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| STATE OF MARYLAND | * | IN THE |
| | | CIRCUIT COURT FOR |
| v. | * | BALTIMORE CITY |
| OFFICER GARRETT MILLER | * | CASE NO. 115141034 |

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**DEFENDANT GARRETT MILLER'S OPPOSITION TO THE STATE'S MOTION TO COMPEL A WITNESS TO TESTIFY PURSUANT TO SECTION 9-123 OF THE COURTS AND JUDICIAL PROCEEDINGS ARTICLE**

Defendant Garrett Miller, by undersigned counsel, hereby files this Response in Opposition to the State's Motion to Compel a Witness to Testify Pursuant to Section 9-123 of the Courts and Judicial Proceedings Article. In support thereof, Defendant Miller states as follows:

1. On January 14, 2015, for the first time since the inception of the prosecution of these matters, the State asserted that it **may** call Officer William Porter to testify as a witness during the trial of Defendant Miller because Officer Porter's testimony "**may** be necessary to the public interest."
2. Beyond this bare assertion, the State provides absolutely no proffer in its two-page Motion as to why Officer Porter's testimony is either material or necessary to the trial of Defendant Miller, or how it is necessary to serve the public interest.
3. This request comes days after the Court of Special Appeals' injunction staying the trial of Officer Goodson, and a likely injunction staying the trial of Sergeant White. Both injunctions are the result of the State's characterization of Officer Porter as a material and necessary witness for the trials of Officer Goodson and Sergeant White, as well as the need to clarify the issues concerning Officer Porter's compelled testimony.
4. The State now attempts to place the Defendant's case in the same posture as those matters in an attempt to require a stay of this trial.

5. The State's past actions contradict the alleged need on which the present request rests. When the State was afforded the opportunity to select the order in which to call the cases in this matter, the State contended that "Defendant Porter is a necessary and material witness in the cases against **Defendants Goodson and White**, so it is imperative that Mr. Porter's trial takes place before their trials." Exhibit A, State's Letter dated September 15, 2015 (emphasis added). Consequently, the State suggested the following: "[w]ithout listing all the possible permutations, the State essentially seeks to have Mr. Porter tried before Mr. Goodson and Ms. White, to have Mr. Miller tried before Mr. Nero, and to have Mr. Miller and Mr. Nero tried before Mr. Rice." *Id.*
6. In the State's previous four trial witness lists to the Defendant, the State never once indicated that it intended to call Officer Porter as a witness. Moreover, the State has never suggested, until the filing of the present Motion, that Officer Porter's testimony was in any way necessary to the prosecution of Defendants Miller, Nero, or Lt. Rice.
7. In light of the State's past position, it is abundantly clear that the present Motion is nothing more than a pretext to regain control of the order of the Defendants' trials, and avoid trying the most factually and legally tenuous cases first.
8. However, in order to fulfill its procedural desires, the State is trampling upon the Fifth Amendment rights of Officer Porter, and placing the speedy trial rights of Defendants Miller, Nero, and Lt. Rice at peril. If the present Motion were granted, it would in essence reward the State for its tactical inadequacies and utter disrespect for the Defendants' constitutional rights.

9. For these reasons, compelling Officer William Porter's testimony at the trial of the Defendant Miller is not necessary to the public interest, and the present Motion must be denied.

Respectfully submitted,

Catherine Flynn, Esquire
Brandon Mead, Esquire
Mead, Flynn & Gray, P.A.
One North Charles Street, Suite 2470
Baltimore, Maryland 21201
(410) 727-6400
*Counsel for Officer Garrett Miller*

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**REQUEST FOR A HEARING**

Defendant Garrett Miller, by undersigned counsel, hereby requests a hearing on the State's Motion to Compel a Witness to Testify Pursuant to Section 9-123 of the Courts and Judicial Proceedings Article.

Respectfully submitted,

Catherine Flynn, Esquire
Brandon Mead, Esquire
Mead, Flynn & Gray, P.A.
One North Charles Street, Suite 2470
Baltimore, Maryland 21201
(410) 727-6400
*Counsel for Officer Garrett Miller*

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**ORDER**

Having reviewed the State's Motion to Compel a Witness to Testify Pursuant to Section 9-123 of the Courts and Judicial Proceedings Article and Defendant Garrett Miller's Opposition, it is this _____ day of _____, 2016, by the Circuit Court for Baltimore City

**ORDERED** that the State's Motion to Compel a Witness to Testify Pursuant to Section 9-123 of the Courts and Judicial Proceedings Article be and hereby is **DENIED**.

_____

Judge
Circuit Court for Baltimore City

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of January, 2016, a copy of the foregoing Defendant Garrett Miller's Opposition to the State's Motion to Compel a Witness to Testify Pursuant to Section 9-123 of the Courts and Judicial Proceedings Article, Request for Hearing, Proposed Order, and referenced exhibits were sent via electronic mail and mailed, first-class postage prepaid, to Janice Bledsoe, Deputy State's Attorney, Office of the State's Attorney for Baltimore City, 120 East Baltimore Street, Baltimore, Maryland 21202.

