

IN THE CIRCUIT COURT FOR BALTIMORE CITY, MARYLAND

STATE OF MARYLAND

vs.

Case Numbers:

CAESAR GOODSON,	115141032
EDWARD NERO,	115141033
GARRETT MILLER,	115141034
BRIAN RICE,	115141035
ALICIA WHITE,	115141036
WILLIAM PORTER,	115141037

DEFENDANTS.

REPORTER'S OFFICIAL TRANSCRIPT OF PROCEEDINGS

(Excerpt - The Court's Ruling on Defendants'
Motion for Recusal)

Baltimore, Maryland

Wednesday, September 2, 2015

BEFORE:

HONORABLE BARRY G. WILLIAMS, Associate Judge

* Proceedings Digitally Recorded *

Transcribed by:
Patricia Trikeriotis
Chief Court Reporter
Circuit Court for Baltimore City
111 N. Calvert Street
Suite 515, Courthouse East
Baltimore, Maryland 21202

APPEARANCES:

For the State:

MICHAEL SCHATZOW, ESQUIRE

JANICE BLEDSOE, ESQUIRE

MATTHEW PILLION, ESQUIRE

JOHN BUTLER, ESQUIRE

For the Defendant Caesar Goodson:

MATTHEW FRALING, III, ESQUIRE

ANDREW GRAHAM, ESQUIRE

For the Defendant Brian Rice:

MICHAEL BELSKY, ESQUIRE

CHAZ BALL, ESQUIRE

For the Defendant Alicia White:

IVAN BATES, ESQUIRE

MARY LLOYD, ESQUIRE

TONY GARCIA, ESQUIRE

For the Defendant Garrett Miller:

CATHERINE FLYNN, ESQUIRE

BRANDON MEAD, ESQUIRE

For the Defendant William Porter:

JOSEPH MURTHA, ESQUIRE

GARY PROCTOR, ESQUIRE

For the Defendant Edward Nero:

MARC ZAYON, ESQUIRE

ALLISON LEVINE, ESQUIRE

T A B L E O F C O N T E N T S

P a g e

The Court's Ruling on Defendants' Motion
for Recusal (Denied)

4

1 P R O C E E D I N G S

2 (Excerpt - The Court's Ruling on Defendants'
3 Motion for Recusal began at 11:32 a.m.)

4 THE COURT: I'll next turn to the Recusal
5 Motion. And for that matter, I note that our
6 constitution, case law, and statutes indicate that the
7 State's Attorney of any jurisdiction has significant
8 power and authority to investigate and prosecute criminal
9 matters within the jurisdiction. Specifically, the
10 State's Attorney for Baltimore City, duly empowered by
11 the electorate and through constitutional and statutory
12 mandate, has authority to and is, in fact, charged with
13 the duty to investigate and prosecute criminal matter
14 within the State's Attorney's specific jurisdiction.

15 Maryland Constitution, Article 5, Sections 9
16 and 7 provide for an attorney for the State in each
17 county and Baltimore City, who is to perform those duties
18 and receive the compensation prescribed. Maryland
19 Annotated Code, Criminal Procedure, Section 15-102
20 provides that the State's Attorney shall prosecute and
21 defend, on the part of the State, all cases in which the
22 State may be interested.

23 The State's Attorney is responsible for
24 prosecuting all crime in the city and has wide discretion
25 to prosecute and investigate crimes. The view of the

1 office as being one of wide and largely unreviewable
2 discretion, including the authority to decide not to
3 prosecute a case is reinforced by the Maryland Court of
4 Appeals in *Sinclair v. State*, 278 Md. 243 (1976).

5 Now, taking the extreme step of recusing an
6 entire office or a prosecutor in particular should not be
7 done lightly, and I would not do that lightly.
8 Certainly, there may be times when it becomes entirely
9 appropriate, as a matter of law, for the court to remove
10 from a case a particular prosecutor. However, again,
11 that is the rare case.

12 As noted by the Maryland Court of Appeals
13 in *Babbitt v. State*, 294 Md. 134 (1982), referring
14 to *Maryland Courts and Judicial Proceeding*, Section
15 2-102(a), the court's power to appoint personnel when the
16 situation mandates it for the smooth and efficient
17 running of the judicial system does not authorize the
18 court to assume the State's Attorney's constitutional
19 power to determine when and if to prosecute. In short,
20 this court, as a rule, has limited authority to usurp the
21 power of the State's Attorney.

22 Now, the State's Attorney's legally conferred
23 authority, Maryland Constitution, and case law do serve
24 as the backdrop and set the general framework in which
25 the issues raised by the Recusal Motion must be viewed.

1 At issue here -- although, again, there was 15
2 minutes of argument on each side, again, and I give
3 counsel credit for thoroughly briefing each issue.

