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IN THE
COURT OF SPECIAL APPEALS OF MARYLAND

SEPTEMBER TERM, 1985

NO. 1130

IN RE: CRIMINAL INVESTIGATIONS NO. 1-162
IN THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY

APPEAL FROM THE CIRCUIT COURT
FOR ANNE ARUNDEL COUNTY
(BRUCE C. WILLIAMS, JUDGE)

APPELLANT'S BRIEF AND APPENDIX

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APPELLANT'S BRIEF AND APPENDIX

STATEMENT OF THE CASE

This case presents yet another instance in which a grand jury investigation has been impeded by a decision of the lower court, permitting a "mere witness" to challenge the authority of the grand jury's jurisdiction and, more importantly, interpreting the immunity provision of the Annotated Code of Maryland, Article 27, §262, in such a manner as to render that statute effectively meaningless. While the main issue here is a narrow one - the interpretation of the statute - its implications for criminal law enforcement are broad.

The case comes to this court from the decision of the Anne Arundel County Circuit Court (Bruce C. Williams, Judge)

exercising jurisdiction over a criminal investigation, which denied the Appellant State of Maryland's Motion to Compel testimony of eleven witnesses before the Anne Arundel County Grand Jury. (Docket Entries).^{1/}

The case below was initiated by the Appellant, the State of Maryland on October 18, 1985, when eleven Motions to Compel grand jury testimony were filed with the Circuit Court for Anne Arundel County, pursuant to Md. Rule 4-631. (Motions to Compel). The State's Motions recited that the witnesses had all been summonsed and appeared before the Anne Arundel County Grand Jury on October 7, 1985, at which time each witness, while represented by counsel outside the grand jury room, refused to answer any questions, except for their name and address, relating to the gaming investigation then being conducted by the Anne Arundel County Grand Jury. Each witness cited his or her Fifth Amendment privilege against self-incrimination, in spite of the fact that each was advised of the nature of the grand jury investigation and specifically informed of their exemption from prosecution, trial and punishment for any and all crimes about which they might be compelled to testify, pursuant to the statutory provision of Article 27, §262. The Appellees filed their Response to the Motion to Compel, claiming, among other things, that the Anne

^{1/}The names of the witnesses subpoenaed to testify before the grand jury are not referred to herein, pursuant to Md. Rule 1098b. Because the record below was sealed, no index of the record was prepared by the lower court. Therefore, references to the record will be referred to by the title of the document.

Arundel County Grand Jury lacks jurisdiction to investigate the matter and, more importantly, that the immunity conferred upon the witnesses was not sufficient to protect them from crimes other than gambling violations and thus was not sufficient to displace their Fifth Amendment privilege. (Answer to Motion to Compel).

The matter came on for a hearing before the Honorable Bruce C. Williams of the Circuit Court for Anne Arundel County, and was docketed as a Miscellaneous Law matter, No. 1-162. The only evidence offered at the hearing consisted of the grand jury testimony of one of the aforementioned witnesses, augmented by argument of counsel. In an oral opinion at the conclusion of the hearing, the lower court denied the State's Motions to Compel, apparently finding both that the witnesses were justified in challenging the jurisdictional authority of the grand jury and that the statutory immunity conferred upon the witness pursuant to §262 of Article 27 did not protect those witnesses from prosecution for crimes other than gambling about which their testimony might relate. (Docket Entries, T. 29-30).

The State noted this appeal from the final order of the lower court^{2/} in a timely manner on November 4, 1985.

2/Since the State is now precluded from compelling the testimony of these witnesses, the rights of the parties have been settled and the issue has been finally determined. In Re: Special Investigation No. 244, 296 Md. 80 (1983). In addition, this case falls within "the collateral order exception" to the final judgment rule enunciated in Cohen v. Beneficial Industrial Loan Corporation, 337 U.S. 541 (1949), in that (1) the pretrial order fully disposes of the Appellant's claim to compel the witnesses; (2) the Appellant's

QUESTIONS PRESENTED

- I. DID THE LOWER COURT ERR IN PERMITTING "MERE WITNESSES" TO CHALLENGE THE JURISDICTIONAL AUTHORITY OF THE ANNE ARUNDEL COUNTY GRAND JURY TO CONDUCT AN INVESTIGATION INTO GAMING VIOLATIONS?
- II. DID THE LOWER COURT ERR IN ITS NARROW INTERPRETATION OF ANNOTATED CODE OF MARYLAND, ARTICLE 27, §282, BY HOLDING THAT THE STATUTE PROTECTS WITNESSES FROM PROSECUTION, TRIAL AND PUNISHMENT FOR GAMING OFFENSES ONLY AND NO OTHERS?

CONSTITUTIONAL PROVISIONS, STATUTES, ETC.

As permitted by Rule 1031c.3, the citation of pertinent constitutional provisions, statutes, etc. is set out here, while the pertinent text is set forth in the Appendix.

U.S. Constitution, Amendment V

18 United States Code, §6002

Md. Rules of Procedure, Rule 4-631

Md. Ann. Code, Article 27 §262 (1982 Replacement Vol.)

