

**IN THE CIRCUIT COURT FOR BALTIMORE CITY, MARYLAND**

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STATE OF MARYLAND :  
 v. : **Case No. 109210015**  
SHEILA ANN DIXON :  
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**DEFENDANT’S MOTION IN LIMINE  
TO EXCLUDE EVIDENCE OF OTHER ACTS**

Defendant, Sheila Dixon, by and through her undersigned attorneys, hereby files this motion in limine, to exclude evidence at trial regarding alleged violations of the Maryland perjury statute, Criminal Law Article § 9-101, specifically relating to the financial disclosure forms filed by Ms. Dixon during the relevant time periods.

**I. BACKGROUND**

On January 9, 2009, the State Prosecutor obtained from the grand jury Indictment No. 109009009, charging the Defendant with twelve counts of perjury, theft, misappropriation and misconduct in office. After several of those counts were dismissed by the Court in response to the Defendant’s pretrial motion, the State prosecutor on July 29, 2009, obtained two new Indictments – the first of which, Indictment No. 109210015 (the “Theft Indictment”), realleges the seven counts of theft, misappropriation and misconduct that had not been previously dismissed, and the second of which, Indictment No. 109210016 (the “Perjury Indictment”), charging two counts of perjury relating to the financial disclosure forms that the Defendant filed with the Baltimore City Ethics Board in November 2004 and April 2005.

Specifically, the Perjury Indictment alleges that Ronald Lipscomb had an interest in corporations and other entities involved in real estate development that were “doing business with” or were “regulated by” the City; that, consequently, Defendant, as City Council President, was required to report any gift received from Mr. Lipscomb; and that Defendant made misstatements on two of her financial disclosure forms when she failed to report gifts from Mr. Lipscomb. The pending Theft Indictment contains seven (7) counts charging theft, misappropriation by fiduciary and misconduct in office. These superseding charges involve, among other things, allegations that the Defendant misappropriated to her own use certain gift cards, some of which were allegedly donated by two Baltimore City developers, including Mr. Lipscomb, and some of which were paid for by funds from the Baltimore City Housing Authority.

In response to the Defendant’s discovery request for evidence of other crimes, wrongs or acts pursuant to Md. Rule 4-263, the State Prosecutor indicated that such evidence was included within the materials provided to or examined by the Defendant previously. Evidence relating specifically to the financial disclosure forms at issue in the perjury case was included with the materials that the State Prosecutor made available and/or produced to Defendant. As a result, the Defendant cannot ascertain whether the State Prosecutor plans to introduce evidence relating to the financial disclosure forms in connection with this Theft trial. In an abundance of caution, the Defendant is moving this Court to exclude any evidence of Defendant’s alleged failure to disclose gifts on those forms because, whether Defendant was required to disclose such gifts, and whether the Defendant committed perjury by failing to so disclose on her financial disclosure

forms, is not relevant to the crimes charged in this case and is not permitted pursuant to Maryland Rule 5-404(b).<sup>1</sup>

## II. ARGUMENT

### A. Legal Standard for Admission of Evidence of Other Crimes or Bad Acts

It is black letter law that evidence of a Defendant's prior criminal acts may not be introduced to prove her guilt of the offense for which she is on trial. *See Straughn v. State*, 297 Md. 329, 333, 465 A.2d 1166 (1983); *State v. Faulkner*, 314 Md. 630, 633, 552 A.2d 896 (1989). A Defendant's Sixth Amendment right to a fair trial generally compels the exclusion of evidence of other bad acts by the Defendant. *See Merzbacher v. State*, 346 Md. 391, 407, 697 A.2d 432 (1997).

Consistent with these principles, Maryland Rule 5-404(b) dictates that “[e]vidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith.” As the Court of Appeals explained in *Straughn*:

There are two reasons for the rule [excluding evidence of prior bad acts]. First, if a jury considers a Defendant's prior criminal activity, it may decide to convict and punish him for having a criminal disposition. Second, a jury might infer that because the Defendant has committed crimes in the past, he is more likely to have committed the crime for which he is being tried.

