



2. Officer Porter does not understand the state's argument that, in effect, this injunction should be denied because he should have "first [sought] relief in the Circuit Court for Baltimore City." The Circuit Court signed the Order compelling Porter to testify at 4:22 PM on January 6, 2016. Until then, there was nothing to appeal. Porter asked the Court to stay its Order both in open court on January 6 and in writing on January 7. Indeed, the State attaches the denial of this request as Exhibit 2 to its pleading. Given that the Goodson trial starts Monday, Porter proceeded with all due haste. Certainly, had Porter filed his initial request for an injunction today, or later still, the state would be saying, with good cause, that the issue was defaulted and Porter should have raised at the earliest juncture. That is what Md. Rule § 8-425 requires. Firstly, it requires that a stay be sought in the court below "[u]nless it was not practicable to do so." It was practicable to do it *contemporaneously* with seeking relief in this Court, and that is exactly what Appellant did. However, given the time constraints, Porter did not have the luxury of proceeding *seriatim*. Secondly, § 8-425 requires that the Motion before this Court be made "within a reasonable time." Given the Goodson trial starts Monday, counsel burned a lot of midnight oil and filed his pleading with this Court by mid-morning the day after the circuit court made its ruling. Because any later would not have afforded this Court a reasonable time to opine.

3. The state tells the court that Rule 8-425 applies to civil cases. There is simply nothing from which this Court could make that inferential leap.<sup>1</sup> The rule states that one need not comply with Rule 2-632 if it “is not practicable to do so.” Certainly, as 2-632 is a rule of civil procedure, it is not practicable for Appellant to do so. And, as there is not even a hint from the caselaw or statute either way, the rule of lenity:

When a court construes a criminal statute, it may invoke a principle known as the “rule of lenity” when the statute is open to more than one interpretation and the court is otherwise unable to determine arbitrarily choosing one of the competing interpretations, the court selects the interpretation that treats the defendant more leniently. The rule of lenity is not so much a tool of statutory construction as a default device to decide which interpretation prevails when the tools of statutory construction fail.

Oglesby v. State, 441 Md. 673, 676, 109 A.3d 1147, 1149 (2015). The bottom line must surely be that this Court has inherent authority to stay a criminal case so that an appeal will be meaningful. Porter agrees with the state that the relief requested herein will only be granted in extraordinary circumstances. But Appellant can think of no better words to describe the turn of events that led to the instant motion.

4. Turning to the factors laid out in the state's response:

[A] the likelihood Porter will succeed on the merits. Firstly, as stated above, the state has not sought to show that the instant appeal will not reach the merits.

---

<sup>1</sup> While admittedly it is wholly outside the record, the Office of the Public Defender Appellate Division have informed the undersigned that, in the past, they have utilized the instant Rule to seek a stay so as to be able to litigate, at the appellate issue, a double jeopardy issue. Accordingly, it cannot be said that the relief sought herein is unprecedented.

This is a proper vehicle for the collateral order doctrine. The likelihood that Appellant will succeed on the merits is set out in his initial motion, and need not be reiterated herein;

[B] the balance of convenience. Attached hereto as an Exhibit is a motion that was filed a few hours ago by the State's Attorney for Baltimore City seeking a postponement in the *Goodson* matter. As such, there may well be a circumstance under which the goalposts may move. That said, what happens in Officer Goodson's case is not before this Court. His lawyers are not parties to these series of pleadings back and forth, nor have they even been copied. The question for this Court is - - what is the harm to Appellant if he is required to testify next week versus the harm to the state if he is not? And Porter has amply laid out the harm he will suffer already;

[C] whether Porter will suffer irreparable injury. Not to dwell on the matter: but any way you cut it the state, which has sole charging authority on the matter, has stated within the last two days that when Porter testifies next week under oath he will tell "lies." That is perjury. Perjury carries up to ten (10) years in jail. That is irreparable. By the same token: the state's argument that Porter can challenge later an erroneous *Kastigar* ruling omits consideration that, by then, the perjury damage will have already been done. As stated in the earlier pleading, the Federal Government, who have given no immunity, will also have heard the testimony absent action by this Court;

[D] the public interest. There is no appellate law on this issue in Maryland.