Md. Ann. Code, Article 27, §258 (1924)

Md. Ann. Code, Article 27, §23 (1982 Replacement Vol.)

Laws of Maryland, 1937, Chapters 434, 435, 438

STATEMENT OF FACTS

On October 7, 1985, eleven witnesses who had been subpoenaed by the Anne Arundel County Grand Jury appeared

^{2/}(Cont.) claim is collateral to, and separable from, the principal issue of guilt or innocence; and (3) the order involves an important right that would be lost if the review had to await final judgment. Sigma Reproductive Health Center v. State, 297 Md. 660 (1983). Indeed, if this issue were not a final appealable order, and must await any resulting prosecution arising from the pending investigation, the issue would be lost since the grand jury would be denied the testimony of these witnesses and no indictments may result. The State would never have the opportunity to preserve the issue without compelling the within named witnesses and no contempt proceeding may follow.

before that body to testify in an investigation of possible violations of the State's gambling laws. Each witness was represented by counsel, who remained outside the grand jury room during the witness' questioning. Each witness before the grand jury was advised that the scope of the grand jury's investigation included violations of the State's gambling laws and that is the subject about which each would be questioned. Each witness was explained the provisions of Annotated Code of Maryland, Article 27, §262, providing complete transactional immunity for each of the witnesses compelled to testify, and indeed, the statute was read to each witness. Each witness was further advised that, by operation of that statute, each was exempt from prosecution, trial, and punishment for any and all crimes about which the witness was compelled to testify. After providing their name and address, each witness refused to answer any further questions relating to the gambling activities they were questioned about, citing their Fifth Amendment privilege against self-incrimination. (Motions to Compel).

During the grand jury's questioning, witnesses were asked questions about the name of their employer, their duties and responsibilities in that position, and more particularly, about their knowledge of electronic video gaming devices known as poker machines. Each witness exercised his or her Fifth Amendment privilege and refused to answer any of these questions, in spite of the fact that each was compellable and exempt from prosecution for any crimes about which they might

testify.

Based on each of the witnesses' refusals to answer, the State initiated proceedings to compel their testimony, pursuant to Md. Rule 4-631. Thus, on October 18, 1985, Motions to Compel grand jury testimony of each of the eleven witnesses were filed in the Circuit Court for Anne Arundel County. (Motions to Compel).

On October 28, 1985, a consolidated hearing on all of the State's Motions to Compel was held before the Honorable Bruce C. Williams of the Circuit Court for Anne Arundel County. The only evidence offered at the hearing consisted of a representative transcript of the grand jury testimony of one of the witnesses. At the hearing, the Appellees challenged the authority and jurisdiction of the Anne Arundel County Grand Jury to investigate in this case, alleging, without offering any evidence in support thereof, that the grand jury was investigating tax violations as well as gambling and that any gambling violations should properly be investigated in Baltimore County, where the witnesses were alleged to be employed. In addition, the Appellees suggested that the immunity statute, Article 27, §262 was not sufficient to protect them from other crimes such as income tax evasion, federal gambling violations, and RICO charges. (Transcript of hearing). The State, on the other hand, contended that the "mere witnesses" did not have the right to challenge the authority of the grand jury as to its jurisdiction, citing to the lower court two recent Court of Special Appeals decisions,

In Re: Special Investigation Nos. 224 and 237. In addition, the State contended that the immunity statute in question was sufficiently broad to protect the witness for any and all crimes about which they were compelled to testify, and not just gambling.

The lower court, at the conclusion of the hearing, rendered its opinion, denying the Motions to Compel. The lower court appears to have based its decision upon the finding that: (1) any gaming violations under investigation were not properly before the Anne Arundel County Grand Jury; and, (2) that the immunity statute was not sufficient in scope to protect a witness from crimes other than gambling.^{3/}

ARGUMENT

1. THE LOWER COURT ERRED IN PERMITTING "MERE WITNESSES" TO CHALLENGE THE JURISDICTIONAL AUTHORITY OF THE GRAND JURY.

Although it is not altogether clear, the lower court appears to have relied, at least in part, on the suggestions of the Appellees herein, witnesses and Respondents below, that the Anne Arundel County Grand Jury was without jurisdiction to investigate the matter presently under consideration.

While counsel for the Appellees proffered to the lower court his suspicions that the grand jury was investigating matters other than gambling, no evidence was offered by the Appellees to support such a proposition. Indeed, on the contrary, the only evidence offered at the hearing consisted of the transcript of one of the grand jury witnesses (T. 24-

^{3/}The full text of the lower court opinion is reprinted in the Appendix at E. 1-2.

27). As that transcript makes abundantly clear, the only questions asked of the witness related to gambling violations and nothing more.