*Straughn*, 297 Md. at 333, 465 A.2d 1166. The Court of Appeals has stated that “there are few principles of American criminal jurisprudence more universally accepted than the rule that evidence which tends to show that the accused committed another crime

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<sup>1</sup> Obviously, Defendant is not suggesting that evidence related to gifts given to Defendant by Mr. Lipscomb is inadmissible, as that evidence may demonstrate that the gift cards were not stolen from Lipscomb as alleged in the Theft indictment. The distinct issue of evidence relating to the alleged perjury, i.e., the failure to disclose the gifts on the financial disclosure forms, is the evidence that is inadmissible pursuant to Rule 5-404(b), not the evidence that gifts were given to Defendant.

independent of that for which he is on trial, even one of the same type, is inadmissible.”<sup>2</sup> *State v. Taylor*, 347 Md. 363, 369, 701 A.2d 392 (1997)(quoting *Cross v. State*, 282 Md. 468, 473, 386 A.2d 757, 761 (1978)).

Although evidence of other bad acts by an accused is generally inadmissible, it may be introduced for some purpose other than to suggest that, because the accused is a person of criminal character, it is more probable that she committed the crime for which she is on trial. *See Streater v. State*, 352 Md. 800 at 806, 724 A.2d 111 (1998); *Taylor*, 347 Md. at 369, 701 A.2d 389. There are exceptions to the general rule excluding other bad acts evidence, as when the evidence tends to establish motive, intent, absence of mistake, a common scheme or plan embracing the commission of two or more crimes so related to each other that proof of one tends to establish the other, and the identity of the person charged with the commission of a crime on trial. *See Maryland Rule 5-404(b)*; *Ross v. State*, 276 Md. 664, 669-70, 350 A.2d 680, 684 (1976).

When a trial court determines whether to admit evidence of another bad act, pursuant to Maryland Rule 5-404(b), the proper test for admissibility has three prongs. *See State v. Faulkner*, 314 Md. 630, 634-635, 552 A.2d 896 (1989). First, the proponent of the other bad acts evidence must demonstrate that it has special relevance unrelated to the Defendant’s predisposition to commit a crime.<sup>2</sup> *See Streater*, 352 Md. at 808, 724 A.2d 111; *Harris v. State*, 324 Md. 632-34, 645 A.2d 22. In other words, the other bad acts evidence must meet one of the aforementioned exceptions to Rule 5-404(b). Second, the trial court must determine whether the State has shown by clear and convincing

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<sup>2</sup> This first determination of whether the evidence fits within a legitimate exception to the rule of presumptive exclusion is a legal determination. *See State v. Faulkner*, 314 Md. 630, 634-35, 552 A.2d 896 (1989).

evidence that the Defendant actually committed the other bad acts.<sup>3</sup> *See id.* at 809, 724 A.2d 111; *Ayers*, 335 Md. at 632-34, 645 A.2d 22. Third, the proponent of the evidence must demonstrate that the probative value of the bad acts evidence outweighs any undue prejudice likely to result from its admission.<sup>4</sup> *See Streater*, 352 Md. at 810, 724 A.2d 111; *Harris*, 324 Md. at 500-01, 597 A.2d 956.

