

STATE OF MARYLAND

Plaintiff

v.

CAESAR GOODSON

Defendant

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IN THE  
CIRCUIT COURT  
FOR  
BALTIMORE CITY  
Case No. 115141032

**RECEIVED**

MAY 11 2016

**Criminal Div,  
Circuit Court For  
Baltimore City**

\* \* \* \* \*

**OFFICER GOODSON'S MOTION IN LIMINE TO PRECLUDE OFFICER WILLIAM PORTER FROM TESTIFYING AT OFFICER GOODSON'S TRIAL IN THE ABSENCE OF A WRITTEN OPINION FROM THE COURT OF APPEALS**

On March 8, 2016, the Court of Appeals issued an Order affirming this Court's Order of January 6, 2016 compelling Officer William Porter to testify as a witness at Officer Caesar Goodson's upcoming trial. *See Per Curiam* Order of Court of Appeals, No. 99, attached as **Exhibit A**. Although the Court of Appeals stated that its "reasons" for affirmance would be "stated in an opinion later to be filed," *id.*, no such Opinion has issued. Consequently, the State will call Officer Porter to testify in its case-in-chief at Officer Goodson's upcoming trial, after which Officer Porter will be cross-examined, without the benefit of a written Opinion that may limit the scope of Officer Porter's testimony. If Officer Goodson's trial results in a conviction and if Officer Porter's testimony at Officer Goodson's trial strays beyond the scope delineated in the Court of Appeals' forthcoming opinion, Officer Goodson will be forced to seek a new trial or some other remedy. To avoid the prejudice that Officer Goodson would incur in such a scenario, and because this problem is entirely of the State's own making, Officer Goodson moves this Court to preclude Officer Porter from testifying at Officer Goodson's trial in the absence of a written Opinion from the Court of Appeals.

The proceedings that culminated in the March 8 Order from the Court of Appeals contained disputes over the scope of Officer Porter's upcoming testimony at Officer Goodson's trial, and the ramifications such compelled testimony will have on Officer Porter's constitutional rights against self-incrimination under the U.S. Constitution and the Maryland Declaration of Rights. Those disputes were central to the proceeding before the Court of Appeals because, among other reasons, they concern the degree to which Officer Porter's compelled testimony at Officer Goodson's trial may open the door for the State to charge Officer Porter with perjury in the future. A brief summary of these issues follows.

*First*, Officer Porter argued before the Court of Appeals that even if the State somehow confines its direct examination of Officer Porter at Officer Goodson's trial to areas in which the State has never claimed that Officer Porter perjured himself, Officer Goodson may be entitled to explore additional areas in his cross-examination of Officer Porter, which may, in turn, lead Officer Goodson to call prosecutors as witnesses to impugn Officer Porter's credibility. *See* Officer Porter's Opening Brief before the Court of Appeals, *Goodson & White v. State*, No. 99, filed 2/24/16, attached as **Exhibit B**, at 33-34. *Second*, the State represented that it would *not* elicit at Officer Goodson's trial substantive testimony from Officer Porter regarding certain events:

The State argued at Porter's trial that portions of Porter's taped statement and trial testimony (specifically, his testimony regarding his inability to identify the other officers at one of the scenes, Gray's physical condition at one point in the series of events, and where Porter first heard Gray say that he could not breathe) were not credible. The State has no intention of soliciting that testimony "as true" from Porter at Goodson's trial.

The State is confident, however, that Porter will offer truthful testimony regarding other events that occurred the day of Gray's arrest. The State has a good-faith belief that, if compelled to do so, Porter will testify to conversations he had with Goodson regarding Gray's condition and whether to seek medical attention for

Gray, and to conversations he had with White regarding the plan to seek medical attention for Gray. It is that testimony that the State seeks to compel.

State's Opening Brief before the Court of Appeals, *Goodson & White v. State*, No. 99, filed 2/29/16, attached as **Exhibit C**, at 31-32. *Finally*, Officer Porter argued that "[t]he State's attempt to parse out what Porter can testify to that is truthful is . . . hair splitting at the atomic level." Officer Porter's Reply Brief before the Court of Appeals, *Goodson & White v. State*, No. 99, filed 3/2/16, attached as **Exhibit D**, at 8-9 (noting that each time Officer Porter is forced to reiterate his earlier testimony "he remains susceptible to ten more years in the Department of Corrections").

