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CIRCUIT COURT FOR
BALTIMORE CITY
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CRIMINAL DIVISION

STATE OF MARYLAND

v.

CAESAR GOODSON

IN THE
CIRCUIT COURT FOR
BALTIMORE CITY
CASE No. 115141032

* * * * * * * * * * * * * *

STATE'S RESPONSE TO DEFENDANT'S MOTION TO DISMISS THE INDICTMENT FOR VIOLATION OF HIS SPEEDY TRIAL RIGHTS

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; responds herein to the Defendant's Motion to Dismiss the Indictment for Violation of his Speedy Trial Rights; and urges this Court to deny the Defendant's Motion as baseless under Maryland law.

I. Procedural history

On May 11, 2016, the Defendant filed a Motion to Dismiss the Indictment for Violation of his Speedy Trial Rights, asserting a denial of his constitutional rights under the Sixth Amendment of the U.S. Constitution and Article 21 of the Maryland Declaration of Rights, as well as a denial of his statutory rights under Section 6-103 of the *Criminal Procedure Article* as implemented by *State v. Hicks*, 285 Md. 310 (1979). The following dates are relevant in considering these assertions:

05/01/15	The State filed a statement of charges in District Court and arrested the Defendant for murder, manslaughter, vehicular manslaughter, assault, misconduct in office, and reckless endangerment in connection with the arrest and custodial death of Freddie Gray. The Defendant was released that same day after posting bail in the amount of $350,000. Five other police officers were also charged in connection with Mr. Gray's arrest and death: William Porter, Edward Nero, Garrett Miller, Brian Rice, and Alicia White.
05/21/15	A Grand Jury returned an indictment, which was filed in Circuit Court, charging the Defendant with murder, manslaughter, vehicular manslaughter, assault, misconduct

	in office, and reckless endangerment. The five other police officers charged on May 1st were also indicted.
05/27/15	The Defendant's counsel entered his appearance and filed an omnibus motion that included a "Demand for Speedy Trial" moving that "he be granted a speedy trial."
06/19/15	A first trial date was set for October 13, 2015, for the Defendant and the five other officers. This Court was assigned by the administrative judge to preside over all six trials.
06/26/15	The State provided initial discovery disclosures to the Defendant.
09/02/15	This Court conducted a motions hearing, denying the State's motion to join the Defendant for trial with defendants White, Nero, and Miller.
09/10/15	This Court conducted a motions hearing, denying the Defendant's motion for removal.
09/15/15	The State wrote a letter to this Court concerning trial scheduling in light of the denied joinder of defendants and the maintenance of venue in Baltimore City. The letter outlined the State's request to try Porter prior to the Defendant's case because Porter is a necessary and material witness against the Defendant. The letter also noted that Porter was requesting a postponement of his October 13 trial date, to which the State objected if the delay would be longer than two weeks given the unavailability of another State's witness, the Medical Examiner, during the last half of November. Finally, the State noted that the Defendant had yet to provide discovery despite Rule 4-263's deadline having elapsed.
09/23/15	The State filed a motion to compel discovery from the Defendant.
09/24/15	The Court held a scheduling conference with the State and counsel for all defendants, during which new trial dates were agreed to by all parties.
09/29/15	This Court, sitting as the designated administrative judge, conducted an advance postponement hearing, at which the Court found good cause to postpone the Defendant's case until January 6, 2016, citing as reasons the unavailability of the prosecutors due to conflicts with other defendants' cases and the unavailability of a State's witness, namely Dr. Allan, the Medical Examiner.
10/13/15	The Court conducted a motions hearing regarding discovery disputes.
11/30/15	The trial of *State v. Porter* began.
12/07/15	The Defendant provided his discovery disclosures to the State.
12/16/15	The *Porter* trial ended in a hung jury and mistrial.
12/21/15	The Court held a scheduling conference to select a date for Porter's retrial and to establish a motions hearing and jury selection schedule for the Defendant's trial.
12/29/15	The Court granted the Defendant's request for a pretrial discovery subpoena for the victim's administrative, medical, and disciplinary records.
01/06/16	The Court conducted a pretrial motions hearing for the Defendant's case and formally scheduled jury selection to begin on January 11, 2016. Among other motions resolved, the Court granted a request to immunize Porter and compel his testimony against the Defendant.
01/07/16	Porter filed an appeal of the immunity order and filed in both the Court of Special Appeals and in this Court a motion to stay the order. This Court denied the request to stay.
01/08/16	The Court of Special Appeals issued an order staying the immunity order. The State replied to Porter's motion to stay in the Court of Special Appeals and also filed a

