

STATE OF MARYLAND

v.

ALICIA WHITE

Defendant

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IN THE

CIRCUIT COURT

FOR

BALTIMORE CITY

CASE NO.

DEFENDANT'S MOTION IN LIMINE

TO EXCLUDE TESTIMONY OF OFFICER WILLIAM PORTER

NOW COMES Defendant, ALICIA WHITE, by and through counsel, Ivan J. Bates,

Esq., Tony N. Garcia, Esq, Mary M. Lloyd, Esq. and Bates & Garcia, LLC Attorneys at Law hereby respectfully files this Motion in Limine to exclude testimony of Officer William Porter in the above-captioned matter, and in support states as follows:

INTRODUCTION

The above-captioned matter is scheduled for trial on February 8, 2015. The Defendant is one of six co-Defendants charged in the death of Mr. Freddy Gray. Specifically, the State has filed manslaughter, second degree assault, misconduct in office and reckless endangerment charges against the Defendant. The Defendant seeks to exclude the compelled testimony of her co-Defendant Officer William Porter.

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. 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). After consultation between the

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consultation between the trial court and all counsel, the trials of Officer Porter and Sergeant White were scheduled for November 30, 2015 and January 25, 2016, respectively.

During the months leading up to Officer Porter's trial, his counsel repeatedly relayed to the State his intention to invoke his right against self-incrimination and specifically informed the State of his intention to quash any subpoena issued to him. On December 11, 2015, Officer William Porter, a co-Defendant in the case, was handed a subpoena to testify for the State in the Defendant's trial. On December 16, 2015, Officer Porter's trial ended in a mistrial, a new trial date is scheduled for June 13, 2016.

On January 6, 2016, a hearing on the State's Motion Compel Officer Porter's testimony was held in the co-Defendant, Officer Ceaser Goodson's case. After acknowledging that there was a lack of precedence 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. Following the hearing, the Court granted the State's request and signed an order compelling Officer Porter to testify in Officer Goodson's case. On January 7th, Officer Porter filed his Notice of Appeal and Motion for an Injunction of the trial Court's January 6th order compelling his testimony pending an appeal. The Court of Special Appeals, stayed the court's order compelling Officer Porter to testify and set the case in for oral argument to be heard on March 4, 2016.

On January 8, 2016, Defendant Sergeant White received a copy of the State's Motion to Compel a Witness to Testify for her case. The motion declares that the State has subpoenaed plans to call Officer William Porter to testify as a witness in the above

referenced case, that the State's Attorney for Baltimore City has determined that the testimony for Officer William Porter in the above-captioned case may be necessary to the public interest, that Officer William Porter has refused to testify in the above-captioned case on the basis of his privilege against self-incrimination, and that the State's Attorney for Baltimore City seeks to compel Officer William Porter to testify in the above captioned case.

On January 7, 2016, the Honorable Judge Barry Williams signed the State's requested order prior to conducting any hearing on the matter or allowing counsel to respond.¹ On January 13, 2016, the State sent a letter to the court asking that the Defendant's case, along with her co-defendants be reset for a date following Officer Porter's second trial, noting again the "importance" of Porter as a witness in the Defendant's case.² The Defendant is currently scheduled to begin trial on February 8, 2016, if the court were to grant the State's request to postpone her case until after Officer Porter's scheduled trial date in June or in the alternative postpone the Defendant's case until after the Court of Special Appeals has resolved Officer Porter's appeal, Sergeant White's case is likely to be pushed back to start at the earliest in July of 2016, over fourteen months after she was initially charged. The Defendant requests the court to exclude any testimony from Officer Porter as it is irrelevant evidence and as such not admissible. In the alternative the Defendant requests the court to exclude any testimony from Officer Porter as any probative

¹ On January 12, 2016 the Defendant filed a Motion to Strike the Court Order, due to the order being signed and motions hearing being conducted without her or her counsel being present.

² It should be noted that the first trial for Officer Porter (State v. William Porter) lasted approximately 13 days from November 30th until December 16th. It is anticipated that any retrial as well as the trials for the other co-defendants would also last anywhere from two to three weeks each.

value the testimony may have is substantially outweighed by the unfair prejudice, undue delay and waste of time it will cause in Defendant's case.

