

MAY 20 2014

JAMES R. PARKS
CLERK, STATE GRAND JURY

STATE GRAND JURY OF SOUTH CAROLINA

In the Matter of State Grand Jury
Investigation 2014-237

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) **ORDER DENYING MOTION TO**
) **DISQUALIFY ATTORNEY GENERAL**
) **FROM A STATE GRAND JURY MATTER**
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This matter comes before the Court by way of a motion filed by Robert W. Harrell, Jr. ("Mr. Harrell") dated February 24, 2014, seeking to "[disqualify] Attorney General Alan Wilson from participation in any State Grand Jury investigation and prosecution of Robert W. Harrell, Jr." The motion included an affidavit executed by Mr. Harrell's Chief of Staff – Bradley Scott Wright, Esquire. The State responded with a brief and affidavits on March 7, 2014, and Mr. Harrell replied on March 14, 2014.

A hearing was held on March 21, 2014. Mr. Harrell was represented by Gedney M. Howe, III, Esquire, and E. Bart Daniel, Esquire. The State was represented by Attorney General Alan Wilson, Senior Assistant Deputy Attorney General W. Allen Myrick, Assistant Deputy Attorney General S. Creighton Waters, and Assistant Attorney General Brian T. Petrano. Chief Deputy Attorney General John McIntosh and Solicitor General Robert Cook were also present on behalf of the State.

Applicable Law

The State Grand Jury statute provides that it is the duty of this Court to resolve any doubt regarding conflict of the Attorney General. S.C. Code Ann s 14-7-1650. However, a grand jury is "rooted in long centuries of Anglo-American history" as a "constitutional fixture in its own right". United States v. Williams, 504 U.S. 36, 47 (1992) (quoting various Supreme Court cases). Thus, "a court may not intervene in the grand

jury process absent a compelling reason.” In re Grand Jury Subpoena, 836 F.2d 1468, 1471 (4th Cir. 1988).

Similarly, courts are reluctant to grant a pre-indictment conflict motion to exclude the prosecutor from his role with the grand jury. Typically, the judiciary is hesitant to give credence to efforts to impede an investigation where the issue can be addressed at the more appropriate trial stage if an indictment actually results:

[W]hether a prosecutor who appears before a grand jury labors under a conflict of interest or whether his conduct oversteps the bounds of propriety should be determined after indictment, not by mere conjecture or speculation beforehand. To hold otherwise would burden the grand jury with minitrials and preliminary showings which would assuredly impede its investigation and frustrate the public's interest in the fair and expeditious administration of the criminal laws. United States v. Dionisio, 410 U.S. 1, 17 (1973).

In re Grand Jury Proceedings, 700 F. Supp. 626, 631 (D. Puerto Rico 1988). Likewise, Evans v. State speaks at great length concerning procedures after indictment for a defendant to review the grand jury proceedings and make motions to quash. 363 S.C. 495, 611 S.E.2d 510 (2005).

Finally, disqualification raises separation of powers concerns and thus “is a drastic measure which courts should hesitate to impose except when absolutely necessary.” Matter of Grand Jury Subpoena of Rochon, 873 F.2d 170 (7th Cir. 1989). Of course, the Attorney General is constitutionally mandated as the State’s chief prosecutor, and is constitutionally protected in that role by separation of powers. See generally State v. Thrift, 312 S.C. 282, 291-92, 440 S.E.2d 341, 346-47 (1994).

Even in the post-indictment setting, where there is an actual charge and adversarial process, the courts still are reluctant to undermine the grand jury’s work. These cases have required a showing of actual prejudice. See generally Bank of Nova Scotia v. United States, 487 U.S. 250, 251 (1988) (and various cases interpreting Nova

Scotia). The same goes for cases in South Carolina addressing attempts to disqualify a prosecutor – they similarly have required a showing of actual prejudice.¹

Analysis

This Court has had the opportunity to review the submissions of the parties and has heard the testimony in its entirety. For the following reasons, this Court denies Mr. Harrell's motion.

The testimony of Mr. Wright and Attorney General Wilson is, in many ways, similar:

- both agreed that the Attorney General hoped nothing prosecutable would result from the SLED investigation of the Speaker;
- both said the Attorney General stated he would do the right thing and would even not stand in the way of the prosecution of the Attorney General's parents, if warranted;
- both testified that the Attorney General did not wish to discuss the pending SLED investigation beyond the reason for the Attorney General's referral to SLED;
- both agreed that the Attorney General stated he did not wish the pending SLED investigation to affect the Speaker's support for the PIU;
- both agreed that there was no *quid pro quo* involved in the meeting.

