Circuit Court for Anne Arundel County
Case No. C-02-CR-24-001865

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 513

September Term, 2025

STATE OF MARYLAND

v.

JAMES HOUSTON

Wells, C.J.,
Arthur,
Kehoe, S.,

JJ.

Opinion by Arthur, J.

Filed: June 3, 2025

* This is an unreported opinion. It may not be cited as precedent within the rule of stare decisis. It may be cited as persuasive authority only if the citation conforms to Maryland Rule 1-104(a)(2)(B).

This is an appeal from an interlocutory order in a criminal case in the Circuit Court for Anne Arundel County. In that order, the court disqualified Anne Colt Leitess, the State's Attorney for Anne Arundel County, from participating as an attorney in this case. In addition, the court imposed what it called a "firewall" between the State's Attorney and the Assistant State's Attorneys who will remain as counsel for the State. We shall dismiss the appeal because we lack appellate jurisdiction to decide it.

This appeal stems from the criminal prosecution of James Houston, M.D., who is charged with first-degree murder in connection with the stabbing death of his late wife, Nancianne Houston. Dr. Houston, who also had wounds that had been inflicted with a knife, claims to have acted in self-defense. The State's Attorney was the lead counsel for the State in the criminal case against Dr. Houston.

On May 6, 2025, 17 days before the criminal trial was to begin, the circuit court "dismissed" the State's Attorney from the case. On May 9, 2025, the State noted an appeal from the court's interlocutory order. On May 16, 2025, Dr. Houston moved to dismiss the appeal. For the reasons stated herein, we shall grant the motion.

Our power to decide appeals is derived solely from statute—principally, section 12-301 of the Courts and Judicial Proceedings Article of the Maryland Code (1974, 2020 Repl. Vol.) ("CJP"). Under CJP section 12-301, "a party may appeal from a final judgment entered in a civil or criminal case by a circuit court." *See Huertas v. Ward*, 248 Md. App. 187, 200 (2020). "In general, an order is not a final judgment unless it fully

adjudicates all claims in the case by and against all parties to the case." *Id.* at 200. Everyone agrees that the order in this case is not a final judgment.[1]

In support of its contention that it may appeal the ruling disqualifying the State's Attorney, the State relies solely on the collateral order doctrine, a judge-made gloss on the final judgment rule of CJP section 12-301. *See Dawkins v. Baltimore City Police Dep't*, 376 Md. 53, 64 (2003) (stating that the collateral order doctrine "is based upon a judicially created fiction, under which certain interlocutory orders are considered to be final judgments, even though such orders clearly are *not* final judgments") (emphasis in original).[2]

The collateral order doctrine is a "very narrow exception" to the final judgment rule. *See, e.g.*, *Dawkins v. Baltimore City Police Dep't*, 376 Md. at 58. To qualify as a collateral order, a ruling must satisfy four criteria: "(1) it must conclusively determine the

[1] In a criminal case, the State may appeal—even after a final judgment—only in a few, limited circumstances, such as when a court dismisses an indictment or fails to impose a sentence mandated by the Code. *See* CJP § 12-302(c)(2)-(4). None of those circumstances are present in this case. Nonetheless, "an appeal from an order issued by a court exercising criminal jurisdiction is not constrained by [CJP] § 12-302(c) if the relief sought is collateral to the underlying criminal case against the defendant." *State v. Rice*, 447 Md. 594, 618 (2016). The State may appeal such an order under section 12-301 if it "'settles the rights of the parties or concludes the cause.'" *Id.* (quoting *In re Special Investigation No. 231*, 295 Md. 366, 370 (1983)). Dr. Houston does not contest the State's assertion that the order on appeal in this case falls into that category of cases. Hence, we shall assume for the sake of argument that it does and, thus, that the State may appeal notwithstanding the limitations of CJP section 12-302(c).

[2] The State does not argue that this Court has the ability to review the circuit court's decision by way of a writ of mandamus or prohibition in aid of our appellate jurisdiction. Consequently, we do not consider that issue.

disputed question; (2) it must resolve an important issue; (3) it must be completely separate from the merits of the action; and (4) it must be effectively unreviewable on appeal from a final judgment." *See*, *e.g.*, *Addison v. Lochearn Nursing Home, LLC*, 411 Md. 251, 285 (2009); *Maryland Bd. of Physicians v. Geier*, 225 Md. App. 114, 131 (2015). "[T]he four requirements of the collateral order doctrine are very strictly applied, and appeals under the doctrine may be entertained only in extraordinary circumstances." *In re Foley*, 373 Md. 627, 634 (2003); *accord Maryland Bd. of Physicians v. Geier*, 451 Md. 526, 546 (2017).

