



Office of the State's Attorney for Baltimore City

Introduction

- ▣ Michael Schatzow, Chief Deputy State's Attorney
- ▣ Antonio Gioia, Chief Counsel to the State's Attorney
- ▣ Janice Bledsoe, Deputy State's Attorney for Criminal intelligence

Introduction (cont.)

- ▣ The depraved conduct of the convicted GTTF police officers, and others associated with them in their criminal ventures, has shocked Baltimore and the nation, disgusted those who work tirelessly to fairly and impartially enforce the criminal law, and has required a massive undertaking by the Baltimore City State's Attorney's Office (BCSAO) to attempt to provide justice to the victims of their conduct.

Introduction (cont.)

- ▣ Today, we will address three areas of BCSAO activities taken in response to the GTTF debacle, and in support of greater justice through transparency:
 - ▣ 1. Giglio forms and IAD file discovery;
 - ▣ 2. Undoing GTTF tainted convictions;
 - ▣ 3. A new vacatur statute to ease the process for undoing unjust convictions.

- ▣ Of course, we will be happy to entertain your questions throughout our presentation.

Gun Trace Task Force

- ▣ In 2014, having executed a search and seizure warrant in his official capacity as a Baltimore City Police Officer on a birdseed store, Detective Rayam noticed the shop had a large amount of cash. Later on the same day, he contacted two friends, gave them tactical police vests, and told them to go inside the birdseed shop and take the money. Twelve Thousand Dollars were stolen from the store which was split between Rayam and his friends.

Gun Trace Task Force

- ▣ In December 2012, Sergeant Wayne Jenkins and a bail bondsman named Ronald Stepp were traveling together to Delaware State Park Casino. During the trip, Jenkins and Stepp agreed that Jenkins would supply him drugs that he recovered as a police officer and Stepp would sell the product. Over the years, the relationship expanded to include Stepp ordering supplies for Jenkins such as machetes and grappling hooks, and Jenkins consigning to Stepp drugs that were stolen from the CVS pharmacy that burned down in 2015.



BCSAO ACTIONS

As a result of the Gun Trace Task Force indictments, the BCSAO took a number of actions to address the issues presented by the officer's behaviors:

- Through our case management system (CMS), we identified all cases involving the indicted officers, placed the officer's names in our notification system and began a review all active cases;
- We required all ASAs to implement a Giglio checklist to identify impeachable material for every police officer the BCSAO intended to call as a witness;
- We continued to expand the disclosure and accessibility of Internal Affairs files to the defense;

BCSAO ACTIONS

- We work with BPD to notify us of current information concerning potential impeachment materials
- We hired 6 part time law clerks and pulled four trial attorneys together to review all cases involving the officers; and
- We built a program in our CMS system to assist in the review process and to track the cases.

Giglio Checklist

In April 2018, the BCSAO required each ASA to ask each law enforcement officer who will be called as a witness to answer questions that would reveal potential impeachment material. The questionnaire was based on a best practices review and modeled on the local United State's Attorney's Office Giglio checklist. If an officer refuses to answer the questions or answers a question that relates to his integrity, the BCSAO requests the officer's IA file in order to determine if there is impeachable material in the file. An ASA in the Public Trust and Police Integrity Unit reviews the file and takes appropriate action.

Giglio Checklist Cont.

The implementation of the Giglio checklist has provided more information to the BCSAO concerning potential impeachable material. To date, the BCSAO has reviewed between 500-700 case books as a result of information provided to us from the checklist. Each casebook concerns a single incident, and may include more than one officer.

Internal Affairs Files

History

Location: All Internal Affairs files are located behind secured doors in a BPD office. The files are organized by file number and are in paper form. The BCSAO does not have access to Internal Affairs files unless requested through and provided by BPD. The files are kept in a secured area to which BCSAO does not have access.

Internal Affairs Files

History

The BCSAO had access to IA files if and only if BPD granted access. BPD did not proactively share information with the BCSAO about an officer who had issues relating to truthfulness or other potentially relevant issues. Under the previous BCSAO administration, files became slightly more accessible but again BPD often did not inform the BCSAO of officers that had issues.