	motion to stay Defendant's trial or, alternatively, to advance Porter's trial to moot his appeal and prevent additional delay.
01/11/16	The Defendant filed an opposition to the State's motion to stay or advance Porter's trial. The Court of Special Appeals issued an order staying the Defendant's trial pending resolution of Porter's appeal.
02/10/16	The State filed a petition for writ of certiorari to the Court of Appeals and filed a request for expedited review of Porter's appeal.
02/16/16	The Defendant filed a motion in the Court of Appeals to lift the stay imposed by the Court of Special Appeals.
02/18/16	The Court of Appeals issued an order granting certiorari, staying the Defendant's trial, and allowing for expedited review of Porter's appeal.
03/08/16	The Court of Appeals, after hearing argument from the parties, issued a per curiam order denying Porter's appeal and lifting the stay.
03/15/16	The Court held a scheduling conference with the State and counsel for the six defendants to set a new trial schedule following the lifted stay.
03/16/16	The Circuit Court conducted a postponement hearing, at which the administrative judge's designee rescheduled all six of the defendants' trials to run consecutively one per month starting on May 10, 2016. The Defendant's trial was scheduled as the second of these trials and was set to begin on June 6, 2016.

II. Constitutional right to a speedy trial

The Defendant contends that his federal and state constitutional rights to a speedy trial have been denied. The Court of Appeals applies the same test in assessing the guarantees of both rights: the four-factor balancing test outlined in *Barker v. Wingo*, 407 U.S. 514 (1972), which examines the length of delay, the reason for the delay, the defendant's assertion of his right, and prejudice to the defendant. *State v. Kenneh*, 403 Md. 678, 688 (2008). "None of these factors are either a necessary or sufficient condition to the finding of a deprivation of the right of speedy trial[;] [r]ather, they are related factors and must be considered together with such other circumstances as may be relevant." *Id.* Moreover, "a delay of sufficient length is first required to trigger a speedy trial analysis," and the Court of Appeals has employed the proposition that a delay of one year and fourteen days from the date of arrest is sufficient to trigger the balancing test. *Id.* In the present case, the Defendant was arrested on May 1, 2015, and filed his speedy

trial Motion on May 11, 2016, meaning the delay at the time of his Motion was four days short of the triggering date Maryland courts have used. Even adding the time that has passed since May 11, the delay in the Defendant's trial is barely sufficient to trigger *Barker* balancing, much less to actually find a speedy trial violation. Indeed, applying the four-factor test only confirms that the Defendant has not been deprived of his rights by any measure.

A. Length of the Delay

As the Court of Appeals has held, the length of the delay under the *Barker* test is "necessarily dependent upon the peculiar circumstances of the case" and, "in and of itself, is not a weighty factor." *Id.* at 689 (citing *Erbe v. State*, 276 Md. 541, 547 (1976), which notes that "delay is the least conclusive of the four factors identified in *Barker*" and that the delay in *Barker* was approximately five years, yet no violation was there found.). In assessing the length of the delay, "sufficient time must be allowed for the reasonable preparation of the case on the part of the prosecution and for the orderly processes of the case because of the many procedural safeguards provided an accused." *Epps v. State*, 276 Md. 96, 110 (1975). "For speedy trial purposes the delay involved is reckoned only in connection with the passage of time beyond that which is obviously within the requirements of orderly procedure." *Id.* (internal quotation marks removed).