There is no serious question that the order on appeal satisfies the first two criteria. The order conclusively determines that the State's Attorney cannot participate in the trial of the case and that she must erect a firewall between herself and the assistants who will try it: it is as conclusive as any interlocutory order could be. *See Quartertime Video & Vending Corp. v. Hanna*, 321 Md. 59, 66 (1990) (stating that an interlocutory order is "subject to the full discretionary revisory power of the trial court"). And the issue of whether a circuit court can disqualify the elected State's Attorney and limit her ability to communicate with her subordinates is obviously an important one.

Nor is there any serious question that the fourth and final requirement is also satisfied. Regardless of whether Dr. Houston is convicted or acquitted after a trial on the merits, the State will have no right to appeal. Consequently, the order disqualifying the State's Attorney is completely—and not just effectively—unreviewable on the merits after a final judgment.

The problem in this case is in determining whether the order on appeal is completely separate from the merits of the action—i.e., "collateral." To answer that question, we must inquire into the basis for the order.

The parties do not agree completely on the rationale for the court's decision. According to the State, the court disqualified the State's Attorney because, in the court's words, she had "irrevocably made herself a witness in her own case." *See* Md. Rule 19-303.7 (generally prohibiting an attorney from acting as an advocate at a trial in which the attorney is likely to be a necessary witness). Dr. Houston agrees that the court disqualified the State's Attorney because she "has become a witness in the underlying criminal case." Dr. Houston, however, cites additional "actions" that, he says, "caused" the court to disqualify the State's Attorney. The additional actions seem to consist of discovery violations, such as not disclosing the State's Attorney's "many conversations" with "material witnesses," as well as the alleged "manipulation of electronic case files and documents." Dr. Houston also cites inconsistencies between the State's Attorney's account of her conduct during the investigation and the account of one of the detectives. According to Dr. Houston, the court has determined that the jury will hear the "stipulated fact" that the State's Attorney "willfully withheld evidence from the Defense that the Defendant had previously claimed the decedent had pulled a kitchen knife on him."[3]

[3] Because the issue is not before us, we express no opinion on how this "stipulated fact" could possibly have any relevance to the question of whether Dr. Houston murdered his wife or acted in self-defense. Similarly, we express no opinion about how the State—intentionally or otherwise—could have "withheld" information about what the defendant himself claims to have previously said to one of the witnesses, Mr. Steven Valladares.

After hearing argument on the motion to dismiss, we denied the motion, provisionally, so that we could review the record and ascertain the basis for the circuit court's decision. Having done so, we have concluded that the court disqualified the State's Attorney because it found, in essence, that she was likely to be a necessary witness.

The court heard that on April 1, 2025, the State's Attorney had a telephone conversation with Steve Valladares, Dr. Houston's neighbor. The State's Attorney was alone when the conversation occurred—apparently Mr. Valladares returned her call while she was driving home.

In the conversation, Mr. Valladares told the State's Attorney that Dr. Houston had told him that, at some point (it is unclear when), his late wife had pulled a knife on him. Mr. Valladares's account of what Dr. Houston said would obviously be hearsay if it were admitted to prove the truth of the matter asserted, namely, that Dr. Houston's late wife did, in fact, pull a knife on him at some point. Md. Rule 5-801(c). The State did not inform the defense about Mr. Valladares's hearsay statement. Instead, the State asserts that the State's Attorney spent the next several weeks attempting to determine whether Mr. Valladares had previously told the police about Dr. Houston's alleged statement and attempting to have the police reinterview him. In the meantime, Mr. Valladares called defense counsel and told them what he had told the State's Attorney.[4]

[4] At oral argument in this Court, Dr. Houston correctly conceded that the State did not violate its obligations under *Brady v. Maryland*, 373 U.S. 83 (1963), through its delay in disclosing the contents of the State's Attorney's conversation with Mr. Valladares.

(Footnote continued.)

Based on what we learned at oral argument, Dr. Houston contends that if the State questions the credibility of Mr. Valladares's hearsay statement that Dr. Houston told him that his wife had pulled a knife on him at some point, the defense could call the State's Attorney to testify that Mr. Valladares had made a prior consistent statement to her during their telephone call. Dr. Houston would have to satisfy several evidentiary preconditions before he could adduce any such testimony.

