
**IN THE
COURT OF SPECIAL APPEALS OF MARYLAND**

September Term, 2015

No. 417

MONTGOMERY BLAIR SIBLEY,

Appellant,

v.

JOHN DOE, *et al.*,

Appellees.

On Appeal from the Circuit Court for Montgomery County
(Michael D. Mason, Judge)

BRIEF OF APPELLEE STATE'S ATTORNEY FOR MONTGOMERY COUNTY

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STATEMENT OF THE CASE

This appeal concerns a declaratory judgment action in which Appellant Montgomery Blair **Sibley** sought a declaration that he has a "right to present to the Foreman of the Grand Jury in person his request-to-appear before that body ..." (E. 13.) Mr. **Sibley** wishes to appear before the grand jury to present evidence that "**Barack** Hussein Obama" is committing a crime by possessing fraudulent government identification documents. (See E. 10.)

Mr. **Sibley** filed a Bill of Complaint on October 6, 2014 against John **Doe**, along with several motions, including a Motion to Conduct Pre-Service Discovery, Motion to Expedite Hearing, and Motion to Disqualify the Honorable John W. Debelius, III. (E. 1.) All motions were denied. (Id.) On December 2, 2014, intervener¹ State's Attorney filed a Motion to Dismiss (E. 3); after a hearing on January 22, 2015, the trial court orally granted the Motion to Dismiss "subject to Plaintiff filing an amended complaint." (E. 4.) The court then entered a written order of dismissal on February 3, 2015. (E. 6.)

On January 27, 2015, Mr. **Sibley** filed an Amended Complaint and a Motion to Alter or Amend January 22, 2015 Order of Dismissal. (E. 5.) On May 11, 2015 the trial court entered an order denying the Motion to Alter or Amend. (E. 6.) Mr. **Sibley** noted an appeal on May 15, 2015. (E. 8.)

QUESTIONS PRESENTED

1. Was the circuit court legally correct in not declaring that Mr. **Sibley** was entitled to present in person to the grand jury his request to appear before it and was only entitled to communicate to the grand jury a request to appear after first making the request to the State's Attorney?

2. Given that Mr. **Sibley** was only requesting a declaration of his rights regarding a request to appear before a grand jury, did the trial court commit no abuse of discretion in denying his motions to conduct discovery and for Judge Debelius's recusal?

¹ On December 19, 2014, the trial granted the motion of Appellee State's Attorney for Montgomery County to intervene as a defendant (E. 2).

STATEMENT OF FACTS

Mr. **Sibley** filed a Bill of Complaint on October 6, 2014 against John Doe along with a Motion to Conduct Pre-Service Discovery and a Motion to Expedite Hearing. (E. 1, E. 16.) The trial court, per Judge Debelius, denied the motions on October 20, 2014. (E. 1.) Two days later, Mr. **Sibley** filed "Plaintiffs Verified Emergency Motions to (I) Disqualify The Honorable John W. Debelius **III**, and (II) Reconsider Orders Denying Motions to Conduct **Pre-Service** Discovery and to Expedite." (E. 1, 19–25.) The trial court denied these motions on November 6, 2014. (E. 2.) In the Complaint, Mr. **Sibley** alleged that he had sent a letter to Judge Debelius requesting a "warrant for the arrest of Barack Hussein Obama." (E. 10.)

On December 2, 2014, Appellee State's Attorney filed a Motion to Dismiss (E. 3); **after** a hearing on January 22, 2015, the trial court orally granted the Motion to Dismiss "subject to Plaintiff filing an amended complaint." (E. 4.) The court stated that "I don't believe that I had an obligation to declare ... that you have a right to approach [the foreman] in person" (E. 35.) The court then entered a written order of dismissal on February 3, 2015. (E. 6.)

On January **27, 2015**, Mr. **Sibley** filed an Amended Complaint and a Motion to Alter or Amend January 22, 2015 Order of Dismissal. (E. 5.) On May 11, 2015, the trial court entered an order denying the Motion to Alter or Amend. (E. 6.) Mr. **Sibley** noted an appeal on May 15, 2015. (E. 8.)

ARGUMENT

I. MR. SIBLEY WAS NOT ENTITLED TO A DECLARATORY JUDGMENT THAT HE HAS THE RIGHT TO PRESENT IN PERSON TO THE GRAND JURY FOREMAN A REQUEST TO APPEAR BEFORE THE GRAND JURY.

Mr. **Sibley** seeks a declaration of his rights **regarding** a request to appear in person before a grand jury and present allegations that President Obama is violating Maryland criminal law. (E. 10.) Although he is correct that the trial court should have declared his rights and not simply dismissed his complaint, he is incorrect as to his rights.

