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**IN THE  
COURT OF APPEALS OF MARYLAND**

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**September Term, 2015**

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**No. 99**

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**ALICIA WHITE**  
v.  
**STATE OF MARYLAND, Appellee**

and

**CAESAR GOODSON**  
v.  
**STATE OF MARYLAND, Appellee**

On Interlocutory Appeal from the Circuit Court for Baltimore City  
(Honorable Barry G. Williams)

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**APPENDIX TO BRIEF OF APPELLANT WILLIAM PORTER**

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February 24, 2016

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IN THE CIRCUIT COURT FOR BALTIMORE CITY, MARYLAND

STATE OF MARYLAND

vs.

Case Number:  
115141037

WILLIAM PORTER,

Defendant.

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REPORTER'S OFFICIAL TRANSCRIPT OF PROCEEDINGS  
(Excerpt - Testimony of Syreeta Teel)

Baltimore, Maryland

Monday, December 7, 2015

BEFORE:

HONORABLE BARRY G. WILLIAMS, Associate Judge  
(and a jury)

APPEARANCES:

For the State:

JANICE BLEDSOE, ESQUIRE  
MICHAEL SCHATZOW, ESQUIRE  
MATTHEW PILLION, ESQUIRE  
JOHN BUTLER, ESQUIRE

For the Defendant:

JOSEPH MURTHA, ESQUIRE  
GARY PROCTOR, ESQUIRE

\* Proceedings Digitally Recorded \*

Transcribed by:  
Patricia Trikeriotis  
Chief Court Reporter  
Circuit Court for Baltimore City  
111 N. Calvert Street  
Suite 515, Courthouse East  
Baltimore, Maryland 21202

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THE COURT: Ladies and gentlemen of the jury,  
does anyone still have a copy of the transcript?

THE CLERK: No. Okay. Thank you.

THE COURT: All right. Thank you.

BY MS. BLEDSOE:

Q. And did you, in fact, contact Officer Porter?

A. Yes.

Q. And do you know what -- just for clarification,  
do you know what 10-16 means?

A. Yes. It means immediate backup unit.

Q. So what did Officer Porter say to you on the  
telephone when you contacted him?

A. That he confirmed -- he answered up to --

MR. PROCTOR: Judge, I should just renew the  
earlier objection.

THE COURT: Very well. Objection is overruled.

BY MS. BLEDSOE:

Q. Go ahead.

A. That he did respond to Druid Hill and Dolphin  
with Officer Goodson. As he pulled up behind the wagon,  
he exited his vehicle, approached the rear of the wagon.  
Officer Goodson got out of the driver's side of the  
wagon, and proceeded to the back as well.

As the doors were opened, Officer Goodson --  
I'm sorry -- Officer Porter advised that Mr. Gray was

1 lying on the wagon floor with his head towards the front  
2 of the van and his feet towards the door. He asked him  
3 what was up. He stated he couldn't -- he said he can't  
4 breathe. Officer Porter asked him -- asked Mr. Gray to  
5 get up. At which time, he said he couldn't. So Officer  
6 Porter stated he reached in and helped him up onto the  
7 bench.

8           Officer Porter advised that he asked him if he  
9 needed a medic. Mr. Gray said yes. Officer Porter --  
10 they shut the wagon doors, and he has a conversation with  
11 Officer Goodson in reference to the conversation with Mr.  
12 Gray. He then advises that he proceeds as immediate  
13 back-up for 7-Baker-09.

14           Q. Now, prior to -- during your conversation when  
15 you were listening to Officer Porter, prior to Officer  
16 Porter saying that he advised that he asked Mr. Gray what  
17 he needed, what else did Officer Porter say that Mr. Gray  
18 said?

19           A. May I refer to my notes?

20           Q. Absolutely. And, in fact, this might help  
21 refresh your recollection.

22           (Brief pause.)

23           THE COURT: Mark it for identification.

24           MS. BLEDSOE: Sure, Your Honor. State's  
25 Exhibit Number 30 for identification.

1 THE CLERK: 31.  
2 (State's Exhibit Number 31  
3 was marked for identification.)  
4 BY MS. BLEDSOE:  
5 Q. And just take a minute. See if it helps  
6 refresh your recollection.  
7 (Brief pause.)  
8 BY MS. BLEDSOE:  
9 Q. Does that help refresh your recollection?  
10 A. Yes.  
11 Q. Okay. So when Officer Porter opened the door,  
12 what did he say to you that Mr. Gray said to him?  
13 A. He advised that Mr. Gray was stating, "Help."  
14 Q. And what else did Officer Porter say after --  
15 MR. PROCTOR: Objection.  
16 THE COURT: Same objection?  
17 MR. PROCTOR: It's asked and answered.  
18 MS. BLEDSOE: You don't know what the question  
19 is, so.  
20 THE COURT: Objection is overruled.  
21 BY MS. BLEDSOE:  
22 Q. After Officer Porter indicated to you that Mr.  
23 Gray said "Help," what else did Freddie Gray say?  
24 A. He stated that he couldn't breathe.  
25 MS. BLEDSOE: Your Honor, at this time, the

1 State would enter State's Exhibit Number 91, which is --  
2 MR. PROCTOR: Objection.  
3 THE COURT: 91?  
4 MS. BLEDSOE: I mean 31.  
5 MR. PROCTOR: Objection.  
6 THE COURT: 91 or 31, what number?  
7 MS. BLEDSOE: 31, Your Honor.  
8 THE COURT: Approach.  
9 (Counsel and Defendant approached the bench,  
10 and the following ensued:)  
11 THE COURT: Her notes?  
12 MS. BLEDSOE: It's the statement.  
13 MR. PROCTOR: It's not a statement. It's a  
14 police report. They don't come in.  
15 THE COURT: This is what we just had for ID as  
16 her notes; right?  
17 MR. PROCTOR: Yes.  
18 THE COURT: Okay. This is 31. Okay.  
19 Objection, sustained.  
20 MS. BLEDSOE: Thank you, Your Honor.  
21 THE COURT: Okay.  
22 (Counsel and Defendant returned to the trial  
23 table, and the following ensued:)  
24 THE COURT: Objection, sustained.  
25 BY MS. BLEDSOE:

1 Q. Now, after you had this conversation with  
2 Officer Porter, what did you do?

3 A. I ended the phone conversation, and reported it  
4 immediately to my supervisor to advise her of the  
5 conversation I had with Officer Porter.

6 Q. Okay. And as a result of that conversation,  
7 what did you do?

8 A. I had to call Porter back because, before  
9 ending the first conversation, I made an appointment with  
10 him to come in for a statement. My sergeant advised me  
11 that the appointment needed to be sooner, so I contacted  
12 Officer Porter a second time to schedule an earlier  
13 appointment.

14 Q. Okay. And then what did you do?

15 A. After scheduling the appointment, hung up the  
16 phone. I entered that information into our note system.

17 Q. When you say "that information," what are you  
18 referring to?

19 A. I'm sorry, the telephone conversation, as well  
20 as the appointment conversation.

21 Q. And was Exhibit Number 31, the one that I asked  
22 you to look at to refresh your recollection, were those  
23 the notes that you wrote down?

24 A. Yes.

25 Q. Did there come a time when you interviewed



1 THE COURT: No, you haven't. You all have been  
2 fine.  
3 BY MR. PROCTOR:  
4 Q. I'm going to show you what's been marked by the  
5 State for identification as State's Exhibit 31. You see  
6 that, ma'am?  
7 A. Yes.  
8 Q. And you're familiar with that; right?  
9 A. Yes.  
10 Q. Those are your notes of your first telephone  
11 conversation with Officer Porter?  
12 A. Yes.  
13 Q. And let me just read you the first sentence.  
14 MS. BLEDSOE: Objection.  
15 THE COURT: Sustained.  
16 MR. PROCTOR: Okay.  
17 BY MR. PROCTOR:  
18 Q. Where does that say that Officer Porter  
19 responded to?  
20 MS. BLEDSOE: Objection.  
21 THE COURT: Sustained.  
22 BY MR. PORTER:  
23 Q. Where did Officer Porter tell you he responded  
24 to?  
25 A. Dolphin and Baker Street.

1 Q. Okay. Here's my question. Do Dolphin and  
2 Baker Street ever meet?

3 A. No.

4 Q. Okay. So that report that says Dolphin and  
5 Baker is incorrect; right?

6 A. Correct.

7 Q. And -- but -- so but Dolphin is right by where  
8 Stop 1 happened; right? I'm sorry. Baker is right where  
9 Stop 2 happened; right?