More importantly, however, in two companion cases decided by this Court, In Re: Special Investigation No. 224, 54 Md. App. 137 (1983) and In Re: Special Investigation No. 237, 54 Md. App. 201 (1983), this Court firmly held that "mere witnesses" did not have the luxury of challenging the territorial jurisdiction of the grand jury. In a thoroughly researched opinion, relying upon a host of Supreme Court cases, the Court recognized that it is not until the conclusion of the grand jury investigation, when an indictment has been returned, that a party may challenge the jurisdiction of the grand jury, since it is not until then that a person with standing would have the right to make such a challenge, and the jurisdiction of the grand jury becomes clear. As the Court noted in In Re: Special Investigation No. 224, supra, at 147, citing Hendricks v. United States, 223 U.S. 178, 174:

As has been said before, the identity of the offender, and the precise nature of the offense, if there be one, normally are developed at the conclusion of the grand jury's labors, not at the beginning.

In the same case, the Court went on to hold that:

The witnesses in this case have challenged the territorial jurisdiction of the grand jury. It is the lesson of Blair that they are incompetent to do so: in truth it is in the ordinary case no concern of one summoned as a witness whether the offense is within the jurisdiction of the Court or not.

In Re: Special Investigation 224, supra, at 147.

The Appellees argued below, and presumably will argue here, that the foregoing cases are not dispositive since the present case involves witnesses summonsed to testify as opposed to producing records, as was the case in In Re: Special Investigation No. 224 and 237, supra. (T. 11-12). No such distinction was made by this Court in its decisions previously, and no rationale could be contrived to support such a distinction. Whether witnesses are called to testify or produce records, the holding of this Court is clear: "mere witnesses" do not have the right to challenge the jurisdictional authority of the grand jury. As the Court in In Re: Special Investigation No. 224 recognized, "that mere witnesses, who have no recognized interest in the validity of the grand jury's proceedings, have managed to stall those proceedings for over one year is deeply to be regretted." The Appellant respectfully suggests that to allow the witnesses in this case to stall and obfuscate the grand jury's proceeding, given the two recent decisions to the contrary, would be a tragedy indeed.

11. THE LOWER COURT ERRED IN HOLDING THAT THE IMMUNITY CONFERRED UPON A WITNESS PURSUANT TO ARTICLE 27, §262 IS LIMITED TO ONLY GAMBLING OFFENSES.

While a witness may not challenge the authority or jurisdiction of a grand jury to conduct its investigation, Argument 1, supra, he no doubt may raise his Fifth Amendment privilege against self-incrimination when compelled to testify before a grand jury. However, when that privilege is displaced by an immunity which is broad enough to supplant the privilege against self-incrimination, the witness may be compelled to

testify in spite of his objections and claim of privilege. Butler v. State, 55 Md. App. 409 (1983).

The lower court denied the State's Motions to Compel in this case by holding that the provisions of Article 27, §262, which applies to gambling investigations, was not sufficiently broad to protect a witness from incriminating himself with respect to crimes other than gambling.

Recently, in Butler, supra, this Court discussed in depth the history of Maryland immunity statutes, and their applicability. Butler instructs us, harking back to Bowie v. State, 14 Md. App. 567 (1972), that immunity is exclusively a creature of statute. A grant of immunity takes away the constitutional privilege against self-incrimination when a witness is compelled to testify and grants the witness an immunity from prosecution, trial, and punishment in place of the privilege. State v. Panagoulis, 3 Md. App. 330 (1968), aff'd, 253 Md. 699 (1969). As noted in Brown v. State, 233 Md. 288 (1963), in order to be valid, the immunity granted must be as broad as the privilege against self-incrimination which it supplants or displaces.

Unlike the Federal system,^{4/} Maryland provides prosecutors with limited circumstances in which immunity from prosecution may be conferred. Also unlike the Federal immunity statute which

^{4/}18 U.S.C. §6002 (1970) provides that a witness before a Court or grand jury of the United States may be compelled to testify but no testimony or information directly or indirectly derived from such testimony may be used against the witness in any criminal proceeding. The Federal Immunity Statute is applicable to all criminal offenses.

grants use and derivative use immunity, Maryland's immunity statutes, with few exceptions, grant transactional immunity. Transactional immunity means that a witness compelled to testify about an incident cannot be prosecuted for any offenses arising out of that transaction, even if independent evidence of the offense can be obtained. As noted in Butler, supra, after the Supreme Court's decision in Counselman v. Hitchcock, 142 U.S. 547 (1892), it was generally believed that only transactional immunity would be sufficient to displace the Fifth Amendment privilege. Not until the Supreme Court decided Kastigar v. United States, 406 U.S. 441 (1972), was use and derivative use immunity held to be sufficient to supplant the privilege. See, generally, Butler, supra.

While our appellate courts have had a number of occasions to discuss Maryland's immunity statutes, See, e.g., Roll v. State, 15 Md. App. 31 (1972), (holding that §298C of Article 27 is constitutional); State v. Toelle, 10 Md. App. 202 (1970) (accepting, without deciding, that §§39 and 262 of Article 27 are constitutional); Brown v. State, 233 Md. 288 (1963) (deciding that §23 of Article 27, dealing with bribery, is constitutional), no Maryland appellate decision has directly addressed the issue presented here - the scope of immunity conferred upon a witness once immunity is applicable - although, as we shall argue below, such a decision is implicit in previous decisions.

