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STATE OF MARYLAND

* IN THE

2016 JUN 29 PM 1:08

Plaintiff

* CIRCUIT COURT

CIRCUIT COURT
BALTIMORE CITY
CRIMINAL DIVISION

v.

* FOR

GARRETT MILLER

* BALTIMORE CITY

Defendant

* Case No. 115141034

* * * * *

MOTION FOR KASTIGAR HEARING

Now comes Defendant, Garrett Miller, by undersigned counsel, and files this Motion for a Hearing pursuant to *Kastigar v. United States* and for reasons states:

STATEMENT OF FACTS

Officer Garret Miller was indicted on May 21, 2015 on four charges: assault-second degree, two counts of misconduct in office and reckless endangerment. On April 21, 2016 he was served with an Order, signed by this Honorable Court, compelling his testimony as a witness in the trials of Officer Edward Nero and Lt. Brian Rice. Officer Miller's trial is scheduled to begin on July 27, 2016. Officer Miller was called as a witness by the State in *State v. Nero* on May 16, 2016. Officer Miller only testified pursuant to a grant of immunity from the State, he would not have testified if not for this Honorable Court's order requiring him to do so. It is anticipated that Officer Miller will be called as a witness in *State v. Rice* and will again be compelled to testify under a grant of immunity.

In anticipation of Officer Miller's trial, the State assigned two new prosecutors to prosecute this case, specifically, Assistant State's Attorney Lisa Phelps and Assistant

State's Attorney Sara David. Until the assignment of these two new prosecutors, Officer Miller was being prosecuted by Assistant State's Attorney Schatzow and Assistant State's Attorney Bledsoe and their team of attorneys. Mr. Schatzow and Ms. Bledsoe led the prosecution of Officer Nero and are therefore cognizant of the immunized testimony offered by Officer Miller. Mr. Schatzow and Ms. Bledsoe are prosecuting Lt. Rice, and will therefore be exposed to Officer Miller's immunized testimony yet again.

Following the assignment of the "taint team," undersigned counsel was informed that Assistant State's Attorney Kristen Blumer would be the liaison to this "taint team." Undersigned counsel was directed to send all correspondence to Assistant State's Attorney Blumer and to have no direct contact with the "taint team." It is the understanding of counsel that despite the assignment of a new prosecution team, Mr. Schatzow and Ms. Bledsoe continue to direct the prosecution of Officer Miller.

LEGAL ARGUMENT

If some part of the Indictment is based on specified unlawful activity that the State can establish is not covered by the immunity conferred on the Defendant, the Indictment must nevertheless be dismissed if the investigation or grand jury presentation of this matter relied directly or indirectly upon information furnished by the Defendant under grant of immunity. The Eleventh Circuit for the United States Court of Appeals has clearly described the procedure that must be followed in making this determination as follows:

Once a defendant shows that he has testified under immunity, the prosecution has the burden of showing that its evidence is not tainted; this