10 A. Yes.

11 Q. And Dolphin is right where Stop 5 happened --  
12 Stop 4 happened; right?

13 A. Yes.

14 Q. So when you write in that report that Officer  
15 Porter told you about what happened on Dolphin and Baker,  
16 you're including Stop 2 and Stop 4; is that fair to say?

17 A. Yes.

18 Q. And not to flog the horse, but in the recorded  
19 statement, the only mention of Mr. Gray's breathing was  
20 Officer Porter saying that he wasn't having any problem  
21 breathing; is that true?

22 A. Yes.

23 Q. He didn't appear short of breath. Officer  
24 Porter said that; didn't he?

25 A. Yes.

POSITION PAPER  
WITNESS IMMUNITY

From  
AGS  
office

I. INTRODUCTION

A. The Problem

There are, basically two types of immunity: transactional and use and derivative use immunity (hereinafter "use immunity"). Transactional immunity means that once a witness has been compelled to testify about an incident, he may never be prosecuted for offenses arising out of that transaction even if independent evidence of the offense(s) -- from a source other than the witness -- comes to light. Use immunity, a shorthand term for use and derivative use immunity, means that once a witness has been compelled to testify about an offense, neither that testimony nor any evidence derived from that testimony may be used against the witness. If independent evidence is discovered, or has been preserved, the witness theoretically may still be prosecuted for the offense.

Obviously, in situations in which insider information about criminal activity is necessary in order to prosecute criminal activity, the prosecutor is faced with untenable alternatives when only transactional immunity is available.

For example, assume a scenario in which a narcotics network is functioning effectively with a hierarchy in which the first echelon leader is a prosperous, "white collar" professional who has never been convicted of a crime. That individual, who we can refer to as "Kingpin", provides the capital necessary to purchase the narcotics which is distributed to users. He never has his hand on the narcotics and enters only into cash transactions. Kingpin, however, relies upon a certified public accountant ("A") and an individual who monitors the actual narcotics distributing network ("B").

Kingpin may never be successfully prosecuted without information from "A" or "B". There may not be enough evidence against "A" or "B" to prosecute them for their role in the

conspiracy.

A resourceful prosecutor, who could be investigating Kingpin for narcotics violations or criminal violations of the income tax code would subpoena "A" or "B" before the grand jury at which time "A" and "B" would invoke their privilege against self-incrimination. Under the present law, the prosecutor would then face the dilemma of having to give "A" or "B" transactional immunity or a total exemption from liability for their misdeeds. "A" or "B", then, could conceivably not be prosecuted for their role in the conspiracy on either the state or federal level. If granted transactional immunity, they also conceivably may not incur civil liability for their involvement. "A" or "B" conceivably may not incur civil tax liability in the form of penalties and "A" conceivably may not face professional discipline in the form of license suspension or revocation by his professional licensing authority. To permit "A" or "B" to walk away from their misdeeds would truly be a miscarriage of justice.

#### B. The Resolution

The resolution of the dilemma is to provide the prosecutor with use immunity to permit the prosecutor to build a tax prosecution case against Kingpin by immunizing "A" from the use of "A's" testimony against him, or a narcotics case by immunizing "B" from the use of his testimony against him. "A" and "B" could still be prosecuted for their involvement in the conspiracy, could still be forced to pay civil tax penalties and "A" could still be subject to discipline on a professional basis. Certainly, consideration of appropriate sanctions against "A" and "B" should and must include all possibilities given the magnitude of their involvement in the crime.

#### II. PROPOSED GENERAL IMMUNITY STATUTE

The proposed statute is based substantially on the federal immunity statutes: 18 U.S.C. §§6001-04 (1985). Changes made in the language are primarily those required by the differences

between the organizational structure of law enforcement agencies in the federal and state systems.

The proposed general immunity statute differs substantively from existing Maryland statutes in three ways:

1. It provides for use and derivative use instead of transactional immunity;
2. It is generally available rather than limited to specific crimes;
3. It has built-in procedural safeguards which must be complied with prior to its utilization. Generally, the present statutes operate automatically.

The proposed immunity statute would replace the immunity provisions for specific crimes. Presently, Maryland has separate immunity provisions for the following crimes: Article 27, §23, Bribery of Public Officials;<sup>1/</sup> Article 27, §24, Bribery of Athletic Participants; Article 27, §39, Conspiracy to Commit Bribery;<sup>2/</sup> Gambling or Lottery Violations; Article 27, §298, Controlled Dangerous Substances; Article 27, §262, Gambling; Article 27, §371, Lottery Violations; Article 27, §400, Selling Liquor to Minors; Article 27, §540, Sabotage Prevention; Article 33, §26-16, Election Irregularities; Financial Institutions §9-

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<sup>1/</sup>Article III, §50 of the Constitution of Maryland requires the General Assembly to adopt a bribery statute conferring transactional immunity. Article 27, §§23 and 39 are the response to the mandate. Consequently, absent a constitutional amendment, immunity for bribery must continue to be "transactional" as opposed to the more limited "use and derivative use" immunity.

<sup>2/</sup>Transactional immunity for conspiracy to commit bribery also would not be affected since it has constitutional overtones.

910. Savings and Loan Prosecution.<sup>3/</sup>

### III. BASES FOR USE IMMUNITY

#### A. Legal Basis for Use Immunity

In 1892, the Supreme Court held unconstitutional a federal immunity statute which barred the introduction of compelled testimony but permitted it to be used to locate other evidence.<sup>4/</sup> The Court reasoned -- correctly -- that such derivative use of the tainted evidence rendered the immunity meaningless. But rather than simply stating that the Constitution required derivative use immunity; i.e., immunity from both the introduction of compelled testimony and exploitation of the testimony to find leads, the opinion spoke in broad language which seemed to require transactional immunity. Consequently, Congress enacted a transactional immunity statute which was upheld by the Supreme Court,<sup>5/</sup> and which became the model for state legislation. In 1970, Congress repealed the transactional immunity statutes and enacted a new use immunity statute, 18 U.S.C. §§6001-04 (1970). When the Supreme Court reviewed the new statute, it held that the transactional immunity language in Counselman which had been relied on for almost one hundred years was dicta. Thus, the Court held that the new statute which bars the use and derivative use of information obtained under a grant of immunity provides the protection required by the Fifth Amendment.<sup>6/</sup>

Maryland's transactional immunity statutes, like the federal

<sup>3/</sup> Immunity in the savings and loan situation would remain the same since the duration of the immunity accorded to the investigation of the pending matters would be limited to one more extension of the sunset provisions.

<sup>4/</sup> Counselman v. Hitchcock, 142 U.S. 547 (1892).

<sup>5/</sup> Brown v. Walker, 161 U.S. 591 (1896).

<sup>6/</sup> Kastigar v. United States, 406 U.S. 441 (1972).

Immunity statutes repealed in 1970, are based upon an incorrect interpretation of the 1892 decision. It is now clear that use immunity will meet constitutional requirements. Maryland's laws are, therefore, outdated.

#### B. Practical Bases for Use Immunity

In addition to providing the possibility that a witness given use immunity may be subject to subsequent prosecution for his criminal activity, i.e., the Oliver North prosecution, and would be subject to collateral consequences, use immunity provides for more complete disclosure of evidence than transactional immunity. As Professor G. Robert Blakely stated at the 1974 Seminar of the National Association of Attorneys General:

With transactional immunity all the witness has to do is mention the transaction; he does not have to fill in the details. So his attorney can tell him to just mention it, and then say, "I don't remember." But with a "use" statute, a smart attorney advises his client to tell all he knows, because the more he tells, the less can be later used against him. So "use" statutes encourage fuller disclosure by witnesses, and that is what they are really all about.

As a result, individuals testifying under a grant of use immunity have greater reason to disclose their involvement.<sup>7/</sup>

Further, a general immunity statute, instead of the present patchwork quilt of immunity statutes for particular crimes, would likewise be more conducive to full disclosure of evidence by an immunized witness. Often testimony about a drug transaction will encompass other crimes, such as violations of criminal tax statutes. Under the present system, a witness subpoenaed to testify pursuant to the immunity provisions of Article 27, §298

<sup>7/</sup>Whether transactional or use witness immunity does not preclude prosecution for perjury or making false statements under oath.

(Controlled Dangerous Substances) may not refuse to testify because testimony regarding the controlled dangerous substances transaction would simultaneously implicate him in the commission of other crimes, e.g., tax perjury.<sup>8/</sup> Yet this circumstance presents the possibility of a trap for the unwary prosecutor inquiring into drug violations and inadvertently granting transactional immunity for some previously unknown criminal activity.