The specific immunity statute under consideration here is Annotated Code of Maryland, Article 27, Section 262, which states:

No person shall refuse to testify concerning any gaming or betting because his testimony would implicate himself and he shall be a competent witness and compellable to testify against any person or persons who may have committed any of the offenses set forth under this Subtitle, provided that any person so compelled to testify in behalf of the State in any such case, shall be exempt from prosecution, trial and punishment for any and all such crimes and offenses of which such person so testifying may have been guilty or a participant and about which he was compelled to testify.

While perhaps not artfully stated, the plain language of the statute provides for transactional immunity, i.e. exemption from prosecution, trial and punishment. In addition, the immunity from prosecution applies to "any and all such crimes and offenses of which such person so testifying may have been guilty or a participant and about which he was so compelled to testify." The scope of the immunity thus conferred is, by the very words of the statute, not limited to merely gambling offenses, but to any and all such crimes and offenses of which the witness was guilty and about which he was compelled to testify. The only limitations on the statute refer to offenses "about which he was so compelled to testify," thus limiting the immunity conferred only to those answers which are responsive to questions posed. Had the legislature wanted to limit the immunity conferred upon a witness only to gambling offenses, it could have done so, by limiting the immunity to an exemption from "prosecution, trial and punishment for gambling offenses," in simple terms. Where, however, the language of the statute is clear and unambiguous, there is no need to resort to statutory construction or interpretation. In Re: Arnold M., 298 Md. 515 (1984).

Even if the court should go beyond the plain meaning of the words employed, the basic maxims of statutory construction also dictate the conclusion that the statute is intended to cover all crimes about which the witness is compelled to testify, and not merely gambling offenses. In this regard, the statute is to be construed reasonably and with reference to the purpose to be accomplished. Scott v. State, 297 Md. 235 (1983), Haskell v. Carey, 294 Md. 550 (1982). The court should also consider the consequences which may flow from one interpretation of the statute rather than another, and adopt a construction which is in harmony with the general scheme of the enactment and one which will assist in effectuating the legislative purpose. State v. Berry, 287 Md. 491 (1980). The legislative purpose in enacting the immunity provision is to provide a tool for compelling testimony over the assertion of a Fifth Amendment privilege in certain cases, and thus to aid in the prosecution of those particular types of offenses. If, as the lower court found, the immunity conferred upon a witness by operation of this statute is limited to only gaming offenses, its utility would be rendered meaningless, since practically any answer to a question might implicate a witness in a crime other than gambling and thereby defeat the very legislative purpose for which the statute was enacted. For example, a witness who is asked "Do you know what a pay off is?", might thereby refuse to answer claiming that a truthful answer would incriminate for a crime other than gambling.

Additionally, it is by now axiomatic that, absent a clear

indication to the contrary, a statute, if reasonably possible, is to be read so that no word, clause, sentence or phrase is rendered surplusage, superfluous, meaningless or nugatory. Management Personnel Services, Inc. v. Sandefur, 300 Md. 332 (1984), Mayor and City Council of Baltimore v. Hackley, 300 Md. 277 (1984). In the present case, and with reference to Article 27, §262, the lower court accepted the argument of Appellees that the word "such", placed as it is in the phrase "exempt from prosecution, trial and punishment for any and all such crimes and offenses..." is a reference to gambling offenses only, enumerated in the preceding part of the statute. If that be the case, then the remaining part of the sentence describing the scope of immunity, i.e. "of which such person so testifying may have been guilty or a participant and about which he was so compelled to testify," becomes totally meaningless and mere surplusage. Such an interpretation flies in the face of the basic principle of statutory construction cited above. It is much more logical and reasonable to therefore conclude that the word "such" modifies the phrase "crimes and offenses of which such person so testifying may have been guilty or a participant and about which he was so compelled to testify."

In analyzing the statute in harmony with basic principles of statutory construction, the court should recognize that, by adopting the interpretation of the lower court, the statute is also rendered unconstitutional, since the immunity conferred upon the witness is not sufficient to supplant the Fifth Amendment

privilege. Brown, supra. Where there are two constructions that can be placed on a statute, one of which will result in its legality and effectiveness and the other which will make it illegal or nugatory, the court must construe it so as to render it effective and so as to avoid a conflict with the Constitution whenever that course is reasonably possible. Pickett v. Prince George's County, 291 Md. 648 (1981), Moberly v. Herboldshiemer, 276 Md. 211 (1975). As noted earlier, while no Maryland appellate decision has directly addressed this issue, the Court of Appeals in Brown v. State, supra, did uphold the constitutionality of the immunity conferred by the bribery statute, Annotated Code of Maryland, Article 27, §23. As the court noted in Brown, the language in the gambling statute, §262 is almost identical to the language of the bribery statute. Brown, supra, p. 294, fn. 2. Thus, given the constitutionality of the immunity provision of the bribery statute and the almost identical language of the gambling statute in issue, ipso facto the gambling statute also passes constitutional muster and is therefore at odds with the lower court decision.

