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STATE OF MARYLAND

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IN THE

Plaintiff

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CIRCUIT COURT

v.

CIRCUIT COURT
BALTIMORE CITY *
CRIMINAL DIVISION

FOR

GARRETT MILLER

*

BALTIMORE CITY

Defendant

*

Case No. 115141034

* * * * *

**MOTION TO DISCLOSE GRAND JURY MINUTES AND TESTIMONY AND
REQUEST FOR A HEARING**

NOW COME, Defendant, Garrett Miller, by and through his undersigned counsel, pursuant to Maryland Rule 4-642(d), and file this Motion to Disclose Grand Jury Minutes and Testimony and Request for a Hearing and in support thereof state as follows:

In Maryland, Courts and Judicial Proceedings, Section 8-507 governs the disclosure of the content of grand jury proceedings. Section 8-507(a) states that, “[a] person may not disclose any content of a grand jury proceeding.” MD CODE ANN. CRTS & JUD. PROC. § 8-507. Although disclosure of grand jury proceedings is proscribed generally, there are exceptions to this general rule. Subsection (c)(2), addressing grand jury reports, states that, “(c) [t]his section does not prevent: (2) [a]ny other governmental unit or person making a disclosure authorized by law.” *Id.* In addition to disclosures authorized by law, the Maryland rules give trial courts discretion to order disclosure to further the proper administration of justice. Maryland Rule 4-642(d) provides:

(d) Motion for Disclosure. Unless disclosure of matters occurring before the grand jury is permitted by law without court authorization, a motion for disclosure of such matters shall be filed in the circuit court where the grand jury convened. If the moving party is a State's Attorney who is seeking disclosure for enforcement of the criminal law of a state or the criminal law of the United States, the hearing shall be ex parte. In all other cases, the moving party shall serve a copy of the motion upon the State's Attorney, the parties to the judicial proceeding if disclosure is sought in connection with such a proceeding, and such other persons as the court may direct.

The court shall conduct a hearing if requested within 15 days after service of the motion.

Long standing policy and law have both required that disclosure of grand jury proceedings be done discreetly and infrequently. *See Dennis v. United States*, 384 U.S. 855 (1966). The Supreme Court has acknowledged the “long-established policy that maintains the secrecy of the grand jury proceeding in the federal courts.” *United States v. Procter & Gamble Co.*, 356 U.S. 677 (1958). While there is a trend toward secrecy, secrecy of grand jury testimony is not absolute. *In re Biaggi*, 478 F.2d 489 (2d Cir 1973).

In deciding whether or not to disclose grand jury minutes or transcripts, it has been well established that the trial court is given substantial discretion in making this decision. *Causion v. State* 209 Md. App. 391 (2013). The Court in *United States v. Universal Mfg. Co.*, likened this discretion to that of the discretion allowed when regulating discovery in a criminal case. 525 F.2d 808 (8th Cir. 1985).

A party must show a “... particularized need for grand jury materials before any disclosure will be permitted. ...” *United States v. Sells Engineering, Inc.*, 463 U.S. 418 (1983), *In re Criminal Investigation No. 437 in Circuit Court for Baltimore City*, 316 Md. 66 (1989). Under the particularized need standard, the court weighs the public interest against the need for continued secrecy. *Illinois v. Abbolt & Associates, Inc.*, 460 U.S. 557 (1983). *In re Criminal Investigation No. 51,843 in Circuit Court for Prince George's County*, 119 Md. App. 112, *certiorari denied*, 349 Md. 235 (1998) (stating that the burden of demonstrating that need for disclosure of grand jury material outweighs public interest in secrecy is on party seeking disclosure, but the burden is lessened as reasons for preserving grand jury become less weighty, and thus, trial court must consider circumstances of each case in balancing interests and deciding whether to order disclosure). The court explains ‘particularized need’ as, “that the material they seek is needed to

avoid possible injustice in another judicial proceeding, that the need for disclosure is greater than the need for continued secrecy, and that their request is structured to cover only material so needed.” *Douglas Oil Co. v. Petrol Stops Northwest*, 441 U.S. 211 (1979).

