

IN THE CIRCUIT COURT
FOR BALTIMORE CITY

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CIRCUIT COURT
BALTIMORE CITY
CRIMINAL NO. 115141037

STATE OF MARYLAND

v.

OFFICER WILLIAM G. PORTER

Defendants.

CRIMINAL NO. 115141037

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**DEFENDANT MOTION IN LIMINE RE.
JUROR ISSUES**

Comes now Defendant Officer William Porter, through his counsel, Joseph Murtha and Gary Proctor (hereinafter "Defendant") and respectfully submits this Motion in Limine with Respect to various juror issues in the case at bar. This Motion complements the request for a jury questionnaire, and is filed in addition to it.

1. As the Court is aware, Defendant has twice asked this Court for a Change of Venue, but both motions have been denied. Because of this Court's ruling, Defendant maintains that additional precautions are necessary during the selection of a jury.

2. Firstly, 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

name 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.

In the current climate, saying “not guilty,” regardless of the evidence or the lack thereof presented by the state, and then returning to your daily life will take great courage on the part of the citizenry. It is possible, indeed probable, that an acquittal of Officer Porter will lead to further civil unrest. But this officer deserves his trial without any “sacrificial lamb” thinking on the part of jury members. 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, for example, Grandison v. State, 305 Md. 685, 719, 506 A.2d 580, 597 (1986) (“the determination to have the jury sequestered throughout the trial is

discretionary.”)¹ Moreover, all of the caselaw appears to be from the Land Before Time.com, Facebook, Twitter, and wall-to-wall media saturation.

While the 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 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 nigh on 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 are 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, the undersigned, Mr. Proctor, participated in a two (2) month trial with jurors under these conditions - - so it can be done. The entire city knows the trial date, and everyone has their 2 cents to offer. Any person selected to this jury will be bombarded with opinions, TV news, facebook posts and the like.² This Court's decision to keep the trial in Baltimore necessitates such action.

¹ See also Veney v. Warden, 259 Md. 437, 271 A.2d 133 (1970); State v. Magwood, 290 Md. 615, 432 A.2d 446 (1981), Hounshell v. State, 61 Md. App. 364, 379, 486 A.2d 789, 796 (1985). It is also significant that both Grandison, and his co-defendant, Vernon Evans, were removed to Somerset and Dorchester County.

² 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 Defendant's fate.

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. In upholding the sequestration, the Third Circuit's rationale is equally apposite here:

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.

United States v. Shiomos, 864 F.2d 16, 18 (3rd Cir. 1988). In our trial “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, 86 S. Ct. 1507, 1518, 16 L. Ed. 2D 600 (1966).³ The Supreme Court also found it significant that, as with the case at bar, Dr. Sheppard was not granted a change

³ The jury was also sequestered in the Watergate trials, see United States v. Haldeman, 559 F.2d 31 (D.C. Cir. 1976).

of venue.⁴ The Supreme Court's ultimate holding, in a case with, if anything, less publicity than the case at bar, is worthy of quotation 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 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.

⁴ 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, 86 S. Ct. 1507, 1519, 16 L. Ed. 2D 600 (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. See Stroble v. State of California, 343 U.S. 181, 201, 72 S.Ct. 599, 609, 96 L.Ed. 872 (1952) (Frankfurter, J., dissenting).” Sheppard id. At 361 (emphasis supplied)).

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.

Sheppard v. Maxwell, 384 U.S. 333, 362-63, 86 S. Ct. 1507, 1522-23, 16 L. Ed. 2D 600 (1966) (emphasis supplied).⁵

3. While counsel submits that full sequestration is necessary, in the event the Court does not so find, counsel requests that jurors congregate at a third party location, and be driven to the courthouse by security officers. Again, the undersigned counsel, Mr. Proctor, participated in a trial in Washington in which the jurors congregated at RFK Stadium, and were driven to and from court by the United States Marshal Service. In the case at bar, there is only one way in and one way out of this courthouse, that members of the public 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. It will affect his or her thinking, perception of the case, and ultimately the verdict.

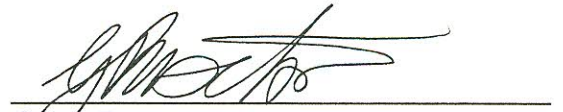
⁵ Accord Gannett Co. v. DePasquale, 443 U.S. 368, 379, 99 S. Ct. 2898, 2905, 61 L. Ed. 2D 608 (1979) ("In addition to excluding inadmissible evidence, a trial judge may order sequestration of the jury or take any of a variety of protective measures. See Nebraska Press Assn. v. Stuart, 427 U.S. 539, 562-565, 96 S.Ct. 2791, 2804-2806, 49 L.Ed.2d 683.")

4. Finally, in addition to the statutory and caselaw cited above, Officer Porter 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, 909 A.2d 270, 283 (2006).

Respectfully Submitted,

Handwritten signature of Joseph Murtha in black ink, written over a horizontal line.

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Handwritten signature of Gary E. Proctor in black ink, written over a horizontal line.

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CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of October, 2015, a copy of Defendant's Motion in Limine was sent via United States Mail to Michael Schatzow, Chief Deputy State's Attorney for Baltimore City, 120 E. Baltimore Street, 9th Floor, Baltimore MD 21202, with proper postage affixed.



A handwritten signature in cursive script, appearing to read "G. Proctor", is written over a solid horizontal line.

GARY E. PROCTOR