First, Mr. Valladares's hearsay statement about what Dr. Houston allegedly told him will be admissible under an exception to the general prohibition against hearsay only if (1) Dr. Houston first testifies that his wife once pulled a knife on him and (2) the defense establishes that Dr. Houston told Mr. Valladares that his wife once pulled a knife on him at some point before the homicide—i.e., at some point before Dr. Houston's motive to fabricate arose. Md. Rule 5-802.1(b); *Thomas v. State*, 429 Md. 85, 106-07 (2012). If Dr. Houston does not testify, or if the defense cannot establish that the alleged

"*Brady* 'offers a defendant no relief when the defendant knew or should have known facts permitting him or her to take advantage of the evidence in question or when a reasonable defendant would have found the evidence.'" *Yearby v. State*, 414 Md. 708, 723 (2010) (emphasis omitted) (quoting *Ware v. State*, 348 Md. 19, 39 (1997)). Presumably, however, Dr. Houston did not need the State's Attorney to inform him that he himself had previously told Mr. Valladares that the decedent had pulled a knife on him. Furthermore, "[i]f the defendant learns of the information before the conclusion of the trial, to wit, in time to use it, there has been no *Brady* suppression." *Adams v. State*, 165 Md. App. 352, 421-22 (2005); *accord State v. Grafton*, 255 Md. App. 128, 147 (2022). Here, the defense learned of the State's Attorney's conversation with Mr. Valladares weeks before the trial was scheduled to begin. The State concedes that it violated its discovery obligations under Maryland Rule 4-263 by not promptly disclosing the conversation, but the State did not violate Dr. Houston's constitutional rights under *Brady*.

conversation occurred before the motive to fabricate arose, then Mr. Valladares's statement is inadmissible hearsay.

In contending that the State's Attorney is likely to be a necessary witness, Dr. Houston assumes that the court will permit Mr. Valladares to testify that Dr. Houston told him that his wife had once pulled a knife on him. In that event, he posits that the State will attack Mr. Valladares's credibility. He contends that he can respond to such an attack by calling the State's Attorney to have her affirm that Mr. Valladares made "a prior consistent statement" to her in their telephone conversation in early April of 2025. At oral argument, Dr. Houston was unable to explain how he would establish that Mr. Valladares's statement to the State's Attorney, months after the death of Dr. Houston's wife, was made before a motive to fabricate arose. In other words, Dr. Houston was unable to explain how Mr. Valladares's statement to the State's Attorney was made before Mr. Valladares acquired a motive to testify falsely in order to assist his neighbor, Dr. Houston.

Nonetheless, our analysis of these issues shows that the question of whether the State's Attorney is likely to be a necessary witness is not completely separate from the merits. We cannot evaluate whether the State's Attorney is likely to be a necessary witness at trial without evaluating how the trial might progress, how the several witnesses might testify, and how the court might rule on various evidentiary issues. For that reason, we are constrained to conclude that the State cannot satisfy the third element of the collateral order doctrine.

In advocating for a different conclusion, the State cites a number of federal cases that have entertained interlocutory appeals under the collateral order doctrine when a federal district court has disqualified every lawyer in the United States Attorney's Office in the judicial district. *See, e.g., United States v. Williams*, 68 F.4th 564, 571 (9th Cir. 2023) (collecting cases). Those cases are obviously a bit different from this one, in which the circuit court has not disqualified every lawyer in the State's Attorney's Office for Anne Arundel County, but only the State's Attorney herself (and only because of her alleged conduct as counsel of record in a specific case). *See United States v. Bolden*, 353 F.3d 870, 874 n.1 (10th Cir. 2003) (acknowledging that "disqualifying an entire United States Attorney's office differs materially from disqualifying an individual prosecutor for purposes of the collateral order doctrine" and expressly declining to "address whether the government may immediately appeal an order disqualifying one or more prosecuting attorneys").

In general, the collateral order doctrine does not authorize an immediate appeal of an order disqualifying counsel in a civil case (*see, e.g., Richardson-Merrell, Inc. v. Koller*, 472 U.S. 424, 440-41 (1985); *Harris v. David S. Harris, P.A.*, 310 Md. 310, 312, 316 (1987)), an order declining to disqualify counsel in a civil case (*Firestone Tire & Rubber Co. v. Risjord*, 449 U.S. 368, 379 (1981)), or an order disqualifying defense counsel in a criminal case. *See Flanagan v. United States*, 465 U.S. 259, 260, 270 (1984). Courts have reasoned that, if the aggrieved party need not show that the disqualification order resulted in prejudice, then those orders are effectively reviewable on appeal from a final judgment. *See Richardson-Merrell, Inc. v. Koller*, 472 U.S. at

438; *Flanagan v. United States*, 465 U.S. at 268; *Harris v. David S. Harris, P.A.*, 310 Md. at 320. On the other hand, if the aggrieved party must show that the disqualification order resulted in prejudice, the order is not completely separate from the merits. *See, e.g., Richardson-Merrell, Inc. v. Kohler*, 472 U.S. at 438; *Flanagan v. United States*, 465 U.S. at 268-69.

Admittedly, none of those cases concerns an order disqualifying an individual prosecutor. The State, however, cites no case in which any court anywhere has ever held that the collateral order doctrine permits an immediate appeal from an order disqualifying an individual prosecutor from an ongoing trial.