Any problems that result from proceeding to trial in the absence of a written Opinion from the Court of Appeals are entirely of the State's making. Just over one year ago, the State decided whom to charge and with what charges in the cases arising out of Freddie Gray's death. Since those charges issued, the State engaged in a litigation strategy based on the premise that it could call Officer Porter to testify in Officer Goodson's case. The State has known throughout this process that Officer Porter would invoke his right against self-incrimination in Officer Goodson's case and, following Officer Porter's mistrial, the State succeeded in compelling Officer Porter to testify at Officer Goodson's upcoming trial. The context in which the State now finds itself—in possession of an Order affirming this Court's Order that Officer Porter may be compelled to testify at Officer Goodson's trial but without an Opinion defining the metes and bounds of such testimony—is one that the State alone created.

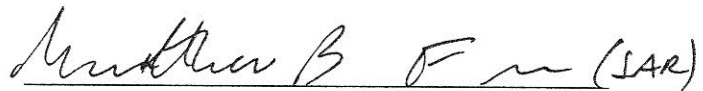
In the absence of an Opinion from the Court of Appeals addressing the scope of Officer Porter's testimony at Officer Goodson's upcoming trial, and in light of the inevitable motion for a new trial or some other remedy that will occur should the State obtain a conviction against Officer Goodson and should Officer Porter's testimony range beyond any limits that are placed

on that testimony in the Court of Appeals' forthcoming opinion, Officer Goodson respectfully submits that Officer Porter should not be allowed to testify at Officer Goodson's upcoming trial.

For the reasons presented above, Officer Caesar Goodson requests that this Court issue an Order precluding Officer Porter from testifying at Officer Goodson's upcoming trial in the absence of an Opinion from the Court of Appeals addressing the scope of Officer Porter's testimony.

Dated: May 11, 2016

Respectfully submitted,



Matthew B. Fraling, III  
Harris Jones & Malone, LLC  
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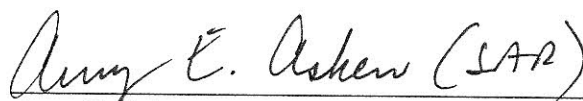
Andrew Jay Graham  
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*Counsel for Officer Caesar Goodson*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 11th day of May 2016, a copy of Defendant Caesar Goodson's Motion *In Limine* to Preclude Officer William Porter from Testifying at Officer Goodson's Trial in the Absence of a Written Opinion from the Court Of Appeals, Request for a Hearing, and Proposed Order were served via first class mail, postage prepaid upon:

Michael Schatzow, Esquire  
Chief Deputy State's Attorney for Baltimore City  
120 E. Baltimore Street  
9<sup>th</sup> Floor  
Baltimore, Maryland 21202

  
Amy E. Askew

STATE OF MARYLAND

Plaintiff

v.

CAESAR GOODSON

Defendant

\* IN THE  
\* CIRCUIT COURT  
\* FOR  
\* BALTIMORE CITY  
\* Case No. 115141032

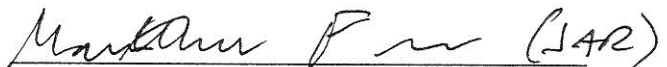
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**REQUEST FOR A HEARING**

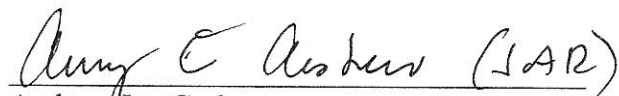
Defendant Caesar Goodson respectfully requests a hearing on his Motion *In Limine* to Preclude Officer William Porter from Testifying at Officer Goodson's Trial in the Absence of a Written Opinion from the Court Of Appeals.

Dated: May 11, 2016

Respectfully submitted,

 (JAR)

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*Counsel for Officer Caesar Goodson*

STATE OF MARYLAND

Plaintiff

v.

