

COMMONWEALTH of VIRGINIA



OFFICE OF THE COMMONWEALTH'S ATTORNEY CITY OF PORTSMOUTH



MEDIA RELEASE

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Portsmouth, VA

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Mitchell Update - Motion to Reconsider

PORTSMOUTH, VA

On May 24, 2017 the Commonwealth's Attorney for the City of Portsmouth submitted a written motion to the Portsmouth Circuit Court pursuant to Va. Code § 19.2-206, requesting that the court empanel a special grand jury to investigate and report on conditions involving or tending to promote criminal activity related to the death of Jamycheal Mitchell at the Hampton Roads Regional Jail in the city of Portsmouth. Today, all of the judges of the Circuit Court for the City of Portsmouth denied the Commonwealth's motion in a one-page order. In relevant part, the judges opined that "the Commonwealth's Attorney has not provided any reasons to impanel a special grand jury;" that "the matter at hand has been investigated by several professionally staffed independent entities and appears to be the subject of an ongoing investigation by the U.S. Department of Justice;" that "[t]he Court is of the opinion that the citizens of Portsmouth would not have any additional expertise, special competence or proficiency that would further contribute to the investigation surrounding the death of Jamycheal Mitchell in the Hampton Roads Regional Jail."

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Relevant Legal Principles

The Code of Virginia enables prosecutors to request that special grand juries be empaneled to investigate and report on alleged criminal activity. The relevant statute, § 19.2-206(A), provides in full:

Special grand juries may be impanelled by a circuit court (i) at any time upon its own motion, (ii) upon recommendation of a minority of the members of a regular grand jury that a special grand jury be impanelled, to perform the functions provided for in subdivision (2) of § 19.2-191, or (iii) *upon request of the attorney for the Commonwealth to investigate and report on any condition that involves or tends to promote criminal activity and consider bills of indictment to determine whether there is sufficient probable cause to return each such indictment as a “true bill.”* (emphasis added)

Legal Analysis

1. Whether the Commonwealth’s Attorney is required to “provide any reasons” to impanel a special grand jury

Nowhere in Va. Code § 19.2-206 is there a requirement that the Commonwealth “provide reasons” in a motion to empanel a special grand jury. The Court presumably sought for the Commonwealth to include in its motion specific facts involving alleged crimes committed against Jamycheal Mitchell in the Hampton Roads Regional Jail. If the Commonwealth alleged facts pertaining to alleged crimes in its motion to empanel a special grand jury, this would have constituted impermissible *ex parte* communication with the Court, as well as illegal disclosure of confidential matters to be heard only by the grand jury. Yet, the Court denied the Commonwealth’s motion to impanel a special grand jury because “the Commonwealth’s Attorney ha[d] not provided any reasons to impanel a special grand jury.”

The reason for which the Commonwealth moved the Court to empanel a special grand jury was to investigate conditions involving or tending to promote criminal activity related to the death of Jamycheal Mitchell. This is the only statutory allegation the Commonwealth was

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required to provide in moving the Court to empanel a special grand jury, yet the Court overlooked that allegation and denied the Commonwealth's motion.

2. Whether the various investigations of Mr. Mitchell's death have any bearing on this office's criminal investigation.

The collateral investigations of Mr. Mitchell's death play no role in and constitute no valuable supplement to this office's criminal investigation. Indeed, the Virginia Inspector General's investigation was deemed to be so incomplete that the inspector general herself was removed by a nearly unanimous vote of the General Assembly. The Inspector General's investigation had nothing to do with the instant criminal investigation, as it was designed to inquire into the following matters, among others: "to review processes in place related to referral and admission of HRRJ inmates to Eastern State Hospital (ESH); [to] review the Department of Behavioral Health and Developmental Services (DBHDS) Office of Internal Audit Investigation Report released March 16, 2016; [to] identify potential risk points; and [to] make recommendations for systemic improvement in order to prevent similar events in the future."

The investigation by the U.S. Department of Justice into the Hampton Roads Regional Jail is completely separate and distinct from this office's investigation. It is a "pattern or practice" investigation into whether the jail systematically violates inmates' constitutional rights. This Department of Justice investigation is not designed to investigate Mr. Mitchell's death or generate any information that can be used by this office in making a prosecutorial determination.

None of the agencies referenced by the Court have been able to provide the Commonwealth with the information it needs to make a full and informed prosecutorial determination. Additionally relevant is the fact that no City resources have been expended to investigate this matter except a cursory investigation by the Portsmouth Police Department shortly after Mr. Mitchell's death. Other agencies have indeed investigated Mr. Mitchell's death,

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but their inquiries are irrelevant to our criminal investigation. None of the other investigations into Mr. Mitchell's death have been designed to determine whether crimes were committed against Mr. Mitchell under Virginia law. This office's request for a special grand jury is therefore a legitimate request, not a duplication of other agencies' efforts.

3. Whether the “expertise, special competence or proficiency” of potential special grand jurors is a relevant inquiry.

The Court's implicit requirement that special grand jurors have “expertise, special competence or proficiency” is misguided. No prospective special grand juror is required to demonstrate a special aptitude for understanding the issues presented by this case. There is no legal requirement for such a demand in the Code of Virginia. Special grand jurors only must inquire diligently into the matters presented to them.

The Commonwealth trusts that any citizens who would have composed the special grand jury would have been diligent and motivated to inquire into conditions tending to promote criminal activity in their city. The special grand jurors sought by the Commonwealth in this case would have had the ability to subpoena witnesses and documents not yet accessible to the Commonwealth by virtue of the grand jury's subpoena power.

The Commonwealth recognizes that the Court potentially wishes to avoid expending additional investigative resources to rehash old evidence already uncovered during the course of the investigation. *The Commonwealth does not seek to impanel a special grand jury to delay, to retrace steps already covered by existing investigations, or for any political purpose whatsoever.* The subpoena power of the special grand jury is essential to enable the Commonwealth to obtain yet-unseen documents and yet-un-examined witnesses. The unique ability of special grand juries under the law of this Commonwealth to subpoena documents and witnesses is arguably essential to the Commonwealth's prosecutorial determination in this case.

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Conclusion

On the motion of a special prosecutor, the Portsmouth Circuit Court recently saw fit to grant a motion to empanel a special grand jury to investigate a local elected official and pastor in this community. That case had already been investigated at length. No one came remotely close to dying in that case, yet the Court did not hesitate to empanel a special grand jury. It is incomprehensible that the Court would deny a special grand jury inquiry into this case, which involves widely reported and undeniably horrible allegations, and which ended in the death of a young man.

This office expended hundreds of hours of document review, legal research, legal analysis, and writing into developing a nearly 100-page report of investigation after receiving the bulk of the investigative documents from the Virginia State Police. This office reviewed nearly 1,500 pages of documents and roughly 50 hours of audio and video in developing its internal report of investigation. Even after these efforts, it is clear that the scope of our inquiry does not encompass all facts needed to make a prosecutorial determination. This office, through the Virginia State Police, has been unable to interview the various medical personnel who came into contact with Mr. Mitchell, as well as obtain additional medical documentation for Mr. Mitchell from the jail's medical services provider. These are significant, critical pieces of evidence that are material to our prosecutorial determination. Without access to this information, our prosecutorial determination is not and cannot be fully informed. This office has filed a motion to reconsider the denial of the motion to empanel a special grand jury contemporaneously with this press release.


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