Everyone can hold hands and sing kumbaya to that notion. All six of the officers' cases have garnered international attention. The rioting that occurred last April is never far from the minds of the citizens of Baltimore City. The public has an interest in justice being done; and being seen to be done.

For these reasons, Appellant submits he has met his burden of showing an injunction should issue.

5. The state also puts too much reliance of *Kastigar*. This does not cure a fresh basis for a perjury charge, which is what the state has said is what will happen next week. But furthermore, as stated initially, and not contradicted by the state, there is no taint team in this case. *Kastigar* will not pick up the nuances of what the state learned from seeing Appellant testify not once, but twice. It is ineffectual in the windfall that would be reaped by the state in seeing Porter subjected to cross not once, but twice. Furthermore, in Porter's trial, it is axiomatic that his lawyer could object if the state asked him something objectional. We become toothless, however, in our capacity as the representative of a witness.

6. Moreover, it is time for this Court to consider whether 9-123 is sufficient in this particular instance to protect a man with a pending manslaughter charge. The majority of the jurisdictions that have considered it is, have decided to the contrary. *State v. Thrift*, 312 S.C. 282 (S.C. 1994), *State v. Gonzalez*, 853 P.2d 526 (Alaska 1993), *Wright v. McAdory*, 536 So.2d 897 (Miss. 1988), *State v.*

*Soriano*, 68 Ore. App. 642 (Or. Ct. App. 1984), *Attorney General v. Colleton*, 387 Mass. 790 (Mass. 1982), *D'Elia v. Penn. Crime Commn.*, 521 Pa. 225 (Pa. 1989), *State v. Miyasaki*, 62 Haw. 269 (Hawaii 1980), *People v. Campbell*, 137 Cal. App. 3d 867, 187 Cal. Rptr. 340 (CA Ct. App. 1982).

7. At page 12 of Exhibit 1 to the State's reply is the assertion by the State's Attorney's Office for Baltimore City that "[i]f Officer Porter testifies in *Goodson* consistently with his testimony in his own case, he may rest assured that prosecutors will be consistent with their evaluation of his testimony." So the question then becomes: what was their evaluation? In a nutshell:

Porter "lied to you [the jury] about what happened... lied when he spoke to the [investigative] officers and he lied when he spoke on the witness stand;" [by Ms. Bledsoe] "Officer Porter was not telling the truth about his involvement in this incident...the only reasonable conclusion you can come to is that Ofc. Porter is not telling the truth."

These words were uttered by the very same prosecutors that will call Porter as a witness next week. This should not come to pass with little more than a passing glance by this Court. An injunction should issue.

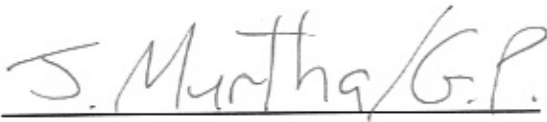
**WHEREFORE**, for the foregoing reasons and any others that appear to this Court, Officer Porter prays that the Court stay the Circuit Court's Order that he be compelled to testify in the trial of Officer Goodson.

Respectfully Submitted,



---

Gary E. Proctor  
Law Offices of Gary E. Proctor, LLC  
8 E. Mulberry Street  
Baltimore, MD 21202  
410-444-1500  
Fax 866-230-4455  
[garyeproctor@gmail.com](mailto:garyeproctor@gmail.com)



---

Joseph Murtha  
Murtha, Psoras & Lanasa, LLC  
1301 York Road, Suite 200  
Lutherville, MD 21093  
410-583-6969  
[jmurtha@mpllawyers.com](mailto:jmurtha@mpllawyers.com)

Attorneys for Officer William Porter

## CERTIFICATE OF SERVICE

I hereby certify that on this 8<sup>th</sup> day of January 2016, a copy of the foregoing Reply to Motion for Injunction Pending Appeal was emailed Carrie J. Williams Assistant Attorney General, and on the next business day, January 11, 2016, it will be hand delivered to her office at 200 Saint Paul Place, Baltimore MD 21202.



