

IN THE CIRCUIT COURT FOR BALTIMORE CITY, MARYLAND

----- 2009 NOV -5 - AM - 9X20  
STATE OF MARYLAND :

v. :  
BALTIMORE CITY  
CRIMINAL DIVISION Case No. 109210015

SHEILA ANN DIXON :  
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**DEFENDANT'S OPPOSITION TO STATE'S MOTION IN LIMINE  
TO PRECLUDE USE OF DOCUMENTS**

Defendant, Sheila Ann Dixon, by her undersigned attorneys, hereby oppose the State's Motion in Limine to preclude use of certain documents showing the Defendant's character traits to be in contrast to the charges brought against her.

In Maryland, it is "well established doctrine that a criminal defendant may always offer evidence of his or her good character for a trait relevant to the crime charged as circumstantial evidence of innocence." *Sahin v. State*, 337 Md. 304, 310 (1995) (citing 1 McCormick on Evidence § 191, at 812-14 (John W. Strong ed., 4th ed. 1992)). This rule has been fully articulated by the State legislature:

Where character evidence is otherwise relevant to the proceeding, no person offered as a character witness who has an adequate basis for forming an opinion as to another person's character shall hereafter be excluded from giving evidence based on personal opinion to prove character, either in person or by deposition, in any suit, action or proceeding, civil or criminal, in any court or before any judge, or jury of the State.

MD. CODE ANN., CTS & JUD. PROC., § 9-115.

So long as character evidence is "confined to an attribute or trait, the existence or non-existence of which would be involved in the non-commission or commission of the particular crime charged, . . . it should, when proved, be taken into consideration in connection with all the other evidence and afforded such weight under all the facts and circumstances of the case as it

merits in the judgment of the jury.” *Hallengren v. State*, 14 Md. App. 43, 49 (1972). *See also Braxton v. State*, 11 Md. App. 435, 439 (1971) (“a defendant may always offer evidence of his good character and to prove that his character was such as to make it unlikely that he would have committed the act charged against him”). Furthermore, “evidence of good character is not merely collateral evidence, but may in itself raise such a doubt as to require the acquittal of the defendant “ *Hallengren*, 14 Md. App. at 49.

Without authority or analysis, the State simply repeats, mantra-like, the charge that all the documents in question are “wholly irrelevant to the charges in the indictment.” But the relevance of such evidence is not in its direct connection to the specific charges. Such evidence is relevant if it serves to provide part of the basis for the testimony of character traits of the defendant that are inconsistent with the commission of the crimes charged. See MD. CODE ANN., CTS & JUD. PROC., § 9-115. Thus, for example, “[i]t is irrelevant to show the defendant's reputation for honesty and integrity in a prosecution for adultery; or for truth and veracity, or peace and quietude, in a prosecution for statutory rape; for good military conduct in a rape prosecution; for truth and veracity in a robbery prosecution; or for honesty and integrity, in a murder prosecution; for morality and sobriety in a prosecution for a false bank report entry; or for reliability in business in a prosecution for the malicious destruction of property. Nor would a defendant's reputation as a peaceful or law abiding citizen be a relevant character trait in a case involving a charge of incest.” *Hallengren v. State*, 14 Md. App. at 52. On the other hand, evidence of a defendant’s “good character, honesty and trustworthiness” is admissible when defendant is charged with armed robbery. *Braxton v. State*, 11 Md. App. 935 (1971).

Here, the State has specifically charged the defendant with counts of theft and misappropriation of gift cards from Ronald Lipscomb and Patrick Turner, who intended that they

be distributed to “needy and underprivileged families in Baltimore... .” Indictment at 9, 10, 11, 12, 13 and 14. The defense intends to counter these allegations with evidence relevant to the specific character traits implicated by these charges against her. Specifically, the defense intends to offer evidence of the defendant’s good character for honesty, generosity and commitment to needy individuals. See Defendant’s Proposed Jury Instruction No. 28. The admissibility of such evidence, and the testimony of sponsoring witnesses, is plain.

While the State opposes this evidence for the asserted reason of “prevent[ing] this criminal trial from being turned by the defendant into a referendum on her performance as Mayor,” the purpose for offering such evidence is altogether different. It is to show that the Mayor is a person whose character is inconsistent with the charges levied against her. As the New Jersey Court stated, in approving character evidence in a case involving charges of misconduct in office by municipal employees: “general characteristics which tend to indicate a reputation contrary to the acts charged and which may tend to indicate an unlikelihood of their commission by the defendants . . . are indirectly related to the manner in which the defendants carry out their public duties as it goes to whether they would be likely to act in the public interest, as public officers, as opposed to any other interest. *State v. Costa*, 139 N.J. Super. 588, 592-93 (Law Div. 1976).

