

STATE OF MARYLAND

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v.

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CRIMINAL DIVISION  
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CIRCUIT COURT FOR  
BALTIMORE CITY  
CASE No. 115141032

CAESAR GOODSON

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**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

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<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



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**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:

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Respectfully submitted,

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CAESAR GOODSON,

Appellant,

v.

STATE OF MARYLAND,

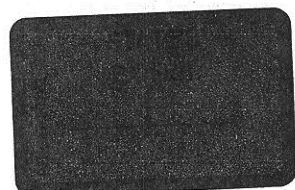
Appellee.

\* 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.