The closest the State comes is *Matter of Grand Jury Subpoena of Rochon*, 873 F.2d 170, 173 (7th Cir. 1989). In that case, the court employed the collateral order doctrine to hear an appeal of an order that disqualified the Attorney General of the United States from participating in a grand jury investigation into civil rights violations allegedly committed by FBI employees against a former FBI agent. The basis for the disqualification order was that the agent had named the Attorney General, in his official capacity, as a defendant in a related civil suit in which the former agent contended that the investigation had been conducted in bad faith. *Id.* at 171-72. As the appellate court explained in that case, the question of whether the Attorney General should be disqualified from the grand jury investigation because of his status as a defendant in the civil suit "does not require consideration" of whether the agent's treatment "should lead to the prosecution of any individual for a violation of federal law." *Id.* at 173.

Here, by contrast, the question of whether the State's Attorney is likely to be a necessary witness, and thus cannot serve as an advocate, is entwined with the merits of the case, in that it is inseparable from evidentiary issues that will arise at trial. *See Richardson-Merrell, Inc. v. Koller*, 472 U.S. at 439 (observing that "[o]rders disqualifying attorneys" in civil cases "on the ground that they should testify at trial . . . are inextricable from the merits because they involve an assessment of the likely course of the trial and the effect of the attorney's testimony on the judgment"). We cannot consider the merits of the disqualification order in this case without considering the evidentiary issues that may arise at trial. The question, therefore, is not completely separate from the merits. Accordingly, the collateral order doctrine does not authorize this appeal.

MOTION TO DISMISS GRANTED; COSTS TO BE PAID BY APPELLANT.

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UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 0153

September Term, 2025

STATE OF MARYLAND

v.

JAMES S. HOUSTON

Wells, C. J.,
Arthur,
Kehoe, S.,

JJ.

Concurring Opinion by Kehoe, J.

Filed: June 3, 2025

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I concur in the result. The trial court's finding that the State's Attorney of Anne Arundel County, Anne Colt Leitess ("Ms. Leitess"), is a witness in the case is inextricably tied to the merits of the case because the necessity of her testimony would not be determined unless and until Steven Valladares ("Mr. Valladares") testified. *U.S. v. Bolden*, 353 F.3d 870, 875-76 (10th Cir. 2003).

I write separately, however, because I can find nothing in the record that would indicate that Ms. Leitess made herself a witness in the case. As part of her trial preparation, she spoke on the phone with Mr. Valladares, who was a neighbor of the Defendant, James S. Houston ("Mr. Houston"), and the alleged victim, Nancianne Houston ("Ms. Houston"). Mr. Valladares stated that Mr. Houston had told him that Ms. Houston had at one time threatened him with a knife. Mr. Valladares's statement about this conversation with Mr. Houston had not been disclosed before. Mr. Valladares's statement to Ms. Leitess is hearsay. Md. Rule 5-801(c). If Ms. Leitess were called upon to testify as to what Mr. Valladares told her, it would be hearsay within hearsay. Md. Rule 5-805. It is unclear what possible exception to the hearsay rule would allow for the admission of either statement. Md. Rule 5-802.

Ms. Leitess spoke directly to a witness in a one-on-one conversation. It may be a best practice for her to have someone else present while speaking to the witness. However, irrespective of whether she was alone or in the company of one or more investigators, she would have heard the same statement by the witness.

The trial court compared Ms. Leitess's situation to former Attorney General Jeff Sessions' recusal from the investigation of Russian involvement in Donald J. Trump's 2016

presidential campaign. This analogy is inapposite because Attorney General Sessions recused himself because he had been actively involved in Mr. Trump's campaign and could not be involved in the investigation.[1]

Because we are dismissing the appeal we do not reach the merits of this case. A finding that an attorney has inextricably made himself or herself a witness by speaking directly to a witness would circumscribe an attorney's ability to prepare for trial. Attorneys, including State's Attorneys, routinely speak to witnesses without others present. In these conversations, the attorneys will assess the credibility of the witness, the strengths and weakness of their possible testimony and the impact of the possible testimony. These conversations are often done alone because the attorneys do not have the resources to bring other people into the conversation. It appears that the trial court viewed such one-on-one conversations as beyond the realm of appropriate advocacy.

[1] *See Attorney General Jeff Sessions will recuse himself from any probe related to 2016 presidential campaign*, The Washington Post (March 2, 2017), https://www.washingtonpost.com/powerpost/top-gop-lawmaker-calls-on-sessions-to-recuse-himself-from-russia-investigation/2017/03/02/148c07ac-ff46-11e6-8ebe-6e0dbe4f2bca_story.html.