Read in light of the foregoing principles of statutory construction, and based on the plain meaning of the words employed, while the applicability of the statute is limited to gambling offenses, the scope of immunity conferred by its operation includes any and all offenses about which the witness is compelled to testify. Thus, both analytically and practically, once a witness is compelled to testify before a grand jury or at a trial involving the investigation or

prosecution of a gambling offense, the immunity provision of Section 262 is triggered. However, the scope of immunity conferred upon the witness is not merely limited to gambling offenses but includes any and all crimes about which the witness is compelled to testify before the grand jury or at the trial.

The legislative history of Section 262 also supports this analysis. While immunity for persons compelled to testify in gambling offenses dates back to Chapter 265 of the Laws of 1853, the present language of the statute finds its genesis in Chapter 438 of the Laws of 1937. That year, the legislature amended not only the language of the immunity provision of the gambling statute, but also amended the immunity provision of the bribery statute and the conspiracy statute in almost identical terms, and enacted an immunity provision for lottery violations at the same time. See, Laws of Maryland, 1937, Chapters 434, 435 and 438. While the reasons for each of the amendments differed, it is worth noting that the language adopted is practically identical. The bribery statute, for example, was amended to make clear that only witnesses called "in behalf of the State" received immunity from prosecution. The gambling statute, on the other hand, was amended to make clear that the exemption for compelled witnesses applied not only to "prosecution", but also to "trial and punishment" as well. The statute as it existed prior to the 1937 amendment indicates the legislative intent to grant immunity to all offenses revealed by the witness' testimony, not just gaming offenses. Prior to the 1937 amendment, the statute provided immunity for "any offense to

which [the witness'] testimony relates." Annotated Code of Maryland, 1924, 5258. In addition to adding the language exempting the witness not only from prosecution but trial and punishment as well, the amendment also served to limit the immunity conferred to those crimes or offenses "about which he was so compelled to testify." In this fashion, the legislature made clear that the witness' immunity extended only to offenses revealed in responsive answers to compelled questions and not any volunteered statements.

In 1972, a blue ribbon commission empanelled to revise the Maryland criminal code, the Brune-Kenney Commission, had occasion to consider the immunity language of the bribery statute. In so doing, the commission noted that one who is compelled to testify in a bribery investigation and prosecution receives immunity not only for bribery, but, if the facts revealed by the witness also provide evidence of extortion, the witness receives immunity for extortion as well. See, Commission on Criminal Law, Proposed Draft, June 1, 1972, 5200.15). Although cognizant of this commission's report, the legislature did not adopt any changes to the statutory language used, and therefore the legislature is deemed to have considered the commission interpretation accurate. Cf., e.g., Williams v. State, 292 Md. 201 (1981).

As Professor Wigmore notes, other jurisdictions with similar immunity statutes which are applicable to a limited category of offenses have usually interpreted their statutes to provide for immunity from all crimes about which the witness is compelled to testify, once the immunity is applicable. 8 Wigmore, Evidence,

(McNaughton Rev. 1961) §2282, p. 509, fn. 2. Thus, for example, while the language of the Florida statute differs from Maryland's, the Florida courts have interpreted their statute, which is applicable to a limited category of offenses such as bribery and gambling, to confer immunity from all crimes about which the witness is compelled to testify. State v. Kelly, 71 So. 2d 887 (Fla. 1954).

Faced with a similar contention, the Court of Appeals of New York upheld a contempt citation, where the immunity statute, like Maryland's and Florida's, was limited to a certain category of offenses. Gold v. McKenna, 25 N.Y. 2d 475, 255 N.E. 2d 235 (1969). As the court there recognized:

To be sure, there is always the possibility that in any Grand Jury investigation where immunity is granted, crimes not specifically enumerated in the statute may be revealed. However, to allow this fact to repeatedly void the grant of immunity would be illogical and contrary to the intent of the Legislature. Gold v. McKenna, supra, at 237-238.

See, also, State v. Kuhlman, 68 Or. App. 743, 683 P.2d 552 (Or. App. 1984), rev'd on other grounds, 298 Or. 703, 695 P.2d 571 (Or. 1985), State v. Chitwood, 73 Ariz. 314, 240 P.2d 1202 (1952), and Ex Parte Williams, 127 Cal. App. 424, 16 P.2d 172 (1932).

CONCLUSION

The lower court was clearly erroneous in permitting "mere witnesses" to challenge the jurisdiction of the grand jury since they do not have standing. It is simply premature to consider the subject matter jurisdiction of a grand jury, which should have the unfettered discretion in subpoenaing witnesses and

gathering evidence, as this Court recently made clear.

In addition, the lower court misinterpreted the plain meaning of the language of Article 27, §262 by limiting the scope of immunity conferred to only gambling offenses, and no others. The basic principles of statutory construction, the legislative history of the statute, and decisions of sister states all point to a contrary conclusion - the statute, once applicable, confers immunity from prosecution as to all offenses revealed by the witness' compelled testimony.

