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October 30, 2009

VIA HAND-DELIVERY

Marian Soto, Criminal Clerk Manager
Circuit Court for Baltimore City
Clarence M. Mitchell, Jr. Courthouse
100 N. Calvert St., Room 200
Baltimore, MD 21202

Re: *State of Maryland v. Sheila A. Dixon*
Case No. 109210015

Dear Ms. Soto:

Enclosed herewith please find *Defendant's Motion in Limine to Preclude the State from Referring to Hearsay, or Other Inadmissible Evidence in the Opening Statement and From Introducing Such Inadmissible Evidence During Trial* to be filed in the above-referenced case.

Thank you for your attention with respect to this matter.

Very truly yours,



Dale P. Kelberman

DPK/klf
Enclosure

cc: Hon. Dennis M. Sweeney
Robert A. Rohrbaugh, State Prosecutor
Thomas M. McDonough, Deputy State Prosecutor
Arnold M. Weiner, Esquire

IN THE CIRCUIT COURT FOR BALTIMORE CITY, MARYLAND

STATE OF MARYLAND

*

v.

*

CASE NO. 109210015

SHEILA ANN DIXON

*

* * * * *

**DEFENDANT’S MOTION IN LIMINE TO PRECLUDE THE STATE FROM
REFERRING TO HEARSAY, OR OTHER INADMISSIBLE EVIDENCE IN OPENING
STATEMENT AND FROM INTRODUCING SUCH INADMISSIBLE EVIDENCE
DURING TRIAL**

Defendant, Sheila Ann Dixon, by her undersigned counsel, respectfully moves this Court to preclude the State from referring to hearsay evidence, or making an improper argument, in its opening statement or during the course of the trial, and in support of its motion submits the following:

Over the course of the last couple of weeks, within days of the commencement of trial, the State has suddenly produced additional discovery identifying several new witnesses and voluminous additional documents which it intends to offer at trial. Among other things, these new witnesses include persons who were allegedly contacted by “someone at City Hall” who offered them gift cards for the holidays. In several instances, the recipients are said to have expressed disappointment with the donation.

This recent discovery material has prompted this Motion. It appears to the Defendant that the State may seek to offer this hearsay, or refer to it during its opening statement. In addition, the Defendant is concerned that the State may attempt to argue that these new witnesses are among the category of “victims” of this offense, i.e. needy people who did not receive additional gift cards.

It may be stating the obvious that hearsay is not admissible during trial. Md. Rule 5-802. For the same reason, hearsay should not be a part of an opening statement. In *Wilhelm v. State*, 272 Md. 404, 326 A.2d 707 (1974), Judge O'Donnell articulated the scope and limitations of an opening statement:

The primary purpose or office of an opening statement in a criminal prosecution is to apprise with reasonable succinctness the trier of facts of the questions involved and what the State or the defense expects to prove so as to prepare the trier of facts for the evidence to be adduced. While the prosecutor should be allowed a reasonable latitude in his opening statement *he should be confined to statements based on facts that can be proved and his opening statement should not include reference to facts which are plainly inadmissible and which he cannot or will not be permitted to prove*, or which he in good faith does not expect to prove. An opening statement by counsel is not evidence and generally has no binding force or effect. To secure a reversal based on an opening statement the accused is usually required to establish bad faith on the part of the prosecutor in the statement of what the prosecutor expects to prove or establish substantial prejudice resulting therefrom. (citations omitted)(emphasis added).

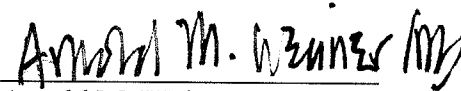
In the witness interviews provided by the State on Friday, October 23, 2009, and more recently, the Defendant has been provided with numerous instances of witnesses who are claimed to have stated things such as “they spoke with someone in City Hall who told them XXXXX.” These statements are replete with hearsay, which does not fall within any exception to that evidentiary rule. Such evidence could unfairly be used to taint the Defendant, by suggesting that the Defendant knew about or directed whatever statement is offered.

In addition, the indictment in this case charges the Defendant with theft and misappropriation, not from any “needy” persons, but from Ron Lipscomb and Patrick Turner. The grand jury found and charged that it was the developers who were allegedly deceived or misled. Consequently, the State should not be permitted to argue to the jury that any of these witnesses were the “victims,” as such an argument would be grossly improper. The Defendant may not be tried or convicted of a crime with which she was not charged. *Turner v. State*, 242

Md. 408 (1966); *Tapscott v. State*, 106 Md. App. 109 (Md. App. 1995). Therefore, any argument to the jury advancing such a theory is improper and should not be permitted.

The Defendant therefore requests that the Court preclude the State from making reference in its opening statement, or during trial, to any inadmissible hearsay, or to suggest that these newly disclosed witnesses were the “victims” of the offenses charged.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY certify that on this 30th day of October, 2009, copies of the foregoing Defendant's Motion In Limine To Preclude The State From Referring To Hearsay In Opening Statement Or During Trial was sent, via email and first class mail, postage prepaid, to:

Robert A. Rohrbaugh, State Prosecutor
Thomas M. McDonough, Deputy State Prosecutor
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Towson, Maryland 21286



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