Further, there are no procedural safeguards in the present immunity statutes and consequently their operation is triggered haphazardly, without identification of when a witness begins to receive immunity. The statutes also provide an "automatic immunity bath". Across the nation,<sup>9/</sup> witnesses subpoenaed before the grand jury must either assert the privilege against self-incrimination or else notify the prosecutor that it is their intention to do so. The prosecutor then asks the court to order testimony and certifies that the immunity conferred thereby is in the public interest. This is the procedure set out in this proposed statute and is the procedure incorporated in the recently adopted savings and loan immunity legislation. In sharp contrast, most present Maryland statutes immunize everyone who answers questions in the grand jury.<sup>10/</sup> No assertion of the privilege is required, nor is there any requirement of a certification that the immunity is in the public interest. The uncertainty of when the statute is applicable, coupled with the blanket automatic transactional immunity bath, makes Maryland immunity statutes both haphazard and dangerous. Unless a

<sup>8/</sup> In re: Criminal Investigation No. 1-162, 307 Md. 622 (1987).

<sup>9/</sup> Witness Immunity, National Association of Attorneys General, August, 1978.

<sup>10/</sup> State v. Pangoullis, 253 Md. 699 (1969) (Witness who appeared voluntarily before grand jury to make statement and was then asked questions was "compelled" to testify within meaning of bribery immunity statutes).



prosecutor is very conversant in the vagaries of investigative grand jury law, he or she accidentally may immunize potential targets. As a consequence of the risks arising from the broad automatic immunity received by anyone subpoenaed before a grand jury investigating drugs, gambling and election laws, the grand jury frequently becomes unusable as an investigative tool in these areas. The result is that the financial aspects of large drug operations cannot be investigated by Maryland grand juries.

Finally, despite the broad brush immunization the present statutes provide, they may ironically deprive potential defendants of the opportunity to provide exculpatory evidence to a grand jury. A prosecutor who might otherwise consent to the appearance of a defendant who want to testify before an investigative grand jury or -- the more common occurrence -- a prosecutor who is willing to call a witness supportive of the defense, may decline to do so because he fears automatic immunization. There are no immunity waiver statutes and the question of whether the automatic immunity can be waived has yet to be resolved by the appellate courts.

#### IV. PROPOSED STATUTE

The proposed statute substitutes use for transactional immunity<sup>11/</sup> because of the additional fact-finding utility that use immunity provides. It would automatically bring the Maryland law into accord with the Supreme Court's current view of the breadth of the Fifth Amendment.

The proposed statute is made generally applicable primarily for two reasons. It assures the compellability of the testimony regarding a transaction which may involve a variety of interrelated crimes and thus circumvents any constitutional

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<sup>11/</sup> Transactional immunity for the crime of bribery is retained because of its constitutional underpinning and for the savings and loan investigation because of its limited duration.

problem which may presently exist.<sup>12/</sup> Secondly, it is now apparent that a grand jury may be an inappropriate forum for the investigation of a variety of crimes, particularly large scale drug operations, money laundering, and tax perjury. The existence of a generally available but limited immunity statute would remedy the dual problems of no immunity for most crimes and too much immunity for drugs, gambling and elections offenses.

By far the most significant changes provided by the proposed statute are procedural. Immunity would no longer be conferred automatically or accidentally, but rather only through court order. To ensure coordinated, responsible requests for immunity, the decision to seek a court order requires approval by the State's Attorney, Attorney General or State Prosecutor. The State's Attorney, the Attorney General or State Prosecutor will thereby have central control and ultimate responsibility for the issuance of grants of immunity.

The judicial role under this statute is ministerial. The judge verifies that:

1. The State's Attorney, the Attorney General, or State Prosecutor has approved the request for an immunity order;
2. The witness has refused or is likely to refuse to testify;
3. The prosecutor has determined that the witness's testimony may be necessary to be in the public interest.

Once the judge concludes these three requirements are met, he issues a court order compelling testimony and immunizing the witness.

The judge will not himself determine whether the witness'

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<sup>12/</sup>Cf. *In re Criminal Investigation No. 1-162*, supra. n.6. (witness must reasonably fear prosecution for one of enumerated offenses).

testimony may be necessary to the public interest. To do so would transform the Judge into a prosecutor and require him to make delicate prosecutorial judgments which are inappropriate. Furthermore, a particular immunity grant may be a very small aspect to a large scale investigation, making it impossible for the Judge to make any meaningful evaluation of the public interest.

CAESAR GOODSON  
Appellant,  
v.  
STATE OF MARYLAND  
Appellee.

\* IN THE  
\* COURT OF SPECIAL APPEALS  
\* OF MARYLAND  
\* SEPTEMBER TERM, 2015  
\* NO. 2308 (CC# 115141032)

\* \* \* \* \*  
**OFFICER GOODSON'S MOTION TO LIFT STAY OF TRIAL AND REQUEST  
FOR AN ORDER DIRECTING THE TRIAL COURT  
TO DISMISS THE INDICTMENT**

Defendant, Officer Caesar Goodson ("Defendant" or "Officer Goodson"),<sup>1</sup> through his counsel, and pursuant to Maryland Rule 8-431 and this Court's January 11, 2016 Order, moves to lift the stay of Officer Goodson's trial pending resolution of the interlocutory appeal filed by Officer Porter, and requests that an order be issued by this Court directing the trial court to dismiss the indictment.

**I. INTRODUCTION**

Officer Goodson objects to the Court of Special Appeals' January 11, 2016 Order staying, *sua sponte*, his criminal trial that was scheduled to begin on that same date ("Stay Order"). The interlocutory appeal filed by Officer William Porter (which is properly before this Court and should proceed as ordered) did not divest the circuit court of jurisdiction and this Court lacked the power and authority to stay Officer Goodson's trial.

<sup>1</sup> Although Officer Goodson is captioned as the "Appellant," this Court designated Officer William Porter ("Officer Porter") as the Appellant in its Order. *See* Maryland Rule 8-111. Officer Goodson has not noted an appeal on any issue, nor has the State noted any appeal in which Officer Goodson is the Appellee.

This Court's Stay Order, even if it were procedurally permissible, would violate Officer Goodson's right to a fair and speedy trial as guaranteed to him under the Sixth Amendment to the United States Constitution and Article 21 of the Maryland Constitution. It is not and cannot be in Officer Goodson's interests to stay this matter as it is in violation of his constitutional rights, and the Court's presumption that this was in the best interest of the defendant is mistaken.

On May 1, 2015, the State decided whom to charge and with what charges. Since that day, it has engaged in a litigation strategy based on the faulty premise that it could call Officer Porter to testify in Officer Goodson's case. However, the State knew that Officer Porter was going to invoke his right against self-incrimination in Officer Goodson's case. Despite that knowledge, the State continued its prosecution of Officer Goodson and deliberately chose to try him after Officer Porter.

Due to the State's litigation tactics, Officer Porter was forced to take an emergency interlocutory appeal in order to protect his constitutional rights against self-incrimination. Officer Porter's appeal is appropriate based on the "extraordinary circumstances" created by the State, in its attempts to deprive a defendant with pending charges of his constitutional rights. Indeed, an injunction was necessary to protect Officer Porter's rights.

However, there is no need for Officer Goodson's rights to get trampled in the process, particularly when it only rewards the State for its trial tactics, lack of preparation, and lack of evidence. Although the issue of a stay was not before this Court, in the end, this Court circumvented the trial court's authority and effectively granted the

State's motion for a continuance pending the resolution of Officer Porter's appeal. Any way it is to be packaged, the reason Officer Goodson's trial is stayed is because of the State's decisions and tactics. Officer Goodson should not have to pay the price while the State reaps the benefit.

Every day that passes, Officer Goodson's right to a speedy trial is further violated. Officer Goodson asks, and the law requires, that the stay be lifted. Further, because the State's tactics have forced Officer Goodson into this position, and assuming this Court has jurisdiction over Officer Goodson's case, we ask that this Court find that Officer Goodson's state and federal constitutional rights have been violated, and that justice requires that the indictment against him be dismissed.

## II. BACKGROUND

On May 1, 2015, State's Attorney Marilyn Mosby publicly declared the following relating to the April 12th arrest of Freddie Carlos Gray, Jr. ("Mr. Gray") and his untimely death:

*It is my job to examine and investigate the evidence of each case and apply those facts to the elements of a crime, in order to make a determination as to whether individuals should be prosecuted. This is a tremendous responsibility, but one that I saw and accepted when the citizens of Baltimore City elected me as the State's Attorney, and it is precisely what I did in the case of Freddie Gray.*

Once alerted about this incident on April 13, investigators from my police integrity unit were deployed to investigate the circumstances surrounding Mr. Gray's apprehension. Over the course of our independent investigation, in the untimely death of Mr. Gray, *my team worked around the clock; 12 and 14 hour days to canvas and interview dozens of witnesses; view numerous hours of video footage; repeatedly reviewed and listened to hours of police video tape statements; surveyed the route, reviewed voluminous medical records; and we leveraged the information made*

*available by the police department, the community and family of Mr. Gray.*

*The findings of our comprehensive, thorough and independent investigation, coupled with the medical examiner's determination that Mr. Gray's death was a homicide that we received today, has led us to believe that we have probable cause to file criminal charges.*

See PBS News Hour (PBS television broadcast May 1, 2015), available at <http://time.com/3843870/marilyn-mosby-transcript-freddie-gray/> (emphasis added).