4 The defendants offer the following reasons that
5 mandate recusal: The seizing of political and personal
6 gain by the State's Attorney and her husband, a local
7 legislator; an Assistant State's Attorney's personal
8 relationship with an individual who may testify at trial;
9 the role of the State's Attorney and personnel in her
10 office serving as the investigators for the case; the
11 pending civil claim filed by the defendants against the
12 State's Attorney and various personnel in her office; the
13 financial interests of the attorney for the Gray family,
14 who is allegedly a close friend, financial supporter, and
15 attorney for the State's Attorney; and an allegation that
16 the State's Attorney and her various prosecutors have
17 become material witnesses in this case.

18 As authority for their collective position, the
19 defendants once again point this court to Maryland Rule
20 of Professional Conduct 3.8, which, again, provides, in
21 relevant part, that a prosecutor must refrain from
22 prosecuting a charge which the prosecutor knows lacks
23 probable cause and refrain from making improper
24 extrajudicial statements.

25 Once again, looking at *Sinclair v. State*, the

1 Court of Appeals did have an opportunity to examine Rule
2 3.8. In that matter, the court addressed a criminal
3 defendant's contention that, having been charged by a
4 prosecutor who had a conflict of interest regarding his
5 case, the conviction was improper. In reversing the
6 conviction, the court addressed the import of Rule 3.8
7 upon the prosecutor's ability to prosecute a given case
8 and held that a violation of Rule 3.8 would not, in and
9 of itself, require reversal of the conviction.

10 Nevertheless, the court acknowledged that,
11 generally speaking, whether the State's Attorney does or
12 does not institute a particular prosecution is a matter
13 of discretion and, absent gross abuse of that discretion
14 or absent statutory authority to the contrary, is
15 accountable only to the electorate.

16 Now, frankly, were the court to set the legal
17 bar as low as the defendants espouse, rarely would an
18 elected State's Attorney be permitted to carry out the
19 charge given by the electorate. The reality is, with the
20 bar so low, a defendant could simply allege that the
21 State's Attorney filed a case, knowing it lacked probable
22 cause, and therefore ought to be removed from that
23 particular case.

24 This court does find that the motion filed is
25 bereft of facts that would show that the State's Attorney

1 is prosecuting this case, quote, "knowing" that is not
2 supported by probable cause. Rare is the time that
3 recusal, based on the allegation of prosecuting a knowing
4 -- prosecuting a case knowingly, that there is no
5 probable cause, would be appropriate, and that is not --
6 this is not one of these times.

7 If a trial court is presented with evidence
8 that a case lacks probable cause, then a motion to
9 dismiss may be appropriate but, again, not recusal of the
10 State's Attorney's Office.

11 The defendants next claim that the State's
12 Attorney's husband is the Councilman for the 7th
13 District. That is true. But yet, that his district
14 included areas that were impacted by the disturbances in
15 April, and there exists a conflict of interest. They
16 state, and I quote, "Any fair-minded objective observer
17 would conclude that Mrs. Mosby's neutrality, judgment,
18 and ability to administer the law in an objective manner
19 was and is compromised by her relationship to Nick Mosby
20 and his position as a 7th District Councilman." I query,
21 why? Is the implication that she is unable to think on
22 her own and do what the citizens elected her? Frankly, I
23 do find the assertion troubling and condescending.

24 Absent facts, as opposed to bald allegations,
25 showing that there is a conflict, as listed in the

1 pleadings, her marriage to a Councilman is not a reason
2 for recusal.

3 The next claim that there is a relationship
4 between Ms. Bledsoe and a reporter. And because the
5 reporter may be a defense witness at trial, the State's
6 Attorney's Office should be recused. The State's
7 response is interesting to the court in that they seem to
8 believe that they should have a say in whether or not the
9 defense should call a witness. They do not.

10 Barring issues of relevance and materiality
11 that would be argued before the court, I see no scenario
12 where the State gets to tell the defense whether a
13 witness can be called. That said, if the reporter is
14 called at trial, there are many other ways to resolve the
15 issue short of recusal of the entire State's Attorney's
16 Office.

17 The next basis for recusal request is that the
18 State's Attorney conducted an independent investigation.
19 As previously noted, one of the functions of the State's
20 Attorney's Office is to carry out investigations. There
21 is no prohibition against a prosecutor conducting an
22 investigation. Basically, it seems the defense argument
23 is essentially that any prosecutor who conducts an
24 investigation is barred from prosecuting any case he or
25 she investigates. There is no legal support for that

1 particular position.

2 This court notes that the State's Attorney does
3 have a right to be involved in an investigation of a
4 matter. And if it turns out that by their actions the
5 prosecutors, by not adhering to common sense, turn
6 themselves into witnesses, then so be it. That said, if
7 every time a defense attorney alleges that a prosecutor
8 is a witness because a prosecutor spoke to someone or is
9 around when the case was discussed, there would be very
10 few prosecutions without recusal.