The Court of Appeals, in *Brack v. Wells*, made clear what Mr. Sibley's rights are in this context and, therefore, what declaratory judgment he is entitled to:

It is the opinion of this Court that every citizen has a right to offer to present to the grand jury violations of the criminal law. This does not mean that an individual member of that body may be approached. The citizen should exhaust his remedy before the magistrate and state's attorney as was done in the instant case, and if relief can not [sic] be had there, he then has the right to **ask** the foreman **of the** grand jury for permission to appear before that body.

184 Md. **86, 97** (1944). Thus, Mr. **Sibley** has only the *right to ask* the grand jury foreperson for permission to appear before that body—not the right to appear. As Mr. **Sibley** has acknowledged, he "hand-delivered to the State Attorney for Montgomery County a sealed letter addressed to the Foreman of the Grand Jury" and that he received correspondence from the foreperson "declining to investigate Sibley's allegations." (Appellant's Br. 4 (citing E. 43-44)) Thus, Mr. **Sibley** has exercised his right to ask the grand jury foreperson for permission to present his allegations to the grand jury, a request that the foreperson of the grand jury declined.

In any event, Mr. Sibley's right to ask for permission to appear before the grand jury materializes only *after* he first requests that the "magistrate" issue charges and, if refused, that he requests that the State's Attorney present the allegations to the grand jury. Although Mr. **Sibley** apparently interpreted "magistrate" to be the circuit court, given his letter to Judge Debelius requesting an arrest warrant for President Obama (E. 10), the Court's reference to "magistrate" in 1944 is equivalent to "District Court Commissioner" in 2015. *See State v. Smith*, 305 Md. 489, 501–05 (1986) (detailing how the statute that created District Court Commissioners intended for those officers to assume the powers and duties formerly held by "charging magistrates"). Mr. **Sibley** has not alleged that he requested any relief from the District Court Commissioner.

Regarding Mr. Sibley's assertion that he "has the right to present to the Foreman of the Grand Jury *in person* his request-to-appear" (E. 13), the Court of Appeals does not grant a right to direct, in person communication, given the Court's pronouncement that, while "[i]t is the opinion of this Court that every citizen has a right to offer to present to the grand jury violations of the criminal law[, t]his does not mean that an individual member of that body may be approached." *Brack*, 184 Md. at 97 (emphasis added). Mr. Sibley, therefore, has only the right to communicate to the grand jury foreperson his wish to present allegations to the grand jury (which he has done), and only after requesting that a District Court commissioner issue charges or, failing that, a State's Attorney present the allegations to the grand jury. He is entitled to a judgment declaring these rights alone and nothing more.

Mr. **Sibley** argues that he has the right to an "untainted Grand Jury to consider his 'complaint'" and **by** "untainted" he means a grand jury not "prejudiced" by a State's Attorney. (E. 13.) He has no such right.

Mr. **Sibley** specifically complains that a prosecutor "pejoratively characterized **Sibley** to the Grand Jury Foreman as a 'birther'^{2]} lunatic.'" (E. 12.) Under Maryland law, however, there is no prohibition against prosecutors communicating to a grand jury their opinions about allegations before the jury, including the credibility of those who make the allegations to the grand jury.³

Given that a grand jury's task is to determine if probable cause exists to believe a crime has been committed, it is proper for the grand jury to consider the credibility of accusations brought before it. *See State v. Holton*, 420 Md. 530, 549 (2011) ("The grand jury serves the dual function of determining if there is probable cause to believe that a crime has been committed and of protecting citizens against unfounded criminal prosecutions." (internal quotation omitted)); *State v. Wallace*, 372 Md. 137, 148 (2002) ("Probable cause, we have frequently stated, is a nontechnical conception of a reasonable ground for belief of guilt." (quoting *Doering v. State*, 313 Md. 384,403 (1988))). Therefore,

² "There remain groups of people, nicknamed 'birthers,' who continue to question the President's place of birth and therefore legitimacy as President." *Farah v. Esquire Magazine, Inc.*, 863 F. Supp. 2d 29, 31 (D.D.C. 2012), *aff'd sub nom. Farah v. Esquire Magazine*, 736 F.3d 528 (D.C. Cir. 2013).

³ At least one court has even opined that, under Maryland law, Mr. **Sibley**, as a "self-appointed investigator" would have no right to complain if a prosecutor went so far as to *obstruct* a grand jury from performing its duties. *Sellner v. Panagoulis*, 565 F. Supp. 238, 251 (D. Md. 1982), *af d*, 796 F.2d 474 (4th Cir. 1986).