Ms. Mosby then read the State's version of the "facts," which it supposedly had evidence to support, in its Statement of Probable Cause and in the end, as it related to Officer Goodson, stated:

Officer Caesar Goodson is being charged with second-degree depraved heart murder, involuntary manslaughter, second-degree negligent assault, manslaughter by vehicle by means of gross negligence, manslaughter by vehicle by means of criminal negligence, misconduct in office by failure to secure prisoner, failure to render aid.

*Id.*<sup>2</sup> On that same day, Officer Goodson was suspended from the Baltimore City Police Department without pay.

Based on current filings by the State, Officer Goodson now knows that the "evidence" that was referenced by Ms. Mosby was in fact the testimony of Officer Porter. Thus, as early as May 1 of last year, the State's Attorney knew that the State's case depended upon Officer Porter's testimony. Even before the indictments were returned,

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<sup>2</sup> On May 21, 2015, Officer Goodson was indicted. The seven-count indictment charged Officer Goodson specifically with 1) Second Degree Depraved Heart Murder; 2) Involuntary Manslaughter; 3) Second Degree Assault; 4) Manslaughter by Motor Vehicle; 5) Criminally Negligent Manslaughter by Motor Vehicle; 6) Misconduct in Office; and 7) Reckless Endangerment.

Officer Porter's counsel had been informed by the State of its position that he must be tried before Officer Goodson. See September 15, 2015 Letter from Chief Deputy State's Attorney Michael Schatzow, attached hereto as **Exhibit 1**.

On July 24, 2015, the State formally advised counsel for Officer Porter that his trial would go first. On September 2, 2015, after ruling that each defendant was to be tried separately, the trial court directed the State to identify the order in which it wished to try the defendants, as well as the anticipated length of each trial.

On September 15, 2015, the State advised the Court in writing that it intended to try the defendants in the following order: Porter, Goodson, White, Miller, Nero, and Rice. See **Ex. 1**. The State represented to the Court 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." *Id.* (emphasis added).<sup>3</sup> After consultation between the trial court and counsel, the trials of Officer Porter and Officer Goodson were scheduled for November 30, 2015 and January 6, 2016, respectively. It is reasonable to assume that before deciding upon the order in which it would call the six cases, the State reviewed Maryland law to determine whether Officer Porter could, in fact, be required to testify at the subsequent trials.

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<sup>3</sup> If the State *truly* believed that it could compel *any defendant* at *any time* to give trial testimony through the grant of use and derivative use immunity, it would logically follow that the order of the trials would be irrelevant.



**A. The State knew of Officer Porter's intention to quash the subpoena and file an appeal.**

As early as May 2015, Officer Porter's attorneys informed the State of his intention to assert his 5th Amendment privilege if called to testify in the trials of other defendants. *See* Affidavits of Joseph Murtha, Esq. and Gary E. Proctor, Esq., attached hereto as **Exhibits 2** and **3**, respectively. During the months leading up to Officer Porter's trial, his counsel repeatedly informed the State of his intention to invoke his right against self-incrimination, and advised the State of his intention to quash any subpoena issued to him. *See Ex. 2* and *Ex. 3*.

On December 11th, before a verdict had been reached in his own trial, the State served Officer Porter with a subpoena to testify in Officer Goodson's trial, knowing that Officer Porter would move to quash it. During a bench conference with the trial court, Officer Porter's counsel stated on the record that Officer Porter would oppose any attempt by the State to compel him to testify. *Id.* On December 16, 2015, Officer Porter's trial ended in a mistrial.

The State had no reason to believe that Officer Porter's position had changed following the mistrial. On December 22, 2015, during a scheduling conference with the trial court and counsel for Officers Goodson and Porter, Mr. Proctor reminded the State of his client's intention to move to quash any subpoena and his intention to appeal the trial court's ruling if it entered an order compelling Officer Porter to testify. *Id.* Despite this knowledge, the State elected to proceed with the trial of Officer Goodson on January 6, 2016 and never requested that Officer Goodson's trial be moved to a later date. This

was a strategic trial decision made by the State, and it now must live with the consequences.

**B. During the January 6, 2016, hearing on the Motion to Quash and Motion to Compel, the State acknowledged the absence of any Maryland appellate guidance.**

At the hearing on Officer Porter's Motion to Quash the Subpoena and the State's Motion to Compel Testimony (pursuant to Md. Code Ann., Cts. & Jud. § 9-123),<sup>4</sup> the State openly acknowledged that there are no Maryland appellate decisions that squarely address the issue confronted by the trial court, namely: can a defendant, without a plea agreement and with criminal charges pending against him, be compelled to testify in the trials of other defendants, involving the same facts and issues to be presented later at his own trial, under a grant of use and derivative use immunity?<sup>5</sup> Indeed, the State

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<sup>4</sup> The Courts & Judicial Proceedings Article will be referred to as "CJP."

<sup>5</sup> Officer Goodson agrees with the position taken by Officer Porter that the immunity statute was not written to be applied in this circumstance. The effect of this trial court's ruling leads to the conclusion that Officer Goodson, who never gave a statement regarding this matter (which was his right) and has the right not to testify in his own case, could have been compelled to testify in the trial of Officer Porter in December 2015 under the guise of use and derivative use immunity. Regardless of whether the State could ultimately meet its burden under a hearing based on the case of *Kastigar v. United States*, 406 U.S. 441 (1972), before his later trial, Officer Goodson's federally and state afforded rights would be breached. In fact, every single defendant involved in the April 12, 2015 arrest and transport of Mr. Gray could be compelled to testify in the case of Officer Porter (or any other defendant) under the State's theory. This is not only nonsensical but it completely eviscerates the purpose of their constitutional protections.

Moreover, only the State can grant immunity; a defendant cannot compel an individual to testify on his behalf if that person invokes the 5th Amendment. In multi-defendant cases like this one, the State alone would control the evidence and be able to deny a defendant equal access to witnesses. For example, assume that Defendants A and B were also officers who were indicted relating to the death of Mr. Gray. Both defendants refuse to testify in the trial of Officer Goodson and invoke their 5th Amendment privilege. Assume also that Defendant A has inculpatory testimony against Officer Goodson and Defendant B has exculpatory testimony. The State could subpoena Defendant A, provide immunity under § 9-123, and elicit inculpatory

commented to the effect that it would be nice to have appellate guidance in Maryland on the issue, but "someone has to go first."<sup>6</sup> The trial court also recognized that it was wading into "uncharted territory." After acknowledging that there was a lack of precedent on this direct issue *and* that Officer Porter intended to appeal any order from the trial court compelling him to testify, the State elected to proceed with its motion to compel and asked the trial court to enter an order forcing Officer Porter to testify. Even after the trial court warned the State about the potential consequences of the entry of the order, the State requested that it be entered. *See* January 6, 2016 Order Compelling Testimony, attached hereto as **Exhibit 4**. This was yet another intentional, tactical decision made by the State.

During the January 6, 2016 hearing, Officer Porter orally moved to stay enforcement of the order pending the appeal. The trial court denied Officer Porter's motion from the bench and entered an order to that effect the next day. *See* January 7, 2016 Order Denying Stay, attached hereto as **Exhibit 5**. On January 7th, Officer Porter filed his Notice of Appeal and Motion for an Injunction of the trial court's January 6th

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testimony and purposefully not call Defendant B because the testimony will hurt its case. Officer Goodson has no way of compelling Defendant B's testimony. As a result, this distorts the fact-finding process and essentially deprives a defendant of his right to a fair trial.

<sup>6</sup> As of the filing of this Motion, Officer Goodson does not have a copy of the transcript. It is Officer Goodson's understanding that the Court has a DVD copy of the January 6, 2016 hearing.

order compelling his testimony pending an appeal.<sup>7</sup> On January 8th, the State responded to Officer Porter's motion and this Court granted a temporary stay of the order.