Internal Affairs Files

Current Status

In 2017, the BCSAO met with the BPD Legal Department to discuss access to Internal Affairs files and lack of notice about potential impeachment evidence. At the meeting it was decided that BPD would give access to Internal Affairs files to the BCSAO through BPD legal, and share information with the BCSAO concerning alleged conduct that may relate to an officer's integrity.

Internal Affairs Files

Current Status

In March 2018, the BCSAO and the City Solicitor, Judge Andre Davis, reached an agreement in which the BCSAO would have unlimited access to Internal Affairs files and would be allowed to share the records with defense counsel pursuant to a Case Related Use Agreement. The BCSAO has implemented an unrestricted review policy with defense counsel concerning IA records. Any IA record concerning any police officer involved in a case may be reviewed by defense counsel at the BCSAO subject to signing the Case Related Use Agreement. BCSAO has reviewed over 4,000 IA files.

Post Indictment GTTF

Active Cases

- Through our CMS, we immediately identified all active cases involving the indicted officers. Chief Legal Counsel Tony Gioia started reviewing each active case to determine if the case was able to proceed given the involvement of the officers. If the case could not proceed, the case was dismissed.
- Additionally, through our CMS, we entered the names of the indicted officers into our notification system which identified and alerted the Assistant States Attorneys of any case involving the officers. As additional information was provided to us, additional officers were added to the notification system.

Case Review

STEPS IN THE REVIEW PROCESS:

There are multiple steps that need to be taken to complete a review of a case:

1. Obtain a copy of the Statement of Probable Cause (SOPC)
2. Based on the SOPC , determine the role of the tainted officers.
3. What evidence was the officer involved in collecting, procuring, recovering and/or submitting?
 - Affiant on a search and seizure warrant?
 - Recovering officer on Controlled Dangerous Substance(CDS)?
 - Submitting officers on CDS?
 - Recording interview of defendant or witness?
 - Recover a firearm?
 - Observed a defendant throw contraband?
4. Review the evidence that the tainted officer was associated with and determine if the case can go forward without the officer's testimony.

Initial Action for Closed GTTF Cases

Using the results from our CMS, the BCSAO under the guidance of Chief Counsel Tony Gioia reviewed each closed case and if the case was not viable without the testimony of a tainted officer, a Joint Motion to Vacate Judgement would be filed with the court. The Office of the Public Defender (OPD) joined in the motion.

After mixed success in court, the single motion evolved into two motions which are currently used:

1. Motion to Extend Time to File a Motion to Withdraw a Guilty Plea
2. Motion to Withdraw Guilty Plea.

Joint Motion to Extend Time

IN THE CIRCUIT COURT FOR BALTIMORE CITY

STATE OF MARYLAND *
V. *
SHAUNE BERRY * CASE NO. 111056039
DEFENDANT *
* * * * * * * * * * *

JOINT MOTION TO EXTEND TIME TO FILE MOTION TO WITHDRAW PLEA OF GUILTY

To the Honorable Charles Peters, Judge in Charge, Circuit Court for Baltimore City:

Now come the State, by Marilyn J. Mosby, State's Attorney for Baltimore City and Janice Bledsoe, Baltimore City State's Attorney's Office, and Defendant, James Butler, by his attorney in the Office of the Public Defender, and respectfully represent the following:

1. That on February 10, 2010, Defendant, was arrested by members of the Baltimore Police Department following an encounter with and search of 1256 Kimmore Avenue by Detectives Ryan Guinn, Thomas Wilson and Momodu Gondo. Suspected controlled dangerous substances seized during the search of the residence were submitted to the Evidence Control Unit of the Baltimore Police Department by Ryan Guinn and recovered by Momodu Gondo.
2. On September 20, 2011, Defendant appeared before this Honorable Court and entered a plea of guilty to count two of case number 111056039, charging Possession with Intent to Distribute a controlled dangerous substance: to wit: Heroin in violation of section 5-602 of the Criminal Law Article of the Maryland Code. Following acceptance of the guilty plea, pursuant to a plea agreement, the Court imposed a three year sentence with no probation.
3. On March 1, 2017, federal agents arrested seven members of the Baltimore Police Department's Gun Trace Task Force, including Detective Momodu Gondo, for alleged conduct undertaken under color of authority as a sworn officer of the Baltimore Police Department. Officer Gondo, was charged with engaging in a racketeering conspiracy and racketeering offenses, including robbery, extortion, and overtime fraud. Said alleged conduct occurred during the time period set forth in the federal indictment.