In the Defendant's case, the length of delay between the arrest and his upcoming trial date on June 6 will be thirteen months and five days. A review of the above chronology shows that the case has suffered no lapses during which the parties were not preparing the case in accordance with the "requirements of orderly procedure." Indeed, the Defendant was still gathering discovery until a week prior to the January 6 trial date and, in fact, never provided the State with discovery until nearly two months after the October 13 trial date. Nothing could be

done in the case during the time when the appellate court stay was in place, and a week after the stay was lifted, the Defendant's case was promptly rescheduled as the second trial of the six. As such, the length of the delay here should receive no weight in the analysis. The delay was minimal relative to the progress of discovery and ordinary procedure in a murder trial whose facts overlap with five related cases also docketed in the same court.

B. Reasons for the Delay

Regarding the reasons-for-the-delay prong of *Barker*'s test, the Court of Appeals has held "that different reasons should be assigned different weights:

> A deliberate attempt to delay the trial in order to hamper the defense should be weighted heavily against the government. A more neutral reason such as negligence or overcrowded courts should be weighted less heavily but nevertheless should be considered since the ultimate responsibility for such circumstances must rest with the government rather than with the defendant. Finally, a valid reason, such as a missing witness, should serve to justify appropriate delay.

Kenneh, 403 Md. at 690 (citing *Barker*, 407 U.S. at 531). The relevant questions, thus, in this part of the analysis are (1) what are the periods of delay and (2) what are the reasons for each of those delays. The Defendant claims that "[t]he reason for the yearlong delay of [his] trial is the State's insistence that a single witness substantiate the charges against him." Def. Mot. at 10. On the contrary, the delays in this case fall into four discrete periods, each of which was justified by circumstances that do not favor finding a speedy trial violation.

The first period of delay ran from the Defendant's arrest on May 1, 2015, through the first trial date on October 13, 2015. The Court of Special Appeals has unequivocally held that "[t]he span of time from charging to the first scheduled trial date is necessary for the orderly

administration of justice and is accorded neutral status." *Howell v. State*, 87 Md. App. 57, 82 (1991). This period, thus, should receive no weight in the analysis.

The next period ran from that first trial date on October 13, 2015, until January 11, 2016, when jury selection was scheduled to begin on the second trial date but the case was then instead stayed by the Court of Special Appeals. At the hearing on September 29, 2015, that generated this postponement of the trial date, this Court, sitting as the administrative court, found that the reasons necessitating the delay were the unavailability of prosecutors and the unavailability of a State's witness. "[P]rosecutors are not treated as interchangeable," and the unavailability of the prosecutor in the case, though "charged to the State, does not weigh heavily in the speedy trial analysis." *Peters v. State*, 224 Md. App. 306, 363 (2015). Additionally, the unavailability of a witness justifies an appropriate delay. *Howard v. State*, 440 Md. 427, 448 (2014). Moreover, this Court can take notice of the fact that during this time there was only one team of prosecutors on the six defendants' cases. The Court can also take notice that since June 19, 2015, this Court has been the only court assigned to preside over the six cases. Because Porter's case was scheduled as the first case to be tried, neither the prosecution nor the Court realistically would have been available to try the Defendant's case any earlier than the January 11, 2016, date. As such, this period of delay should receive little, if any, weight in the analysis.

The third period of delay involved the time in which the case was stayed pending resolution of Porter's appeal from January 11, 2016, until the stay was lifted on March 8, 2016. Though the Defendant makes much of this time period, as a matter of law, "[d]elays caused by government appeals should be charged against the State only when the appeal is taken in bad faith or as a dilatory tactic." *Ward v. State*, 52 Md. App. 63, 77 (1982); *accord United States v. Jackson*, 508 F.2d 1001, 1004-05 (7th Cir. 1975) ("the period of delay attributable to review of an

order [by an appellate court] should not be considered" in a speedy trial analysis; "insofar as appellate review is necessary for the fair administration of public justice, the resulting delay is both unavoidable and justifiable."). As the Supreme Court has explained in this context:

> Given the important public interests in appellate review, it hardly need be said that an interlocutory appeal by the Government ordinarily is a valid reason that justifies delay. In assessing the purpose and reasonableness of such an appeal, courts may consider several factors. These include the strength of the Government's position on the appealed issue, the importance of the issue in the posture of the case, and—in some cases—the seriousness of the crime. For example, a delay resulting from an appeal would weigh heavily against the Government if the issue were clearly tangential or frivolous.