Also on Friday, January 8, 2016, at approximately 2:30 p.m., Officer Goodson received the State's Motion for Continuance of his trial, pending the outcome of Officer Porter's appeal. *See* State's Motion for Continuance ("State's Motion"), attached hereto as **Exhibit 6**. The State claimed that refusing to grant a continuance would "result in irreparable harm to the People of Maryland by *effectively gutting* their government's prosecution against Caesar Goodson (and eventually Alicia White) . . . ." **Ex. 6 at 5** (emphasis added). It asserted that Officer Porter "is the only person[] capable of giving useful testimony" and that he was "the only witness able to testify to critical aspects of Defendant Goodson's alleged role in Mr. Gray's death." *Id.* at 5. Officer Goodson filed an Opposition to this motion on January 11, 2015.<sup>8</sup>

Before the trial court could rule on the State's Motion, this Court ordered a stay of Officer Goodson's trial.

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<sup>7</sup> Pleadings filed with this Court or generated by it will be identified in, but not attached to, Officer Goodson's Motion.

<sup>8</sup> Because the arguments raised in Officer Goodson's Opposition to the State's Motion for Continuance are raised in his Motion to Lift Stay, a copy of the Opposition is not attached. Officer Goodson will provide a copy of his Opposition at the Court's request.

### III. ARGUMENT

#### A. Officer Goodson's trial should not have been stayed pending the resolution of Officer Porter's interlocutory appeal.

The Court of Appeals has held that the fundamental jurisdiction of a trial court is not divested simply because an appeal is taken from an interlocutory order, and the underlying trial should continue at the discretion of the trial judge. *See Pulley v. State*, 287 Md. 406, 417-18 (1980).<sup>9</sup> If all interlocutory appeals could halt underlying trials, there would be "havoc" with cases tried in this State. *Id.* at 418. However, the Court of Appeals recognized that there are some interlocutory appeals, particularly those involving the constitutional rights of the accused, where a stay may be warranted. *Id.* at 418-19 (identifying as an example an appeal related to the accused's guarantee against double jeopardy). In those circumstances, a stay of the underlying trial of the *accused asserting the constitutional violation* on appeal may be stayed either by the trial court or an appellate court, in order to aid in its appellate jurisdiction. *Id.* at 419.<sup>10</sup>

In the instant case, Officer Porter asserts that his constitutional rights were violated when the trial court ordered him to testify in Officer Goodson's case. Officer Porter noted an appeal and requested a stay in order to preserve and protect his rights. For this reason, a stay of an order relating to Officer Porter's constitutional rights was

<sup>9</sup> The State agrees with this proposition. *See State's Response to William Porter's Motion for Injunction Pending Appeal*, at page 4.

<sup>10</sup> The Court of Appeals also noted that if the trial court determines that the appeal is "utterly without merit and the defense was interposed merely to accomplish unwarranted delay," the trial may proceed. *Id.* at 419.

necessary and appropriate, and it was done in order to aid this Court's appellate jurisdiction relating to his appeal.

In contrast, Officer Goodson, the accused in this case, did not file any appeal to this Court, nor did he request a stay. While the stay of the circuit court's order compelling Officer Porter's testimony *protects Officer Porter's constitutional rights*, a stay of the *Goodson* trial *violates Officer Goodson's constitutional rights*.

**B. Officer Goodson's right to a speedy trial is violated with each passing day.**

In its papers below, the State has argued that the immunity statutes serve "the legitimate demands of government to compel citizens to testify" particularly where "the only persons capable of giving useful testimony are those implicated in the crime." *Ex. 6 at 5* (citation omitted). The State did not identify any case that held that litigation to determine whether a statute applied to a non-party was a "legitimate demand[] of government," much less a case that holds that such litigation trumps an accused's constitutional right to a speedy trial.

Under Maryland law, Officer Goodson's trial was required to start within 180 days after his or his counsel's initial appearance, *i.e.*, November 23, 2015. *See* Md. Code Ann., Crim. Proc. § 6-103 (formerly Article 27 § 591); Md. Rule 4-271(a)(1); *State v. Hicks*, 285 Md. 310 (1979) (holding that the 180-day requirement is mandatory)

("Hicks"). Officer Goodson's trial was already postponed once to January 6th, well past the *Hicks* date.<sup>11</sup>

Over and above the statutory requirement that he be tried within 180 days, Officer Goodson's right to a speedy trial is guaranteed by Article 21 of the Maryland Declaration of Rights and the Sixth Amendment to the United States Constitution. In this case, the State moved the trial court for a continuance and, by action of this Court, it was effectively granted. It is appropriate for this Court to consider the impact of a further delay on Officer Goodson's right to a speedy trial.

For speedy trial purposes, the length of delay is measured from the date of arrest or filing of indictment, information, or other formal charges to the date of trial. *Divver v. State*, 356 Md. 379, 388-89 (1999) (citations omitted). When the period of delay "is of constitutional dimensions, the court is required to consider a four-factor balancing test to determine whether the defendant has been deprived of his right to a speedy trial." *Schmitt v. State*, 46 Md. App. 389, 390 (1980) (citations omitted). *See also Divver*, 356 Md. at 388 (holding that the trigger for a speedy trial analysis is when the pretrial delay becomes "presumptively prejudicial"). The factors are: 1) the length of delay; 2) the reason for the delay; 3) the defendant's assertion of his right, and 4) prejudice to the defendant. *See Divver*, 356 Md. at 388. An evaluation of all four factors demonstrates

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<sup>11</sup> Officer Goodson does not waive his right to argue in the future that his original trial date in January 2016 was in violation of *Hicks* and his right to a speedy trial and expressly reserves the right to do so. Officer Goodson also does not waive his right to argue that there will be an inordinate delay between January 6, 2016 and his rescheduled trial date, and that dismissal will be warranted. *State v. Brown*, 355 Md. 89, 108-09 (1999).

that a stay for an indefinite period of time will violate Officer Goodson's right to a speedy trial.

*1. Length of delay.*

Officer Goodson was indicted on May 21, 2015. The day jury selection was scheduled to begin—January 11, 2016—was the 236th day after he was indicted (or seven months and 22 days). There is no set date for Officer Goodson's trial to resume. A stay of his trial has been put in place "pending resolution of [Officer Porter's] interlocutory appeal or further order from this Court." The time frame for the resolution of Officer Porter's appeal is unknown, given his right to exhaust all appellate avenues, including petitioning the United States Supreme Court for review of this important constitutional issue. Maryland has held that delays of six and one half months to nine and one half months cross the threshold of being of "constitutional dimension." See *Schmitt*, 46 Md. App. at 391-92 (citations omitted). The evaluation of the length of delay focuses on the "amount of time reasonably necessary for trial preparation" (*Coleman v. State*, 49 Md. App. 210, 221 (1981)), which is often dependent on the peculiar circumstances of the case, *i.e.*, the level of complexity of a case. *Schmitt*, 46 Md. App. at 391 (citing *Barker*, 407 U.S. at 530-31). In this case, the State cannot and has not argued that the reason it requested a continuance was for additional time to prepare for trial.

Officer Goodson submits that any further delay, much less a delay for an indefinite period of time, will be of a constitutional dimension and presumptively prejudicial.



2. *Reasons for delay.*

The delay of an indefinite period of time was due solely to the State's unsuccessful litigation tactics and its reliance on a single witness to substantiate the charges against Officer Goodson, and this weighs heavily against the State. In *Schmitt*, this Court held that the State's need for a delay in order to have a particular witness available to testify was an insufficient reason for the delay. *See Schmitt*, 46 Md. App. at 393-94 (finding that a witness's unavailability due to back surgery was an insufficient reason, particularly where there had been no efforts by the State to reach a stipulation as to testimony). The case of *State v. Hiken*, 43 Md. App. 259 (1979), is also instructive. In *Hiken*, this Court affirmed the dismissal of an indictment, where the reason for the delay was the State's need to obtain evidence from another jurisdiction. The Court found that the evidence was not available for trial due to the State's lack of diligence. *Hiken*, 43 Md. App. at 272-74 (finding that the State did not make any earlier efforts to secure the evidence for use at trial).

In this case, the State has known since May 2015 that Officer Porter would be invoking his 5th Amendment privileges. The State knew that Officer Porter would aggressively challenge the issuance of any subpoena, and that he had the right to appeal any adverse ruling. Yet it made no efforts to secure Officer Porter's testimony until one month before Officer Goodson's trial. The failure to have this supposedly "necessary" and "material" evidence is the State's fault, and Officer Goodson's constitutional rights should not have to suffer for it.

