

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 to Dismiss for Prosecutorial Misconduct
or in the Alternative for Sanctions)

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 to Dismiss for Prosecutorial Misconduct or in the Alternative for Sanctions (Denied)	4
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1 P R O C E E D I N G S

2 (Excerpt - The Court's Ruling on Defendants'
3 Motion to Dismiss for Prosecutorial Misconduct or in the
4 Alternative for Sanctions began at 11:23 a.m.)

5 THE CLERK: All rise. Part 31 resuming its
6 session, the Honorable Barry G. Williams presiding.

7 THE COURT: Thank you. Everyone may be seated.

8 All right. This Court has had the opportunity
9 to hear the arguments of counsel. I reviewed all the
10 motions and responses that have been filed and listened
11 to the arguments of counsel.

12 I will start with the Motion to Dismiss for
13 Prosecutorial Misconduct or in the Alternative for
14 Sanctions.

15 In the pleadings, the defendants have outlined
16 a number of issues, but they focus mainly on 3.6 and 3.8
17 of the Maryland Rules of Professional Conduct.

18 Maryland Rule 3.6 references trial publicity,
19 and reads as follows:

20 A lawyer who is participating or has
21 participated in the investigation or litigation of a
22 matter shall not make an extrajudicial statement that the
23 lawyer knows or reasonably should know will be
24 disseminated by means of public communication and will
25 have a substantial likelihood of materially prejudicing

1 an adjudicative proceeding in the matter.

2 Rule 3.8(e) notes the special responsibilities
3 of a prosecutor. The prosecutor in a criminal case
4 shall, except for statements that are necessary to inform
5 the public of the nature and extent of the prosecutor's
6 action and that serve a legitimate law enforcement
7 purpose, refrain from making extrajudicial comments that
8 have a substantial likelihood of heightening public
9 condemnation of the accused and exercise reasonable care
10 to prevent an employee or other person under the control
11 the prosecutor in a criminal case from making an
12 extrajudicial statement that the prosecutor would be
13 prohibited from making under Rule 3.6 or Rule 3.8.

14 I do note that on April 12, Mr. Freddie Gray
15 was placed in police custody and, at some point,
16 sustained serious injuries. On April 19, Mr. Gray died.

17 April 18 through the end of the month, there
18 were protests in our city, which ultimately we had
19 violence in our city, which led to the city being under
20 curfew.

21 On May 1st, the State's Attorney held a press
22 conference where, among other things, she announced the
23 charges against the defendants.

24 The defendants in this case reference the
25 statements of the State's Attorney and state that her

1 words, at a minimum, should be the basis for sanctions
2 pursuant to the Maryland Rules or even possibly a reason
3 to dismiss the charges.

4 It seems that the first argument of the
5 defendants is that the State's Attorney violated their
6 right to a fair trial by publicizing inciting rhetoric
7 intended to heighten the public condemnation of them.

8 They refer specifically to her statement of May
9 1 where, after announcing that she had filed charges
10 against the defendants, she read into the record the
11 statement of probable cause. I do have a copy of the
12 full transcript, which I did review. But in relevant
13 part, what the defendants seem to be referring to is the
14 following:

15 "To the people of Baltimore and the
16 demonstrators across America, I have heard your call for
17 'no justice, no peace.' Your peace is sincerely needed
18 as I work to deliver justice on behalf of this young man.

19 "I can tell you that the actions of these
20 officers will not and should not in any way damage the
21 important working relationship between police and
22 prosecutors as we continue to fight together to reduce
23 crime in Baltimore.

24 "Last, but certainly not least, to the youth of
25 this city, I will see justice on your behalf. This is a

1 moment. This is your moment. Let's ensure that we have
2 peaceful and productive rallies that will develop
3 structural and systematic changes for generations to
4 come. You're at that forefront of this cause, and as
5 young people, our time is now.

6 "The findings of our comprehensive, thorough,
7 and independent investigation, coupled with the Medical
8 Examiner's determination that Mr. Gray's death was a
9 homicide, which we received today, has led us to believe
10 that we have probable cause to file criminal charges."

11 According to defendants, her words were
12 broadcast in every home in America.

13 Now, it seems that the defense argument is that
14 after the statement that she read -- after reading the
15 indictment, she delivered the statement with passion and
16 anger, and that was not necessary to inform the public of
17 the nature and the extent of her actions and, therefore,
18 is a violation of 3.6(a). Also, that she knew or should
19 have known that such extrajudicial statements carried a
20 substantial likelihood of heightening public condemnation
21 of the defendants.

22 Also, defendants state by saying at the press
23 conference that the Medical Examiner's report declared
24 Mr. Gray's death a homicide, identifying pieces of
25 evidence that would be presented at trial, and

1 referencing the fact that defendants made statements, and
2 stating her opinion that the defendants were guilty.
3 Again, the words of the defendants, the State's Attorney
4 violated their right to a fair trial by disseminating
5 prejudicial information that has contaminated the jury
6 pool. These are some of the allegations that were
7 presented here today and in the motions filed by counsel.

