

Local

# Misconduct alleged in murder case LaHood prosecuted

By Elizabeth Zavala | March 8, 2017 | Updated: March 9, 2017 12:45am

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Attorneys trying to dismiss a murder indictment said a prosecutor withheld information about a sexual encounter five years ago between a witness and a fellow prosecutor, and they accused Bexar County District Attorney Nicholas "Nico" LaHood of threatening the lawyers if they pursued this claim.



A motion filed Tuesday, signed by lawyers Mark Stevens, Joe D. Gonzales and Christian Henricksen, said LaHood threatened Gonzales and Henricksen during a meeting in a judge's chambers, vowing to "destroy" and "shut down" their legal practices.

LaHood denied it when reached Wednesday at a news conference in Austin, where he was advocating for legislation to reform criminal justice procedures.

“Completely false allegation,” LaHood said. “I am very much looking forward to litigating this in open court in front of everybody and totally flushing out all witnesses in this case. Completely false.”

LaHood last month had personally helped try the case against Miguel Martinez, 29, which ended in a mistrial after one day of testimony. At the time, his office, Henrickson and state District Judge Lori Valenzuela said only that the mistrial was by mutual agreement of prosecutors and the defense.



## Courting controversy

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Bexar County District Attorney Nico LaHood isn't a stranger to controversial issues

The document filed Tuesday, a writ of habeas corpus, asked Valenzuela to dismiss the murder charge, arguing that a retrial would put Martinez in the position of being tried twice for the same offense, called double jeopardy, and saying a prosecutor withheld evidence favoring the defense.

“Specifically, retrial is prohibited because the prosecutor intentionally goaded the defense into moving (for) a mistrial; because the prosecutor intentionally failed to disclose exculpatory evidence with the specific intent to avoid the possibility of an acquittal; and because the prosecutor intentionally failed to disclose exculpatory evidence with intent to protect the reputation of a colleague,” the document states.

Martinez is accused of killing Laura Carter, 33, on Jan. 11, 2015. Police said she had her hands in her pockets and was sitting in her vehicle in the 300 block of Arrid Drive when she was shot five times in the head in a Southeast Side neighborhood.

LaHood and Jason Goss, an assistant district attorney, prosecuted Martinez at trial. At the time, LaHood said the case caught his attention “because of the sheer callousness and cold-bloodedness of the defendant’s actions.”

The defense had not begun presenting evidence before Valenzuela granted two motions for a continuance



and finally agreeing to declare a mistrial Feb. 16.



Photo: William Luther /San Antonio Express-News

This week's defense motion said Goss had disclosed "a potential conflict issue" before the jury was sworn in Feb. 8, telling the judge that "an unnamed person in the District Attorney's Office had formerly had a sexual relationship with its witness, Gregory Dalton."

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Bexar County District Attorney Nico LaHood speaks after a news conference in September. Allegations that he threatened defense lawyers with ruining their practices if they pursued claims of prosecutorial misconduct were "completely false," he said Wednesday.

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The document states Goss did not, at first, tell the defense that the unnamed assistant d.a. was briefly involved in the Martinez prosecution.

"Not knowing the name of the prosecutor, or that she had been assigned to the 437th (District Court) and had access to the case file, the defense was not overly concerned," the motion states.

It was only when Valenzuela ordered the prosecutors to disclose the information that defense attorneys learned that the unnamed prosecutor had worked in Valenzuela's court and on the Martinez case "for at least one day with full access to the file (and) had once been sexually involved with Gregory Dalton, a star witness for the state," the document said.

The motion used the term "relationship" at some points but elsewhere described it as a single sexual encounter.

Defense attorney Stevens declined to elaborate on the motion's claims Wednesday. What happens next is up to Valenzuela, he said.



"We will ask the judge for a hearing. If she grants it, both sides have the opportunity to put on evidence if they feel necessary," he said. "After hearing evidence, the judge rules on the merits of the arguments and will either grant relief or deny it."

Valenzuela declined to comment Wednesday on the motion.

The motion states that Goss had known of the potential conflict for two years, receiving the Martinez case file early in 2015 and giving it to his second-chair prosecutor, who came to his office a day later to tell him she had had a sexual encounter with Dalton three years before and was "embarrassed" and "mortified."

"Acting unilaterally and motivated, he says, by a desire to protect his colleague, he constructed what he called a 'firewall' and instructed her to have nothing more to do with the case. He had no further conversations with his colleague about the case" and, at her request, told no one else about it, the motion states.

The motion described LaHood agreeing to a mistrial in a meeting Feb. 9 in Valenzuela's chambers and saying that if given the chance at another trial, "he would pick a better jury than the one then in the box" and prosecutors would be better prepared.

Gonzales replied that if further investigation showed prosecutorial misconduct had occurred, the defense would challenge any retrial, the motion said.

"Mr. LaHood became enraged and directly threatened Mr. Gonzales and Mr. Henricksen," the motion states. "Looking first at one then the other, the District Attorney said that he would 'destroy' and 'shut down' their practices and would make sure they never got hired on another case again in Bexar County."

It goes on to state that LaHood said he “would go to the media and do whatever it took, and that he did not care what happened to him ... (He) “could always go back to private practice, he said, and make more money as a defense attorney.”

Martinez’s lawyers “assured” LaHood that they “would not be intimidated,” and “would seek any remedies supported by the law and evidence,” the motion states.

The unnamed prosecutor attended another meeting with defense lawyers and prosecutors on Feb. 13 and did not deny the encounter with Dalton, but Dalton refused to be interviewed by the defense lawyers, the document states.

Dalton’s testimony was expected to place Martinez at the scene of the killing. But prosecutors turned over other exculpatory evidence before the trial started that seemed to cast doubts on Dalton’s value as a prosecution witness. According to the motion, Goss and LaHood interviewed Dalton on Jan. 31, and Goss notified the defense the next day that Dalton had kept information from police and that he had told the prosecutors that Martinez solicited Dalton’s help in killing Carter, offering him \$1,000.

Dalton told the prosecutors he declined, thinking Martinez was joking, but asked if he could have sex with her before she was killed, Goss told the defense attorneys, according to the motion. The disclosure of the new information prompted defense lawyers to argue in their motion that Dalton should be treated as a suspect in the crime or at least an accomplice.

On Wednesday afternoon, LaHood released a prepared statement calling the defense motion a “meritless attack on the integrity of this office and our prosecutors.”

"We know the law and all the facts will show our prosecutors acted legally and ethically in the pursuit of justice. We will continue to ensure justice for the victim in this case. We welcome the opportunity to litigate all the facts in open court and developing the testimony of all witnesses," the statement said.

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