The Court of Appeals of Maryland outlined the standard for particularized need for disclosure in *In re Criminal Investigation No. 437 in Circuit Court for Baltimore City*. 316 Md. 66 (1998). Parties seeking disclosure must show that: (1) the material they seek is needed to avoid a possible injustice; and (2) the need for disclosure is greater than the need for continued secrecy; and (3) their request is structured to cover only material so needed. *Id.* at 85. In that case, the Court held that the request of 112 documents out of approximately twelve banker’s boxes of materials constituted a particularized need. *Id.* at 89. The judge noted that “out of all those documents which were submitted,” the State is requesting “only 112 documents . . .” *Id.* at 90. This was judged to be an “infinitesimal part of total submissions” and “would not in any way compromise or indicate to any person outside that grand jury or outside the confines of those parties in this court what the workings of the grand jury were. *Id.* Both *Silbert v. State*, 12 Md. App. 516 (1971) and *Causion v. State*, 209 Md. App. 391 (2013), discuss the particularized need and the discretion the trial court has to order disclosure of grand jury materials.

In Defendants’ cases, a legitimate particularized need for the grand jury testimony and minutes is apparent and clearly meets the three-part tested described above. It was reported in the Baltimore Sun on Saturday, June 25, 2016, that, not only was a script given to the lead detective in this case to present to the grand jury, that script had material misrepresentations of fact contained within it. Further, it was reported that prosecutor Jan Bledsoe gave unsworn testimony before the grand jury. The report details that, instead of the lead detective in the police investigation

answering questions under oath posed by the grand jurors, it was instead the prosecutor giving testimony when she had not been sworn as a witness before the grand jury.

The grand jury testimony and minutes are necessary to avoid a possible injustice and present the Defendants' motion to dismiss to this Court. It is only through the grand jury materials that Defendants and this Honorable Court will be able to properly determine that Defendants' rights to due process were violated. Given that this is one of the most publicized cases in Baltimore in recent history, and given that every aspect of this case -- from the original arrest through the most recent disclosures -- has been reported publicly in the press, any argument that the need for continued secrecy of these matters would appear dubious and self-serving for the State.

Undersigned counsel believes that the State has provided this Court with the transcripts of testimony of Detective Taylor before the grand jury to let the court determine whether it should be disclosed. It is undersigned counsel's position that this testimony, the script that it was based on, and the testimony of Jan Bledsoe, any other witnesses who presented testimony (sworn or unsworn), and the minutes of the proceedings must be disclosed to the defense in this case.

In addition to the particularized need stated above, a particularized need specific to Detective Taylor exists. As the Court of Appeals has previously recognized,

problems concerning the use of the grand jury transcript at the trial to impeach a witness, to refresh his recollection, to test his credibility * * * are cases of particularized need where the secrecy of the proceedings is lifted discretely and limitedly. The [Supreme] Court also observed that the developments in the area of disclosure of grand jury minutes were entirely consistent with the realization that disclosure, rather than suppression of relevant legal materials, normally promotes the proper administration of criminal justice

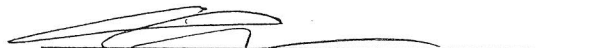
Germain v. State, 363 Md. 511, 537 (2001). It follows that, regardless of which party calls a witness who has testified before the grand jury, refreshing the witness' recollection, testing

credibility and impeachment are all “particularized needs” that have already been established under Supreme Court and Maryland precedent.

Further, to properly promote the administration of justice on Defendants’ pending motion to dismiss, disclosure is necessary. The defects in the institution of the prosecution occurred at both the District Court and Circuit Court levels and rise to a level which would violate the Officers’ rights of due process secured by the United States Constitution as well as the Maryland Declaration of Rights. The Officers have submitted a motion to dismiss the Indictments based on these defects and, in order for this Honorable Court in the administration of justice to properly rule on such a motion, disclosure is required.

WHEREFORE, Defendant, Garrett Miller, hereby respectfully moves this Honorable Court to schedule a hearing on this matter and, after said hearing, Order the State to disclose the minutes and transcripts of the grand jury proceedings in this case.

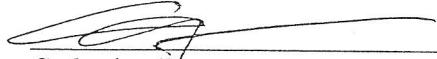
Respectfully submitted,



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REQUEST FOR A HEARING


Defendant, by and through his respective counsel, request a hearing on this Motion.



Catherine Flynn

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of June, 2016 a copy of the foregoing Motion was hand-delivered to the Office of the State's Attorney for Baltimore City, 120 East Baltimore Street, Baltimore, Maryland 21202.



Catherine Flynn