CAESAR GOODSON

Defendant

\* IN THE  
\* CIRCUIT COURT  
\* FOR  
\* BALTIMORE CITY  
\* Case No. 115141032

\* \* \* \* \*

**ORDER**

Upon consideration of Defendant Caesar Goodson's Motion *In Limine* to Preclude Officer William Porter from Testifying at Officer Goodson's Trial in the Absence of a Written Opinion from the Court Of Appeals, and any opposition thereto, the record in this case, the applicable law, and for good cause shown, it is this \_\_\_\_ day of \_\_\_\_\_, 2016,

ORDERED, that Defendant's motion is GRANTED, and it is further

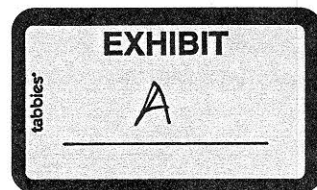
ORDERED, that Officer William Porter shall be precluded from testifying at Officer Goodson's trial in the absence of a written opinion from the Court of Appeals in *Goodson & White v. State*, No. 99.

\_\_\_\_\_  
The Honorable Barry Williams,  
Circuit Court for Baltimore City, Maryland





# EXHIBIT A



No. 99 – Circuit Court for Baltimore City  
Case Nos. 115141036 & 11514032

Argued: March 3, 2016

IN THE COURT OF APPEALS  
OF MARYLAND

No. 99

September Term, 2015

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ALICIA WHITE

v.

STATE OF MARYLAND

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CAESAR GOODSON

v.

STATE OF MARYLAND

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Barbera, C.J.  
Battaglia  
Greene  
Adkins  
McDonald  
Watts  
Hotten,

JJ.

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PER CURIAM ORDER

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Filed: March 8, 2016

ALICIA WHITE & CAESAR GOODSON

Appellants

v.

STATE OF MARYLAND

Appellee

\* IN THE  
\* COURT OF APPEALS  
\* OF MARYLAND  
\*  
\* No. 99  
\* September Term, 2015  
\*  
\*  
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\* \* \* \* \*

**PER CURIAM ORDER**

For reasons to be stated in an opinion later to be filed, it is this 8th day of March, 2016,

ORDERED, by the Court of Appeals of Maryland, that the judgments of the Circuit Court for Baltimore City set forth in the orders dated January 6, 2016 and January 7, 2016 issued pursuant to Md. Code Ann., Cts. & Jud. Proc. § 9-123, are affirmed; and it is further

ORDERED that the above-captioned cases, Alicia White v. State of Maryland and Caesar Goodson v. State of Maryland, are remanded to the Circuit Court for Baltimore City for trial; and it is further

ORDERED that the stay issued by this Court be, and it is hereby, lifted, and it is further

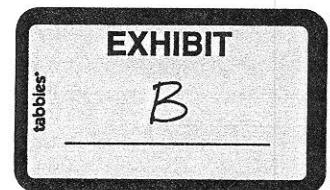
ORDERED that costs in this Court be paid by the Appellant, William Porter.

/s/ Mary Ellen Barbera

Chief Judge



# EXHIBIT B



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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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BRIEF OF APPELLANT WILLIAM PORTER

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*Counsel for Appellant William Porter*

February 24, 2016

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cross-examination will be wider than the State's direct. But, more fundamentally, this conversation that the State seeks to elicit occurred at Druid Hill and Dolphin. And what exactly did the State say about that in its closing? Here's what:

The defendant arrives and pulls up. Defendant's credibility. Do you believe this story? His story, you'll hear it when you listen to his statement, no conversation with Officer Goodson. Now, do you believe -- does that sound to you reasonable? Does that sound to be truthful? Does that sound credible? Does that sound -- here, he's responding to a call to check this prisoner out, and he doesn't say, well, what happened, man? Why do you - - why do you need me to check the prisoner out? What are you doing? What -- what -- what's going on? No conversation.

But that -- you know, that's like the Stop 2 thing where he can't identify his own shift commander who's sitting right in front of his face. That's not a cover up. That's not trying to hide the truth. That's not trying to throw the investigators off. Nah, nah. That's not what that is.

(E. 0442.)