### 3. *Assertion of the right.*

On May 27, 2015, shortly after he was indicted, Officer Goodson filed a motion demanding a speedy trial. See Online Docket (May 27, 2015) ("Motion for Speedy Trial"), Ex. 7. On September 2, 2015, the trial court severed the cases of the six defendants and Officer Goodson's trial date was set for October 13, 2015. See Hearing Notice, Ex. 8. Then, on September 29, 2015, without a waiver of Officer Goodson's *Hicks* rights, the trial court postponed his original trial date past the 180-day limit to January 6, 2016. See Hearing Notice, Ex. 9; see also Ex. 7 (Sept. 29, 2015, "Postponement Form Filed; *Hicks*, Md. Rule 4-271 Not Waived"). The State filed a Motion for Continuance of that trial, which Officer Goodson opposed on January 11, 2016, arguing, among other things, that it would violate his right to a speedy trial. Most recently, on January 15th, Officer Goodson filed an objection to this Court's Order staying his case based on those same reasons. See Exhibit 10. Officer Goodson has asserted his rights at each turn.

### 4. *Prejudice to the accused.*

A delay of his trial prejudices Officer Goodson. The Court of Appeals recognizes that there are personal factors that should be considered when determining prejudice to a defendant, such as "the disruption of his employment, the drain of his financial resources, the curtailment of his associations, his subjection to public obloquy and the creation of anxiety in him, his family and friends." *Divver*, 356 Md. at *Id.* at 274-75 (citations omitted). The media scrutiny Officer Goodson has been subjected to, by itself, shows actual prejudice. With each day, Officer Goodson suffers fear, anxiety, and exposure to

public scrutiny and criticism. Additionally, because the State chose to charge him with a felony, Officer Goodson was suspended without pay on May 1, 2015. Further delay will not only violate Officer Goodson's constitutional and statutory rights, but it will impact his livelihood and the welfare of his family. Finally, Officer Goodson's defense will also be impaired, as evidence turns stale, by witnesses relocating or forgetting critical information with the passage of time. *Id.*

Due to this Court's de facto grant of the State's Motion for Continuance, Officer Goodson is now forced to wait for an unknown period of time for his trial to begin. The constitutional issues raised by Officer Porter, the lack of authority on the application of CJP § 9-123 to defendants with pending charges, and the State's pronouncement that the absence of Officer Porter's testimony effectively guts its case against Officer Goodson, makes it reasonable to assume that there will be future appeals, even to the United States Supreme Court. Should the stay continue until the resolution of Officer Porter's interlocutory appeal, it could be years before Officer Goodson's trial occurs, through no fault of Officer Goodson. This would be a violation of Officer Goodson's right to a speedy trial and should not be permitted.

- C. If the State's motion for continuance had been granted by the trial court on January 11th, this Court would be compelled to find that it was an abuse of discretion.**

In ordering the stay, this Court essentially stepped into the shoes of the trial court and granted the State's Motion for a Continuance because of the need to secure an absent witness.

Under well-established Maryland law, a trial court's decision to grant or deny a request for continuance based on the absence of a witness will be reviewed by the appellate courts for an abuse of discretion. *Jackson v. State*, 214 Md. 454, 459 (1957). In determining whether a continuance should be granted, the party making the request must show the following: "1) he had a reasonable expectation of securing the evidence of the absent witness . . . within some reasonable time; 2) that the evidence is competent and material, and he believed that the case could not be fairly tried without it; and 3) that he had made diligent and proper efforts to secure the evidence." *Id.* (citations omitted) (generally referred to as the "*Jackson* factors"). The State has failed to provide proof that it satisfies these requirements as it has to in order to warrant a continuance, much less continued enforcement of this Court's Order.

***1. The State has not demonstrated, nor can it, that it had a reasonable expectation that Officer Porter would testify.***

Almost since making the determination that it wanted to have Officer Porter's trial proceed first, the State has known that he would be invoking his right not to testify. In light of the State's (and the trial court's) recognition that the State's request to compel Officer Porter to testify because of a grant of use and derivative use immunity ventured into "uncharted territory," the State cannot argue that it truly believed it had well established Maryland precedent on its side.<sup>12</sup> Indeed, the Maryland cases and the

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<sup>12</sup> In light of the statements made by the State and the trial court on January 6th regarding the lack of precedent on point, it is unclear why the State argues that Officer's Porter's appeal is "doomed to fail." See **Ex. 6 at 3**. The cases cited by the State as support for the appeal's forecasted failure do not involve a criminal defendant, with current charges pending and a trial date scheduled, being given use and derivative use immunity. See **Ex. 6 at 4**.

statutory language plainly do not support this argument. As the Court is aware, "A person may not be compelled to testify in violation of his privilege against self-incrimination. The failure of a defendant to testify in a criminal proceeding on this basis does not create any presumption against him." *See* CJP § 9-107. That statute is clear and unequivocal on its face.

The State attempts to circumvent Officer Porter's unassailable right against self-incrimination by granting him use and derivative use immunity under CJP § 9-123. But CJP § 9-123 applies to "witnesses," not current defendants. The State has presented no case law in which use and derivative use immunity was ever given to a defendant in Officer Porter's current situation—a fact the State does not dispute.

Maryland law does not support the State's use of § 9-123, or the State's request for a continuance (and this Court's stay). The recent case of *Davis v. State*, 207 Md. App. 298, *cert. denied*, 429 Md. 529 (2012), is instructive. In *Davis*, the defendant requested a continuance on the first day of his trial in order to present the testimony of a co-defendant (a juvenile, "Jerquan"), whose adjudication was not scheduled to take place until two months later.<sup>13</sup> The defendant argued that he needed a continuance because Jerquan was refusing to testify based on his 5th Amendment privilege until after his adjudication. *Davis*, 207 Md. App. at 304-05. The defendant characterized Jerquan's statements as exculpatory. *Id.* at 305. The trial court denied the defendant's request. *Id.*

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<sup>13</sup> Although *Davis* involved a defendant's request for a continuance, there is no reason why the same factors would not apply to the State's request for a continuance due to an absent witness.

On appeal, this Court found that the trial court did not abuse its discretion in denying the continuance under the first two *Jackson* factors. As it relates to the reasonableness of the defendant's expectation to secure Jerquan's live testimony (factor 1), the Court said the following:

Under *Jackson*, the first factor that appellant must show in order to be entitled to a continuance is that "he had a reasonable expectation of securing the evidence of the absent witness or witnesses within some reasonable time." 214 Md. at 459, 135 A.2d 638. Here, it is undisputed that Jerquan was not going to waive his Fifth Amendment privilege and testify at appellant's trial. In *Tann v. State*, 43 Md. App. 544, 548, 406 A.2d 448 (1979), this Court held "that where the absent witness is also a co-defendant and there is no showing that he will waive his privilege against self-incrimination and exonerate the appellant, the trial judge may deny the postponement of a trial."

Appellant, nevertheless, asserts that, because Jerquan's trial was scheduled only two months after appellant's trial, "there was a reasonable likelihood that [Jerquan] would cease to have a Fifth Amendment basis for refusing to testify after that point." Appellant's contention overlooks the fact that Jerquan's Fifth Amendment privilege would not end with his trial, unless he was found not involved. If Jerquan was found involved, his Fifth Amendment privilege would continue through disposition and *all subsequent appeals*. Any appeal to this Court could take anywhere from nine months to over a year. At the hearing on appellant's motion for a continuance, there was no indication that Jerquan was going to enter a plea of involved. Therefore, because Jerquan was not going to waive his Fifth Amendment privilege to testify at appellant's trial and there was no indication that he would enter a plea of [*sic*] involved, we conclude that appellant failed to show that Jerquan would be available to testify "within some reasonable time." See *Jackson*, 214 Md. at 459, 135 A.2d 638.

*Davis*, 207 Md. App. at 308-09 (emphasis in original). Like the State in this case, the defendant in *Davis* knew that the co-defendant was *not* going to waive his 5th Amendment Privilege and, like the State in this case, the defendant was unable to say when the co-defendant would become a compellable witness.

Any claim by the State that it had a reasonable expectation of securing Officer Porter's testimony is belied by opinions from the Court of Appeals of Maryland. In *Archer v. State*, 383 Md. 329 (2005), the Court of Appeals noted that a defendant becomes a compellable witness when "no appeal or sentence review was pending and the time for appeal and sentence review had expired." *Archer*, 383 Md. at 344 (citing *Ellison v. State*, 310 Md. 244 (1987)). The Court also observed that a government can compel a defendant who entered into a plea agreement with the State *and* could not be further incriminated by answering questions. *Id.* (citing *United States v. Gernie*, 252 F.2d 664 (2d Cir. 1958)).