Mr. Sibley's reputation—and, thus, his credibility—is a factor for the grand jury to consider in determining its response to his allegations, especially given that Mr. Sibley's allegations against President Obama are "unfounded criminal" accusations, *Holton*, 420 Md. at 549, that have been roundly and thoroughly rejected.

Mr. **Sibley** has filed numerous lawsuits, in various courts, based on his claims that President Obama is ineligible for office because he was not born in the United States and his Hawaii birth certificate is a forgery. *See, e.g., Sibley v. Obama*, 12-CV-1832 JDB, 2012 WL 6625813 (D.D.C. Dec. 19, 2012), *aff'd*, 522 F. App'x 2 (D.C. Cir. 2013); *Sibley v. Alexander*, 916 F. Supp. 2d 58, 59 (D.D.C. 2013) ("Plaintiff **Sibley** has returned to this Court with yet another case challenging President Obama's eligibility to hold office. The case was filed in the Superior Court of the District of Columbia, where **Sibley** sought to enjoin defendants from casting their votes as electors for President Obama."); *Sibley v. Obama*, 866 F. Supp. 2d 17, 19 (D.D.C. 2012), *aff'd*, 12-5198, 2012 WL 6603088 (D.C. Cir. Dec. 6, 2012) ("Plaintiff claims President Obama is not qualified to serve as president, now or in the future, because he is not a 'natural born Citizen' of the United States per Article II, § 1 of the Constitution. That assertion is based mainly on alleged indications of fraud in the Certificates of Live Birth that President Obama released publicly to prove he was born in Hawaii.") Given this history, and given that Mr. **Sibley** seeks to have President Obama prosecuted for violation of § 8-303 of the Criminal Law Article, it is clear this this action is once again merely another "quixotic attempt to prove that President Obama is not a natural born citizen as required by Constitution." *Taitz v. Obama*, 707 F. Supp. 2d 1, 3

(D.D.C. 2010); *see* Md. Code **Ann.**, Crim. Law § 8-303(a)(5) (LexisNexis 2012) (specifying a birth certificate as one of the documents covered by this section). Consequently, any comment **from** a prosecutor about Mr. Sibley's credibility to a grand jury, based on his quest to prove President **Obama** ineligible for office, would not only be accurate and proper but would enable the grand jury to assess whether probable cause exists.

II. THE CIRCUIT COURT DID NOT ABUSE ITS DISCRETION IN DENYING MR. SIBLEY'S MOTIONS FOR RECUSAL AND PRE-SERVICE DISCOVERY.

This Court reviews the denial of motions for recusal of judges and denial of discovery for abuse of discretion. *Bishop v. State*, 218 Md. App. 472, 491 (2014), *cert. denied*, 441 Md. 218 (2015) (recusal decision); *Bacon v. Arey*, 203 Md. App. 606, 671 (2012) (discovery denial). And an abuse of discretion only occurs "where no reasonable person would take the view adopted by the [trial] court [] ... or when the court acts without reference to any guiding principles, and the ruling under consideration is clearly against the logic and effect of facts and inferences before the **court**[] ... or when the ruling is violative of fact and logic." *Bacon*, 203 Md. App. at 671 (quoting *Beyond Systems, Inc. v. Realtime Gaming Holding Co., LLC*, 388 Md. 1, 28 (2005)). Given the very narrow scope of this action—a declaratory judgment action regarding what rights Mr. **Sibley** has to present allegations to a grand jury—the trial court did not abuse its discretion in denying both his motion for recusal and his motion for pre-service discovery.

In exercising their discretion to recuse themselves or not, trial judges should “**examin[e]** the record facts and the law, and then **decid[e]** whether a reasonable person

knowing and understanding all the relevant facts would recuse the judge." *Bishop*, 218 Md. App. at 494 (quoting *Boyd v. State*, 321 Md. 69, 86 (1990)). Here, Mr. **Sibley** asserts that Judge Debelius should have recused himself because "he would be called as a witness" (Appellant's Br. 6), in that Mr. **Sibley** contacted him "as a condition precedent to **Sibley** contacting the Foreman of the Grand Jury" (Appellant's Br. 5). Therefore, he contends, Judge Debelius had "personal knowledge of facts that are in dispute in the proceeding" and thus his recusal is mandated by the Maryland Code of Judicial Conduct. (Appellant's Br. 5.) This argument fails because, not only was there never a "dispute" as to whether Mr. **Sibley** had contacted Judge Debelius, but "personal" in this context only means knowledge from an "extrajudicial source," not knowledge "acquired in a judicial setting." *Scott v. State*, 175 Md. App. 130, 152 (2007) (quoting *Jefferson-El v. State*, 330 Md. 99, 105 (1993)). Whatever facts Judge Debelius witnessed, he witnessed them as a judicial officer, not extrajudicially. Moreover, Mr. **Sibley** cites no authority for the proposition that a judge's mere status as a witness so calls into question his impartiality that he must recuse himself.

