

STATE OF MARYLAND

v.

GARRETT MILLER

* * * * *

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BALTIMORE CITY
CRIMINAL DIVISION

IN THE
CIRCUIT COURT FOR
BALTIMORE CITY
CASE No. 115141034

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STATE’S RESPONSE TO SUPPLEMENTAL MOTION FOR A *KASTIGAR* HEARING

Now comes the State of Maryland, by and through Marilyn J. Mosby, the State’s Attorney for Baltimore City, and Chief Deputy State’s Attorney Michael Schatzow and files the State’s Response to Defendant’s Supplemental Motion for a *Kastigar* Hearing.

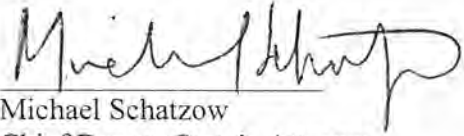
The State acknowledges that the Defendant is entitled to a *Kastigar* hearing. When the government proceeds to prosecute a previously immunized witness, it has “the heavy burden of proving that all of the evidence it proposes to use was derived from legitimate independent sources.” *Kastigar v. United States*, 406 U.S. 441, 461-2 (1972). The State does not contest that a *Kastigar* hearing is appropriate in this case, and one is scheduled for July 27, 2016.

The State can meet its preponderance of the evidence burden through various methods. The government does not need to negate all abstract possibilities of a taint. *Welsh v. Holt*, 78 F. 3d 580 (1996) (explaining that the occurrences Welsh identified amounted to speculative opportunities for taint to occur); *see also United States v. Byrd*, 765 F. 2d 1524, 1529 (11th Cir. 1985). The type of proof that the State will present to establish that no tainted material has or will be used will vary depending on the nature and the extent of any alleged *Kastigar* violations the Defendant raises. *See, e.g., United States v. North*, 920 F. 2d 940, 943 (D.C. Cir. 1990) (government may shoulder its burden “in any fashion” or through “use of any techniques”); *see also United States v. Daniels*, 281 F. 3d 168, 181 (5th Cir. 2002) (*Kastigar* evidence presented via FBI reports, grand jury transcripts, and case agent’s testimony); *United States v. Moytana*, 45 F. 3d 1296, 1299 (1995) (government bore *Kastigar* burden via declarations and documents; no

requirement that hearsay witnesses be presented for cross-examination); *United States v. Rogers*, 722 F. 2d 557, 560 (9th Cir. 1983) (declarations used in *Kastigar* hearing).

Respectfully submitted,

Marilyn J. Mosby



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CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of July, 2016, a copy of the Response to Defendant's

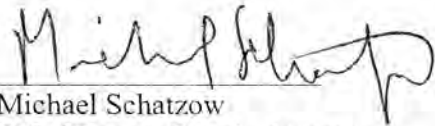
Motion for a *Kastigar* Hearing was mailed and e-mailed to:

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Respectfully submitted,

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