For the foregoing reasons, the Appellant respectfully urges this court to reverse the decision of the lower court, and remand with instructions to compel the Appellees to testify. Because this case involves a pending grand jury investigation, the Appellant also respectfully requests this court issue its mandate forthwith.

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COURT: All right. Well, of course, as everyone knows Maryland doesn't have a general immunity statute and no State's Attorney, Attorney General or Special Prosecutor can give more immunity than is allowed by statute and we are dealing with a specific statute granting certain immunity here under Article 27 Section 262. But that, the Court does not read in such a broad way as the Assistant Attorney General does. I think it certainly would permit the granting of immunity for any prosecution involving gambling and gaming but on the very face of this investigation by virtue of the fact that these people are allegedly committing gaming violations in Baltimore County and this proceeding is before the Grand Jury in Anne Arundel County it appears, on its face, that it's a tax investigation because that would be the only thing that would confer jurisdiction to this County. Not the gaming aspects of this investigation. So that unless this statute can be read to confer immunity for other than gaming violations then the witnesses that are being asked to testify before the Grand Jury aren't compellable.

I think there was a pretty thorough analysis of our immunity statutes in the case of Butler v. State where Judge Moylan went into it at some length and he made a statement in there that I think is quite true that if the Special Prosecutor or the Attorney General or even the Court ordered witnesses to testify under a Motion to Compel where it was not a legal

1 or strictly granted immunity under one of the provisions of
2 the statute, that would not bind any other prosecutor's office
3 from prosecuting and would not prohibit the Federal government
4 from prosecuting. So that if it's an extra legal type of
5 granted immunity that's not authorized by the statute it
6 doesn't bar any other prosecution elsewhere. And what Mr.
7 Kolberman is arguing, I think goes far beyond the limited
8 grant of immunity that's contained in Article 27 Section 262
9 when he suggests that this would prevent prosecution for mur-
10 der should it come in response to a question that one of the
11 witnesses committed a murder. I don't think that was contem-
12 plated by the Legislature and certainly it's not in the langu-
13 age as you read that statute. So that I think that argument
14 doesn't sustain itself.

15 And I think that in view of the fact that this is,
16 on its face, a tax investigation, in view of the fact that
17 those that are being granted immunity aren't given immunity
18 from any violations of the law other than gaming violations
19 under the statute that they cannot be compelled to testify
20 against themselves in this investigation. So I will deny the
21 Motions to Compel as to each of these witnesses.

22 MR. IRWIN: Thank you, Your Honor.

23 MR. MASTER: Thank you, Your Honor.

24 MR. SWISHER: Thank you, Your Honor.

25 MR. SOUKUP: Thank you, Your Honor.

(AMENDMENT V)

(Rights of Accused in Criminal Proceedings)

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

18 U.S.C. §6002 (1982)

§ 6002. Immunity generally

Whenever a witness refuses, on the basis of his privilege against self-incrimination, to testify or provide other information in a proceeding before or ancillary to—

- (1) a court or grand jury of the United States,
- (2) an agency of the United States, or
- (3) either House of Congress, a joint committee of the two Houses, or a committee or a subcommittee of either House,

and the person presiding over the proceeding communicates to the witness an order issued under this part, the witness may not refuse to comply with the order on the basis of his privilege against self-incrimination; but no testimony or other information compelled under the order (or any information directly or indirectly derived from such testimony or other information) may be used against the witness in any criminal case, except a prosecution for perjury, giving a false statement, or otherwise failing to comply with the order.

(Added Pub.L. 91-452, Title II, § 201(a), Oct. 15, 1970, 84 Stat. 927.)

MARYLAND RULES OF PROCEDURE, RULE 4-631 (1985 Replacement Vol.)

Rule 4-631. COMPELLING TESTIMONY ON THE CONDITION OF IMMUNITY

(a) **Requested by State.** — In any proceeding under this Title, before a grand jury, or pursuant to Code, Article 10 § 39A, if a witness lawfully refuses to answer or to provide other information on the basis of the privilege against self incrimination, the court, when authorized by law, shall compel the witness to answer or otherwise provide information if:

- (1) The State's Attorney requests in writing or on the record that the court order the witness to answer or otherwise provide information, notwithstanding the witness' claim of privilege; and
- (2) The court informs the witness of the scope of the immunity the witness will receive as provided by the appropriate statute.

(b) **Order of Court.** — The court shall enter its order compelling testimony in writing or on the record.

§ 262. Persons compellable to testify; exemption from prosecution.

No person shall refuse to testify concerning any gaming or betting because his testimony would implicate himself and he shall be a competent witness and compellable to testify against any person or persons who may have committed any of the offenses set forth under this subtitle, provided that any person so compelled to testify in behalf of the State in any such case shall be exempt from prosecution, trial and punishment for any and all such crimes and offenses of which such person so testifying may have been guilty or a participant and about which he was so compelled to testify. (An. Code, 1961, § 326; 1939, § 304; 1924, § 258; 1912, § 228; 1904, § 214; 1888, § 131; 1853, ch. 265, § 8; 1856, ch. 195, § 9; 1937, ch. 438.)

