

APR 09 2018

IN THE STATE GRAND JURY OF SOUTH CAROLINA

JAMES R. PARKS
CLERK, STATE GRAND JURY

STATE OF SOUTH CAROLINA

vs.

JOHN E. COURSON,

Defendant.

INDICTMENT NUMBERS:

2017-GS-47-07

2017-GS-47-08

2017-GS-47-09

2017-GS-47-33

2017-GS-47-34

STATE OF SOUTH CAROLINA

vs.

JAMES H. HARRISON,

Defendant.

INDICTMENT NUMBERS:

2017-GS-47-38

2017-GS-47-39

2017-GS-47-40

2017-GS-47-41

STATE OF SOUTH CAROLINA

vs.

TRACY R. EDGE,

Defendant.

INDICTMENT NUMBERS:

2017-GS-47-35

2017-GS-47-36

2017-GS-47-37

MOTION REGARDING
EX PARTE COMMUNICATION

The State of South Carolina respectfully submits the instant motion to address issues surrounding communications between this Court and all parties to matters arising from State Grand Jury Investigation 2016-257. The Court elicited consent from the State to have ex parte communications with the defense in the matters of State v. Richard Quinn, Sr. and State v. Richard Quinn, Jr. However, the Court failed to relay the substance of that communication to the State and failed to allow the State an opportunity to respond. Further, during ex parte discussions with the State, the Court made inquiries concerning the State Grand Jury beyond the issues of State v. Richard Quinn, Sr. and State v. Richard Quinn, Jr. to which the State declined to respond.

The State is aware the Court disagrees with the State's recollection of the substance and timing of these communications, and counsel for the State is concerned about continuing issues in this regard infecting other matters arising from this State Grand Jury investigation. Therefore, in an attempt to remedy the perceived problems which dominated the Quinn matters, the State respectfully requests (1) that any consent by the State allowing ex parte communication is hereby rescinded, (2) that the State be promptly notified of any and all ex parte communications between the Court and any current or future parties to this State Grand Jury matter and be permitted an opportunity to respond, and (3) that all communication between the Court, the State, and the defense be placed on the record with an impartial court reporter and preserved for clarity, certainty, and the protection of all parties.

I. All future communications should be made on the record to avoid further disputes.

The February 28, 2018 hearing on the State's Motion to Reconsider regarding State v. Richard Quinn, Sr. and Richard Quinn, Jr. held in Beaufort County and the Court's March 6, 2018 Order Denying the State's Motion to Reconsider highlight significant disagreements regarding the timing and substance of communications with the Court. The State stands by all facts asserted in its Motion to Reconsider. However, it is clear that the parties have very different recollections about conversations that occurred prior to the guilty plea. The instant motion seeks to redress these concerns and to facilitate a speedy resolution of the above captioned cases by ensuring that no further communication disputes arise.¹

¹ Unfortunately, this is not the first time the State has been forced to raise concerns over misrepresentations by defense counsel in communications with the Court. See November 21, 2017 email exchange, attached as **Exhibit A**; see also November 28, 2017 Status Conference Transcript at 42:10-17, attached as **Exhibit B** ("MR. PASCOE: I disagree strongly with what we discussed in chambers.... Nobody agreed to a trial date outside of this courtroom. THE COURT: I agree.").

Both the State and defense in the Quinn matters agree that consent to ex parte communications pursuant to the Court's request occurred. The disagreement is the timing of the consent. As the undersigned discussed during the February 28 hearing, in the late afternoon of December 12, 2017, the day before the Quinn guilty pleas, the parties engaged in a conference call with the Court. February 28, 2018 Hearing Transcript at 59:14-60:18. During that conference call, the Court inquired whether the parties recalled granting permission to have ex parte communication on a prior occasion in Beaufort. The State's concern is that it was not present for that grant of authority to engage in ex parte communications. *Id.* at 60:3-7. Thereafter, on the evening of December 12, ex parte discussions did occur. *Id.* at 60:15-18 ("And you called me on the night of – that night on December the 12th and you said that you were going to call Mr. Richardson as well."). The question raised—and which remains unanswered—is *when* did that consent occur. The Court failed to answer this question during the hearing or in its Order and at the very least, both the Court and defense counsel suggest consent was initially granted the afternoon of the guilty plea, which is not accurate.² Regardless of when the consent occurred in the Quinn matters, the Court failed to relay the substance of its communication with defense counsel to the State and failed to allow the State an opportunity to respond. When this type of situation occurs with the Court, it is nearly impossible for litigants to have faith that they have not been injured by the ex parte communications with the Court.

