

STATE OF MARYLAND

Plaintiff

v.

CAESAR GOODSON

Defendant

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IN THE
CIRCUIT COURT
FOR
BALTIMORE CITY
Case No. 115141032

RECEIVED

DEC 15 2015

**Criminal Div.
Circuit Court For
Baltimore City**

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**DEFENDANT'S MOTION *IN LIMINE*
REGARDING JUROR ISSUES**

Defendant Caesar Goodson, through his counsel, respectfully submits this Motion *in Limine* with respect to various juror issues in this case.

Officer Goodson has twice asked this Court for a change of venue, but both motions have been denied.¹ Because of this Court's rulings, the Defendant maintains that additional precautions are necessary during the selection of a jury.

1. First, Defendant requests that this Court inform all members of the jury, both in its preliminary instructions, and during final instructions, that the juror names will never be revealed to the public, nor the media, and that they may remain entirely anonymous should they choose to do so. Md. Rule 4-312(d)(3) already allows that the Court may shield the names of the jurors from "anyone other than the judge, counsel, and the defendant." As such, counsel is not seeking to expand the law, but rather just to make potential jurors aware of what we all already know to be true: there are measures we are taking to ensure that CNN does not turn up at your door.

¹ Concurrently with this Motion, the Defendant has filed a Second Motion for Reconsideration of Denial of Motion for Removal, as well as a proposed jury questionnaire and voir dire.

In the current climate, saying "not guilty," regardless of the evidence or the lack thereof presented by the State, and then returning to daily life will take great courage on the part of the citizenry. This is particularly so as to Officer Goodson, who faces the most serious charges of any of the six officers. Moreover, Officer Porter's trial has gone to the jury as of the filing of this motion. It is possible, indeed probable, that no matter the outcome of Officer Porter's trial, further civil unrest may follow. Whatever the aftermath of the trial of Officer Porter, Officer Goodson faces the strong risk of an "overcorrection" in the minds of potential jurors. Even if a juror truthfully answers questions in voir dire regarding their ability to remain fair, this would not, of course, prevent their later consideration of external factors. Accordingly, the jury should be told that their names will be screened from the outside world.

2. Defendant further requests that this Court sequester all jurors. Md. Rule 4-311 states that "(c) Separation of Jury. The court, either before or after submission of the case to the jury, may permit the jurors to separate or require that they be sequestered." There is, admittedly, a paucity of Maryland law on the issue, but what there is instructs this Court that it has the discretion to do so. *See, e.g., Grandison v. State*, 305 Md. 685, 719 (1986) ("[T]he determination to have the jury sequestered throughout the trial is discretionary.").² Moreover, all of the case law appears to be from an era before live blogs, Time.com, Facebook, Twitter, and wall-to-wall media saturation. While the

² *See also Veney v. Warden*, 259 Md. 437, 442 (1970); *State v. Magwood*, 290 Md. 615, 619-20 (1981); *Hounshell v. State*, 61 Md. App. 364, 379 (1985). It is also significant that in *Grandison*, Mr. Grandison and his codefendant, Mr. Evans, were removed to Somerset County and Dorchester County. 305 Md. at 698 (quoting *Evans v. State*, 304 Md. 487, 494-95 (1985)).

definition of sequester varies from case to case, and jurisdiction to jurisdiction, what counsel suggests is as follows: following the selection of a jury, sheriff's office members take the jurors home, to pack a bag. They are then put in a hotel, at court expense, until trial is completed. All television in the room is controlled, so that the local news, national news, and the like are not made available to jurors. While this Court may order all jurors to avoid news stories in all cases, in the case at bar, that will be virtually impossible. During the period of sequestration counsel requests that jurors have their phones taken from them, and all correspondence/calls/visits with friends and family be monitored by deputies. While this may, of course, make it harder to get a jury, and lead to greater hardship on the part of those chosen, it can be done. The entire city knows the trial date, and everyone has an opinion to offer. Any person selected to this jury will be bombarded with opinions, TV news, Facebook posts and the like.³ This Court's decision to keep the trial in Baltimore necessitates such action.

In *United States v. Shiomos*, 864 F.2d 16 (3rd Cir. 1988) the Defendant was a Senior Judge, charged with extortion. Based on the fact that the case would "generate significant amount of publicity," the Court *sua sponte* sequestered the jurors. *Id.* at 17. "The parties agree that a decision not to sequester the jury is in the sound discretion of the trial judge. *See Holt v. United States*, 218 U.S. 245, 251, 31 S.Ct. 2, 5-6, 54 L.Ed. 1021 (1910)." *Id.* at 18. The Third Circuit's rationale in upholding the sequestration applies equally here:

³ This Court is also aware that at least some community members have encouraged city residents to register for jury selection, and otherwise attempt to insert themselves into the jury that will decide Officer Goodson's fate.

The record demonstrates that there was a reasonable basis for the district court's concern that the jurors would find it difficult to disregard the publicity accompanying the trial. Although we do not hold that sequestration was mandated in these circumstances, neither can we hold that the trial judge, who was on the scene and had a vantage point superior to ours, abused his discretion in directing sequestration of the jury to ensure the defendant and the public a fair trial. The decision to sequester the jury was a completely rational response to a situation that threatened to disrupt the process of an orderly trial.