Even if the State could somehow confine their direct questioning to areas in which they have never levied a perjury accusation against Porter (which they cannot), this would still not solve the issue.

This is because "a judge must allow a defendant wide latitude to cross-examine a witness as to bias or prejudices." *Smallwood v. State*, 320 Md. 300, 307-08 (1990). Accordingly, whatever narrow focus the State may decide to employ in an attempt to cure the unconstitutional ill set out herein, nothing would bind counsel for Goodson and White from a much wider foray on cross-examination. Lest this Court make any mistake: the State believes that Porter's testimony is *pivotal* to a conviction against either White or Goodson. They told the circuit court that not calling Porter would "gut" those prosecutions. As such, it is far from a stretch that counsel for the defendants will



additionally jump on the Officer-Porter-lack-of-veracity bandwagon. With one crucial difference: counsel for Goodson and White owe Porter nothing by way of discovery obligations. Porter does not have the faintest inkling what is coming from these hostile questioners, yet he will be compelled to answer their accusations, within a few seconds of hearing them, under oath. In the event that Porter withstands their cross with his reputation intact, the prosecutors could then become character witnesses to impugn his veracity (see further below).

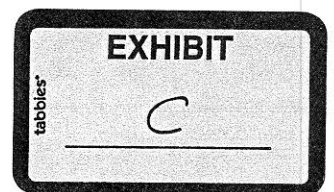
**6. *Porter has a separate right not to testify under the Maryland Declaration of Rights.***

As stated *supra*, Article 22 of the Maryland Declaration of Rights is the more protective state analog to the self-incrimination clause of the Fifth Amendment. Counsel has located no case which holds that the *Murphy* or *Balsys* rulings are applicable in Maryland on Article 22 grounds.

Article 22 of the Maryland Declaration of Rights reads that “That no man ought to be compelled to give evidence against himself in a criminal case.” Under Article 22, “[t]he privilege must be accorded a liberal construction in favor of the right that it was intended to secure.” *Adkins v. State*, 316 Md. 1, 8 (1989). Article 22 uses the word “evidence,” which the Federal Constitution does not. Evidence against oneself can be provided in a number of ways. Accordingly, Porter submits that the protection under the Maryland Declaration of Rights is wider than that afforded Porter by the United States Constitution.



# EXHIBIT C



IN THE  
COURT OF APPEALS OF MARYLAND

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SEPTEMBER TERM, 2015

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NO. 99

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CAESAR GOODSON & ALICIA WHITE,  
Appellants,

v.

STATE OF MARYLAND,  
Appellee.

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ON WRIT OF CERTIORARI TO THE  
COURT OF SPECIAL APPEALS OF MARYLAND

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BRIEF OF APPELLEE

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BRIAN E. FROSH  
Attorney General of Maryland

CARRIE J. WILLIAMS  
Assistant Attorney General

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Counsel for Appellee

2. *Porter has no Fifth Amendment right to commit perjury, and the State's arguments at Porter's first trial regarding his credibility are irrelevant*

Porter next accuses the State of providing “the farce of a grant of immunity” in order to “lay a foundation for evidence that the State has already deemed as constituting an obstruction of justice and perjury.” (Brief of Appellant at 16). Porter seems to be arguing that because the State contended at his first trial that portions of his testimony were not credible, if he testifies consistently at Goodson’s and White’s trials, the State will have suborned perjury, and, moreover, could charge Porter with committing perjury. Porter’s claim is without merit.

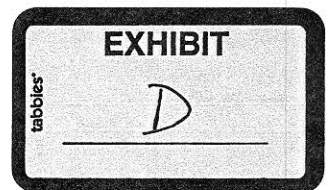
First, contrary to Porter’s contention, the truthfulness *vel non* of a witness’s testimony is not an all-or-nothing proposition. The State argued at Porter’s trial that portions of Porter’s taped statement and trial testimony (specifically, his testimony regarding his inability to identify the other officers at one of the scenes, Gray’s physical condition at one point in the series of events, and where Porter first heard Gray say that he could not breathe) were not credible. The State has no intention of soliciting that testimony “as true” from Porter at Goodson’s trial.

