell v. Alabama, 287 U.S. 45, 53 (1932). A defendant, therefore, has a "presumptive right" to the counsel of

his own choice unless this presumption is somehow overcome.
United States v. Mosconi, 927 F.2d 742, 748 (1991). This right to effective assistance of counsel includes two correlative rights: "the right to adequate representation by an attorney of reasonable competence and the right to the attorney's undivided loyalty free of conflict of interest." United States v. Gambino, 864 F.2d 1064, 1069 (3rd Cir. 1988).

The issue here is whether Mr. Savage's presumptive right to the assistance of Mr. El-Shabazz has been overcome by any actual or potential conflict of interest. When the government filed its motion, Mr. Savage and Mr. Jones were both represented by lawyers from the same firm. That is no longer the case. Assuming that the representation of codefendants by lawyers from the same firm would have presented an untenable conflict, the question for the Court is whether there is currently any actual or potential conflict of interest that overcomes Mr. Savage's presumptive right to have Mr. El-Shabazz as his lawyer. The Court thinks not.

Mr. El-Shabazz had never seen Mr. Jones until the day of the hearing on this matter. Mr. El-Shabazz has not received any privileged communications from either Mr. Wilks or Mr. Jones directly, or indirectly through Mr. Aboul-Rahman.

The Court finds no basis to think that Mr. El-Shabazz will be inhibited in any way in his representation of Mr. Savage

by the fact that an associate in his firm represented Mr. Jones through the pretrial detention hearing in this matter and Mr. Wilks very briefly preindictment. Nor does the Court think that there will be an appearance of conflict.

Although both Mr. Jones and Mr. Wilks have reserved their right to argue that Mr. El-Shabazz cannot disclose or use any privileged information relating to them, there is no reason to think that there is such information. Both Mr. Jones and Mr. Wilks have said that there were none. Both Mr. Aboul-Rahman and Mr. El-Shabazz have denied any communications.

An appropriate order follows.