MD. ANN. CODE art. 27, §258 (1924)

An. Code, sec. 228, 1904, sec. 214, 1888, sec. 131, 1853, ch. 265, sec. 8, 1856, ch. 195, sec. 9.

258. No person shall refuse to testify concerning any gaming or betting because his testimony would implicate himself; but when any such person is required to testify in behalf of the State, he shall not be prosecuted for any offense to which his testimony relates.

MD. ANN. CODE art. 27 § 23 (1982 Replacement Vol.)

§ 23. Offering bribe to or receiving bribe by public officer; witnesses in prosecution.

If any person shall bribe or attempt to bribe any executive officer of the State of Maryland, any judge, or other judicial officer of this State, any member or officer of the General Assembly of Maryland, any officer or employee of the State, or of any bi-county or multi-county agency in the State, or of any county, municipality or other political subdivision of the State, including members of the police force of Baltimore City and the State Police or any member or officer of any municipal corporation of this State, or any executive officer of such corporation, in order to influence any such officer or person in the performance of any of his official duties; and if the Governor or other executive officer of this State, any judge, or other judicial officer of this State, any member of the General Assembly of Maryland or officer thereof, any officer or any employee of the State, or of any bi-county or multi-county agency in the State, or of any county, municipality or other political subdivision of the State, including members of the police force of Baltimore City and the State Police or any member or officer of any municipal corporation, or mayor or other executive officer thereof in this State shall demand or receive any bribe, fee, reward or testimonial for the purpose of influencing him in the performance of his official duties, or for neglecting or failing to perform the same, every such person so bribing or attempting to bribe any of such officers or persons, and every such person so demanding or receiving any bribe, fee, reward, or testimonial shall be deemed guilty of bribery, and on being convicted thereof shall be fined not less than \$100 nor more than \$5,000, or, in the discretion of the court, shall be sentenced to be imprisoned in the penitentiary of this State for not less than two nor more than 12 years, or both fined and imprisoned, and shall also be forever disfranchised and disqualified from holding any office of trust or profit in this State; and any person so bribing or attempting to bribe or so demanding or receiving a bribe shall be a competent witness, and compellable to testify against any person or persons who may have committed any of the aforesaid offenses; provided, that any person so compelled to testify in behalf of the State

MD. ANN. CODE art. 27, § 23 (1982 Replacement Vol.)
 in any such case shall be exempt from prosecution, trial and punishment for any such crime of which such person so testifying may have been guilty or a participant therein, and about which he was so compelled to testify. (An. Code, 1951, § 29; 1939, § 27; 1924, § 31; 1912, § 28; 1904, § 26; 1888, § 23; 1809, ch. 138, § 8; 1868, ch. 369; 1882, ch. 142; 1933, ch. 202; 1937, ch. 434; 1972, ch. 181, § 28; 1977, chs. 159, 260.)

1937 Md. Laws 853

CHAPTER 435.

AN ACT to add a new section to Article 27 of the Annotated Code of Maryland (1924 Edition), title "Crimes and Punishments", sub-title "Lotteries", said new section to be known as Section 350½, and to follow immediately after Section 350 of said Article, to compel all persons when so ordered to testify in behalf of the State concerning any lotteries, even though such testimony be self-incriminating, but exempting from prosecution, trial and punishment all such persons so testifying.

SECTION 1. *Be it enacted by the General Assembly of Maryland,* That a new section be and it is hereby added to Article 27 of the Annotated Code of Maryland (1924 Edition), title "Crimes and Punishments", sub-title "Lotteries", said new section to be known as Section 350½, to follow immediately after Section 350 of said Article, and to read as follows:

350½. No person shall refuse to testify concerning any lotteries because his testimony would implicate himself and he shall be a competent witness and compellable to testify against any person or persons who may have committed any of the offenses set forth under the sub-title "Lotteries" of this Article, provided that any person so compelled to testify in behalf of the State in any such case shall be exempt from prosecution, trial and punishment for any and all such crimes and offenses of which such person so testifying may have been guilty of a participant therein and about which he was so compelled to testify.

SEC. 2. *And be it further enacted,* That this Act shall take effect June 1, 1937.

Approved May 16, 1937.

1937 Md. Laws 873

CHAPTER 438.

AN ACT to repeal and re-enact with amendments Section 258 of Article 27 of the Annotated Code of Maryland (1924 Edition), title "Crimes and Punishments", sub-title "Gaming", said amendment compelling all persons when so ordered to testify in behalf of the State concerning any gaming or betting, even though such testimony be self-incriminating, but exempting from prosecution, trial and punishment all such persons so testifying.