8 I will note that the purpose of voir dire,
9 whether here in Baltimore or any other jurisdiction, is
10 to ask questions to determine whether members of the
11 venire have information concerning the case and, if so,
12 have they formed opinions. If they have information or
13 formed opinions, can they put that aside and make a
14 decision based on the evidence presented in the
15 courtroom? Conclusory statements that actions of any
16 individual has, quote, "contaminated the jury pool," hold
17 no weight with this court.

18 Now, as counsel are well aware, in order for
19 this court to assess the statements of the State's
20 Attorney in the manner put forth by them and to provide
21 the remedy requested via the Rules of Professional
22 Conduct, this court would have to have a hearing, receive
23 evidence through testimony, affidavits or exhibits, and
24 act as trier of fact.

25 It is well established that the Court of

1 Appeals has original and complete jurisdictions over all
2 attorney disciplinary matters arising from the conduct of
3 a member of the State Bar in Maryland. For that purpose,
4 I would cit the Attorney Grievance Commission versus Pak,
5 400 Md. 567 (2007); Attorney Grievance Commission versus
6 Palmer, 417 Md. 185.

7 Generally, a trial judge adjudicates whether a
8 lawyer has violated a rule of professional conduct if and
9 only if the Court of Appeals has designated that the
10 trial judge can hear an attorney discipline proceeding,
11 which is commenced again when the Attorney Grievance
12 Commission files in the Court of Appeals a Petition for
13 Disciplinary or Remedial Action against a lawyer.

14 Under Maryland Rule 16-711, the Attorney
15 Grievance Commission, appointed by the Court of Appeals,
16 has the authority to oversee attorney disciplinary
17 matters arising from violations of the Maryland Rules of
18 Professional Conduct.

19 Furthermore, a violation of the Rules of
20 Professional Conduct does not give an independent cause
21 of action, nor does an opposing party have standing to
22 seek enforcement of the rule through a collateral
23 proceeding. That premise in Baltimore County versus
24 Barnhart, 201 Md. App. 682 (2011). Clearly, the
25 defendants in this matter qualify as an opposing party,

1 and yet that is exactly the remedy that they seek.

2 Therefore, having reviewed the Rules of
3 Professional Conduct and relevant case law, I find that,
4 without a complaint filed by the Attorney Grievance
5 Commission before the Court of Appeals, referred to my
6 administrative judge for assignment, under the
7 circumstances presented by counsel, it is not within my
8 power to sanction the State's Attorney as requested. So
9 for that reason alone, I would deny the motion.

10 In the alternative, possibly aware of the
11 court's limited authority to rule on alleged violations
12 of the Rules of Professional Conduct, counsel seek to
13 have this court exclude information referenced by the
14 State's Attorney at trial. As a circuit court judge, I
15 do have the authority to dismiss charges or suppress
16 evidence if I deem that it is appropriate.

17 It seems the allegations regarding the State's
18 Attorney's statements concerning the type of evidence
19 collected, the video footage, videotaped statements,
20 autopsy report, medical records, and the knife, the court
21 will acknowledge, as I mentioned to Mr. Schatzow, that,
22 generally, pretrial it is best to avoid reference to
23 these items.

24 I do note that after being asked by a reporter
25 whether the defendants were cooperative with the

1 investigation, the State's Attorney said "Yes." When
2 asked if all six, she replied, "No. They gave a
3 statement. I can't get too far into the facts of this
4 case. I can't. I can't answer that."

5 I am obviously troubled by any prosecutor who,
6 pretrial, would even refer to the fact that a defendant
7 made a statement. The State attempts to brush this away
8 by saying it was but for four words in a withdrawn
9 statement to a question after prepared remarks. But the
10 reality is the statement was from the State's Attorney
11 for our city. And by definition, it is important.

12 While the day may come or may not come when the
13 words of the State's Attorney will be assessed, parsed,
14 and dissected for the purpose of determining if there are
15 violations of the Rules of Professional Conduct, today is
16 not that day.

17 Again, while I do find that the statements are
18 important, for the purpose of ruling on the defendants'
19 request for dismissal or exclusion, which is separate and
20 apart from sanctions, I find that the statements and
21 actions of the State's Attorney, while troubling, do not
22 rise to the level where to the defendants' right to a
23 fair trial have been violated. Nor do I find that the
24 statements and actions are such that it would be
25 appropriate to dismiss the charges or exclude evidence.

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I do believe that voir dire is important. And, again, whether it's in this jurisdiction or another jurisdiction, querying individuals as to what they've heard, what they know, what they believe is an important process.

Therefore, having reviewed all the documents provided, having heard the arguments of counsel, the Motion to Dismiss for Prosecutorial Misconduct or in the Alternative for Sanctions is hereby denied.

(End of excerpt - The Court's Ruling on Defendants' Motion to Dismiss for Prosecutorial Misconduct or in the Alternative for Sanctions concluded at 11:32 a.m.)

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 12 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 12th day of September, 2015.

Patricia Trikeriotis

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