



Ulster County Courthouse in Kingston, New York. Photo is courtesy of Michael Howard

## **Albany Judge Orders New Trial for Manslaughter Case Where Defense Counsel Met Secretly With Law Clerk**

Albany Supreme Court Justice Roger McDonough ruled that defendant Gregory Thayer, who is serving a 25-year prison sentence for killing his best friend, would receive a new trial based on ineffective assistance of counsel

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Criminal Law



**Andrew Denney**

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Citing a defense attorney's "stunning" admission that he had a clandestine ex parte meeting with the law clerk for a judge presiding over his client's manslaughter trial that he didn't disclose to co-counsel, a state Supreme Court justice in Albany has ordered a new trial for the defendant.

Albany Supreme Court Justice Roger McDonough ruled that defendant Gregory Thayer, who is serving a 25-year prison sentence for killing his best friend, would receive a new trial based on ineffective assistance of counsel from Andrew Kossover, a local counsel for Thayer's mostly New York City-based defense team.

Thayer was charged with killing Bruce Swierc in 2022 in Ulster County during a drug-fueled reunion.

At one point in the months preceding Thayer's trial, Kossover met secretly with law clerk William Ghee to discuss the defense's theory that Thayer was not guilty due to mental defect, which would absolve Thayer of criminal responsibility for killing at the defendant's home in Kingston, New York. The basis of the theory was that Thayer believed Swierc was an intruder, despite the fact that the two friends had been together for hours prior to the shooting.

According to court documents, Ghee advised Kossover that Ulster County Supreme Court Justice Bryan Rounds, who presided over Thayer's bench trial and sentencing, wasn't looking favorably on the mental defect theory and suggested that the defense team might consider the theory that Thayer suffered from extreme emotional disturbance when he shot Swierc dead—which could prove a first-degree manslaughter charge, but which falls below the standard for a murder charge, which the Ulster County District Attorney's Office sought at trial.

Kossover conveyed the law clerk's concerns about the defense strategy to his co-counsel, veteran New York City criminal defense attorney Robert Gottlieb, but did not disclose where he obtained this information, according to court papers.

McDonough wrote that Kossover intended this as a "'compromise solution' to his perceived ethical predicament."

"This reticence and silence clearly constituted an inexcusable breach of Kossover's duty of loyalty to his client, the defendant," McDonough wrote. "The sole explanation advanced by Kossover for this unconscionable dereliction of duty was his desire to maintain his good relationship with the trial judge and law clerk."

McDonough also said that Thayer "is not the only victim of Kossover's unethical actions."

"Indeed, the People, the defendant's own trial counsel team, and the decedent's family are, through no fault of their own, forced to go through another trial untainted by Kossover's malfeasance," the judge said.

Kossover declined to comment on McDonough's ruling.

"We are grateful for the judge's very thoughtful and reasoned decision, overturning the conviction," Gottlieb said in an interview with the Law Journal. "The opinion reflects the critical principles of justice that are protected in a judicial ruling such as this."

The Ulster County DA's office has maintained that it was prejudiced in the case. by the ex parte meeting

"I accept and respect the judge's decision for a retrial in the case. It is unfair that the prosecution, in the name of the people of the state of New York and the people of Ulster County, have to suffer the consequences of unethical conduct behind the prosecution's back," Ulster County DA Emanuel Nneji said in an interview with the Law Journal.

Nneji said it is unclear from McDonough's decision whether Thayer will be retried on a manslaughter charge or if he will be tried for murder. If Thayer is retried for manslaughter, Nneji will appeal the matter.

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