Catherine Flynn

STATE'S ATTORNEY
Marilyn J. Mosby

OFFICE *of the* STATE'S ATTORNEY *for* BALTIMORE CITY
120 East Baltimore Street · Baltimore, Maryland 21202

DIRECT DIAL
443-984-6011

September 15, 2015

VIA HAND DELIVERY

The Honorable Barry G. Williams
Associate Judge
Circuit Court for Baltimore City
534 Courthouse East
Baltimore, MD 21202

Re: State v. Goodson, et al.,
Case Nos.: 115141032-37

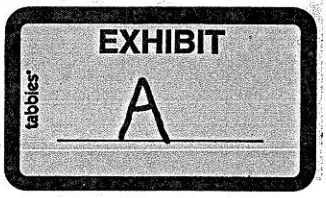
Dear Judge Williams,

I write as directed concerning the order and anticipated length of trials. The anticipated length of trial does not include the time for hearing and resolving pretrial motions, the time for jury selection, nor the length of the defense cases. Because the State has not yet received discovery from any of the Defendants, the anticipated length of trial also does not include possible additional time in the State's case from meeting anticipated defenses. The State would call the cases in the following order.

- First: William Porter, No. 115141037 Five days
- Second: Caesar Goodson, No. 115141032 Five days
- Third: Alicia White, No. 115141036 Four days
- Fourth: Garrett Miller, No. 115141034 Three days
- Fifth: Edward Nero, No. 115141033 Three days
- Sixth: Brian Rice, No. 115141035 Four days.

Defendant Porter is a necessary and material witness in the cases against Defendants Goodson and White, so it is imperative that Mr. Porter's trial takes place before their trials. Defendant Porter's counsel has known this since before the grand jury returned indictments in these cases. On July 24, 2015, counsel for Defendants Porter and Rice were advised by the State that Porter's case would be called first, either with Defendant Rice or without him, depending on the Court's ruling on the joinder sought by the State. Presumably, counsel for Defendants Porter and Rice so advised counsel for the other defendants. In any event, counsel for all Defendants were notified that the State intended to call the Porter case first during the chambers conference with the court on September 2, 2015.

The trial date of October 13, 2015 was ordered on June 19, 2015, based on the availability of the court and all counsel. As Judge Pierson requested, we had cleared that date with Dr. Carol Allan, the Assistant Medical Examiner who conducted the autopsy. We were advised by Dr. Allan this morning that she will be out of Maryland from November 16 through November 30. The State will be ready to begin the case against Mr. Porter on October 13. Counsel for Mr. Porter has expressed his intent to seek a continuance. The State informed counsel for Mr. Porter over the past weekend that it had no objection to a continuance of Mr. Porter's case of up to three weeks, *provided* that his remains the first case to be tried. However, given Dr. Allan's schedule,

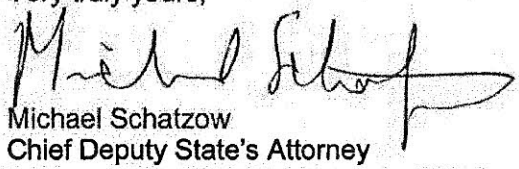


the State now believes that it cannot consent to a continuance beyond October 26. Given that no other Defendant is required to be ready for trial on October 13 (and the State has not received any discovery from any Defendant 30 days before October 13), a two week continuance would not unduly delay the time by which all six cases could be resolved. However, if the consequence of a continuance for Mr. Porter would be forcing the State to try a different Defendant first, then the State would vigorously oppose a continuance for Mr. Porter. Mr. Porter's counsel has been aware of the October 13 trial date for almost three months, and has known with certainty that Mr. Porter's case would be tried first for at least six weeks. In light of the long scheduled and agreed upon trial date, and the other background referenced above, Mr. Porter has no legitimate basis for a continuance, particularly one that would impact the State's traditional right to call cases in the order it chooses.

Finally, the Court directed the State to provide an alternative order in the event that Mr. Porter's case is not tried first. Without prejudice to the State's position that, in light of the facts of this case and the information in this letter, it should be able to call the cases in the order expressed above, the State's alternative order would be to try Mr. Miller first, and then, in order, Mr. Porter, Mr. Goodson, Ms. White, Mr. Nero and Mr. Rice. Without listing all the possible permutations, the State essentially seeks to have Mr. Porter tried before Mr. Goodson and Ms. White, to have Mr. Miller tried before Mr. Nero, and to have Mr. Miller and Mr. Nero tried before Mr. Rice.

Thank you for your consideration of these requests. Pursuant to your instructions, I have enclosed the transcript of each defendant's statement. I trust that this letter is clear and responsive to your direction. If you have any questions or think that a chambers conference would be useful, the State is available at the convenience of the Court.

Very truly yours,



Michael Schatzow
Chief Deputy State's Attorney
Baltimore City State's Attorney's Office

MS/tsr

Enclosures

Cc: Without Enclosures
Matthew B. Fraling, III, Esquire, Via Email
Marc L. Zayon, Esquire, Via Hand Delivery
Catherine Flynn, Esquire, Via Hand Delivery
Joseph Murtha, Esquire, Via Email
Ivan Bates, Esquire, Via Hand Delivery
Michael Belsky, Esquire, Via Hand Delivery
Andrew Jay Graham, Esquire, Via Hand Delivery
Gary Proctor, Esquire, Via Hand Delivery