---

GARY E. PROCTOR



STATE OF MARYLAND

v.

CAESAR GOODSON

\*  
\*  
\*  
\*  
\*

IN THE  
CIRCUIT COURT FOR  
BALTIMORE CITY  
CASE No. 115141032

\* \* \* \* \*

**STATE'S MOTION FOR CONTINUANCE PENDING RESOLUTION BY THE COURT OF SPECIAL APPEALS OF THE MOTION FOR INJUNCTION PENDING APPEAL BY OFFICER WILLIAM PORTER OR, IN THE ALTERNATIVE, TO RETRY OFFICER WILLIAM PORTER'S PENDING CRIMINAL CASE PRIOR TO THE TRIALS OF THOSE CASES IN WHICH HE IS A SUBPOENAED WITNESS**

Now comes the State of Maryland, by and through Marilyn J. Mosby, the State's Attorney for Baltimore City; Michael Schatzow, Chief Deputy State's Attorney for Baltimore City; Janice L. Bledsoe, Deputy State's Attorney for Baltimore City; and Matthew Pillion, Assistant State's Attorney for Baltimore City; and moves this Court for the reasons set forth below to grant a continuance of the above-captioned case until the resolution by the Court of Special Appeals of the Motion for Injunction Pending Appeal by Officer William Porter. In the alternative, the State moves this Court to allow the State to retry Officer Porter's pending criminal case prior to the trial of those cases in which he is a subpoenaed witness.

**I. Background**

Officer William Porter stood trial before a jury in the Circuit Court for Baltimore City on indictment number 115141037 beginning on November 30, 2015. The jury ultimately could not reach a unanimous verdict on any of the charges, resulting in the Court declaring a mistrial on December 16, 2015. Thereafter, on December 22, 2015, the State and counsel for Officer Porter appeared in Administrative Court, where the State announced its intent to retry Officer Porter. The Court set June 13, 2016, as the date for that retrial.

As a separate matter, on December 11, 2015, the State served Officer Porter with a trial subpoena to appear and testify as a witness in the above-captioned case involving Defendant Goodson<sup>1</sup>, whose charges stem from the same events underlying Officer Porter's indictment. On January 4, 2015, Officer William Porter filed a Motion to Quash that trial subpoena, and the State filed a Response to the Motion on the morning of January 6, 2015, which was also the date on which the administrative judge had referred the case to this Court to begin pretrial proceedings. At a hearing that afternoon, this Court denied the Motion to Quash, at which time the State called Officer Porter to the witness stand and asked him if he would testify as a witness in Defendant Goodson's trial, which is scheduled to begin jury selection and testimony the week of January 11. Officer Porter stated that he would not testify and invoked his federal and state privileges against self-incrimination. The State then filed a Motion to Compel Officer Porter's testimony pursuant to Section 9-123 of the Courts and Judicial Proceedings Article ("CJP" hereinafter).

During oral arguments on the Motion to Compel, both Officer Porter and the State incorporated and reiterated their Motion to Quash pleadings. After carefully considering those arguments and the applicable law, the Court granted the Motion to Compel and issued an Order requiring Officer Porter to testify as a witness in Defendant Goodson's case in consideration of a grant of immunity against the government's use or derivative use of any such testimony. Immediately following the Court's ruling, Counsel for Officer Porter stated he would file an interlocutory appeal and orally asked the Court to enjoin the State from actually calling Officer Porter as a witness. The Court denied that request from the bench. The next morning, on January 7, 2015, Officer Porter filed both before this Court and before the Court of Special

---

<sup>1</sup> The State also served a subpoena on Officer Porter to testify in the related trial of Sergeant Alicia White under indictment number 115141036, currently scheduled for trial beginning February 8, 2015.

Appeals a request for Injunction Pending Appeal. This Court denied that request in an order issued later in the day on January 7. On January 8, 2015, however, the Court of Special Appeals issued an Order that “[b]ecause the State has not 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,” “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 motion.” See Order attached as State’s Exhibit 1. The Attorney General’s Office plans to file a response to Officer Porter’s appellate motion by 4:00 p.m. today, January 8.

