

SUPREME COURT OF THE STATE OF NEW YORK  
ERIE COUNTY: CRIMINAL TERM

PEOPLE OF THE STATE OF NEW YORK,

- AGAINST -

JAMES PUGH,

DEFENDANT.

**ATTORNEY AFFIRMATION**

Ind No. 93-0341

Tess M. Cohen, an attorney duly admitted to practice law in the State of New York, hereby affirms under penalty of perjury that:

1. I am an attorney with ZMO Law PLLC, and I am an attorney of record for the defendant, James Pugh. I am fully familiar with the facts of this case and all prior proceedings held herein.

2. I make this affirmation in support of James Pugh's motion to dismiss the indictment pending against him in the interest of justice pursuant to C.P.L. § 210.40(1) and *People v. Clayton*, 41 A.D.2d 204 (2d Dep't 1973).

3. I incorporate by reference in this application, the entirety of the C.P.L. § 440.10 hearing evidence presented before this Court, including all testimony, transcripts and admitted exhibits. I further incorporate by reference the motions *in limine* filed by Mr. Pugh on November 13, 2025.

4. Attached to this affirmation as Exhibit A is a true and accurate copy of a memorandum dated May 3, 1994 by ADA Jonathan Coughlan that was disclosed to the defense during discovery.

5. Unless otherwise specified, all allegations of fact are made upon information and belief and are based upon inspection of the record in this case, information secured from the Erie County District Attorney's Office ("ECDA"), and counsel's own investigation.

6. At trial in 1994, Mr. Pugh was linked to the murder of Deborah Meindl on February 17, 1993 inside her home in Tonawanda based *solely* on the testimony of four statement witnesses: Dennis Wagner, James Baglio, Jeffrey Oryzsak, and Nancy Hummingbird.

7. The original jury acquitted Mr. Pugh of second degree (intentional) murder, but convicted him of felony murder and burglary.

8. Mr. Pugh served twenty-six-and-a-half years in prison before being released to parole on April 19, 2019. He had no violations while on parole, and since his release has worked fulltime doing home renovations and improvements and lived with his sister.

9. Other than the statement witness testimony, nothing else *admitted* at the trial linked Mr. Pugh to the crime in any way. According to the People, a coin found in a car associated with Mr. Pugh's co-defendant, Brian Scott Lorenzo, came from the crime scene, linking Mr. Lorenzo to the murder. While the coin was not technically admitted against Mr. Pugh, the two were tried together and there was evidence connecting Mr. Lorenzo to Mr. Pugh.

10. In the ensuing years, evidence has emerged showing that each of the statement witnesses' testimony was unreliable.

11. **Dennis Wagner** testified at the 1993 trial that Mr. Pugh confessed to committing the crime to him when they were housed together at the Erie County jail. On November 19, 2025, the People filed a certificate of compliance, which stated that

Investigator Salvatore Valvo interviewed Dennis Wagner over the phone on November 5, 2025. During that conversation, Mr. Wagner told Mr. Valvo that “he has throat cancer and cannot testify at trial because ‘a detective from back in the day’ had ‘told him what to say.’” 11/19/2025 Certificate of Compliance at 6. Mr. Wagner was clearly referring to lead Tonawanda Det. David Bentley, who interviewed him in June 1993 after arresting his girlfriend. *See* 1994 Trial Tr. at 855:24-856:19. An appellate court has noted that there “was considerable evidence at the hearing that the lead investigator had pressured many witnesses to incriminate and testify against defendants.” *People v. Lorenzo*, 230 A.D.3d 1564, 1565, 219 N.Y.S.3d 489 (4<sup>th</sup> Dep’t 2024).

12. **James Baglio** fully recanted under oath his trial testimony against Mr. Pugh before this Court during the C.P.L. § 440.10 hearing. There is no indication the People will call him as a witness.

13. **Jeffrey Oryszak** has repeatedly changed his story. At Mr. Pugh’s trial, he testified that at a party at his home that occurred the day after the murder, Mr. Pugh confessed to the murder. 1994 Trial Tr. 708:20-710:15.

14. In a recorded phone conversation with Mr. Pugh in 2005, Mr. Oryszak stated the following:

This Detective Bentley that came here, that came here, that came to my other house where we use to live. He was getting us to say this and say this. Nobody really said anything but, he said you go in there and say this or else. You know what I mean? And what he said, what he said to me is you go and say this your kid. We can take your kids away and shit. A bunch of shit.

*See* C.P.L. § 440.10 Hearing Ex. X: Oryszak Tape Recording at 2:59-3:19; *see also* C.P.L. § 440.10 Hearing Ex X-T: Transcript of Oryszak Tape Recording at 2-3.