4. That on October 12, 2017, Officer Gondo was pled guilty in the United States District Court for the District of Maryland, Northern Division, to conspiracy to engage in racketeering activity in violation of 18 U.S.C. 1962(d) and related counts. Detective Gondo is awaiting sentencing.
5. That Maryland Rule 1-204(a) provides in pertinent part, "When these rules or an order of court require or allow an act to be done at or within a specified time, the court, on motion of any party and for cause shown, may (3) on motion filed after the expiration of the specified period, permit the act to be done if the failure to act was the result of excusable neglect."
6. That both the State and the Defense first became aware of the alleged misconduct set forth in the federal indictment on March 1, 2017. That the failure of counsel for Defendant to timely file a motion to withdraw Defendant's plea of guilty pursuant to Maryland Rule 4-242(h) readily satisfies the "excusable neglect" standard under Maryland Rule 1-204(a)(3) as the alleged misconduct occurred well after the time prescribed in which to file said motion.

WHEREFORE, the parties joint pray,

- A. That this Honorable Court pass an order pursuant to Maryland Rule 4-204(a)(3) permitting Defendant to extend time to file a motion to withdraw her plea of guilty pursuant to Maryland Rule 4-242(h).
- B. And for such other and further relief as the law may require.

Respectfully submitted,

Marilyn J. Mosby
State's Attorney for Baltimore City

Janice Bledsoe
Office of the State's Attorney
120 E. Baltimore Street, 9th floor
Baltimore, Maryland 21202
443-984-6012

Deb Levi
Office of the Public Defender
201 St. Paul Place
Baltimore, MD 21202
410.333.4900
Counsel for Defendant

Joint Motion to Withdraw Guilty Plea

IN THE CIRCUIT COURT FOR BALTIMORE CITY

STATE OF MARYLAND *
V. *
SHAUNE BERRY * CASE NO. 111056039
DEFENDANT *
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1. That on February 10, 2010, Defendant, was arrested by members of the Baltimore Police Department following an encounter with and search of 1256 Kitmore Avenue by Detectives Ryan Guinn, Thomas Wilson and Momodu Gondo. Suspected controlled dangerous substances seized during the search of the residence were submitted to the Evidence Control Unit of the Baltimore Police Department by Ryan Guinn and recovered by Momodu Gondo.
2. On September 20, 2011, Defendant appeared before this Honorable Court and entered a plea of guilty to count two of case number 111056039, charging Possession with Intent to Distribute a controlled dangerous substance, to wit: Heroin in violation of section 5-602 of the Criminal Law Article of the Maryland Code. Following acceptance of the guilty plea, pursuant to a plea agreement, the Court imposed a three year sentence with no probation.
3. On March 1, 2017, federal agents arrested seven members of the Baltimore Police Department's Gun Trace Task Force, including Detective Momodu Gondo, for alleged conduct undertaken under color of authority as a sworn officer of the Baltimore Police Department. Officer Gondo was charged with engaging in a racketeering conspiracy and racketeering offenses, including robbery, extortion, and overtime fraud. Said alleged conduct occurred during the time period set forth in the federal indictment.
4. That on October 12, 2017, Officer Gondo, was pled guilty in the United

States District Court for the District of Maryland, Northern Division, to conspiracy to engage in racketeering activity in violation of 18 U.S.C. 1962(d) and related counts. Detective Gondo is awaiting sentencing.

5. That the parties stipulate that in light of the facts set forth in paragraph three, it serves the interest of justice to permit Defendant to withdraw his guilty plea entered on September 20, 2011.