**II. This Court correctly decided the Motion to Compel Officer Porter as a Witness, such that granting the State a continuance pending the resolution of his appeal or rescheduling Officer Porter’s trial to avoid the need to compel his testimony would avoid a miscarriage of justice in the State’s prosecution of Defendant Goodson**

Officer Porter’s Motion for Injunction requested a stay of this Court’s January 6 Order on the basis that he believes the purported lack of appellate guidance on this issue requires resolution of his appeal before he is made to testify because, otherwise, he suggests that the harm to his Fifth Amendment and Article 22 rights against compulsory self-incrimination will be “irreparable.” In support of this argument, he asserted the same bases set forth in support of his Motion to Quash and against the State’s Motion to Compel. Because this Court has already correctly recognized those arguments to lack any merit, the Court should grant the State a reasonable continuance pending the outcome of his appellate action or, alternatively, should reschedule Officer Porter’s trial to a date prior to that of Defendants Goodson and White. An appeal doomed to fail should not result in an injustice pending such failure.

Regarding Officer Porter's first claim that this Court lacked sufficient appellate guidance in ordering him to testify as a witness in Defendant Goodson's case, the State's Response to Officer Porter's Motion to Quash already amply set forth the half-century of appellate precedent firmly supporting this Court's Order. The State incorporates that Response as if fully stated herein. In short, *Murphy v. Waterfront Commn. of N.Y. Harbor*, 378 U.S. 52 (1964), *Kastigar v. United States*, 406 U.S. 441 (1972), *In re Criminal Investigation No. 1-162*, 307 Md. 674 (1986), and *United States v. Balsys*, 524 U.S. 666 (1998), unquestionably imbue CJP § 9-123 with the constitutionally supported power that authorized this Court to compel Officer Porter's testimony as a witness in exchange for granting him immunity from any prosecutorial use and derivative use of the testimony.

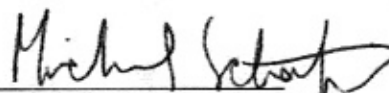
That grant of immunity dispenses with Officer Porter's second claim about irreparable harm flowing from his compelled testimony. Use and derivative use immunity leaves him with precisely the same rights as if he had not testified. Indeed, prior to the time when Officer Porter will face any criminal penalties related to his pending indictment, the State will bear the burden of demonstrating that the evidence it proposes to use against him derived from a source completely independent of his compelled testimony. Meeting this burden is the entire point of a *Kastigar* hearing. If the State fails to meet its burden and is thereby unable to offer untainted evidence sufficient to obtain a conviction, far from any harm coming to Officer Porter, he would be free and clear of the charges against him. Accordingly, the Court of Special Appeals will have no need to enjoin the State in order to safeguard Officer Porter's rights—this Court's grant of immunity, carrying with it *Kastigar's* burden on prosecutors, has already imposed a powerful mechanism to do precisely that. Officer Porter's claim of "irreparable harm," implying some harm in the first place, is therefore simply unfounded and misleading.

Refusing to grant the relief herein requested *would*, however, 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. As the Supreme Court recognized, immunity statutes serve "the legitimate demands of government to compel citizens to testify," particularly in cases where "the only persons capable of giving useful testimony are those implicated in the crime." *Kastigar*, 406 U.S. at 446. Officer Porter is exactly such a person. He is the only witness able to testify to critical aspects of Defendant Goodson's alleged role in Mr. Gray's death. Declining to continue the entire *Goodson* trial pending resolution of Officer Porter's appeal or, alternatively, declining to reschedule Officer Porter's case to avoid the need to compel his testimony would work a grave injustice that would strip the State of a legislatively and constitutionally authorized tool—CJP § 9-123—for compelling the truth from an alleged witness to murder. Nothing in Officer Porter's Motion gives this Court any reason to take such drastic steps. His rights have been amply protected by this Court's January 6 Order, and that Order will eventually be approved by the Court of Special Appeals.