These substantive and procedural protections are necessary to guard against the potential misuse of other bad acts evidence and to avoid the risk that the evidence will be used improperly by the jury against a Defendant. *See Streater*, 352 Md. at 807, 724 A.2d 111. “‘The evidence may not be used merely as a ruse to accomplish the prohibited objective’ of proving a person acted in conformity with his or her character.” *Id.* (citation omitted). The rule acknowledges the risk presented by a jury’s tendency to improperly infer from unrelated bad conduct that the Defendant committed the crime for which she is charged. *See Streater*, 352 Md. at 810, 724 A.2d 111; *Taylor*, 332 Md. at 334, 701 A.2d 389. Thus, the trial court must carefully examine the nature and purpose of the evidence sought to be introduced. *See Streater*, 352 Md. at 807-08, 724 A.2d 111; *Ayers*, 335 Md. at 632, 645 A.2d 2. In order to be admissible, therefore, the other bad acts evidence must be reasonably necessary to establish the elements of the charged offense. *See Streater*, 352 Md. at 810, 724 A.2d 111; *Faulkner*, 314 Md. at 642-43, 552 A.2d. 896.

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<sup>3</sup> This determination protects the Defendant against the risk that unsubstantiated charges of past misconduct will unduly influence the jury. *See Streater*, 352 Md. at 809, 724 A.2d 111; *Lodowski v. State*, 302 Md. 691, 728, 490 A.2d 1228 (1985), *rev’d on other grounds*, 307 Md. 233, 513 A.2d 299 (1986).

<sup>4</sup> Underlying this prong of the *Faulkner* test is the concern that other bad acts evidence is generally more prejudicial than probative. *See Streater*, 352 Md. at 810, 724 A.2d 111; *Taylor*, 347 Md. at 369, 701 A.2d 389. Prejudice may result from a jury’s inclination to convict the Defendant, not because it has found the Defendant guilty of the charged crime beyond a reasonable doubt, but because of the Defendant’s unsavory character or criminal disposition, as illustrated by the other bad acts evidence. *See Streater*, 352 Md. at 810, 724 A.2d 111; *Taylor*, 347 Md. at 369, 701 A.2d 389.

**B. Evidence Relating to Alleged Perjury Related Financial Disclosure Forms Does Not Meet Any Exception to Rule 5-404(b)**

The exceptions to Rule 5-404(b) do not apply in this case to any evidence related to the financial disclosure forms at issue in the Perjury Indictment. As stated above, the central issue in this case is whether Defendant misappropriated certain gift cards. Whether the Defendant reported any alleged gifts on her financial disclosure forms, and whether she was required to do so, does not satisfy any of the exceptions recognized for admitting evidence of other alleged bad acts. The alleged perjury related to the financial disclosure forms does not tend to establish motive, intent or the absence of mistake in connection with the alleged theft of the gift-cards, and identity is plainly not at issue in the pending Theft case. Moreover, the Perjury indictment does not allege that any of the gift cards should have been disclosed by the Defendant on the financial disclosure forms, and therefore, the two alleged crimes are completely separate and distinct.

Similarly, the “common plan” exception does not apply in this case. The Maryland Court of Appeals analyzed the “common plan” exception in *Cross v. State*, 282 Md. 468, 386 A.2d 757 (1978). The analysis contained therein shows that the “common plan” exception does not apply to show conduct in conformity to demonstrate a pattern of behavior. Rather, only when the relationship between the time, place, circumstances or parties involved in the prior occurrences and the current deed, “support the inference that there exists a single inseparable plan encompassing both” events, does this exception come into play. *Id.*, 282 Md. At 475-76, 386 A.2d at 762. Moreover, there must be “not merely a similarity in the results, but such a concurrence of common features that the various acts naturally to be explained as caused by a general plan of which they are the individual manifestations.” *Id.* In this case, there is no reasonable connection that can be

made between the alleged falsification of disclosure forms relating to specific gifts identified in the Perjury Indictment and the misappropriation of the gift cards identified in the Theft Indictment, nor are the two separate alleged acts by Defendant similar. Thus, admitting evidence of the financial disclosure forms would only be used by the State to argue that the Defendant acted in conformity with other bad conduct, the very reason such evidence is inadmissible.

As a result, any evidence relating to financial disclosure forms at issue in the Perjury Indictment is not admissible under the Rule 5-404(b) exceptions and the State Prosecutor should be precluded from introducing any such evidence.

