

2015 DEC 15 P 2:21

STATE OF MARYLAND

v.

CAESAR GOODSON

* * * * *

IN THE
CIRCUIT COURT FOR
BALTIMORE CITY
CASE No. 115141032
(Filed under seal)

STATE'S MOTION FOR APPROPRIATE RELIEF UNDER SEAL

Now comes the State of Maryland, by and through Marilyn J. Mosby, the State's Attorney for Baltimore City; Michael Schatzow, Chief Deputy State's Attorney for Baltimore City; Janice L. Bledsoe, Deputy State's Attorney for Baltimore City; and Matthew Pillion, Assistant State's Attorney for Baltimore City; and respectfully moves this Court for appropriate relief under seal as set forth below.

I. Background

On October 14, 2015, this Court granted in part the Defendant's Motion to Compel Discovery and ordered the State to "provide counsel for the [Defendant], as officers of the court, for use in their preparation for trial, with copies of any and all documents pertaining to the investigation and prosecution of the [Defendant], with the exception of attorney work product items created after May 1, 2015." For a period commencing on October 27 and ending on November 4, the State made available to defense counsel all of the documents covered by the Court's Order. These documents included over 3,500 emails and attachments from the network computer accounts of 13 members of the Office of the State's Attorney, nearly 1,500 non-email documents, as well as 52 multi-media files (CCTV, interview recordings, etc.), many of which, of course, had already been provided in discovery.

II. The Relief Requested

Counsel have now finished their review of these documents and have specified nearly 2000 pages of various materials they requested that the State provide in hard-copy, all of which

the State has mailed to counsel except a small fraction of items that comprise the subject of this Motion. Having facilitated counsel's examination of these documents as officers of the court, the State now respectfully requests that this Court review these remaining documents *in camera* and order that copies of these documents need not be provided to the Defendant's counsel.

The specific documents (page numbered A001-A032) that the State requests not to copy for the Defendant's counsel consist of multiple separate drafts of the Statement of Probable Cause used in the Application for the Statement of Charges originally filed in District Court written and edited largely by attorneys within the Office of the State's Attorney. Preliminarily, the State notes its full understanding and respect for the Court's ruling that a prosecutor's pre-charging investigative work product may be subjected to heightened disclosure requirements. The Supreme Court has long distinguished between "those aspects of the prosecutor's responsibility that cast [her] in the role of an administrator or investigative officer rather than that of advocate." *Imbler v. Pachtman*, 424 U.S. 409, 430-31 (1976). Nevertheless, "the work of an advocate" extends to work "integral to the initiation of the prosecution" and "involv[ing] the exercise of professional judgment," including the prosecutor's "drafting of the [charging document], her determination that the evidence [is] sufficiently strong to justify a probable-cause finding, her decision to file charges, and her presentation of the information" to the judicial body to initiate charges. *Kalina v. Fletcher*, 522 U.S. 118, 130 (1997). Put succinctly, even during the pre-charging stage, *some* of a prosecutor's actions are "the work of an advocate" and, therefore, may constitute classic attorney work product that is privileged from adversarial discovery.

Explaining this privilege, the Supreme Court has long held that "an attempt, without purported necessity or justification, to secure written statements, private memoranda and personal recollections prepared or formed by an adverse party's counsel in the course of his legal

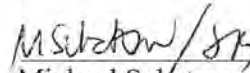
duties . . . falls outside the arena of discovery and contravenes the public policy underlying the orderly prosecution and defense of legal claims.” *Hickman v. Taylor*, 329 U.S. 495, 510 (1946). Additionally, under Maryland’s constitutional separation of powers, “the judiciary . . . is not authorized to probe the mental processes of an executive or administrative officer,” and this “protection from disclosure clearly extends to confidential advisory and deliberative communications between officials and those who assist them in formulating and deciding upon future governmental action.” *Hamilton v. Verdow*, 287 Md. 544, 558-61 (1980).

The various drafts of the Statement of Probable Cause are in large part attorney work product or executive deliberative materials and in remaining part are not even arguably relevant or admissible in the Defendant’s trial, are not helpful to his defense, and are not investigative material. Moreover, these documents do not constitute statements of any trial witness and have since been superseded by the Grand Jury’s Indictment. Instead, these documents (a) show the writing, grammatical, and typographical skills and mistakes of their attorney authors; (b) reflect the deliberations and thought processes of members of the State’s Attorney’s Office; and (c) contain attorney opinions about the significance of certain facts in the case. Accordingly, the State respectfully asks that these documents not be ordered copied to the Defendant’s attorneys.

Wherefore, the State respectfully requests that this Motion for Appropriate Relief Under Seal be granted in its entirety.

Respectfully submitted,

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CERTIFICATE OF SERVICE


I hereby certify that on this 15th day of December, 2015, a copy of the State's Motion for Appropriate Relief Under Seal was mailed and e-mailed to:

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