**A. Evidence of the Defendant’s History of Performing Charitable Acts and of Her Donations to Charitable Causes is Admissible to Show Character Traits Inconsistent with Those Involved in the Commission of Crimes Such as Theft and Fraudulent Misappropriation by a Fiduciary**

Again, the Defendant is charged with theft of gift cards from Mr. Lipscomb and Turner that were allegedly intended for the benefit of others. Testimony showing character traits of

honesty,<sup>1</sup> trustworthiness, generosity and community service, are all admissible as circumstantial evidence of the Defendant's innocence, regardless of any connection with the specific criminal acts charged. Testimony and documents showing a history of tithes to her church and giving to annual Christmas and other gift drives at times before, during and after these charges were brought, and in amounts far in excess of the amounts she is charged with stealing, are admissible as specific acts that would demonstrate a witness's basis of knowledge leading to an independent character opinion. *See Taylor v. State*, 28 Md. App. 560, 569 (1975) (character witness not precluded from speaking of specific acts that enlivened his opinion). *See also* MD CTS. & JUD. PROC. CODE ANN., § 9-115 (allowing the introduction of character evidence based on personal knowledge and need not be confined to the accused's reputation in the community). Furthermore, the character traits demonstrated by the Defendant's commitment to a weekly tithe and giving to annual gift drives are inconsistent with those leading to the abuse of any fiduciary duty toward property meant for distribution to the poor.

**B. Testimony and Documentary Evidence Showing the Defendant's Use of Her Office for the Benefit of the Underprivileged Is Relevant Evidence of Character Traits Inconsistent with the Charge That She Committed Misconduct in Office**

The State's Motion in Limine provides no authority or analysis to support its bald conclusion: "how the defendant may otherwise perform her duties as Mayor has absolutely no relevance to whether proof at trial establishes that she violated the law as charged in the indictment." States' Motion at ¶ 12. But, general character evidence is certainly admissible to

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<sup>1</sup> The Defendant is charged here with theft by deception, a crime implicating her honesty. The term "honesty" generally is given broad meaning. *See, e.g., State v. Costa*, 139 N.J. Super. 588, 592, 462-463 (Law Div. 1976) (citing *State v. Micci*, 46 N.J. Super. 454, 462 (App. Div. 1957)) ("The epithet "honest" implies a sense of general probity which is the antithesis of criminal tendency or conduct..."); *see also Wiggins v. State*, 778 S.W.2d 877, 889 (Tex. App. 1989) (an honest person is defined as one who "will not lie, cheat, or steal; truthful; trustworthy").

show character inconsistent with abuse of office. MD. CODE ANN., CTS. & JUD. PROC., § 9-115; *see State v. Costa*, 139 N.J. Super. at 592-93.

Here, the State has charged the Defendant specifically with having corruptly misused her public office to deprive Baltimore's needy of a handful of gift cards. Testimony and documentary evidence that she used her office for the *benefit* of similarly situated citizens are relevant to support the conclusion and opinions that she possesses character traits inconsistent with the notion that she would victimize such persons, and such evidence is unquestionably admissible.

**C. Defendant's Hearsay Is Not Implicated By Documents Produced By The Baltimore City Government**

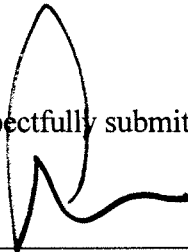
The Court need not be concerned that many of the business documents that the Defendant intends to offer in order to demonstrate her administration's steadfast and exemplary commitment to the poor and needy in Baltimore involve potential hearsay. Many contain no statement from the Defendant, and to the extent that they do, such can be redacted for trial. For example, the unprecedented "Baltimore 10-Yr. Plan to End Homelessness," about which the State expresses concern, is a 64-page document containing facts, statistics and plans regarding the homeless in Baltimore that was compiled by a workgroup of 82 civic and community leaders, which was headed by a Civic Leadership Council that was co-chaired by Sister Helen Amos. The only statement attributed to Mayor Dixon in all of those pages is a single page introduction from her. The introduction is not inadmissible as hearsay because it is not being offered for the truth of the matter asserted, but as a foundation for the character testimony; and, character testimony is inevitably based, in whole or in part, on hearsay. In any event, it could easily be redacted if it were necessary to do so.

Sister Helen Amos, however, can and is expected to testify about the importance of this project to Mayor Dixon, to Mayor Dixon's role in getting the project under way and to the resources that Mayor Dixon directed to these efforts to help the poor and needy once she took office. Similarly, quotes of Mayor Dixon that appear in any of the press releases offered by the Defendant could be redacted to avoid any hearsay argument that the State may make.

**CONCLUSION**

For the foregoing reasons, the State's Motion to Preclude the Use of Documents should be denied.

Respectfully submitted,



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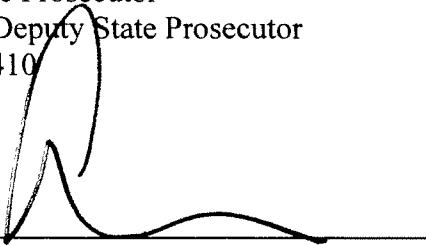
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**CERTIFICATE OF SERVICE**

I HEREBY certify that on this 5th day of November , 2009, copies of the foregoing Defendant's Opposition To State's Motion In Limine To Preclude Use Of Documents were hand delivered, to:

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