In the case at bar, the State failed to cite to the trial court any law whatsoever relating to the factors to be considered when requesting a continuance. It was well known to the State that Officer Porter would invoke his rights against self-incrimination under state and federal law. Further, it was and is well known to the State that it is within a court's discretion to deny a request for a postponement where a party "desires to secure the Fifth Amendment protected testimony of a co-defendant." See Brief of the State of Maryland in *Davis v. State*, No. 953, Sept. Term 2011, 2012 WL 2153708 (Mar. 15, 2012), a copy of which is attached hereto as **Exhibit 11**. Indeed, in *Davis*, the State argued, in pertinent part,

Moreover, the basis for Davis's postponement request cannot, *as a matter of simple logic*, be an adequate basis for a postponement. Davis was demanding, essentially, that he not be tried until after his co-defendant had been tried, so that his co-defendant could be available to testify in his case. If both co-defendants took that same position, no trial could ever be held. (...) Had Jerquan H. demanded that his proceeding be halted until Davis was available to testify (on the grounds that he wished to take advantage of

Davis's exculpatory statement), *the courts would have been paralyzed* if, as a matter of law, a desire to wait for a co-defendant's case to conclude constitutes grounds for an automatic continuance.

In terms of the three *Jackson* requirements noted above, Davis has *categorically failed* to show that he had a "reasonable expectation of securing the evidence or witness in a reasonable time." His "expectation of securing" Jerquan's testimony was itself was [*sic*] unreasonable; one co-defendant has no right to be tried before or after another. And the time required to "secure" the witness was not reasonable; Jerquan's case would not be heard for months, and he would then have time to note exceptions, then file an appeal, and *otherwise exhaust all of the available remedies which must be exhausted before he could no longer invoke his Fifth Amendment right to remain silent.*

2012 WL 2153708, at \*7 (emphasis added).

"Simple logic" compels the conclusion that the State's unreasonable hope of securing Officer Porter's testimony was not an adequate basis for a delay in Officer Goodson's trial. In essence, the State wants Officer Goodson to wait an indeterminate amount of time, either until Officer Porter has exhausted his appellate rights relating to this Court's Order to Compel (assuming it is ultimately upheld) or, if convicted, his appellate rights relating to his conviction. As held by this Court (and recognized by the State) in *Davis*, this cannot be said to be a "reasonable amount of time."

2. *The State fails to meet its burden of showing that the evidence it wishes to elicit from Officer Porter is "competent" and "material."*

In its Motion for Continuance, the State argues that a failure to grant a continuance will "result in irreparable harm to the People of Maryland by effectively gutting their government's prosecution against Caesar Goodson (and eventually Alicia White) for his alleged actions in the death of Freddie Gray." Ex. 6 at 5. The State further argues that Officer Porter "is the only witness able to testify to critical aspects of Defendant



Goodson's alleged role in Mr. Gray's death." *Id.* These admissions by the State confirm that in the absence of Officer Porter's testimony, its case cannot proceed against Officer Goodson.<sup>14</sup> At the same time, it fails to articulate what the competent evidence is and how it is material to the charges against Officer Goodson. No proffer has been made to date. In essence, the State expects the judiciary *not to question* its ill-conceived tactics and allow the State to conduct Officer Goodson's trial in any manner it sees fit. The State needs to be reined in and required to present the information required by law.

3. ***The State fails to demonstrate that it made diligent and proper efforts to secure the evidence.***

As to the third *Jackson* factor, the State does not explain what efforts it made to secure the evidence other than issuing a subpoena on December 11th, knowing since May of last year that Officer Porter was going to move to quash it. For months, the State made no efforts to get this issue resolved by any court, despite knowing that the law in this area was far from settled. The State never requested a hearing before the trial court in Officer Goodson's case to resolve or clarify the issue. The State could have served a subpoena upon Officer Porter at any point after the trials were severed, but it chose not to do so.<sup>15</sup>

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<sup>14</sup> The State's decision to charge Officer Goodson with seven crimes, including second degree murder, based solely on the testimony of an individual it has publicly called a liar is a decision it will have to live with.

<sup>15</sup> In order to get this issue resolved, the State could have served a subpoena with the initial trial date (October 13, 2015) after this Court severed the cases on September 2, 2015 and then reserved a subpoena once the trial date was moved at its request. The State did neither.

The State did nothing to minimize any delay or potential impact on Officer Goodson's trial.<sup>16</sup>

The State's efforts to secure this evidence have been anything but diligent. If the State truly believes that it can deprive a criminal defendant with pending charges of his 5th Amendment rights so long as use or derivative immunity is offered, then the State has had many months to try to secure Officer Porter's testimony. Instead, the subpoena was not served until less than a month before the then-scheduled start of trial.

The delays in the case are a direct result of the State's choices. Because it would have been an abuse of discretion for the trial court to grant the State's Motion for Continuance, this Court likewise has no legal basis for staying Officer Goodson's trial.

**D. This Court should lift the stay and direct the trial court to dismiss the indictment against Officer Goodson.**

If this Court finds that it has jurisdiction over Officer Goodson's trial, then it should lift the stay and enter an order directing the trial court to dismiss the indictment against Officer Goodson for a violation of his right to a fair and speedy trial.

The State represents that without Officer Porter's testimony, its case against Officer Goodson will be "gutted." That may be, but it was the State's decision in the first instance to charge Officer Goodson with seven crimes, including murder, based solely on the testimony of a co-defendant, whom it has publicly declared to be a liar. It was the State's decision to schedule Officer Goodson's trial after Officer Porter's trial, despite

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<sup>16</sup> The State must have expected further delays if the trial court denied Officer Porter's motion to quash. The State does not dispute that Officer Porter had the right to appeal the order compelling him to testify. Given Officer Porter's consistent invocation of his 5th Amendment privilege, the State cannot credibly assert that it did not anticipate the current situation.

knowing he would move to quash the subpoena. It was the State's failure to appreciate the consequences that its actions would have upon Officer Goodson's constitutional rights.

Officer Goodson is constitutionally guaranteed the right to a fair trial before an impartial jury. He has the right to prepare and present a defense, and to confront and examine witnesses. Officer Goodson's attorneys were prepared to proceed to trial on January 11th. Expert witnesses spent time reviewing the evidence and reserved certain dates on their busy schedules to testify on his behalf. Fact witnesses made arrangements to be present at trial. Because of this stay by the Court, whether these witnesses will be available in the future is unknown. Witnesses may relocate or their memories may fade. Additional expense will be necessitated for preparation and possible retention of new experts. Depending on when this case is re-set for trial, Officer Goodson's counsel may not be available and new counsel may have to be engaged. It may be the case that in order for Officer Goodson to be able to present his defense—a defense he was prepared to give with a January 11 start date—he will be forced to sacrifice his right to a fair and speedy trial.

Unfortunately, Officer Goodson's rights have already been irreparably harmed by the simple grant of this stay. One judge has been assigned to the cases arising out of Mr. Gray's death and the trials of the other officers have been scheduled. If the stay is lifted, the task of rescheduling Officer Goodson's trial will be fraught with practical problems and constitutional violations. A three week window of time will be needed and, based on the currently scheduled trials of the other officers, that time is not available for months.

Further, the other co-defendants will argue that it is not just or reasonable to violate their rights to speedy trials in order to accommodate the rights of Officer Goodson. There is also the practical consideration of having a sufficient jury pool in order to impanel a fair and impartial jury.

Officer Goodson is facing this precarious and untenable situation solely because of the State's litigation strategy. A criminal defendant should not be penalized because of a prosecutor's lack of foresight. The State could not know with any certainty the outcome of Officer Porter's trial. But, the State knew in advance that Officer Porter would move to quash any subpoena and appeal any order compelling him to testify. The State knew it lacked appellate guidance directly supporting its position, yet chose to proceed into these "uncharted waters," apparently with the unreasonable and naïve assumption that Officer Porter would suddenly have a change of heart.

After a little over two weeks of "investigation," the State, in a rush to judgment, charged Officer Goodson with the most serious crimes related to Mr. Gray's death. Now, the State, after hurriedly issuing charges, is dragging its heels, unwilling to try Officer Goodson's case. Without question, Officer Goodson's right to a speedy trial means nothing to the State. The Court must put an end to this bizarre circus that the State has created.

Officer Goodson's right to a speedy trial is actively being violated by virtue of this stay. He has had no role in the delay. When his trial will be re-scheduled is unknown.<sup>17</sup>


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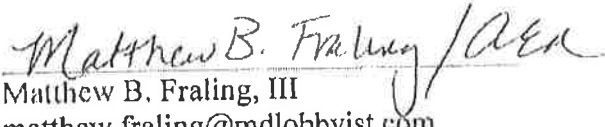
<sup>17</sup> On January 13th, the State made it known to the circuit court and counsel for all defendants that it wanted to delay all of the defendants' trials until Officer Porter's appeal is

Officer Porter should be accorded the right to pursue his appeal and vindicate his rights under the 5th Amendment. In the meantime, the only appropriate remedy for the violation of Officer Goodson's rights, and as a sanction against the State for deliberately causing the delay, is to lift the stay and direct the trial court to dismiss the indictment.