**C. The Alleged Perjury Cannot Be Established By Clear and Convincing Evidence and Admission of Evidence of Alleged Perjury Would Cause Undue Prejudice to Defendant**

Although any evidence relating to the failure to disclose gifts on Defendant's Financial Disclosure Forms does not comply with any of the exceptions to Rule 5-404(b), it is also clear that any such evidence would not satisfy the other two prongs for admissibility articulated in *Streater*.

Whether the Defendant has committed perjury, as alleged in the Perjury Indictment, cannot be established by clear and convincing evidence in advance of the trial on the Theft Indictment. To do so would require a "minitrial" of the Perjury case in advance of the Theft charges. In addition to the factual issues in the perjury case that have yet to be proven by any quantum of proof, there are still legal questions that remain unresolved regarding whether the Defendant had a duty to report any of the gifts on her financial disclosure forms and the applicability of the Ethics Code, as discussed in Defendant's motion to dismiss the Perjury Indictment. The State Prosecutor chose to

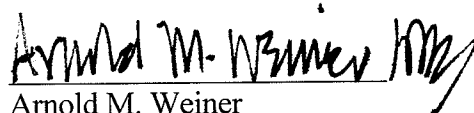
seek separate indictments for the Theft and Perjury charges. He should not be permitted to offer evidence of the Perjury case when he chose not to join the two

Further, there is no necessity for any evidence relating to the alleged failure to make disclosures on the financial disclosure forms in this trial, nor is there any probative value for that evidence. The principal issue in this trial is whether the Defendant knowingly and intentionally misappropriated the gift cards with the requisite criminal intent. Evidence regarding the alleged failure to report gifts on the Defendant's financial disclosure forms has absolutely no bearing on any of those issues. Rather, the only result from the introduction of such evidence is to confuse, mislead, and unfairly prejudice the jury. As stated above, there are several complicated preliminary legal and factual issues relating to whether the Defendant had a duty to disclose the gifts in the first instance, which in turn requires an analysis of the City Ethics Code. Because this evidence has no bearing on any of the issues in this case, there is no reason for the Court to go down this path.

### III. CONCLUSION

WHEREFORE, for the foregoing reasons, Defendant respectfully requests that its motion in limine be granted.

Respectfully submitted,



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Barry L. Gogel

Norman L. Smith

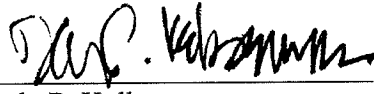
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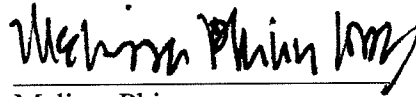
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**SHEILA ANN DIXON** :  
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**ORDER**

Upon consideration of Defendant, Sheila Ann Dixon’s Motion in Limine to Exclude Evidence and its accompanying Memorandum of Law in support thereof; any Opposition thereto; and any oral argument on the issue; it is on this \_\_\_\_\_ day of \_\_\_\_\_, 2009, hereby:

ORDERED that Plaintiff’s Motion in Limine is **GRANTED**; and it is further

ORDERED that the following evidence is excluded from mention, or introduction as evidence at trial:

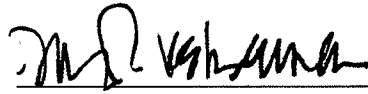
- a) Any financial disclosure forms filed by the Defendant; and,
- b) Any evidence of the Defendant’s alleged failure to disclose gifts on such financial disclosure forms;

\_\_\_\_\_  
Judge, Circuit Court for Baltimore City

**CERTIFICATE OF SERVICE**

I HEREBY certify that on this 23<sup>rd</sup> day of October, 2009, copies of the foregoing Motion in Limine were sent, via email and first class mail, postage prepaid, to:

Robert A. Rohrbaugh, State Prosecutor  
Thomas M. McDonough, Deputy State Prosecutor  
300 E. Joppa Road, Suite 410  
Towson, Maryland 21286



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