Also at issue is the substance of conversations between the parties and the Court. The Court insists the undersigned has misrepresented the substance of conversations held in chambers prior to the plea in its Motion for Reconsideration. *Id.* at 41:16-19 ("in your motion you also said that I

² An April 4, 2018 filing under seal by defense counsel for Richard Quinn, Sr., further highlights this confusion over the timing of consent to ex parte communication.

said something to you in chambers, which was not correct.”). However, similar to its discussion of the timing of ex parte communication, the Court failed to specifically address in its order or during the hearing exactly what the State allegedly misrepresented in its motion. The State stands by the facts presented in its Motion to Reconsider, as well as any other factual assertions it has made throughout this litigation.

For this reason, the State respectfully requests this Court not initiate ex parte communication with any parties and ensure that any further communication in matters arising under State Grand Jury investigation 2016-257 assigned to this Court be made on the record. Rule 501, SCACR, Canon 3. To the extent this request is denied, this motion shall serve as notice that the State vehemently objects to any further ex parte communication between the Court and any parties to matters arising from the underlying investigation. The relief sought herein is focused on ensuring communication disputes, such as those occurring prior to the Quinn pleas, do not infect the remaining defendants so these cases may be disposed of without controversy.

II. The Court should not entangle itself in the underlying State Grand Jury investigation.

As previously discussed, the Court reached out to the undersigned on the evening of December 12, 2017. As the Court should recall, much of that ex parte conversation involved an inquiry about potential targets of the underlying State Grand Jury investigation, and the State refrained from answering the Court’s questions.

The presiding judge of the State Grand Jury has jurisdiction to hear all matters relating to the State Grand Jury except for prosecution of cases arising from indictments issued by the State Grand Jury. S.C. Code Ann. 14-7-1730(A). Once an indictment is returned, only then does the circuit court judge designated by the Chief Justice retain jurisdiction to preside over the prosecution of that criminal matter. Administrative Order State Grand Jury, S.C.Sup.Ct. Order

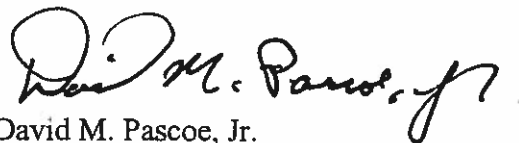
dated March 20, 2003. The designated circuit court judge does not retain jurisdiction over unindicted matters pending in an ongoing State Grand Jury investigation. Thus, the role of the circuit court judge designated to preside over the prosecution phase of a State Grand Jury matter is to dispose of only those matters, and the Court must take care to not entangle herself in the ongoing State Grand Jury investigation.

Conclusion

For the foregoing reasons, the State respectfully requests the Court:

- (1) Rescind any prior grant of consent to ex parte communication by any party to matters arising from State Grand Jury investigation 2016-257;
- (2) Promptly notify the State of any ex parte communications between the Court and any current or future party to matters arising from State Grand Jury investigation 2016-257 and provide an opportunity to respond to the substance of that communication; and,
- (3) Ensure that any correspondence with the Court, the State, and the defense be placed on the record by an impartial court reporter and preserved for the record.

Respectfully submitted by,

A handwritten signature in black ink, appearing to read "David M. Pascoe, Jr.", written in a cursive style.

David M. Pascoe, Jr.
First Circuit Solicitor

April 9, 2018,
Orangeburg, South Carolina.

Exhibit A

November 21, 2017 email

From: David M. Pascoe <dpascoe@scsolicitor1.org>
Sent: Tuesday, November 21, 2017 7:34 PM
To: Mullen, Carmen T. Law Clerk (Crystal Swinford)
Cc: Deborah Barbier; Johnny Gasser; Greg Harris; Jim Parks; Mullen, Carmen T. Secretary (Jamie Thompson); Thomas B Scott; W. Baker Allen; Phil Giese; Gregory, Richard; Smith, Jeremy; Robert Bogan; Scarlett Wilson; David Pascoe
Subject: Re: Trial Scheduling: State v. Quinn

Crystal,

I just read Mr. Gasser's correspondence which is woefully inaccurate. I will address his claims at next weeks hearing unless the court wants a more thorough and immediate response. I am very concerned that it may be necessary for all future communication with the defense be on the record or in writing.

I look forward to next week.