#### IV. CONCLUSION

This Court should grant Officer Goodson's Motion to Lift Stay and order the trial court to dismiss the indictment.

  
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*Counsel for Officer Caesar Goodson*

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resolved. The State also requests that upon final resolution, Officer Porter's re-trial be scheduled first, whenever that may be. Whether or not the stay is lifted, the State is determined to delay the trial of Officer Goodson, without regard for the additional prejudice he will undoubtedly experience, much less the further violation of his constitutional rights. Officer Goodson does not know if this request will be granted.

**CERTIFICATE OF SERVICE**

I hereby certify that on this 15th day of January 2016, a copy of the foregoing paper was sent via electronic mail and mailed, first-class postage prepaid to:

Brian E. Frosh, Attorney General of Maryland  
Carrie J. Williams, Assistant Attorney General  
Office of the Attorney General, Criminal Appeals Division  
200 Saint Paul Place  
Baltimore, Maryland 21202

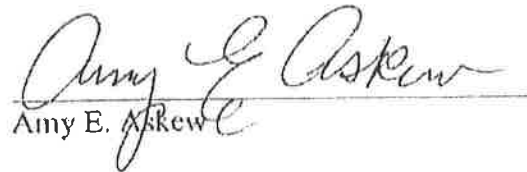
Michael Schatzow, Chief Deputy State's Attorney  
Office of the State's Attorney for Baltimore City  
120 East Baltimore Street  
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Lutherville, Maryland 21093

*Counsel for Appellant*

  
Amy E. Askew

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IN THE  
COURT OF APPEALS OF MARYLAND

---

September Term 2015

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No. 99

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ALICIA WHITE  
v.  
STATE OF MARYLAND, Appellee

and

CAESAR GOODSON  
v.  
STATE OF MARYLAND, Appellee

On Interlocutory Appeal from the Circuit Court for Baltimore City  
(Honorable Barry G. Williams)

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**AFFIDAVIT OF GARY E. PROCTOR, ESQUIRE**

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I, Gary E. Proctor, am over 18 years of age, am competent to testify, and have personal knowledge of the facts and other matters contained in this affidavit.

1. I am counsel for Officer William Porter in *State v. William Porter*, Circuit Court for Baltimore City, Case No. 115141037.
2. I have spoken with the members of the Civil Rights Division of the United States Attorney's Office who are investigating the in-custody death of Mr. Gray. On or about October 22, 2015, I corresponded with the Assistant United States Attorneys involved in

the investigation. It is my understanding that the standard practice for the Department of Justice not to be involved prior to the conclusion of the state prosecutions.

3. In addition, at a meeting with one witness who was called at Officer Porter's trial, in response to a question I asked, the witness stated "the FBI also asked me that question."

4. I observed at least three current members of the United States Attorney's Office for the District of Maryland in attendance of Officer Porter's trial, including the United States Attorney himself. I specifically recall that these individuals were present for Officer Porter's testimony.

5. After being served with the subpoena during his trial, Officer Porter raised the issue of Federal involvement in his Motion to Quash on January 4, 2016. *See* Motion to Quash at 8-9 (E. 0118-19, 0156-57.)

6. To my knowledge, there has been no denial by the State, nor have they proffered to any Court, that Federal immunity has been obtained.

I solemnly affirm under the penalties of perjury and upon personal knowledge that the foregoing is true and correct.

2-23-16  
Date

  
\_\_\_\_\_  
Gary E. Proctor



2016 JAN -7 A 11: 21

IN THE CIRCUIT COURT FOR BALTIMORE CITY, MARYLAND

STATE OF MARYLAND :

v. :

CAESAR GOODSON :


Defendant :

Criminal Nos. 115141032

**NOTICE OF INTERLOCUTORY APPEAL  
BY WITNESS WILLIAM PORTER**

Please note the interlocutory appeal of Officer William Porter to the Court of Special Appeals of Maryland, from the Court's ruling on this matter of January 6, 2016 that he be compelled to testify in this matter.

**LAW OFFICES OF GARY E. PROCTOR, LLC**

  
\_\_\_\_\_  
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410-583-6969  
[jmurtha@mpslawyers.com](mailto:jmurtha@mpslawyers.com)

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on January 7, 2016, a copy of the foregoing Notice of Appeal was emailed and mailed to Michael Schatzow, Office of the State's Attorney at 120 E. Baltimore Street, Baltimore, Maryland 21202.

  
GARY E. PROCTOR

CAESAR GOODSON,

Appellant,

v.

STATE OF MARYLAND,

Appellee.

\* IN THE  
\* COURT OF SPECIAL APPEALS  
\* OF MARYLAND  
\* September Term, 2015  
\* No. 2308  
\* (CC # 115141032)

\* \* \* \* \*

**ORDER**

On January 6, 2016, the Circuit Court for Baltimore City issued an order granting the "State's Motion to Compel a Witness to Testify Pursuant to Section 9-123 of the Courts and Judicial Proceedings Article" in *State of Maryland v. Caesar Goodson*, Case No. 115141032. On January 7, 2016, William Porter, the witness subject to the circuit court's order, noted an appeal after that ruling, and, on that same date, filed a "Motion for Injunction Pending Appeal by Officer William Porter" in this Court. Because the State has not as yet had an opportunity to respond to this 38-page motion that was filed just 24 hours ago, and because the trial in this matter is to commence shortly, on Monday, January 11, 2016, it is this 8<sup>th</sup> day of January, 2016, by the Court of Special Appeals,

ORDERED that the circuit court's order requiring William Porter to testify be and hereby is stayed pending the issuance of a decision by this Court on Appellant's<sup>1</sup> motion.

FOR A PANEL OF THIS COURT

CHIEF JUDGE'S SIGNATURE  
APPEARS ON ORIGINAL ORDER

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PETER B. KRAUSER, CHIEF JUDGE

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<sup>1</sup> Pursuant Maryland Rule 8-111, William Porter is designated as appellant in this appeal.

CAESAR GOODSON,  Appellant,  v.  STATE OF MARYLAND,  Appellee.	*    IN THE *    COURT OF SPECIAL APPEALS *    OF MARYLAND *    SEPTEMBER TERM, 2015 *    No. 2308 *    (CC# 115141032)
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\* \* \* \* \*

**ORDER**

WHEREAS, on January 6, 2016, the Circuit Court for Baltimore City issued an order granting the “State’s Motion to Compel a Witness to Testify Pursuant to Section 9-123 of the Courts and Judicial Proceedings Article” (the “Motion to Compel”) in *State of Maryland v. Caesar Goodson*, Case No. 115141032; and

WHEREAS, on January 7, 2016, Appellant William Porter<sup>1</sup>, the witness subject to the circuit court’s order, noted an interlocutory appeal from the circuit court’s order granting of that motion; and

WHEREAS, following the noting of the appeal, appellant, on the same day, filed in this Court a “Motion for Injunction Pending Appeal” (the “Motion for Injunction”); and

WHEREAS, on January 8, 2016, this Court issued an order temporarily staying the circuit court’s granting the State’s Motion to Compel pending a decision by this Court on Appellant’s Motion for Injunction; and

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<sup>1</sup> Pursuant to Maryland Rule 8-111, William Porter is designated as appellant in this appeal.

WHEREAS the State has now responded to the Motion for Injunction and appellant, in turn, has filed a reply to the State's response to the Motion for Injunction; and

WHEREAS the trial in *State of Maryland v. Caesar Goodson*, Case No. 115141032 is scheduled to commence today, Monday, January 11, 2016 at 9:30 a.m.; and

WHEREAS it is presumably in the interests of all parties that appellant's interlocutory appeal of the circuit court's order granting the State's motion to compel the testimony of William Porter be decided before the commencement of trial; and

WHEREAS if any party to the proceedings in the circuit court or to this interlocutory appeal disagrees with this order, they may file a motion, for this Court's consideration, to lift the stay.

NOW, THEREFORE, IT IS this 11<sup>th</sup> day of January 2016, by the Court of Special Appeals,

ORDERED that the trial in *State of Maryland v. Caesar Goodson*, Case No. 115141032, now pending in the Circuit Court for Baltimore City, be and hereby is stayed pending a resolution of the above-captioned interlocutory appeal or further order of this Court.

FOR A PANEL OF THE COURT

(CHIEF JUDGE'S SIGNATURE  
APPEARS ON ORIGINAL ORDER)

PETER B. KRAUSER, CHIEF JUDGE