11 The next argument is that the State's
12 Attorney's investigators are controlled by the State's
13 Attorney and, as a result, the witnesses could not
14 possibly be expected to testify without undue influence
15 because they would be worried about their employment. In
16 addition to making an assumption that is not grounded in
17 fact, defendants have chosen to ignore the appropriate
18 manner in which to address bias, which is cross-
19 examination. While certainly there may come a time when
20 investigators for the State's Attorney's Office may be
21 called as witnesses, recusal of the office because the
22 defendants believe that the witnesses may have a bias is
23 not appropriate.

24 The next allegation is a two-pronged
25 allegation. One, that the State's Attorney has a direct

1 and financial and professional interest in the outcome of
2 the case due to the tort claims notice filed by the
3 defendants on May 7. Again, if defendants are allowed to
4 generate issues of recusal by filing claims, it could
5 happen in all cases. An allegation of financial and
6 professional interest against the State's Attorney levied
7 by opposing counsel in an active case is rarely grounds
8 for recusal. The second prong has to deal with the
9 possibility that her statements run afoul of the Rules of
10 Professional Conduct.

11 As I noted in my denial for sanctions, if it is
12 determined at a later date by the Attorney Grievance
13 Commission that the statements of the State's Attorney
14 rise to the level requiring sanctions, then so be it.
15 Again, as alleged, not grounds for recusal.

16 The next argument was that the State's Attorney
17 is personally and professionally connected to William
18 Murphy, who is the family attorney for the Gray family
19 and presents himself as their spokesperson. The
20 defendants allege that he has a financial interest in the
21 outcome of any criminal case against them, and their
22 complaint does seem to be based on the fact that Mr.
23 Murphy donated to the campaign of the State's Attorney,
24 was on her transition team, and wrote a letter on her
25 behalf in response to a request from the Attorney

1 Grievance Commission.

2 There is no legal authority that has been
3 presented to this court for the proposition that if an
4 attorney is on a transition team that the State's
5 Attorney must recuse themselves from all matters
6 involving that lawyer. It is not true for criminal
7 matters, and it is certainly not true for civil matters.

8 Defendants have also argued that the State's
9 Attorney overreached when charging false imprisonment,
10 assault, and second-degree murder, and somehow that has
11 some benefit to Mr. Murphy. I do not see how those
12 charges that have not been adjudicated have a benefit in
13 the civil matter, but clearly is not a basis for recusal.

14 I do note that while the defendants are no
15 longer charged with false imprisonment, if this court
16 were to recuse the State based on the defendants' belief
17 of overreaching in their case, it would likely be
18 something filed in every case. Once again, if there is
19 an issue of sufficiency, that can be resolved in any
20 motions and ultimately by the trier of fact.

21 The court also notes that there are a number of
22 individuals who support a candidate financially. And
23 once again, barring anything besides conjecture and
24 conclusory statements of financial concerns for Mr.
25 Murphy, the defendants haven't come close to showing that

1 recusal of the State's Attorney or her office would be
2 appropriate. And writing a letter on behalf of Ms. Mosby
3 to the Attorney Grievance Commission in a matter that is
4 now closed does not require recusal of the State's
5 Attorney's Office.

6 The next and probably most interesting
7 allegation that has been levied by the defense is that
8 the State's Attorney and her prosecutors have made
9 themselves material witnesses in this case.

10 For that proposition, the defendants reference
11 a March 17th, 2015 email from a division chief in the
12 State's Attorney's Office to the Western District
13 Commander stating that the State's Attorney had asked him
14 to look into community concerns regarding drug dealing in
15 the area of North Avenue and Mount Street. Apparently,
16 the Commander forwarded the email to Defendant Rice,
17 along with other lieutenants, and told them that they
18 would conduct daily narcotic initiatives in the area.

19 Defendants then point out that on April 12,
20 2015, Defendants Nero, Rice, and Miller were patrolling
21 the area of North and Mount when they encountered Mr.
22 Gray. Based on this, they argue that the State's
23 Attorney was directing the officers to the area.

24 This argument fails to take into account the
25 command structure of the Baltimore City Police Department

1 and the fact that a prosecutor does not have the
2 authority to direct any officer to conduct initiatives.
3 As I read what defendants presented, it is clear that the
4 command came from the Baltimore Police Department.
5 Inquiring about an area three weeks prior to the incident
6 does not lead this court to believe that recusal is
7 demanded and does not make the State's Attorney or her
8 lawyers integral to the arrest of Mr. Gray nor does it,
9 as argued by defendants, make the State's Attorney an
10 essential witness.

