

IN THE SUPERIOR COURT OF GLYNN COUNTY

STATE OF GEORGIA

STATE OF GEORGIA,)	
)	Warrant Nos. _____
v.)	
)	Murder; Criminal Attempt to Commit False
WILLIAM RODERICK BRYAN,)	Imprisonment
Defendant.)	

MOTION FOR CLARIFICATION OF PROCEDURE FOR PROSECUTION OF DISTRICT ATTORNEY PRO TEMPORE

COMES NOW Defendant William Roderick Bryan, by and through undersigned counsel, pursuant to the Sixth Amendment of the United States Constitution and Article I, Section I, Paragraph XI of the Constitution of the State of Georgia, and other authority, and files this his "Motion for Clarification of Procedure for Prosecution of District Attorney Pro Tempore." In support thereof, Defendant shows as follows:

1. There is considerable uncertainty as to proper procedure with respect to prosecution of the District Attorney Pro Tempore for violation of oath of office and possibly other offenses associated with her role in the prosecution of Mr. Bryan prior to the State's compliance with Georgia law with respect to the replacement of Tom Durden with Joyette Holmes as District Attorney Pro Tempore. Defendant seeks clarification thereof.

2. O.C.G.A. § 15-18-27 provides that "any person" may make the affidavit contemplated in said statute. Does that definition encompass an individual such as Mr. Bryan who has pending arrest warrants bound over to superior court that are being prosecuted by the Cobb County District Attorneys Office? Is there any question as to whether Mr. Bryan has standing to do so? Would family or friends have standing to do so? Does undersigned counsel have standing to do so? The statute provides for disqualification of the district attorney upon a finding of probable cause by the superior court – in which event the court must notify the Attorney General of the disqualification for substitution of another prosecutor under O.C.G.A. § 15-18-5.

3. Under said statute, should the contemplated affidavit be presented to the superior court judge that Mr. Bryan's case has been assigned to, or may that affidavit be presented to any judge of the superior court of Glynn County? Does the disqualification of the superior court judges of the Brunswick Judicial Circuit

Original filed in office this
June 17, 2020
Maebon Hogarth
Clerk, Superior Court, Glynn County, Georgia

from the prosecution of Mr. Bryan encompass disqualification with respect to the filing of an affidavit for the prosecution of the District Attorney Pro Tempore?

4. Is the procedure set forth in O.C.G.A. § 15-18-27 the exclusive means by which to prosecute the District Attorney Pro Tempore? The statute specifically references, as an alternative, the filing by the grand jury of a sealed report "with the presiding judge."

5. Undersigned counsel notes that a Glynn County Police Officer filed an application earlier this year for an arrest warrant for the arrest of Chief Assistant District Attorney John B. Johnson for violation of oath of office. There has been a proliferation of oath of office cases in the Brunswick Judicial Circuit over the past year, including one case involving the shooting of an unarmed black man in neighboring Camden County, Georgia by a law enforcement officer. Another oath of office prosecution includes an indictment returned against the Chief of the Glynn County Police Department and other officers. These cases, several of which are groundbreaking, promise to vastly expand Georgia case law on the subject. However, the procedure set forth in O.C.G.A. § 15-18-27 may preclude the use of a civilian application for an arrest warrant against a district attorney.

6. There is also some question as to whether the grand jury has authority to return an indictment or special presentment against the District Attorney Pro Tempore pursuant to O.C.G.A. § 15-12-74 based on the affidavit of a concerned citizen. Subsection (a) imposes a duty on grand jurors to "examine or make presentments as may or shall come to their knowledge or observation after they have been sworn." Additionally, they have the right and power "and it is their duty as jurors to make presentments of any violations of the laws which they may know to have been committed at any previous time which are not barred by the statute of limitations." Is there any legal impediment to Mr. Bryan bringing such matters to the attention of the grand jury? There is precedent in Glynn County, following the "no bill" returned in favor of various Glynn County Police Officers in the shooting death of Carolyn Small, for concerned citizens to communicate additional facts and circumstances so that the grand jury might consider the matter further. Moreover, O.C.G.A. § 51-7-46, expressly contemplates that presentments may be made "at the instigation

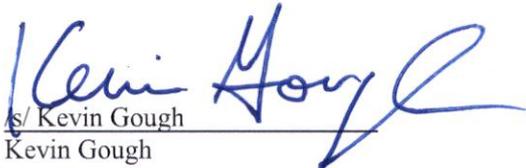
of a third person.” Said statute creates a cause of action for malicious prosecution where a presentment has been instigated maliciously and without probable cause. The statute would serve no purpose if concerned citizens did not have the right to communicate with the grand jury independently of the District Attorney. Case law from other jurisdictions is mixed on this subject. Would the Glynn County District Attorney be the legal advisor under such circumstances, the District Attorney Pro Tempore, or a third prosecutor?

7. Under federal law, for example, it is clearly improper for the accused to contact the grand jury without approval of the prosecutor or judge. 18 U.S.C. § 504; In re Grand Jury, 604 F. Supp. 453 (1985). However, in In re Application to Present Complaint to Grand Jury, ___ S.E.2d ___ (West Virginia 2020) (2020 WL 1670792), the Supreme Court of Appeals of West Virginia held that the circuit court could not deny a convicted murderer’s application to present a complaint to grand jury alleging subornation of perjury by the prosecutor without a showing of clear intent to obstruct justice). Georgia law provides no comparable procedure for the court to screen or pre-approve such applications. However, should the court be inclined to judicially create such a procedure then Mr. Bryan will make every effort to comply with it.

8. O.C.G.A. §15-12-71 also provides for grand jury inspection and examination of the offices of the District Attorney located in the County. Does the appointment of the District Attorney Pro Tempore to handle a case in Glynn County, who is then presumably afforded access and use of District Attorneys office in said county or other county offices, thereby become subject to grand jury review in Glynn County? Does the Cobb County jury have the power to do so? Is the jurisdiction of the two grand juries concurrent? Or are district attorneys pro tempore effectively unregulated by any grand jury?

9. It has been said “better to seek forgiveness than to ask and be denied.” Defendant does NOT subscribe to that philosophy. Defendant has yet to execute an affidavit much less attempt to communicate the contents thereof to the grand jury of any county or to anyone else. Defendant files this motion in a good faith effort to determine his rights and the proper procedure by which his concerns may be addressed. Defendant takes no position, at this time, as to whether there is an inherent conflict with respect to the Cobb County District Attorney’s office handling this motion on behalf of the State of Georgia.

So moved, this 17th day of June, 2020.


s/ Kevin Gough
Kevin Gough
ATTORNEY FOR DEFENDANT
Georgia Bar No. 303210

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CERTIFICATE OF SERVICE

COMES NOW Kevin Gough, attorney for the defendant, and hereby certifies that a copy of the foregoing document(s) have been served upon the District Attorney by email delivery this date.

This 17th day of June, 2020.


s/ Kevin Gough

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