

2015 DEC 15 A 9: 24

STATE OF MARYLAND

* IN THE
* CRIMINAL DIVISION
* CIRCUIT COURT

v.

* FOR
* BALTIMORE CITY

WILLIAM PORTER,

* CASE NO. 115141037

Defendant

*

* * * * *

BENCH MEMORANDUM: DEFENDANT'S MOTION TO RECONSIDER THE COURT'S PROPOSED JURY INSTRUCTION ON MISCONDUCT IN OFFICER

Defendant, William Porter, through his attorneys Joseph Murtha and Gary Proctor, hereby requests this Honorable Court to reconsider its' Proposed Jury Instruction on Misconduct in Office and hereby states the following:

1. On December 10, this Honorable Court presented the attorneys with its' proposed jury instructions. Relative to the instruction on Misconduct, the Court has stated "A police officer 'corruptly fails to do an act required by the duties of his office if he willfully fails or willfully neglects to perform the duty. A willful failure or willful failure is one that is intentional, knowing and deliberate"
2. The Court's proposed instruction seeks to define the term "corrupt" as any intentional, knowing or deliberate act or omission. The definition omits the necessary elements of "evil motive," "bad faith," "depravity," "perversion," or "taint." (See MPJI, 4:23, Comments).
3. By the words of the Court's proposed instruction, any time any public officer intentionally fails to do any duty required of them, irrespective of the nature of the duty or the *mens rea* behind the act or omission, they are guilty of misconduct in office. This definition and instruction is antithetical to the law, the pattern jury

instructions and the comments to the Pattern Jury Instructions – all of which require more than an intentional act or omission, but one done with an “evil motive,” “bad faith,” etc. The Court’s proposed instruction might be correct if the Defendant was charged with **malfeasance in office** (the doing on an illegal or unlawful act under color of law), as malfeasance inherently possesses the *mens rea* of the underlying criminal offense. However, when the charge is nonfeasance, the State has the burden of proving more than an intentional omission, but, one done with an evil intent.

4. This Court need look no further than the comments the Maryland Pattern Jury Instruction which states that it is inappropriate to try to define “corrupt” in the jury instructions. The Comment to MPJI 4:23 states the following:

‘The word ‘corruption,’ as an element of misconduct in office, is used in the sense of depravity, pervasion or taint.’ (Perkins & Boyce, *supra*, at 542). ‘Thus, the conduct must be a willful abuse of authority and not merely an error in judgment.’ (Hyman Ginsberg and Isadore Ginsberg, *Criminal Law and Procedure in Maryland* 152 (1940) ‘the word corrupt does not necessarily ... mean financial dishonesty (but) rather connotes that the wrongful act is done with ‘evil motive or in bad faith and not honestly.’ (quoting *State v. Begyn*, 34 N.J. 35, 50, 167 A.2d. 161, 169 (1961).

The Committee did not define or explain “corrupt or corruptly,” believing that the words “corrupt” or “corruptly” communicate their meaning better than a definition would. (Emphasis added).

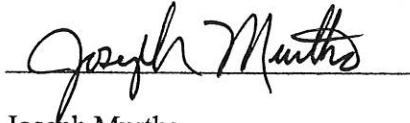
5. This Court’s proposed instruction seeks to define “corrupt” in a way that omits the necessary element of depravity, evil motive etc.
6. Were the Court’s proposed instruction a fair statement of the law, **any time any public officer intentionally fails to do any act required by their internal rules**

and regulations, they would be guilty or misconduct in office, irrespective of their *mens rea*.

7. Police Officers have general orders about a variety of things, including things like personal hygiene, arriving on time for work, wearing specific uniforms, etc. By the Court's proposed instruction, if a Police Officer intentionally is late for work, wears the wrong uniform, decides not to shave that morning, or does not maintain appropriate hygiene, he or she would be guilty of misconduct – irrespective of the lack of any bad faith or evil motive.
8. Prosecutors have internal policies regarding appropriate courtroom attire, work hours, demeanor, etc. Any time a prosecutor intentionally fails to abide by any of these internal policies, regardless of their *mens rea*, they could be prosecuted for Misconduct in Office.
9. The Defendant implores this Honorable Court to utilize, and not deviate from, the Pattern Jury Instructions. To the extent that this Court rules that it will deviate from the pattern instruction, the Defendant would request that the court define “corrupt” not as a willful failure – one that is “intentional, knowing and deliberate,” but rather as one that is done with “evil motive or bad faith.” (MPJI 4:23, Comments).
10. Defendant hereby incorporates by reference both his earlier objections made orally, and his written motion that failing to seatbelt cannot constitute recklessness.

WHEREFORE, the Defendant, William Porter, respectfully requests that this Honorable Court reconsider its' Proposed Instruction relative to Misconduct in Office.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Joseph Murtha", written over a horizontal line.

Joseph Murtha

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A handwritten signature in black ink, appearing to read "Gary E. Proctor", written over a horizontal line.

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Attorneys for Officer William Porter

CERTIFICATE OF SERVICE

I HEREBY CERTIFY a copy of the foregoing Motion was this 13th day of December, 2015, emailed to Ms Bledsoe, and on December 14, 2015 who will additionally be handed a copy in open Court.



Gacy E Proctor