11 Next, the defendants argued that the Medical
12 Examiner made conclusions in the autopsy that were based
13 in part on factual accounts which, and I quote, "could
14 have only been communicated from the State's Attorney's
15 Office," end quote, and therefore the prosecutors who
16 made the statements are witnesses in the case.

17 While I don't assume that the statements are
18 true, a review of Maryland Rule 5-720 [sic] through 705
19 make it clear that it is up to the expert witness to
20 provide the reason for their conclusion and the
21 information used to reach said conclusion. While it
22 would be appropriate cross-examination to ask the source
23 of information, extrinsic evidence would not be
24 appropriate. Therefore, the defense assertion that the
25 prosecutors who purportedly gave information would

1 necessarily be witnesses is inaccurate.

2 Despite what both sides seem to think, saying
3 something doesn't make it true, nor does saying it
4 emphatically or repeating it over and over. Simply
5 stating that it is the position of one party or the
6 other, again, also doesn't make it true.

7 The defense believes that an ASA drafted the
8 statement of probable cause, although a representative
9 from the sheriff's department signed it. The argument is
10 then that the person who drafted it is now a witness.
11 Even if a prosecutor drafted the statement of probable
12 cause, assisted in the preparation of the statement of
13 probable cause for a criminal charge, or actually wrote
14 it, does not make one a witness. The individual who
15 signed the document is the witness.

16 The belief that by reading the statement of
17 probable cause at the press conference means that the
18 State's Attorney adopted the statements as true and
19 becomes a witness is, candidly speaking, mind-boggling.
20 It is not a basis for recusal.

21 The defense then argues that because the
22 prosecutors had conversations with investigators, and
23 that the case was not about the knife any longer, and was
24 about the failure to get medical attention for Mr. Gray,
25 it somehow made those prosecutors witnesses. Discussing

1 the path of a criminal investigation with officers or
2 telling them not to do the defense's job for them does
3 not make the prosecutor a witness, despite defense
4 counsel's argument to the contrary.

5 Even if stated, it is noted that the
6 investigators for the Baltimore City Police Department
7 are under the authority of the police department. And if
8 they determine that they wanted to follow a lead, they
9 had every right to do so. While this may be fodder for
10 cross-examination of the police witness, again, it does
11 not make a prosecutor a compellable witness.

12 Whether Mr. Gray was detained illegally is an
13 issue for the trier of fact. Whether the State has
14 overcharged or has enough evidence to convict one or all
15 of the defendants is an issue for the trier of fact.
16 Whether the witness should be believed is an issue for
17 the trier of fact. These are not issues that in any way
18 go towards the recusal of the State's Attorney's Office.

19 In the 44 written pages the defendants have
20 filed on this particular issue and the 15 minutes of
21 argument, there's a paucity of law that would lead this
22 court to granting their request. Some of the cases cited
23 by the defendants go to trial issues such as the
24 propriety of the stop. They reference Illinois vs.
25 Wardlaw, 528 U.S. 119 (2000); Wise v. State of Maryland,

1 132 Md. App. 127 (2000). Or as discussed earlier,
2 Attorney Grievance Commission of Maryland versus Gansler,
3 377 Md. 646 (2003). And, finally, the defense's reliance
4 on Buckley v. Fitzsimmons, 509 U.S. 259 is not helpful
5 because it has more to do with a type of immunity a
6 prosecutor has if sued.

7 Along with the law that I cited earlier, I have
8 found no law contrary to Brack v. Wells, 184 Md. 86
9 (1944), which references a prosecutor's broad discretion
10 to implement criminal matters; nor State v. Aquilla,
11 18 Md. App. 487 (1973), which acknowledges the State's
12 Attorney's authority to assign to deputies and assistants
13 various duties required by statute.

14 This is the Defense Motion for Recusal and,
15 based on the arguments presented, lack of controlling law
16 on the issue, the court will deny said motion.

17 (End of excerpt - The Court's Ruling on
18 Defendants' Motion for Recusal concluded at 11:47 a.m.)

19
20
21
22
23
24
25

REPORTER'S CERTIFICATE

I, Patricia A. Trikeriotis, an Official Court Reporter of the Circuit Court for Baltimore City, do hereby certify that the proceedings in the matter of State of Maryland vs. Caesar Goodson, et al., Case Numbers 115141032 through 37, on September 2, 2015, before the Honorable Barry G. Williams, Associate Judge, were duly recorded by means of digital recording.

I further certify that the page numbers 1 through 17 constitute the official transcript of an excerpt of the proceedings as transcribed by me or under my direction from the digital recording to the within typewritten matter in a complete and accurate manner.

In Witness Whereof, I have affixed my signature this 15th day of September, 2015.

Patricia Trikeriotis

Patricia A. Trikeriotis,
Chief Court Reporter
Circuit Court for Baltimore City