Id.

As already seen in Officer Porter's trial, in Officer Goodson's trial, although it may not rise to the level where, "The fact [will be] that bedlam reigned at the courthouse during the trial and newsmen took over practically the entire courtroom, hounding most of the participants in the trial, especially [the defendant]." *Sheppard v. Maxwell*, 384 U.S. 333, 355 (1966), it is undeniable that public and media attention on the trial will be unprecedented, except in the trial of Officer Porter.⁴ The Supreme Court also found it significant that, as with the case at bar, Dr. Sheppard was not granted a change of venue.⁵ The Supreme Court's ultimate holding, in a case with, if anything, less publicity than the case at bar, is worthy of quoting at length:

From the cases coming here we note that unfair and prejudicial news comment on pending trials has become increasingly prevalent. **Due process requires that the accused receive a trial by an impartial jury free from outside influences. Given the pervasiveness of modern**

⁴ The jury was also sequestered in the Watergate trials. See *United States v. Haldeman*, 559 F.2d 31 (D.C. Cir. 1976).

⁵ The Supreme Court considered it of great significance that "[m]uch of the material printed or broadcast during the trial was never heard from the witness stand." *Sheppard v. Maxwell*, 384 U.S. 333, 356 (1966). As counsel have previously argued, amongst other things, Ms. Mosby's statement outside city hall with regard to the fact that some Officers have given statements, while others have not, will also not be uttered at Officer Porter's trial. "The fact that many of the prejudicial news items **can be traced to the prosecution**, as well as the defense, aggravates the judge's failure to take any action." *Id.* at 361 (citing *Stroble v. California*, 343 U.S. 181, 201 (1952) (Frankfurter, J., dissenting))." (emphasis supplied).

communications and the difficulty of effacing prejudicial publicity from the minds of the jurors, the trial courts must take strong measures to ensure that the balance is never weighed against the accused. And appellate tribunals have the duty to make an independent evaluation of the circumstances. Of course, there is nothing that proscribes the press from reporting events that transpire in the courtroom. But where there is a reasonable likelihood that prejudicial news prior to trial will prevent a fair trial, the judge should continue the case until the threat abates, or transfer it to another county not so permeated with publicity. **In addition, sequestration of the jury was something the judge should have raised sua sponte with counsel.** If publicity during the proceedings threatens the fairness of the trial, a new trial should be ordered. But we must remember that reversals are but palliatives; the cure lies in those remedial measures that will prevent the prejudice at its inception. The courts must take such steps by rule and regulation that will protect their processes from prejudicial outside interferences. Neither prosecutors, counsel for defense, the accused, witnesses, court staff nor enforcement officers coming under the jurisdiction of the court should be permitted to frustrate its function. Collaboration between counsel and the press as to information affecting the fairness of a criminal trial is not only subject to regulation, but is highly censurable and worthy of disciplinary measures.

Since the state trial judge did not fulfill his duty to protect Sheppard from the inherently prejudicial publicity which saturated the community and to control disruptive influences in the courtroom, we must reverse the denial of the habeas petition. The case is remanded to the District Court with instructions to issue the writ and order that Sheppard be released from custody unless the State puts him to its charges again within a reasonable time.

Id. at 362-63 (1966) (emphasis supplied).⁶

3. While counsel submits that full sequestration is necessary, in the event the Court does not so find, counsel requests that jurors congregate at an undisclosed third-party location, and be driven to the courthouse by security officers. In the case at bar, there is only one way in and one way out of this courthouse, that members of the public

⁶ *Accord Gannett Co. v. DePasquale*, 443 U.S. 368, 379 (1979) ("In addition to excluding inadmissible evidence, a trial judge may order sequestration of the jury or take any of a variety of protective measures." (citing *Nebraska Press Ass'n v. Stuart*, 427 U.S. 539, 562-565 (1976))).

appear able to use. Already, the Court has been closing half of Calvert Street, due to the assembled media and protestors. It does not take a vivid imagination to picture what the scene will be like once a verdict is expected. A juror should not have to walk this gauntlet.⁷ It will affect his or her thinking, perception of the case, and ultimately the verdict.

Finally, in addition to the statutory and case law cited above, Officer Goodson submits that all of these arguments are made pursuant to his right to Due Process under the Fifth and Fourteenth Amendments to the United States Constitution, and Articles 19, 20, 21, 23, and 24 of the Maryland Declaration of Rights. Defendant further states that any mistrial in this case, due to actions that could have been prevented by the action requested herein, will not have been required because of manifest necessity, and that double jeopardy will prohibit any retrial. *Hubbard v. State*, 395 Md. 73, 96 (2006).



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⁷ Although the defense is not aware of any incidents involving the jurors in Officer Porter's trial, it is expected that the trial of Officer Goodson, who faces the most serious charges, will attract even more media and public attention, posing an increased risk to jurors.

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REQUEST FOR HEARING

Defendant Caesar Goodson respectfully requests a hearing on his Motion *In Limine* Regarding Juror Issues.



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CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of December 2015, a copy of the foregoing

Motion was served via first class mail, postage prepaid upon:

Michael Schatzow, Chief Deputy State's Attorney
Office of the State's Attorney for Baltimore City
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