Respectfully submitted,

Marilyn J. Mosby
State's Attorney for Baltimore City

Janice Bledsoe
Office of the State's Attorney
120 E. Baltimore Street, 9th floor
Baltimore, Maryland 21202
443-984-6012

Deb Levi
Office of the Public Defender
201 St. Paul Place
Baltimore, MD 21202
410.333.4900
Counsel for Defendant

Statement of Authorities

Maryland Rule 4-242(h)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Petition was mailed/hand-delivered to: Office of the State's Attorney for Baltimore City at 120 E. Baltimore St., Baltimore, Maryland 21202, on this _____ day of January 2019.

Deb Levi

Closed GTTF cases

In September 2018, the BCSAO was able to hire 6 part time law clerks to review cases involving the GTTF officers. The BCSAO created a program in our CMS to assist in reviewing the cases. Part of the program is an officer checklist which is completed by both the law clerks and the ASA. The law clerks gather all documents (SOPC, drug analysis, search and seizure warrants) necessary for an ASA to make a decision about whether the case is viable.

The BCSAO has transferred four attorneys from trial units to review the cases. If the case is deemed “viable” by the ASA, no further action is taken. If the tainted officer is a necessary witness to the case and the case cannot be proven without the tainted officer, the BCSAO prepares the two motions, has the OPD sign the motions and return the motions to BCSAO for filing with the court.

Difficulties with Review and filing of Closed Cases

- Increase in volume of cases as the pool of tainted officers increased which drained the resources of the BCSAO;
- Obtaining documents from cases going back to 2008;
- Inconsistent decisions by judges. Some judges granted the motions. Some judges denied the motions, in essence concluding that there was no legal process available for undoing the conviction.
- Unavailability to pursue legal remedy when a judge denied the joint motions.



Difficulties with Review and filing of Closed Cases

1. Increase in Volume: As more information about the officers became available to the BCSAO, the caseload increased but the resources to review the cases did not.
2. Older documents: As the dates changed, the ability to collect the documents for review became more difficult. For example, finding the search and seizure warrant from a 2009 case in order to determine if the tainted officer was the affiant on the warrant.
3. Inconsistent decisions by the court: The BCSAO has filed motions in approximately 152 cases. The courts have denied the motions in about 31 cases.
4. No clearly approved procedural vehicle to seek to undo the tainted convictions, and no prosecutorial ability to vacate the judgements: If a judge denied the joint motions, the BCSAO had no authority to vacate the judgement. Yet for cases not concluded, the prosecutor has the unquestioned authority to terminate the prosecution.

Current Review Data*

Total cases subject to review: 2171

Total review-completed cases: 425

Total cases in which motions filed: 151

Total cases in which motions granted: 123

Total cases in which motions denied: 28

Total cases in which motions ready to be filed: 73

Total viable cases: 180

*All numbers are approximate

Vacatur statute

BCSAO has proposed a vacatur statute that will be introduced in this session of the legislature.

The proposed legislation is designed to make clear that prosecutors have the authority to request, and the courts have the power to grant relief, where an existing conviction should not be allowed to stand,

Reasons for granting the relief would include (1) that the underlying conduct is no longer a crime; (2) newly discovered evidence creates a substantial or significant possibility that the trier of fact would have been affected, and the evidence is discovered too late for a motion under current statutes and rules; and (3) fairness and justice require that the conviction be undone.

Conclusion

The criminal justice system in Baltimore will not be trusted by the community unless it is perceived as fair and just.

That perception will only come from unceasing, transparent efforts from all those involved: the police, prosecutors, defense attorneys, judges, and probation, parole and corrections officers.

The BCSAO has undertaken major efforts to improve justice, in the interest of transparency and to respond to the disgusting conduct of the convicted GTTF officers. When we could act on our own, such as in dropping ongoing cases involving tainted GTTF officers, we did so; When we could only act in concert with others, such as increasing transparency in the discovery of BPD Officers' IAD files with the cooperation of the City Solicitor and BPD legal, we did so;

Conclusion Cont.

And when there was no clear path to undoing convictions based on the conduct of tainted officers, the BCSAO worked creatively to establish one that has worked more often than not in the courts, and another that, if it becomes law, will work in the future.