SECTION 1. *Be it enacted by the General Assembly of Maryland,* That Section 258 of Article 27 of the Annotated Code of Maryland (1924 Edition), title "Crimes and Punishments", sub-title "Gaming", be and it is hereby repealed and re-enacted with amendments, to read as follows:

1937 Md. Laws 873

258. No person shall refuse to testify concerning any gaming or betting because his testimony would implicate himself and he shall be a competent witness and compellable to testify against any person or persons who may have committed any of the offenses set forth under this sub-title, provided that any person so compelled to testify in behalf of the State in any such case shall be exempt from prosecution, trial and punishment for any and all such crimes and offenses of which such person so testifying may have been guilty or a participant and about which he was so compelled to testify.

Sec. 2. *And be it further enacted, That this Act shall take effect June 1, 1937.*

Approved May 18, 1937.

1937 Md. Laws 851

CHAPTER 434.

AN ACT to repeal and re-enact with amendments Section 31 of Article 27 of the Annotated Code of Maryland (1935 Supplement), title "Crimes and Punishments", sub-title "Bribery", said amendment limiting the immunity provisions of said statute to witnesses called in behalf of the State and exempting said witnesses from prosecution, as well as from trial and punishment.

SECTION 1. *Be it enacted by the General Assembly of Maryland, That Section 31 of Article 27 of the Annotated Code of Maryland (1935 Supplement), title "Crimes and Punishments", sub-title "Bribery", be and it is hereby repealed and re-enacted with amendments, to read as follows:*

31. If any person shall bribe or attempt to bribe any executive officer of the State of Maryland, any judge, justice of the peace or other judicial officer of this State, any member or officer of the General Assembly of Maryland, any officer or employee of the State, or of any county, municipality or other political sub-division of the State, including members of the police force of Baltimore City and the motorcycle deputies (commonly known as State Police) under the Commissioner of Motor Vehicles, or any member or officer of any municipal corporation of this State, or any executive officer of such corporation, in order to influence any such officer or person in the performance of any of his official duties; and if the Governor or other executive officer of this State, any judge, justice of the peace or other judicial officer of this State, any member of the General Assembly of Maryland or officer thereof, any officer or any employee of the State, or of any county, municipality or other political sub-division of the State, including members of the police force of Baltimore City and the motorcycle deputies (commonly known as State Police) under the Commissioner of Motor Vehicles, or any member or officer of any municipal corporation, or Mayor or other executive officer thereof in this State shall demand or receive any bribe, fee, reward or testimonial for the purpose of influencing him in the performance of his official duties, or for neglecting or failing to perform the same, every such person so bribing or attempting to bribe any of such officers or persons, and every such person so demanding or receiving any bribe, fee, reward, or testimonial shall be deemed guilty of bribery, and on being convicted thereof shall be fined not less than one hundred dollars nor more than five thousand dollars, or, in the discretion of the court, shall be sentenced to be imprisoned in the penitentiary of this State for not less than two

1937 Md. Laws 851

nor more than twelve years, or both fined and imprisoned, and shall also be forever disfranchised and disqualified from holding any office of trust or profit in this State; and any person so bribing or attempting to bribe or so demanding or receiving a bribe shall be a competent witness, and compellable to testify against any person or persons who may have committed any of the aforesaid offenses; provided, that any person so compelled to testify in behalf of the State in any such case shall be exempt from prosecution, trial and punishment for any such crime of which such person so testifying may have been guilty or a participant therein, and about which he was so compelled to testify.

Sec. 2. *And be it further enacted, That this Act shall take effect June 1, 1937.*

Approved May 18, 1937.

CRIMINAL CODE §200.15 (Proposed Draft June 1, 1972) (State of Maryland Commission on Criminal Law)

**§200.15. Bribery and bribe receiving;
grant of immunity**

Any person who bribes, attempts to bribe, or conspires to bribe a public servant, or any public servant who receives, attempts to receive, or conspires to receive a bribe, fee, reward, or testimonial shall be a competent witness and compellable to testify against any person or persons who may have committed any of the aforesaid offenses concerning his participation or guilt therein; provided that any person so compelled to testify shall be exempt from prosecution, trial and punishment for conduct about which he is compelled to testify, including any conduct involving or pertaining to any such offense of which he may have been guilty or in which he may have participated.

COMMENT

Section 50 of Article III of the Maryland Constitution (quoted in the Commentary to §200.10) requires the legislature provide for a grant of immunity to compel testimony concerning bribery and attempted bribery involving public officials. §23 of Article 27 contains such a grant of immunity. §200.15 follows quite closely the wording of the present section and gives in full the immunity contemplated by the Constitution.

The added language in §200.15 which does not appear in §23 is intended to make clear the extent to which testimony may be compelled and immunity is conferred. A person may be required to testify concerning "his participation or guilt" in a bribery offense and receives immunity "for the conduct about which he is compelled to testify." Thus, if a public servant testifies that he accepted or demanded a bribe in such a manner that he is guilty not only of bribe receiving but also of extortion, he receives immunity for both offenses. §200.15 also provides for a grant of immunity to persons guilty of conspiring to bribe or to receive a bribe. The constitutional provision does not mention a grant of immunity for persons guilty of conspiracy, but §39 of Article 27 presently provides for a grant of immunity in such cases. Thus, §200.15 simply combines the provisions in §§23 and 39 of Article 27.