United States v. Loud Hawk, 474 U.S. 302, 315-16 (1986). Additionally, the fact that the Government prevails on appeal is considered "prima facie evidence of the reasonableness of the Government's action." *Id.* at 316.

Assessing the facts of this time period in light of these legal principles, first it must be noted that the State's September 15, 2015, letter to the Court openly identified Porter as a necessary witness in the case against Goodson. The State did not spring Porter as a witness at the last moment. More importantly, despite the Defendant's assertions otherwise, the State had no reason to believe that compelling Porter as an immunized witness would cause delay in the Defendant's trial. This Court's January 6, 2016, immunity order involved nothing more than a straightforward application of the plain terms of *Courts and Judicial Proceedings Article* § 9-123. When Porter appealed that order, the State in good faith opposed the appeal but at the same time sought to ensure that Porter's actions caused no unnecessary delay. The State not only sped up the appellate process by filing a bypass petition with the Court of Appeals, but also asked the high Court for expedited review. The State then litigated the appeal at the break-neck pace of less than three weeks from certiorari to mandate.

That mandate also served to reinforce the good faith nature of the State's actions given that it summarily rejected Porter's appeal. Moreover, the Court of Appeals recently issued its full opinion in the case, captioned as *State v. Rice*, ___ Md. ___, 2016 Md. LEXIS 290 (May 20, 2016). The Court agreed with every aspect of the State's arguments regarding its ability to compel Porter. Far from bad faith or dilatoriness, the Court's decision is "prima facie evidence of the reasonableness of the Government's action." *Loud Hawk*, 474 U.S. at 316. Moreover, the importance of Porter's testimony in this serious murder trial cannot be understated or in doubt—he is a critical eye witness to the Defendant's alleged actions, thus, easily satisfying the remaining *Loud Hawk* factors. While the Defendant argues with the benefit of hindsight that the State should somehow have anticipated the course of events that started with Porter's meritless appeal, the State cannot reasonably be required to have predicted that the Court of Special Appeals *sua sponte* would have stayed this Court's immunity order and then have stayed the Defendant's trial on the day it was set to begin—all on Porter's unfounded claims of error. As such, this period of delay should receive no weight in the speedy trial analysis.

The final period of delay runs from the date the appellate stay was lifted on March 8, 2016, until the Defendant's new trial date of June 6, 2016. The reasons for this delay come down to necessity and simple logistics, and the administrative court on March 16, 2016, charged the postponement "as an administrative postponement due to the lifting of the stay." Indeed, once the stay ended, the Defendant's case obviously could not be held immediately—witnesses had to be re-subpoenaed, party schedules had to be adjusted, public notice had to be given, *etc.* The Court set a new trial date for each of the six defendants a mere eight days after the stay was lifted, and the Court placed the Defendant's trial second—right after Nero's—in a line of six trials set consecutively one per month. Moreover, the Court can take notice that at the March 15,

2016, scheduling conference, the Defendant was given the opportunity to have the earlier trial date given to Nero, but his counsel declined because of witness availability. As such, with only one prosecution team and one Court presiding over Nero's and the Defendant's trials, the Defendant's case could not realistically have been held any earlier than it will be. While unavailable courts and unavailable prosecutors are charged to the State, delays from such factors are given little weight in assessing a speedy trial violation. *Peters*, 224 Md. App. at 362. Consequently, the final period of delay in this case should also receive little weight. On the whole, thus, more than half of the delay (7 months and 10 days) in this case is neutral pretrial preparation or pursuit of a meritorious appeal and less than half of the time (5 months and 28 days) is only lightly chargeable to the State due to witness or staffing issues.

