

IN THE CIRCUIT COURT FOR BALTIMORE CITY, MARYLAND

STATE OF MARYLAND

v.

SHEILA ANN DIXON

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CIRCUIT COURT
BALTIMORE CITY
CRIMINAL DIVISION
Case No. 109210015

**STATE'S RESPONSE TO THE DEFENDANT'S MOTION FOR EXTENSION
OF TIME TO FILE PRETRIAL MOTIONS**

Comes now the State of Maryland, by and through counsel, and responds to the Defendant's Motion for an Extension of Time to File Pretrial Motions as follows:

Introduction

At a scheduling conference in early August, 2009, all parties agreed to a schedule for filing motions, responses, and a hearing. That schedule was as follows:

- a. Defendant's motions filed by 9/8/09;
- b. State's responses by 9/18/09;
- c. Defendant's Replies by 9/25/09;
- d. Hearing on motions on 9/30/09 to accommodate;
- e. Trial on November 9, 2009

In an effort to accommodate the Defendant and to ensure that trial could be held as scheduled, the State agreed to respond to the Defendant's motions (which were expected, and have proved to be, lengthy) within 10 days, instead of 15 days permitted by the Maryland Rule 4-252.

The defendant has filed a Motion to Compel Discovery seeking copies of any grand jury subpoenas issued after the return of the indictment in case number 109009009 by the grand jury in January, 2009. The Court has scheduled a hearing on that motion on September 16, 2009.

The defendant now files a motion for an extension of time, complaining yet again that the State has refused to provide discovery. Contrary to the Defendant's contention, the State has provided the Defendant with far more discovery than the Maryland Rules require. Using such voluntary disclosures, the Defendant continues to create imaginative issues which may appear, at first blush, to have merit, but which lack real substance.

Her request for an extension of time is based on two unwarranted assumptions:

1. That the motion to compel discovery will be granted and;
2. That alleged lack of discovery prevents her from filing a motion to dismiss.

For the reasons set forth below, the State objects to the requested extension of time.

Argument

With regard to the first assumption, the defendant has totally failed to explain why she is entitled to information regarding grand jury subpoenas which were withdrawn before any documents or testimony was produced. Her only arguments are: 1) that because the State has voluntarily produced copies of grand jury subpoenas where there had been a discoverable response, the State is required to produce all grand jury subpoenas which were ever issued, regardless of whether there had been a response, a position for which she cites no authority whatsoever, and; 2) that the discovery of such subpoenas is necessary so that the defendant can file a motion.

In the defendant's earlier memorandum (which was inappropriately filed without sealing in direct violation of the Maryland Rules¹), she cited *United States v. Zarattini*, 552 F.2d 753 (7th Cir. 1977) for the position that it is not an abuse of the grand jury to continue an investigation even after an indictment has been returned. As is obvious from the fact that new indictments were returned, once this Court had dismissed certain counts of indictment 109009009 and Mr. Lipscomb agreed to cooperate, the grand jury was focused on returning new charging documents. It was permitted, if it chose to do so, to issue subpoenas even if the resulting evidence could be useful in trying the charges remaining in the original indictment. Since a *nolle prosequi* has been entered in the original case, there can be no good faith argument that any information gathered by the grand jury in July, 2009 can or will be used at a trial of case number 109009009.

Nevertheless, in this instance, the grand jury subpoenas in question were withdrawn to avoid just the type of issue which the Defendant seems intent on manufacturing. Having withdrawn the subpoenas, it is respectfully submitted that the Defendant should, at bare minimum, proffer how and why such information is relevant to any good faith motion related to the new pending indictments. To date, the Defendant has failed to make such a proffer and has offered no particularized need for the disclosure sought.²

Maryland Rule 4-252 provides that "...when discovery discloses the basis for a motion, the motion may be filed within five days after the discovery is furnished." To the extent that any motion contemplated by the defendant is based upon the issuance of such grand jury subpoenas, she has apparently had a basis for doing so since the instant indictment was returned in late July, 2009. In fact, the defendant filed a motion to quash

¹ Maryland Rule 4-642

² See Maryland Rule 4-642 and *In Re Criminal Investigation No. 437*, 316 Md. 66, 557 A.2d 235 (1989)

subpoenas on precisely such grounds (attached hereto as Exhibit I) in case number 109009009.

Clearly, the defendant has had in her possession, since at least July 7, 2009, copies of subpoenas she now seeks to compel the State to produce, **since copies of three such subpoenas were attached to her motion in that case.** If the existence of such subpoenas is the basis for any motions contemplated by the defendant **in this case**, there is absolutely no reason why such motions should not have been filed by September 8, 2009 in accordance with the schedule agreed to by the Court and all counsel, and heard at the scheduled September 30 hearing.

Not only does the defendant apparently seek to file such motions well after they could and should have been filed, she now seeks more time than the Rules permit to do so. By not filing motions that should have been filed by September 8, 2009 under the pretext that she has no basis for the motions without the discovery she seeks to compel, she has endangered the viability of the scheduled trial date.

