

STATE OF MARYLAND

v.

WILLIAM PORTER

* * * * *

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IN THE
CIRCUIT COURT FOR
BALTIMORE CITY
2016 JUL 11 PM 2:27
CASE No. 115141037
CIRCUIT COURT
BALTIMORE CITY
CRIMINAL DIVISION *

STATE’S RESPONSE TO DEFENDANT’S MOTION TO DISCLOSE GRAND JURY MINUTES AND TESTIMONY AND REQUEST FOR A HEARING

Now comes the State of Maryland, by and through Marilyn J. Mosby, the State’s Attorney for Baltimore City; Lisa Phelps, Assistant State’s Attorney for Baltimore City; and Sarah R. David, Assistant State’s Attorney for Baltimore City; and responds herein to the Defendant’s Motion to Disclose Grand Jury Minutes and Testimony and Request for a Hearing.

The Defendant recognizes the traditional secrecy of Grand Jury proceedings but claims nevertheless that he should be permitted access to them here based on a purported particularized need to gather evidence for his Motion to Dismiss the Indictment for a Defect in the Institution of the Prosecution and to potentially refresh Detective Dawnyell Taylor’s memory, test her credibility, or impeach her. Def. Mot. at 3-5. Accordingly, the Defendant demands access to all transcripts and minutes of the Grand Jury’s proceedings in this case and access to a so-called “script” that Detective Taylor used during her Grand Jury testimony. Def. Mot. at 4-5. The Defendant’s Motion fails to show a sufficient need to overcome the legal secrecy of the materials he seeks.

First, regarding the supposed need to gather evidence for his Motion to Dismiss, the State has filed contemporaneously a Response to that motion that demonstrates its lack of merit even with an evidentiary hearing. The State incorporates that Response in relevant part herein and summarizes the conclusion that even assuming, *arguendo*, that all of the claims the Defendant there asserts were proven true, not one of those facts would support dismissal of the indictment.

Consequently, the need to gather evidence that cannot under any circumstances have any legal effect on the proceeding for which the evidence is sought patently fails to demonstrate a particularized need to break the secrecy of the Grand Jury's proceedings. Given that the Defendant bears the burden to "establish the requisite 'particularized need' which, among other things, outweighs the reasons underlying the policy of grand jury secrecy," *Silbert v. State*, 12 Md. App 516, 523 (1971), the Defendant's request on this first asserted ground should be denied.

Regarding the Defendant's request for Grand Jury materials supposedly needed to aid his questioning of Detective Taylor, the State first notes that Taylor would only be called as a *defense witness*, not a State's witness. This is significant because the cases the Defendant cites in his Motion on this point all involve the need to question *State's* witnesses. Presumably, the Defendant has had ample opportunity to interview and prepare his own witness for trial such that there will be no need to refresh her memory. Certainly, no claim can be made that Detective Taylor will prove to be a hostile witness to the defense so that there would be a need to impeach her.

Indeed, to grant the Defendant's Motion on this ground would completely undue Grand Jury secrecy. On the Defendant's theory, all any defendant would need to do to pierce Grand Jury secrecy would be to claim that every person on the State's witness list will actually be a defense witness, thereby creating a need to use that person's Grand Jury testimony to aid in their trial questioning. The Court of Special Appeals, however, has made clear that the defense has no right "to conduct an egregious fishing trip into the minutes of the Grand Jury in the fervent hope that he might possibly stumble across something that would be beneficial to him." *Sutton v. State*, 25 Md. App. 309, 314 (1975). Likewise, "[t]he mere hope that Grand Jury minutes may possibly contain some exculpatory evidence is not enough to demonstrate the 'particularized

need” that is required to overcome the rule of Grand Jury secrecy. *Id.* Given these firm limitations on the disclosure of records of Grand Jury proceedings, the Defendant has again failed on this ground to provide any basis for granting his Motion.

Wherefore, the State requests that this Court deny the Defendant’s Motion to Disclose Grand Jury Minutes and Testimony and Request for a Hearing.

Respectfully submitted,

Marilyn J. Mosby



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CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of July, 2016, a copy of the State's Response to the Defendant's Motion to Disclose Grand Jury Minutes and Testimony and Request for a Hearing was mailed and e-mailed to:

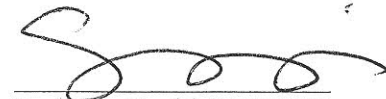
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