FACTS

It is expected that Officer Porter's testimony will be consistent to the previous statements given to investigators. The only information pertinent to the Defendant Sergeant Alicia White can be found in his statement to investigators specifically the following excerpts:

"I tell Sarge, Sergeant White what we had. That uh, Freddie Gray at this point to uh, he's probably got to go to the medic 'cause he's saying – he not really saying anything. He actually appears pretty lethargic."... "I tell Sergeant White, she uh, she goes in and she looked at him. She said, 'Yea, you guys will probably have to take him to Bon Secours.'"... "We go down, and she says uh, I need a follow-up on medic and I could do the hospital detail over at Bon Secours. (Page 9 Transcript April 17, 2016)

"I talk to Sergeant White and says uh, I say, this guy is not going to go to the – the – right now is about – us. Central Booking is not going to take this guy if he's saying he needs to go to the hospital. She goes around and she asks him same, you know the same questions. He's not really answering anybody. You know, she's like, what's wrong with you and he doesn't say anything. She's like, you need a hospital? You need to go to medic or something? He says, 'Yes.' That's all, he's not really saying anything." And she was talking to uh, Freddie at that point in time."... No, she didn't call for a medic." ... "Uh, well she told me that I would have to take over the hospital detail and just to follow the wagon down to the station." ... "we'll drop off the other prison and go in, -- of that, from there." (Page 45-47)

"From North Avenue sergeant says, you know, if somebody keeps asking for the medic, you know, it turns into a hospital detail in which, you know, you have to send them the prisoner until they can determine if he is fit to go to jail, you know." [Det Anderson: Officer, Sergeant White mentioned that?] "that I would be in the hospital detail. Yes. Yes. That's why I followed the medic, Im sorry that's why I followed Goodson into the district." (Page 77).

See Transcript of Officer Porter's Statement on April 17, 2015

As Officer Porter's testimony in his own case is entirely consistent with his statement given to investigators on April 17, 2016 it is not recited in this memorandum. That State has not proffered that there are any other statements made by Officer Porter that include any information regarding Sergeant White or that they expect him to testify any differently than he has previously testified, therefore it is the Defendant's position that the previously outlined statements are the only evidence the State expects to extract from Officer Porter's testimony in the Defendant's trial.

ARGUMENT

I. The Evidence is Irrelevant

Evidence, to be admissible, must be both relevant and material. *Lai v. Sagel*, 373 Md. 306, 319 (2003). Evidence is material if it tends to establish a proposition that has legal significance to the litigation; it is relevant if it is sufficiently probative of a proposition that, if established, would have legal significance to the litigation. *Id.* Maryland Rule 5-401 defines relevant evidence as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence." Therefore, evidence is only relevant if it tends to establish a material fact. *Lesson v. State*, 293 Md. 425 (1982). The evidence is considered immaterial if a reasonable fact finder would not attach importance to it in deciding a contested issue. *Paige v. Manuzak*, 57 Md.App. 620, 632 (1984).

Officer Porter's potential testimony in Sergeant White's case is irrelevant. In short, Officer Porter states that he informs Sergeant White of the situation and that Mr. Gray was

probably going to need to go to the medic, Sergeant White then agrees with him and instructs him to take Mr. Gray to Bon Secours and specifically tells Officer Porter that he will need to take over the hospital detail. Although Officer Porter states that Sergeant White did not call a medic herself he is quite clear that she instructs him to take Mr. Gray to the hospital. This is the sole information that will be gleaned by testimony of Officer Porter at Sergeant White's testimony.

According to Officer Porter's statement and prior testimony, it is clear that Sergeant White acted as a reasonable officer should have under the circumstances and therefor his testimony, if relevant at all would only be to further exonerate Sergeant White. Thus for any potential testimony of Officer Porter is entirely irrelevant to the State's case and chief and must be excluded.

II. The Evidence is More Prejudicial than Probative.

Even if the court were inclined to find that Officer Porter's potential testimony is relevant to Sergeant White's case, any probative value of the testimony is severely outweighed by the potential prejudiced the testimony will undoubtedly cause to the Defendant's case.

Pursuant to Maryland Rule 5-403, even if the evidence is relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice. The Rule says, in its entirety

Although relevant, evidence may be excluded if its probative value is substantially outweighed by the *danger of unfair prejudice*, confusion of the issues, or misleading the jury, or *by considerations of undue delay, waste of time*, or needless presentation of cumulative evidence. Id.

A. Any probative value of Officer Porter's testimony is slight and would only serve to exonerate Sergeant White.

In the case at hand, the only probative value of Officer Porter's testimony in Sergeant White's case is that he informed Sgt. White of Mr. Gray's condition, that she instructed him to take Mr. Gray to the hospital and that a medic was not called at that time by Sergeant White. The evidence is only probative to show that Sergeant White acted reasonably. In fact, Captain Justin Reynolds, an expert listed by the State in their disclosures, would specifically opine that even if you consider the statements given by Officer Porter to be truthful, Sergeant White's actions were reasonable in telling Officer Porter to take Mr. Gray to the hospital.