Accepting arguendo defendant's pretext that any motions filed could not have been filed as scheduled, even without the extension she seeks, any motions filed after the September 16 hearing on the defendant's Motion to Compel could not reasonably be responded to by the State and heard by the Court on the scheduled hearing date of September 30.

September 16 is a Wednesday. Because weekends are not counted in computing a time period of 7 days or less³, the defendant would presumably have until Wednesday, September 23 to file any such motions. The extension requested would extend that time to Friday, September 25. If the State responded in the 15 days allowed under Rule 4-252,

³ Maryland Rule 1-203(a)

its response would be due on October 10.⁴ This leaves a very narrow window for the Court to consider the pleadings, hold a hearing, and issue a ruling before the scheduled trial date.

Conclusion

The State has provided the discovery that the defendant is entitled to and much, much more. Since the Defendant has continually failed to demonstrate why the requested information is needed to file a good faith motion in the pending actions, the Defendant's Motion for an Extension of Time should be denied.

Even in the unlikely event that this court grants the defendant's motion to compel discovery, the defendant has been aware of her claimed basis for such motions since at least July 7, 2009, before this indictment was even returned by the grand jury. Any claim that the basis for motions to be filed was unknown is simply a pretext, since defendant has known about grand jury subpoenas issued between the return of the original indictment and the return of the new indictments for months. Under these circumstances, a further extension of time is entirely unwarranted.

Assuming *arguendo* and *in futuro* that the basis for any motions that may be filed following the hearing on her Motion to Compel was not apparent and known to the defendant well before the agreed due date of September 8, 2009, the State objects to the extension of time requested by the defendant because granting that extension is likely to

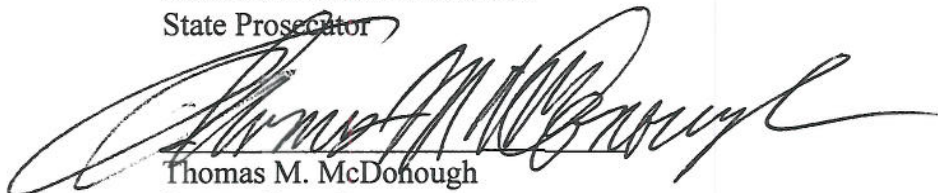
⁴ Having already significantly cut its permitted response time once to accommodate the defendant, the State is not inclined to again voluntarily restrict its time to respond to what we expect will be (if filed), extensive motions by the defense. By agreeing to file its response within 10 days, the State would restrict its response time to fewer working days than the defendant would have to file.

reduce the 15 day period of time permitted for the State's response under Rule 4-252 or result in the rescheduling of the currently scheduled trial date of November 9, 2009.

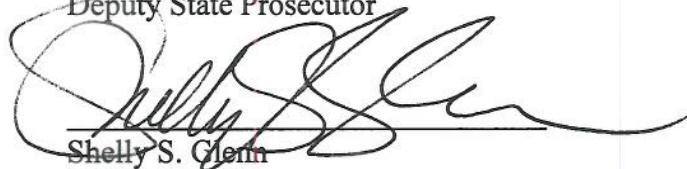
WHEREFORE, for these reasons and others which will be set forth at any hearing, the State of Maryland respectfully moves this Honorable Court to deny the Motion for Extension of Time.

Respectfully submitted,

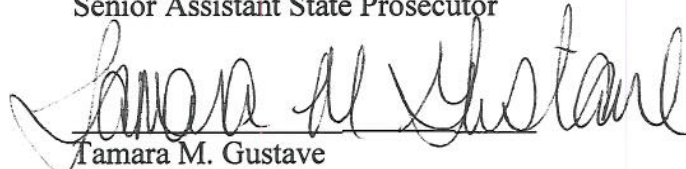
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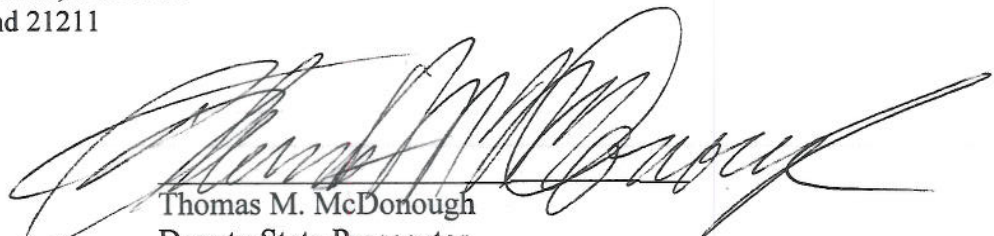
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14TH day of September, 2009 a copy of the foregoing: **STATE'S RESPONSE TO THE MOTION FOR EXTENSION OF TIME** was mailed, postage prepaid, to:

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