The State is confident, however, that Porter will offer truthful testimony regarding other events that occurred the day of Gray's arrest. The State has a good-faith belief that, if compelled to do so, Porter will testify to conversations he had with Goodson regarding Gray's condition and whether to seek medical attention for Gray, and to conversations he had with White regarding the plan to seek medical attention for Gray. It is that testimony that the State seeks to compel.

Porter's argument that Goodson's or White's cross-examination of him will elicit testimony that the State believes is false, and that this is akin to suborning perjury, is likewise unpersuasive. (Brief of Appellant at 30-34). To be sure, "[f]or the prosecution to offer testimony into evidence, knowing it or believing it to be false is a violation of the defendant's due process rights." *United States v. Mills*, 704 F.2d 1553, 1565 (11th Cir. 1983). And "a conviction obtained through use of false evidence, known to be such by representatives of the State, must fall under the Fourteenth Amendment." *Napue v. People of State of Ill.*, 360 U.S. 264, 269 (1959). But the prosecution is not seeking to offer false evidence, nor to obtain a conviction through the use of false



# EXHIBIT D





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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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REPLY BRIEF OF APPELLANT WILLIAM PORTER

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*Counsel for Appellant William Porter*

March 2, 2016

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when, and how; and to somehow look inside the minds of prosecutors as to whether they are making use of compelled testimony.

The State has already told this Court that Porter was “inaccura[te] . . . that his taped recorded statement and his trial testimony are consistent.” (Brief of Appellee at 10.) Imagine then the un-navigable minefield that Porter and his counsel will have to tread when Porter has testified five more times about events that occurred more than a year earlier. It is virtually inconceivable that such considerations will not color Porter’s decision as to whether or not to testify in his re-trial. In a nutshell, should this Court allow him to be paraded unwillingly onto the stand on multiple occasions, it may make Porter’s election for him.

The State’s attempt to parse out what Porter can testify to that is truthful is beyond problematical.<sup>8</sup> It is hair splitting at the atomic level: combining what the prosecutors said about Porter in their closings, and what they seek to now adduce at the trials of others, the State accuses Porter of lying as to:

- What Porter said to Goodson when he drove up to Druid Hill and Dolphin.
- The condition Mr. Gray was in.
- How Mr. Gray was helped onto the seat of the wagon.
- The direction and alignment of the vehicles immediately afterward.

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<sup>8</sup> The State argues that if Porter intends to testify untruthfully he will “find no succor in the Fifth Amendment.” (Brief of Appellee at 33.) In Maryland, though, the prosecution has sole charging authority. So, regardless of Porter’s intentions, the State who have already called Porter a liar on these very same issues, gets to make the call.

The State says that they have a “good-faith belief” that some of Porter’s testimony will be truthful, without citing to the record to evince what that belief is. (Brief of Appellee at 31-32.) In reality, the State does not know what testimony Porter will give. What Appellee really means is that there are two questions that they would have Porter answer in their quest to convict White and Goodson, and they remain indifferent to all the attendant circumstances of testimony that they have, and continue to label as, perjury. Specifically, the State fails to account for the fact that Porter will also be exposed to cross-examination by counsel for Goodson and White. Of course, each time Porter reiterates his earlier testimony—on direct or on cross—he remains susceptible to ten more years in the Department of Corrections.

The practical problems staring Porter down demonstrate *Kastigar*’s lack of utility. *Kastigar* was decided by the United States Supreme Court in 1972. Forty-four years ago. When it was issued the Watergate hearings had yet to commence. You would think then, given its relative antiquity, that there would have been plenty of occasions for this Court to opine on situations such as this one. Yet a search of Westlaw turns up only one *Kastigar* hearing, in *State v. Linda Tripp*, No. K-99-038397, 2000 WL 675492 (Md. Cir. Ct. May 5, 2000). This opinion is from the Circuit Court for Howard County, and is unreported.

Yet, despite this lack of application of *Kastigar*, the State’s argument is that what is happening to Porter is:

no different than any of the countless witnesses over the centuries to whom the government granted immunity in exchange for their compelled testimony . . . [t]he reality is far more mundane - - the State has chosen to