The two versions of the meeting, however, sharply disagree over whether there was some sort of threat made by the Attorney General to Mr. Wright to be conveyed to the Speaker. General Wilson vehemently denies any threat. Mr. Wright perceived a

¹ See State v. Inman, 395 S.C. 539, 720 S.E.2d 31 (2011); State v. Childers, 373 S.C. 367, 645 S.E.2d 233 (2007); State v. Smart, 278 S.C. 515, 299 S.E.2d 686 (1982); State v. Bell, 374 S.C. 136, 646 S.E.2d 888 (Ct. App. 2007).

threat made by the Attorney General. Under either version, however, the evidence presented to the Court does not nearly approach the legal standard necessary to disqualify the Attorney General, who is constitutionally designated as the State's chief prosecuting officer. The focus of the meeting between Mr. Wright and General Wilson related to an entirely collateral matter – the Speaker's support or lack thereof for the PIU. This Court sees no problem with the Attorney General having reached out to the Speaker's office on legislative matters at a point in time when the SLED review was ongoing, particularly in light of the extensive safeguards, discussed below. Accordingly, based upon the evidence presented, this Court finds that the Attorney General did not act inappropriately, but was acting in his statutory capacity to advocate for legislation regarding the criminal laws of the State. See § 1-7-140.

The Attorney General's testimony expressly refutes any improper action or intent on his part. This Court, therefore, finds there was no threat or promise made by the Attorney General. If Mr. Wright unfortunately read into the conversation a threat and promise that was not offered or did not exist, that is no basis for the drastic remedy of disqualifying an elected constitutional officer like the Attorney General from his constitutional and statutory duties, simply because of Mr. Wright's subjective and mistaken interpretation of a conversation. Upon hearing all of the testimony, this Court finds there is no basis to disqualify the Attorney General from this matter.

Most importantly, the process for convening the State Grand Jury protects from the possibility of any abuse. The initiation of a State Grand Jury case requires far more than just the signature of the Attorney General. Section 14-7-1650 requires that the Attorney General must consult with the solicitor of the circuit where the alleged crimes occurred. See Section 16-7-1650. In addition, the Chief of the State Law Enforcement

Division, the criminal investigative agency of the State, must approve the initiation of the State Grand Jury. Then, and only then, does the initiation request go to the circuit court for approval. The petition to the circuit court “in all instances must specify that the public interest is served by the impanelment.” See § 14-7-1630(B).

Further, any SLED investigation is conducted by that agency independent of the Attorney General. The Attorney General does not investigate criminal matters, but only serves as legal advisor to the State Grand Jury after the numerous hurdles necessary for convening a State Grand Jury investigation are met. Once a State Grand Jury is convened, and begins to investigate a matter, the presiding judge maintains judicial oversight. In short, the State Grand Jury Act requires numerous safeguards to be built into the process. This process has been followed since enactment.

Speaker Harrell has submitted no evidence that this longstanding process has in any way been compromised. There is absolutely no indication that the investigation before the State Grand Jury has been affected. Nor has there been any suggestion that the Attorney General or his staff attempted to interfere with or influence the SLED investigation or the circuit court in approving the convening of the State Grand Jury in this matter. The Attorney General recommended a State Grand Jury after review of the SLED report. Subsequent thereto, SLED and the circuit court agreed that a State Grand Jury investigation met the requirements under law. In this Court’s view, the process written into law, and followed by the Attorney General’s Office, SLED and the court were adhered to here.

In summary, the requisite nexus to any pending SLED investigation or convening of the State Grand Jury in this matter, such that the Attorney General is now conflicted, simply does not exist. Importantly, Mr. Wright’s resounding denial with absolute

certitude upon questioning by this Court – stating that there was “absolutely not” any *quid pro quo* relating to the pending SLED investigation – demonstrates that there is no legal basis for disqualification. Additionally, any threat perceived by Mr. Wright does not affect the Attorney General’s ability to serve as the legal advisor to the State Grand Jury in accordance with his statutory duties, referenced above. Accordingly, there has been no abuse of the State Grand Jury process that would necessitate this court granting the extraordinary remedy of disqualification of the Attorney General.

CONCLUSION

Based on the foregoing, this Court finds and concludes that Mr. Harrell has failed to establish and prove any actual conflict or other consideration that would require this court to grant his request for the extraordinary relief of recusal of South Carolina’s elected Attorney General from serving as legal advisor to the State Grand Jury in this matter.

IT IS THEREFORE ORDERED that Mr. Harrell’s motion to recuse the Attorney General from his statutory role as legal advisor to the State Grand Jury is denied.

AND IT IS SO ORDERED this _____ day of _____, 2014.

The Honorable L. Casey Manning
Acting Presiding Judge of the State Grand Jury

_____, South Carolina.