15. When speaking to ADA Michael Hillary and ADA David Heraty in 2021, Jeffrey Oryszak claimed he told the truth at trial, but then described a completely different series of events, apparently conflating his own lies with the lies of Nancy Hummingbird, and then embellishing hers. Oryszak claimed he came to Nancy Hummingbird's house and Scott Lorenz pointed a gun at him while only wearing his boxers, James Pugh was covered in blood, and Nancy Hummingbird was washing Scott Lorenz's bloody sweatshirt. *See* C.P.L. § 440.10 Hearing Tr. 1124:22-11:25:10 (testimony of ADA Michael Hillary). He also told ADAs Hillary and Heraty that Det. Bentley pressured him to testify. *Id.* at 1114:17-18.

16. ECDA officials apparently spoke to Oryszak most recently on July 31, 2025. He reversed his story yet again. According to ADA Schnirel, "When asked by the people if he affirmed his prior statements and trial testimony, he responded with something to the effect of 'I'd say like 80%.' The People then reviewed his statements and testimony with him and there was nothing contained in those documents that he did not affirm the truthfulness of." This statement is from a letter written to Mr. Lorenzo's attorneys dated August 29, 2025 and signed by ADA Schnirel.

17. **Nancy Hummingbird's** testimony, as discussed in the defense motions *in limine*, is mostly inadmissible against Mr. Pugh. Even if her testimony were admissible, it is unreliable in light of her prior and subsequent statements, including the encounter taped by Det. Bentley, in which Ms. Hummingbird stated, "No, he [Jimmy] didn't do it." *See* C.P.L. § 440.10 Hearing Exhibit HH at 26:37-26:39; C.P.L. § 440.10 Hearing Exhibit HH: Transcript of Hummingbird Recording at 16. Ms. Hummingbird lied at trial to protect her 14-year-old son after Det. Bentley falsely claimed he was a suspect in the homicide:

**Ms. Hummingbird:** You promise a deal with my son?...You let my son out.

**Det. Bentley:** Yup. I'm doing everything I can.

**Ms. Hummingbird:** Whatever the hell—whatever the hell you want.

C.P.L. § 440.10 Ex. HH at 28:38-28:49; C.P.L. § 440.10 Ex. LLL at 18.

18. The People have indicated that they may call James Woods, another supposed statement witness who came forward after Mr. Pugh's first trial. Mr. Woods claimed, shortly after Mr. Pugh was convicted, that Mr. Pugh told him: "Lorenzo did enter into a contract with the husband to kill the wife and brought Pugh along without telling him about the murder contract but telling him this was the house they were going to burglarize. Pugh maintains that Baglia [*sic*] was at the house as well." Ex. A: 5/3/1994 Memorandum of ADA Coughlan.

19. Woods's statement is absurd on its face; as the People concede, Mr. Baglio was at a funeral when the murder happened. Mr. Woods is also an unreliable witness—he was convicted of Attempted Robbery in the Second Degree shortly after this alleged conversation, a charge he no doubt hoped to avoid by lying about Mr. Pugh. He then was convicted in 2003 of Rape in the First Degree, Sodomy in the First Degree and Engaging in a Course of Sexual Conduct with a Child in the First Degree, crimes committed against an 11-year-old girl. Moreover, he apparently committed these crimes while lying about who he was, since he was simultaneously convicted of Criminal Impersonation in the Second Degree. Furthermore, the defense is unaware of whether or not Mr. Woods has affirmed his prior statements in more recent years, when he did not have a significant felony charge hanging over his head, though doubtless being on parole and subject to SORA supervision keeps Mr. Woods in fear of ECDA.

20. Moreover, as discussed in the defense's motions *in limine*, Mr. Woods's testimony is inadmissible testimony because it advances a legally invalid theory of the case. Allowing the People to present evidence and argument that the murder was part of a contract between Lorenzo and Pugh would violate double jeopardy because Mr. Pugh was acquitted of intentional murder, and cannot be guilty of burglary or the associated felony murder charge if Mr. Lorenz had permission from Mr. Meindl to be in the Meindl home.

21. Finally, since the original trial DNA evidence has become available indicating another person handled the crime scene evidence—including the necktie used to strangle Ms. Meindl and the knife covered in her blood. While the People have speculated that the additional DNA may have been contamination from ADA Jonathan Coughlan, they never tested Mr. Coughlan, Mr. Coughlan did not testify at Mr. Lorenzo's retrial, and the new DNA results—obtained in response to Mr. Pugh's motion (since he knew there was no way his DNA could have ended up on the murder weapons)—constitute conclusive evidence that an additional person *other than* Mr. Pugh or his co-defendant Mr. Lorenzo deposited DNA on the murder weapons.

22. When the DNA evidence is viewed in light of the dearth of other evidence, the recanted trial testimony, and the considerable evidence police coercion, there remains no possibility that the People can obtain a conviction.

Dated: New York, New York  
November 23, 2025

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