C. The Defendant's Assertion of his Rights

The third *Barker* balancing factor examines the defendant's assertion of his speedy trial right. *Kenneh*, 403 Md. at 692-93. In assessing this factor, "courts should weigh the frequency and force of the objections" to any delay. *Id.* at 693. The defendant's "failure to assert the right will make it difficult for [him] to prove that he was denied a speedy trial." *Id.*

In this case, the Defendant first asserted his right to a speedy trial as part of an omnibus motion filed on May 27, 2015, in which he merely moved that "he be granted a speedy trial." As the Court of Special Appeals has held, however, "a perfunctory motion for a speedy trial . . . as part of an omnibus motion in the circuit court . . . is little more than the avoidance of waiver" and, consequently, is entitled to little weight in a speedy trial analysis. *Lloyd v. State*, 207 Md. App. 322, 332 (2012); *accord State v. Ruben*, 127 Md. App. 430, 443 (1999) ("a purely *pro forma* objection . . . made in writing in an omnibus pretrial motion . . . [is] not calculated to

forcefully bring the harsh consequences of the deprivation of a constitutional right to the attention of the circuit court").

Next, when the case was postponed on September 29, 2015, although the Defendant did not waive his right to a speedy trial, this Court, which sat as the administrative court that day, can take notice that the Defendant did not in any way forcefully object to the postponement. Instead, counsel for the Defendant simply said, "Your Honor, we would most respectfully, um, object for the record."[1] Indeed, the Defendant had not even provided the State with discovery by that time and so would hardly have been in a position to object forcefully in any event. The Defendant never asserted his speedy trial rights again until the appellate courts had imposed a stay, but at that point, this Court was not empowered to act on the Defendant's assertions. Though the Defendant also asserted his speedy trial rights before the Court of Appeals, the high Court's opinion made clear that those assertions were improper to raise in that forum. *Rice*, *supra* at 23 ("To the extent that any one of Defendants believes his right to a speedy trial has been violated as a result of the stays imposed in this case, the proper remedy is not to contest the motions to compel, but rather to move to dismiss the charges.").

After the stay was lifted, the Defendant and the State met with this Court at the March 15, 2016, scheduling conference, and there the Defendant was offered an earlier trial date than June 6. He declined it, a fact of which this Court can take judicial notice. On the following day, at the March 16 postponement hearing, Judge Peters, sitting as the designated administrative judge, asked the Defendant if he was "in agreement with" the June 6 date, and the Defendant's counsel replied only, "yes, we are available on that date." She did not object or assert the Defendant's

[1] To the extent defense counsel contests this dialogue, the videotaped record available thru CourtSmart will confirm the accuracy of the State's description.

right to a speedy trial at that hearing.[2] Even now, the Defendant's May 11 Motion does not actually assert the right to a speedy trial or ask that the trial date be advanced from June 6—it merely asks for the case to be dismissed outright. Accordingly, none of these assertions of the Defendant's speedy trial right should be given much weight in the balancing test.

D. Prejudice to the Defendant

The final *Barker* balancing prong looks at what if any actual prejudice the defendant has suffered as a result in the delay in his trial. The Court of Appeals has described that "prejudice should be weighed with respect to the three interests that the right to a speedy trial was designed to preserve: (i) to prevent oppressive pretrial incarceration; (ii) to minimize anxiety and concern of the accused; and (iii) to limit the possibility that the defense will be impaired." *Kenneh*, 403 Md. at 693. "Of these, the most serious is the last because the inability of a defendant adequately to prepare his case skews the fairness of the entire system." *Id.* With respect to the second interest, "emotional stress from a prolonged delay can be presumed to result . . . from uncertainties in the prospect of facing public trial," but such "intangible personal factors should [not] prevail [unless] the only countervailing considerations offered by the State are those connected with crowded dockets and prosecutorial caseloads." *Glover v. State*, 368 Md. 211, 229-30 (2002). "Actual prejudice requires more than an assertion that the accused has been living in a state of constant anxiety due to the pre-trial delay." *Id.* at 230. "Some indicia, more than a naked assertion, is needed to support the dismissal of an indictment for prejudice." *Id.*

Here, the Defendant's claims of prejudice amount exactly to a mere "naked assertion." The Defendant cites "media scrutiny," feelings of "fear, anxiety, and exposure to public scorn

[2] Though this Court was not sitting as administrative judge that day, to the extent defense counsel contests this dialogue, as previously noted, the videotaped record available thru CourtSmart will confirm the accuracy of the State's description.

