

STATE OF MARYLAND

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IN THE

V.

*

DISTRICT COURT

CAESAR GOODSON

*

OF MARYLAND

CASE NO. 6B02294452

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FOR

GARRETT MILLER

*

BALTIMORE CITY

CASE NO. 3B02294449

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EDWARD NERO

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CASE NO. 4B02294450

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WILLIAM PORTER

*

CASE NO. 0B02294453

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BRIAN RICE

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CASE NO. 2B02294448

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ALICIA WHITE

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CASE NO. 5B02294451

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Defendants

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CLERK OF DISTRICT COURT

OFFICE OF THE STATE’S ATTORNEY FOR BALTIMORE CITY’S OPPOSITION TO DEFENDANTS’ JOINT MOTION TO DISMISS AND IN THE ALTERNATIVE FOR RECUSAL OF BALTIMORE CITY STATE’S ATTORNEY’S OFFICE

Defendants’ Joint Motion to Dismiss and in the Alternative for Recusal of Baltimore City State’s Attorney’s Office is premature, frivolous, illogical, and unsupported by authority when it is not contradicted by authority. Whether born of desperation, the desire for publicity, or a gross effort to taint the grand jury and potential petit jury pool, the motion is absurd. Spewing invective, and casting aspersions on the duly elected State’s Attorney for Baltimore City and her

entire office, the motion bounces from one ridiculous allegation to another, like a pinball on a machine far past “TILT.”

SUMMARY OF ARGUMENT

First, the motion is premature. As Defendants have recognized, this case will proceed in the Circuit Court for Baltimore City, not in the District Court where this motion was filed.

Second, the “conflicts” identified by the Defendants are not conflicts at all, which likely accounts for their inability to supply any authority deeming them conflicts. Third, the Defendants’ claim that the best evidence of the existence of the conflicts is the charging documents themselves reveals both a fundamental (and no doubt deliberate) misunderstanding of when the Defendants are allowed to challenge the sufficiency of the evidence against them, and a willful blindness to the more than sufficient nature of that evidence.

THE DEFENDANT’S MOTION IS PREMATURE

As the Defendants acknowledged in footnote 1 of their Motion for Order Requiring Recordation of Grand Jury Testimony or Stenographer to Take and Transcribe Testimony Before the Grand Jury, they know full well that they will be charged in the Circuit Court. Thus, this Motion is premature, as the District Court lacks the authority to circumscribe the processes of the Circuit Court. While this begs the question of why the Defendants sought Circuit Court relief from the District Court, the answer is all too obvious: harsh rhetoric designed to generate negative pre-trial publicity about the prosecutors in order to taint the grand jury and petit jury pool.

**CONTROLLING AUTHORITY, IGNORED BY DEFENDANTS, AUTHORIZES
THE STATE'S ATTORNEY'S OFFICE'S TO INVESTIGATE CRIMES AND GIVE
TESTIMONY WITHOUT CREATING A CONFLICT**

In a broad, novel theory ignoring contrary controlling authority, Defendants claim that their asserted need to question investigators on the payroll of the State's Attorney's Office mandates recusal of the Office. No authority is cited for this proposition, nor could there be any. Lawyers in private practice use clerks and investigators on the payroll of the law firm to witness statements and provide testimony if the witness needs to be impeached with the prior statement. The Maryland Attorney General's Office employs investigators who testify in cases brought by the Attorney General. The Maryland United States Attorney's Office employs investigators who testify in cases brought by the U.S. Attorney. The U.S. Department of Justice includes the Federal Bureau of Investigation, the U.S. Marshall's Office, and other law enforcement agencies that employ investigators who testify in cases brought by the Department of Justice. Why should they be allowed to do so while the State's Attorney's Office is not?

Defendants fail to cite controlling authority that directly contradicts their contention. In Carr v. State, 50 Md. App. 209 (1981), the defendant contended that the State's Attorney's Office should have been disqualified from prosecuting him because his conviction was based on the testimony of an Assistant State's Attorney from that office who acted as an undercover operative. The argument was based on the then existing equivalent to the Rule of Professional Conduct that the defendants in the instant case rely on. Roundly rejecting that contention, the Court of Special Appeals specifically approved of the State's Attorney utilizing, for trial testimony, investigators employed by his office, whether lawyers or laymen. Noting the "'broad official discretion to institute and prosecute criminal causes,' Brack v. Wells, 184 Md. 86, 90 (1944)," enjoyed by a State's Attorney, the Court spoke to the precise issue Defendants raise