

STATE OF MARYLAND

*

IN THE CIRCUIT COURT

*

OF MARYLAND

v.

*

FOR

HELEN L. HOLTON

*

BALTIMORE CITY

Defendant

*

Case No.: 109007007

* * * * *

**MOTION FOR ORDER COMPELLING STATE TO IDENTIFY OTHER CRIMES,
WRONGS OR ACTS IT INTENDS TO ADMIT UNDER RULE 5-404(b)**

The Defendant, Helen L. Holton, by her attorneys, Joshua R. Treem, Richard C.B. Woods and Schulman, Treem, Kaminkow & Gilden, P.A., moves this Honorable Court for an order compelling the State to identify with particularity all crimes, wrongs or acts, other than those contained in the Indictment returned against her, that the State intends to use in any hearing or the trial in this case, and as reasons therefore states:

1. Rule 5-404(b) states:

(b) Other Crimes, Wrongs or Acts. Evidence of other crimes, wrongs or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, common scheme or plan, knowledge, identity or absence of mistake or accident.

2. When the State attempts to admit evidence of other bad acts for a reason other than proving the character of a defendant to show action in conformity therewith, the trial court must go through a three step process to determine the admissibility of the proffered evidence. First, the trial court must find the evidence of other bad acts is relevant on some basis other than mere propensity to commit the offense charged. Second, the court must find by clear and convincing evidence that the defendant actually participated in the alleged bad acts. Third, the trial court

must find that the probative value of the evidence substantially outweighs its potential for undue prejudice. *Whittlesey v. State*, 340 Md. 30, 665 A.2d 223 (1995), *cert. denied* 516 U.S. 1148.

3. To date, the State has provided Defendant Helen L. Holton almost ten thousand pages of documents in response to her discovery request. In addition, the State has invited counsel for Helen L. Holton to review an undisclosed number of documents housed at the State Prosecutor's Office. Counsel for Defendant Ronald H. Lipscomb has taken the State up on its invitation and reports the following:

(a) Upon arrival at the State Prosecutor's Office, counsel is shown into a conference room and the State brings in numerous boxes of documents of the State's selection. On top of each box is an evidence folder listing the documents contained in the box. Defense counsel are given copies of the evidence folders for only the boxes they have reviewed.

4. The State has not informed defense counsel of how many such boxes of documents are in the possession of the State, nor has the State provided defense counsel with copies of all the evidence folders the State has created. The State selects which boxes are made available to defense counsel on each inspection visit.

5. The documents in possession of the State include an unknown number of documents related to development projects such as Uplands, Strathdale, Orchard Ridge and others that are located within Baltimore City and which involved actions taken by the City Council of Baltimore. Only the State knows how many such documents are in its possession. And because the State alone decides which boxes will be made available for inspection on each visit, the State has the power to provide thousands of irrelevant documents before providing documents that may be crucial to the case.

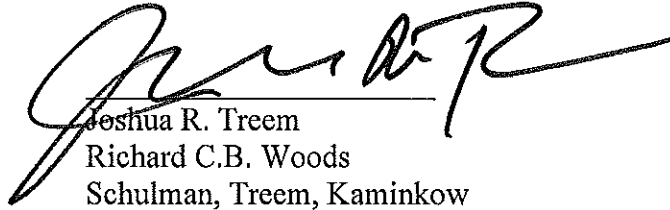
6. The three step process mandated before the admission of other bad acts under Rule 5-

404(b) requires time and effort on the part of the parties and the trial court. The State, having exclusive knowledge of and control over the documents in its possession and in complete control of which documents it will produce first and which last, is in a position of distinct advantage. Defendant Helen L. Holton must prepare to meet an unknown number of alleged bad acts evidenced or disproved by an unknown number of documents in an unknown number of boxes. The State has refused to provide particulars and has failed to provide copies of all the evidence folders on top of each box. The State has amassed an enormous haystack of potential evidence in which may or may not be hidden needles of evidence of other bad acts. Prior to commencing a review of untold thousands of pages of documents, the Defendant needs to know, at the very least, the nature and number of needles she is looking for.

7. If the State is required to identify the Rule 5-404(b) acts it intends to admit, the Defendant will know the nature and relevance of the documents it must copy and address to facilitate and inform the trial court's three-step process in determining the admissibility of each alleged bad act. In addition, the Defendant will be in a position to file in limine motions so the trial court can decide the evidentiary issues involved prior to selecting a jury. If the trial court is forced to deal with such evidence on an *ad hoc* basis during trial the resulting delays in the trial could be numerous and extensive. The potential of undue prejudice to the Defendant in terms of her ability to prepare her defense would be great.

WHEREFORE, to prevent unfair surprise, undue prejudice and extensive delays during the trial, Helen L. Holton, Defendant, prays this Honorable Court to order the State to identify all Rule 5-404(b) other crimes, wrongs or acts it intends to admit at any hearing or the trial of this case.

Respectfully Submitted,



Joshua R. Treem
Richard C.B. Woods
Schulman, Treem, Kaminkow
& Gilden, P.A.
401 E. Pratt Street, Suite 1800
Baltimore, MD 21201
(410) 332-0850

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd day of March, 2009, a copy of the foregoing *Motion for Order Compelling State To Identify Other Crimes, Wrongs or Acts It Intends to Admit Under Rule 5-404(b)* was sent via first class mail, postage paid to:

Robert Rohrbaugh, State Prosecutor
Thomas M. McDonough, Deputy State Prosecutor
Hampton Plaza, Suite 410,
300 East Joppa Road,
Towson, Maryland 21286-3152
Attorneys for the State

Gerard Martin, Esquire
Steven Wrobel, Esquire
25 South Charles Street, Suite 2115
Baltimore, MD 21201-3305
Attorneys for Ronald Lipscomb

Arnold Weiner, Esquire
2002 Clipper Park Road, Suite 108,
Baltimore, MD 21211

and

Dale Kelberman, Esquire
10 Light Street
Baltimore, MD 21202

Attorneys for Mayor Sheila Dixon



Joshua R. Treem