

STATE OF MARYLAND

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IN THE
CIRCUIT COURT
FOR
BALTIMORE CITY
CASE NO. 115141036

v.

ALICIA WHITE,
Defendants.

CIRCUIT COURT
BALTIMORE CITY
CRIMINAL DIVISION

2016 JUN 27 PM 2:53

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MOTION TO DISMISS INDICTMENT(S) FOR DEFECT IN THE INSTITUTION OF THE PROSECUTION AND REQUEST FOR A HEARING

NOW COMES, Defendant, Alicia White, by and through her respective undersigned counsel, pursuant to Maryland Rule 4-252, and file this Motion to Dismiss based on a defect in the institution of the prosecution and in support thereof state as follows:

Introduction

Maryland Rule 4-252 provides that, a motion to dismiss based on a defect in the institution of the prosecution must be made within 30 days of the appearance of counsel or, if discovery discloses the basis of a motion, within five days after the discovery is furnished. Md. Rule 4-252(b). Undersigned counsel received certain belated disclosures, only upon Order from this Court, from the Office of the State’s Attorney on Monday June 20, 2016. Some of those disclosures form support for this motion but undersigned counsel has been instructed by this Court not to use those disclosures without leave of this Court. Undersigned counsel would like those disclosures made part of the record for this motion, under seal if directed by this Honorable Court.

Subsequent to the disclosures the State made on June 20, 2016, an affidavit of Sheriff Sam Cogan was unsealed in federal court and an article was published in the Baltimore Sun regarding information relevant to the charging of the officers at both the District Court and Circuit Court levels.

It has been revealed through this recent discovery and the leaks published by the Baltimore Sun that there were defects in the institution of the prosecution of the Officers charged in the death of Freddie Gray. These defects 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 District Court Defect

Maryland Rule 4-211 prescribes the way in which a peace officer may properly apply for charges. It provides that "a judicial officer may file a statement of charges in the District Court against a defendant who has not been arrested for that offense upon written application containing an affidavit showing probable cause that the defendant committed the offense charged. If not executed by a peace officer, the affidavit shall be made and signed before a judicial officer." Md. Rule 4-211(b)(1).

In *Shaefer*, the Court of Special Appeals described the oath requirement for a peace officer, as well as the knowledge required for the peace officer to sign under oath for charges against a defendant. *Schaefer v. State*, 31 Md. App. 437, 444-47 (1976). The Court of Special Appeals stated that,

[i]n determining the existence vel non of probable cause, *the judicial officer may give consideration to the special significance which objects, happenings, and individuals may have conveyed to a trained, experienced and knowledgeable person swearing to the facts set out.* Those sworn facts may be based on hearsay information even from an unidentified informant, and need not reflect the direct personal observations of the affiant, *but they must contain some of the underlying circumstances from which the affiant could be reasonably justified in a belief that the hearsay information was reliable* or the informant was credible." *Id.* (emphasis supplied).

Id.