The State may argue that Officer Porter's testimony is also probative as his statements were used by the medical examiner in her autopsy report. However, it is clearly stated in Maryland law that the "statement of a witness or other individual" is specifically excluded from the definition of "record" under the Health General Article. Md. Code Ann. Health Gen. § 5-311(d)(ii). Although, the Office of the Chief Medical Examiner "shall keep complete records on each medical examiner's case," any statements of witnesses should be excluded from those records. Md. Code Ann. Health Gen. § 5-311(a)(1). This is especially true when all of those witness statements were the result of an investigation and "testimonial" in nature. "The statute specifically excludes statements in [autopsy] reports by witnesses or other person ... [o]nly the portion of the report setting forth the examination by and the medical findings of the examiner is admissible." *McClain on Evidence*, Section 803(9):1(c). See also *Rollins v. State*, 161 Md. App. 34 (2005), *aff'd* 392 Md. 455. It is expected that the State will seek to introduce Dr. Allan's

report in Defendant's trial. However, it is clear from the above-listed authority that Officer Porter's statement, that she may have relied upon must be redacted from the report prior to its admission and therefor the State's argument is misplaced and Officer Porter's statement has no probative value in regards to the autopsy report.

B. The prejudicial effect of admitting Officer Porter's testimony is substantial and will violate Sergeant White's Constitutional Speedy Trial rights if not excluded.

In contrast to any probative value, the potential for prejudice in Sergeant White's case is extreme. First and foremost, as the court is well aware, the State is requesting to postpone Sergeant White's case until after Officer Porter has been retried, and after Officer Goodson has been tried, which would cause Sergeant White's trial to be postponed at the very least six months from her currently scheduled trial date. A postponement of that nature would take the case past the Defendant's Hicks date in violation of Maryland Rule 4-271. Even if the court were only to postpone her case until after the Court of Special Appeals has resolved Officer Porter's appeal of the motion to compel his testimony, the case would still have to be postponed as the oral arguments are not set until March 4, 2016. In fact, the prejudice the Defendant will face in this matter if Officer Porter's testimony is not excluded rises to a Constitutional level as it will definitely violate her right to a Speedy Trial as guaranteed by the Sixth Amendment of the Constitution.

An accused has a Constitutional right to a speedy trial under the Sixth Amendment of United States Constitution. "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial." U.S. Const. Amend. VI. A similar guarantee is contained in Article 21

of the Maryland Declarations of Rights, “in all criminal prosecutions, every man hath a right... to a speedy trial by an impartial jury.” The United States Supreme Court, in Klopfer v. North Carolina, 386 U.S. 213, 223 (1967), held the Sixth Amendment right to a speedy trial applicable to the states through the 14th Amendment. The purpose of the speedy trial guarantee is “to minimize the possibility of lengthy incarceration prior to trial, to reduce the lesser, but nevertheless substantial, impairment of liberty imposed on an accused while released on bail, and to shorten the disruption of life caused by arrest and the presence of unresolved criminal charges.” Howell v. State, 87 Md. App. 57, 78 (1991), cert. denied 324 Md. 324 (1991) (quoting United States v. MacDonald, 456 U.S. 1, (1982)). “[O]nly the actual restraints imposed by arrest and holding to answer a criminal charge ... engage the particular protections of the speedy trial provision of the Sixth Amendment.” United States v. Loud Hawk, et al., 474 U.S. 302 (1986).

If the court allows the State to call Officer Porter, it will have no choice but to postpone her scheduled trial date and the purpose of the speedy trial guarantee will be lost in her trial. A postponement would not only cause her to suffer immediate and irreparable harm as it relates to her reputation and right to a fair trial, but it will inflict unnecessary personal harm to both her and her immediate family. The stress of the impending court date, the pretrial publicity and the lack of income has lead extreme emotional strain not just to Sergeant White but also to her immediately family, namely her mother and her fiancé. Sergeant White is engaged to be married, however due to her current situation awaiting trial her wedding, along with her life has been put on hold until the case is disposed of. Sergeant White has attempted to seek other employment while she is suspended without pay from the Baltimore City Police Department, however since she is

pending a felony charge and her chosen profession is in security and law enforcement she has been unable to secure temporary or full time employment.