and criticism," being "suspended without pay," "the practical difficulty of rescheduling a slate of fact and expert witnesses for a month-long trial," and "witnesses relocating or forgetting critical information with the passage of time." Def. Mot. at 13. While emotional stress may be presumed for any defendant charged with a crime, the majority of the delay in this case is not "connected with crowded dockets and prosecutorial caseloads" and so such stress should receive little weight. More importantly, the Defendant has only asserted a bald allegation that his defense has been impaired. He has not identified any "witnesses" who have been unable to be rescheduled, let alone any who have been lost or have become forgetful. In short, to the extent the Defendant has suffered any actual prejudice, he has not demonstrated it sufficiently to give this prong of *Barker* any great weight in the analysis.

Balancing the four factors, thus, merely confirms the reason that such minimal delay as has occurred in this case barely even triggers the *Barker* test. The thirteen months and five days that will have elapsed by June 6 have entailed nothing more than reasonable preparation of the case and the orderly processes involved in bringing any murder case to trial. The reasons for the delay are more than half neutral and in remaining part are weighed only lightly against the State. The Defendant cannot be said to have frequently or forcefully asserted his right to a speedy trial. Finally, the Defendant has been free on bail and has proffered nothing more than bald allegations of actual prejudice. Not one of these factors weighs in favor of dismissing this case for a violation of the Defendant's speedy trial rights. On the contrary, this case has been marked by exceptional speed at every point in its process to trial.

III. Statutory right to a speedy trial

At the end of the Defendant's Motion, he makes a brief, if not half-hearted claim that he has been denied his statutory right to a speedy trial under § 6-103 of the *Criminal Procedure*

Article as implemented by *State v. Hicks*, 285 Md. 310 (1979). Given that the postponement that resulted in delaying the case more than 180 days occurred at the September 29, 2015, hearing for good cause found by the designated administrative judge, the Defendant does not contest this aspect of his statutory right—rather he claims that the actual time between his trial dates amounted to an "inordinate delay." Def. Mot. at 14. To be sure, an inordinate delay between trial dates can violate § 6-103. *State v. Frazier*, 298 Md. 422 (1984). To be equally sure, no such violation occurred in this case.

Indeed, to prevail on such a claim, the Defendant bears "the burden of showing that the post-postponement delay is inordinate, in view of all the circumstances," and dismissal is only appropriate "if, after a good cause postponement, trial is not begun with reasonable promptness." *Rosenbach v. State*, 314 Md. 473, 479 (1988). Defining "reasonable promptness," the Court in *State v. Brookins*, 299 Md. 59, 62 (1984), found that a delay of three months and twelve days was reasonably prompt and did not violate the statute. Additionally, the Court in *Frazier* considered such claims from two defendants in a consolidated appeal, and the Court found that delays between trial dates of 266 days and 209 days caused by "an overcrowded docket" were reasonably prompt and also did not violate the statute. 298 Md. at 436-62.

Far from such extreme delays, here the Defendant complains about the delay of 78 days between the October 13, 2015, and January 6, 2016, trial dates, and a delay of 90 days between the lifting of the stay on March 8 and his new trial date on June 6. Given that both of these delays fall well below the longer timeframes held in *Brookins* and *Frazier* to constitute reasonably prompt delays, the Defendant has not remotely met his burden to show an inordinate delay. Even without resorting to appellate comparisons, as a practical matter both the January 6 date and the June 6 date were scheduled at the earliest possible time available for this Court and

the State to try the case—each date following on the heels of the conclusion of the trial of one of the other defendants. In short, the Defendant's alleged statutory violation fails under the test established by the Court of Appeals.

Wherefore, the State asks that this Court deny the Defendant's Motion to Dismiss the Indictment for Violation of his Speedy Trial Rights.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of May, 2016, a copy of the State's Response to Defendant's Motion to Dismiss the Indictment for Violation of his Speedy Trial Rights was delivered as follows:

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Respectfully submitted,

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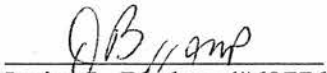

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