David Pascoe

Sent from my iPhone

> On Nov 21, 2017, at 5:28 PM, Mullen, Carmen T. Law Clerk (Crystal Swinford) <CMullenLC@sccourts.org> wrote:
>
> Good evening,
>
> Judge Mullen is available to hear from all parties regarding severance of Defendants Quinn, Jr. and Quinn, Sr. as well as on the State's request to move the trial date identified for Mr. Quinn, Jr. from the week of Feb. 26.
>
> Judge Mullen has availability on Tuesday, Nov 28th at 2:30 in Beaufort County. Please let me know as soon as possible if this date and time is amenable with your schedules. It is the Court's understanding that Ms. Barbier is scheduled to appear in Federal Court that morning but that there was a good chance her hearing may not be going forward.
>
> Thank you,
>
> Crystal
>
> Crystal H. Swinford, Esq
> Law Clerk to the Hon. Carmen T. Mullen Fourteenth Judicial Circuit
>
> On Nov 21, 2017, at 9:49 AM, Pascoe, David M. <dpascoe@scsolicitor1.org<mailto:dpascoe@scsolicitor1.org>> wrote:
>
> Crystal,
>
> I hope you are well and I am sorry for not getting back sooner but I
> was out of the office until late yesterday.
>
> I have attached a letter that went out this morning to Judge Mullen
> and the attorneys. The State is calling both the Richard Quinn, Sr.
> and Richard Quinn, Jr. cases together as a consolidated trial. I am

> also requesting that the trial date be moved to March 14, 2018 as my
> team needs extra time to prepare. I believe the trial will be two to
> three weeks long (which would be the case even if the State called only one defendant to trial).
>
> I will be in Beaufort next Tuesday afternoon if the court wishes to
> discuss the trial date and scheduling order as I think counsel for
> both defendants will be there too.
>
> Thank you and have a great Thanksgiving if I do not hear from you
> before next week.

> Sincerely,
>
> David Pascoe

> -----Original Message-----

> From: Mullen, Carmen T. Law Clerk (Crystal Swinford)
> [mailto:CMullenLC@sccourts.org]
> Sent: Wednesday, November 15, 2017 8:47 PM
> To: Pascoe, David M.; Deborah Barbier; Johnny Gasser; Greg Harris
> Cc: Jim Parks; Mullen, Carmen T. Secretary (Jamie Thompson)
> Subject: Trial Scheduling: State v. Quinn

> All,
>
> Judge Mullen has tentatively set the subject case for trial the week
> of February 26, 2018. Please advise of any conflicts as soon as
> possible as well as the anticipated length of trial.

> If this date is amenable with your schedules, the Court requests a
> consent scheduling order be submitted no later than November 30, 2017.

> Please let me know if you have any questions or require additional
> information.

> Best,
>
> Crystal

> Crystal H. Swinford, Esq.
> Law Clerk to the Honorable Carmen T. Mullen Fourteenth Judicial
> Circuit

> ~~~ CONFIDENTIALITY NOTICE ~~~ This message is intended only for the
> addressee and may contain information that is confidential. If you are
> not the intended recipient, do not read, copy, retain, or disseminate
> this message or any attachment. If you have received this message in
> error, please contact the sender immediately and delete all copies of
> the message and any attachments.

> <11-21-17 - Correspondence to Judge Mullen.pdf>

Exhibit B

November 28, 2017 transcript excerpt

1 In the State Grand Jury for the
2 State of South Carolina

3
4 Case No.: 2017-GS-47-12
5 2017-GS-47-13
6 2017-GS-47-32

7 State of South Carolina,

8 vs.

9 Richard M. Quinn, Junior,
10 Defendant.

11 _____/

12 Case No.: 2017-GS-47-42
13 2017-GS-47-43

14 State of South Carolina,

15 vs.

16 Richard M. Quinn, Senior,
17 Defendant.

18 _____/

19

20

21 **STATUS CONFERENCE**

22

23

24 November 28, 2017

25 Beaufort, South Carolina

26

27 BEFORE:

28 The Honorable Carmen T. Mullen

1 haven't had enough time. Certainly subject to that.

2 MR. PASCOE: Absolutely. The State is ready to
3 start its preparation to go forward with the trial on
4 both Richard and Rick Quinn on February the 20 --
5 whatever that date was. Yes, Your Honor, we will call
6 them together.

7 A couple of things that I would like to put on the
8 record.

9 THE COURT: Certainly.

10 MR. PASCOE: First of all, I'm not going to go
11 into the contents of the letter that Mr. Gasser sent
12 last week, other than to say I disagree strongly with
13 what we discussed in chambers. In fact, Mr. Gasper was
14 not even there, he was out of the country at the time,
15 so I don't know how -- we never, nobody agreed to a
16 trial date outside of this courtroom.

17 THE COURT: I agree. The only thing that we
18 discussed, obviously I was there, it was in Columbia,
19 was a concern that -- and I knew someone had raised it,
20 about a filing deadline. Adn that seemed to be a
21 paramount concern, and it was from Mr. Harris about his
22 client.

23 MR. PASCOE: Yes, ma'am, there was no agreement
24 about a trial date. Now, the other thing that I would
25 like to also point out on the record is that when I