Sergeant White prior to this case, relied on her salary in order to support herself and to pay her bills and other necessary expenses. Since Sergeant White has been without pay for over eight months she has been forced to rely on family members to help support her through the process. Sergeant White is currently living at her mother's house and is relying on her mother to pay all the utilities for the house due to her inability to provide any funds. Sergeant White has also had to seek financial help in order to pay for her health and car insurance as she is unable to pay them on her own. Although she is currently receiving help in order to continue her coverage, there is no certainty how long she will be able to receive support and any further delay of her case will most certainly lead to her having to forgo both her health and vehicle insurance. The lack of income has caused not only a financial strain on her and her family but a tremendously emotional one as well. For someone of Sgt. White's age and experience to have to rely on others to provide basic support has and continues to cause friction between her and her loved ones.

In addition, the extreme financial hardship a postponement will cause Sergeant White, any continuance in this matter will greatly impair her potential defenses in her trial as well. A key defense witness, Dantae Allen, the other passenger in the vehicle who's statement is central to Sgt. White's lack of involvement in the case, has recently been released from jail on bond. According to the State's theory of the case, Mr. Gray sustained his injuries prior to Sgt. White becoming involved in the incident. However, according Mr. Allen, Mr. Gray was banging his head and moving around during the last portion of

the ride. According to medical experts, the type of injuries received by Mr. Gray would prevent him from acting in the manner observed by Mr. Allen. This testimony therefore shows that Mr. Gray did not in fact sustain his injuries prior to Sgt. White's involvement and directly conflicts with the State's theory of the case. It is abundantly clear therefore, Mr. Allen is central to Sgt. White's case. Mr. Allen was being held in custody in Pennsylvania on unrelated charges but has since been released on bail. It is defense's fear that any further postponement in this case will lead to the inability of the defense to track down and produce Mr. Allen for trial. The longer Sgt. White's trial is postponed, the likelihood of securing Mr. Allen for trial diminishes. Due to the outlined arguments it is abundantly clear the amount of prejudice Sergeant White will suffer if the court does not exclude Officer Porter's testimony and allows the State a postponement in order to secure that testimony.

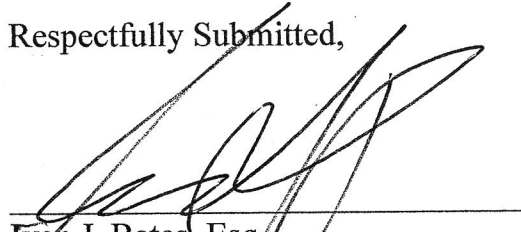
C. If the Court does not preclude Officer Porter from testifying, the case will undoubtedly be postponed in order to secure him as a witness causing an undue delay.

As previously argued, if the court does not preclude the State from calling Officer Porter as a witness, it will be forced to grant a continuance in this matter which could postpone the case at least six months. Any postponement in this matter will cause an undue delay which is not outweighed by the alleged probative value of any testimony Officer Porter may provide. Officer Porter's testimony is at most exculpatory evidence in favor of the Defendant and allowing the State to use his testimony in order to secure a postponement will be a waste of time.

CONCLUSION

For the foregoing reasons, the Defendant asserts that any testimony given by Officer Porter is irrelevant and if relevant any probative value is outweighed by the prejudicial effect and undue delay it will cause and respectfully requests that this Honorable Court grant this Motion in Limine and preclude the State from calling Officer Porter as a witness, and deny any postponement request by the State in order to secure his testimony.

Respectfully Submitted,

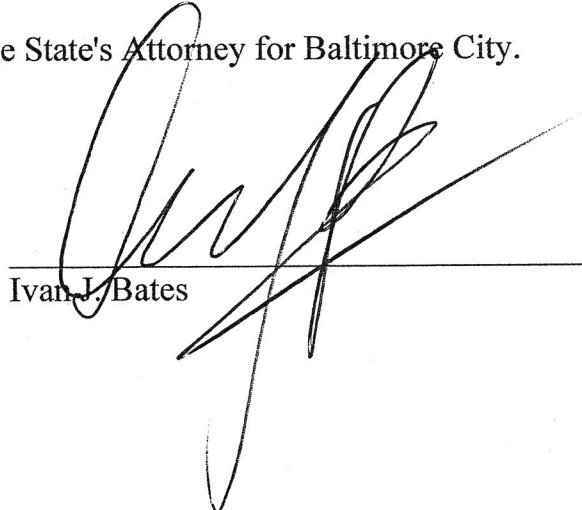


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Motion was emailed on January 15th, 2016 and mailed to the Office of the State's Attorney for Baltimore City.



Ivan J. Bates