STATE OF MARYLAND	*	IN THE
	*	CIRCUIT COURT FOR
v.	*	BALTIMORE CITY
	*	
WILLIAM PORTER	*	CASE No. 115141037
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STATE'S MOTION *IN LIMINE* TO PRECLUDE THE DEFENDANT FROM ATTEMPTING TO CALL THE PROSECUTORS IN THIS CASE AS TRIAL WITNESSES AND FROM ATTEMPTING TO CONTROVERT IRRELEVANT ASPECTS OF OR TO RAISE BASELESS ACCUSATIONS ABOUT THE STATE'S ATTORNEY'S PRE-INDICTMENT ACTIONS IN THIS CASE

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 pursuant to Rule 4-252(d) respectfully moves this Court *in limine* to issue a pretrial order precluding the Defendant from attempting to call the prosecutors in this case as trial witnesses and from attempting to controvert irrelevant aspects of or to raise baseless accusations about the State's Attorney's pre-indictment actions in this case. In support of this Motion, the State submits the following:

1. Based on his counsel's prior pleadings and recent discovery disclosures, the State has reason to believe that the Defendant will seek to confuse, mislead, and prejudice the jury by attempting to call the prosecutors in this case as trial witnesses or by attempting to offer evidence of, argument about, or reference to irrelevant aspects of or baseless accusations about the State's Attorney's pre-indictment actions in this case. This offered material may include any or all of the baseless accusations and irrelevant matters that the Defendant raised in his now-denied efforts to force the recusal of the Office of the State's Attorney for Baltimore City and/or certain of its prosecutors, including material about (1)

the State's Attorney's Office's use of its own employees to investigate Mr. Gray's death; (2) the relationship between prosecutors and their friends, partners, or spouses; (3) civil actions against prosecutors involving the underlying events of this case; (4) prosecutors' past coordination with police to address crime in certain neighborhoods; (5) prosecutors' involvement in coordinating or prioritizing aspects of the police investigation into Mr. Gray's death; (6) prosecutors' involvement in drafting/editing the Statements of Probable Cause in this case; (7) prosecutors' involvement in obtaining search and seizure warrants in this case; or (8) prosecutors' coordination with the Office of the Chief Medical Examiner in sharing and discussing evidence in this case. All such material, as well as any testimony a prosecutor could give, is not relevant or admissible as to any legally consequential matter in this case. The Defendant would simply be improperly engaging in the "defense ploy . . . of trying the prosecutor." *Johnson v. State*, 23 Md. App. 131, 142 (1974).

2. "Evidence that is not relevant is not admissible" at trial. Rule 5-402. To be deemed relevant, the evidence must have a "tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Rule 5-401. A "consequential fact" is also called a "material proposition," and "[m]ateriality looks to the relation between the proposition for which the evidence is offered and the issues in the case." *Smith v. State*, 423 Md. 573, 590 (2011). Even when evidence is relevant, it "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury," or if it would result in "undue delay, waste of time, or needless presentation of cumulative evidence." Rule 5-403. Moreover, although "the

trial prosecutor is a competent witness," "his [or her] testimony must be relevant and material to the theory of the defense . . . [and] must not be privileged, repetitious, or cumulative." *Johnson*, 23 Md. App. at 143.

3. In this case, the issues that the jury will consider bear zero relation to the misleading, confusing, prejudicial, or cumulative propositions for which the Defendant would propose to call the prosecutors as witnesses or to offer evidence of, argument about, or reference to irrelevant aspects of or baseless accusations about the State's Attorney's pre-indictment actions in this case. Indeed, the substance of the Defendant's complaints about the State's Attorney's Office's pre-indictment involvement in this case reduces to his negative opinions about the speed and methods with which the State's Attorney, in conjunction with other law enforcement agencies, developed the facts set forth in the Statement of Probable Cause. The Grand Jury's subsequent investigation and decision to indict in this case, however, rendered those pre-indictment matters utterly irrelevant for purposes of trial. The State has fully addressed and incorporates herein the reasons underlying these averments in the State's previous pleadings related to the Defendant's recusal motion. In short, allowing the Defendant to call prosecutors as witnesses or allowing him to offer information about any of these previously litigated pre-indictment actions and alleged actions would risk improperly "trying the prosecutor," misleading the jury, and wasting trial time with cumulative evidence in a manner that substantially outweighs the nonexistent ability of such evidence to demonstrate a lesser probability that the Defendant's criminally negligent actions caused or risked Mr. Gray's injury or death or that the Defendant any less probably engaged in misconduct in office.