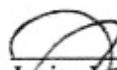
Wherefore, the State asks that this Court grant the State's Motion for Continuance Pending Resolution by the Court of Special Appeals of the Motion for Injunction Pending Appeal by Officer William Porter, or, in the alternative, to grant the State's Motion to retry Officer William Porter's pending criminal case prior to the trials of those cases in which he is a subpoenaed witness.

Respectfully submitted,

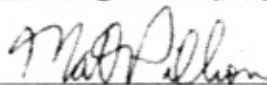
Marilyn J. Mosby



Michael Schatzow (#717876)  
Chief Deputy State's Attorney  
120 East Baltimore Street  
The SunTrust Bank Building  
Baltimore, Maryland 21202  
(443) 984-6011 (telephone)  
(443) 984-6256 (facsimile)  
[mschatzow@stattorney.org](mailto:mschatzow@stattorney.org)



Janice L. Bledsoe (#68776)  
Deputy State's Attorney  
120 East Baltimore Street  
The SunTrust Bank Building  
Baltimore, Maryland 21202  
(443) 984-6012 (telephone)  
(443) 984-6256 (facsimile)  
[jbledsoe@stattorney.org](mailto:jbledsoe@stattorney.org)



Matthew Pillion (#653491)  
Assistant State's Attorney  
120 East Baltimore Street  
The SunTrust Bank Building  
Baltimore, Maryland 21202  
(443) 984-6045 (telephone)  
(443) 984-6252 (facsimile)  
[mpillion@stattorney.org](mailto:mpillion@stattorney.org)

**CERTIFICATE OF SERVICE**

I hereby certify that on this 8th day of January, 2016, a copy of the STATE'S MOTION FOR CONTINUANCE PENDING RESOLUTION BY THE COURT OF SPECIAL APPEALS OF THE MOTION FOR INJUNCTION PENDING APPEAL BY OFFICER WILLIAM PORTER OR, IN THE ALTERNATIVE, TO RETRY OFFICER WILLIAM PORTER'S PENDING CRIMINAL CASE PRIOR TO THE TRIAL OF THOSE CASES IN WHICH HE IS A SUBPOENAED WITNESS was delivered as follows:

By mail and email to:  
Matthew B. Fraling, III  
Sean Malone  
Harris Jones & Malone, LLC  
2423 Maryland Avenue, Suite 100  
Baltimore, MD 21218  
(410) 366-1500  
[matthew.fraling@mdlobbyist.com](mailto:matthew.fraling@mdlobbyist.com)  
Attorneys for Officer Caesar Goodson

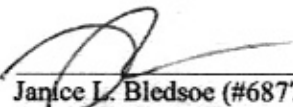
By mail and email to:  
Joseph Murtha  
Murtha, Psoras & Lanasa, LLC  
1301 York Road, Suite 200  
Lutherville, Maryland 21093  
(410) 583-6969  
[jmurtha@mpllawyers.com](mailto:jmurtha@mpllawyers.com)  
Attorney for Officer William Porter

By hand and email to:  
Andrew Jay Graham  
Amy E. Askew  
Kramon & Graham, P.A.  
1 South Street, Suite 2600  
Baltimore, MD 21202  
410-752-6030  
[AGraham@kg-law.com](mailto:AGraham@kg-law.com)  
Attorney for Officer Caesar Goodson

By mail and email to:  
Gary Proctor  
Gary E. Proctor, LLC  
8 E. Mulberry St.  
Baltimore, MD 21202  
410-444-1500  
[garyeproctor@gmail.com](mailto:garyeproctor@gmail.com)  
Attorney for Officer William Porter

Respectfully submitted,

Marilyn J. Mosby

  
Janice L. Bledsoe (#68776)  
Deputy State's Attorney  
120 East Baltimore Street  
The SunTrust Bank Building  
Baltimore, Maryland 21202  
(443) 984-6012 (telephone)  
(443) 984-6256 (facsimile)  
[jbledsoe@stattorney.org](mailto:jbledsoe@stattorney.org)