There is also no reason for Judge Debelius to ever think that he would have been a witness, given that the law looks very unfavorably upon calling judges **as** witnesses, especially when, as here, any facts to which they could testify could be derived from another source. *See Ginsberg v. McIntire*, 348 Md. 526, 552 (1998) (judge is a competent witness only if there is a "compelling need" for the testimony). Apparently, Mr. **Sibley** would have sought Judge Debelius solely to testify that Mr. **Sibley** contacted him to seek

an arrest warrant for President Obama. (Appellant's Br. 5.) Nothing in the record shows that this information, even if relevant and even if disputed, was not obtainable through other evidence, such as a copy of his letter to the judge (which Mr. **Sibley** references in his complaint) or by testimony from someone on the judge's staff that the judge had received the letter. In short, there was no reason for Judge Debelius to believe that he would ever be a witness in this action (assuming that being a witness would have necessitated his recusal) and thus no reason for him to recuse himself for that reason.

Likewise, Judge Debelius did not abuse his discretion in denying Mr. Sibley's motion for "pre-service" discovery. A circuit court "has the inherent power to control and supervise discovery as it sees fit." *Bacon*, 203 Md. App. at 672 (quoting *Gallagher Evelius & Jones, LLP v. Joppa Drive-Thru, Inc.*, 195 Md. App. 583,596 (2010)). Here, Mr. **Sibley** sought "interrogatories directed to Bryan Roslund, Assistant State's Attorney" to obtain the identity of "Defendant John Doe, Foreman, Montgomery County Grand Jury" so that he could "effect service of the Summons and Complaint." (E. 16.) Mr. Roslund has never been a party in this action. Given that Maryland law does not authorize "John Doe pleadings" and that Rule 2-412 only permits interrogatories against parties, the court permissibly exercised its discretion in supervising discovery by denying Mr. Sibley's motion. *See Nam v. Montgomery Cnty.*, 127 Md. App. 172,185 (1999) ("While some states by statute or rule authorize John Doe pleadings and then the subsequent substitution of the person's **true** name when discovered, Maryland is not one of them.")

an arrest warrant for President Obama. (Appellant's Br. 5.) Nothing in the record shows that this information, even if relevant and even if disputed, was not obtainable through other evidence, such as a copy of his letter to the judge (which Mr. **Sibley** references in his complaint) or by testimony from someone on the judge's staff that the judge had received the letter. In short, there was no reason for Judge Debelius to believe that he would ever be a witness in this action (assuming that being a witness would have necessitated his recusal) and thus no reason for him to recuse himself for that reason.

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CONCLUSION

This Court should remand to the Circuit Court for Montgomery County for entry of a judgment declaring Mr. **Sibley's** right to communicate to the grand jury, but not in person, his wish to present criminal allegations, after first seeking relief from a District Court Commissioner and the State's Attorney.

Respectfully submitted,

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Rule **8-504(a)(9)** certification: This brief has been printed with proportionally spaced type, Times New Roman - 13 point.

TEXT OF PERTINENT PROVISIONS
Rule 8-504(a)(8)

§ 8-303. False identification documents

Definitions

(a) In this section, "government identification document" means one of the following documents issued by the United States government or any state or local government:

- (1) a passport;
- (2) an immigration visa;
- (3) an alien registration card;
- (4) an employment authorization card;
- (5) a birth certificate;
- (6) a Social Security card;
- (7) a military identification;
- (8) an adoption decree;
- (9) a marriage license;
- (10) a driver's license; or
- (11) a photo identification card.

Prohibited

(b) A person may not, with **fraudulent** intent:

- (1) possess a fictitious or **fraudulently** altered government identification document;
- (2) display, cause, or allow to be displayed a fictitious or fraudulently altered government identification document;
- (3) lend a government identification document to another or knowingly allow the use of the person's government identification document by another; or
- (4) display or represent as the person's own a government identification document not issued to the person.

Penalty

(c) A person who violates this section is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 6 months or a fine not exceeding \$500 or both.