

STATE OF MARYLAND

v.

ALICIA WHITE

Defendant.

* IN THE
* CIRCUIT COURT
* FOR
* BALTIMORE CITY
* CASE NO. 115141036

* * * * *

**DEFENDANT ALICIA WHITE'S MOTION TO STRIKE COURT'S ORDER
COMPELLING OFFICER PORTER'S TESTIMONY DURING HER TRIAL**

NOW COMES, Defendant, Alicia White, by and through her attorneys, Ivan J. Bates, Esquire, Tony N. Garcia, Esquire, Mary M. Lloyd, Esquire, and Bates & Garcia, LLC, and hereby files this Motion to Strike Court's Order Compelling Officer Porter's Testimony during the trial of Alicia White and in support thereof states as follows:

Introduction

This Honorable Court, on or about January 7, 2016, signed an Order in Defendant Alicia White's case which provided the following:

On January 6, 2016, during a pre-trial motions hearing for State v. Caesar Goodson, Case No. 115141032, the State presented this Court with its written Motion to Compel a Witness to Testify Pursuant to Section 9-123 of the Courts and Judicial Proceedings Article in order to compel Officer William Porter to testify as a State's witness during the Goodson case. During this hearing, counsel for the Defendant¹ incorporated their arguments from their Motion to Quash Trial Subpoena of Officer William Porter. Counsel for the Defendant² and the State incorporated their arguments for application to the above-captioned case. After the hearing, the State presented this Court with its written Motion to Compel a Witness to Testify Pursuant to Section 9-123 of the Courts and Judicial Proceedings Article, in order to compel Officer William Porter to testify in the above-captioned case.

¹ Counsel for Defendant White was unaware that this was a hearing for Defendant White's case and was not present at this hearing. The Court is presumably referring to Defendant Goodson's counsel and/or Defendant Porter's counsel.

² Counsel for Defendant White was unaware that this was a hearing for Defendant White's case and was not present at this hearing. The Court is presumably referring to Defendant Goodson's counsel and/or Defendant Porter's counsel.

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CLERK OF COURT
JULIA A. COOPER

Based on the motions, arguments, and testimony presented during the hearing, this Court finds that the State plans to call Officer William Porter, D.O.B. 6/29/1989, as a witness to testify in the above-captioned case but that Officer Porter is likely to refuse to testify on the basis of his privilege against self-incrimination. This Court further finds that the State's Motion to Compel Officer Porter's testimony complies with the requirements of Section 9-123 of the Courts and Judicial Proceedings Article. For these reason, it is this [7th] day of January, 2016, by the Circuit Court for Baltimore City, hereby

ORDERED that the State's Motion to Compel a Witness to Testify Pursuant to Section 9-123 of the Courts and Judicial Proceedings Article is **GRANTED**, and further

ORDERED that Officer William Porter, D.O.B. 6/26/1989, shall testify as a witness for the State in the above-captioned case and may not refuse to comply with this Order on the basis of his privilege against self-incrimination, and further

ORDERED that no testimony of Officer William Porter, D.O.B. 6/26/1989, compelled pursuant to this Order, and no information directly or indirectly derived from the testimony of Officer Porter compelled pursuant to this Order, may be used against Officer Porter in any criminal case, except in a prosecution for perjury, obstruction of justice, or otherwise failing to comply with this Order.

(J. Williams Order of 1/7/2016) (emphasis supplied).

Argument

"In Maryland, a criminal defendant's right to be present at every stage of his trial is a common law right, is to some extent protected by the Fourteenth Amendment to the United States Constitution, and is guaranteed by [Maryland Rule]." *Wildermuth v. State*, 310 Md. 496, 528 (1987) (internal quotations omitted). Maryland 4-231 entitles a criminal defendant to be present at the preliminary hearing and "every stage of the trial." Md. Rule 4-231(b).

"The Sixth Amendment [also] guarantees a defendant the right to have counsel present at all 'critical' stages of the criminal proceedings." *Montejo v. Louisiana*, 556 U.S. 778, 786 (2009). The Supreme Court has defined a "critical stage" as one that "held significant consequences for

the accused." *Bell v. Cone*, 535 U.S. 685, 696 (2002). When a defendant's trial counsel is excluded from a motions hearing that contains "arguments and testimony" and the availability of a witness against her, she has been denied the right to counsel. See *United States v. Cronin*, 466 U.S. 648 (1984).

Defendant Alicia White and her counsel were not notified that there was a motions hearing scheduled for her case where a witness would be sworn under oath and questioned by the defense and State. The Court seems to recognize this as the Order specifies the ruling took place as a result "a pre-trial motions hearing for State v. Caesar Goodson" to "compel Officer William Porter to testify as a State's witness during the Goodson case." (See J. Williams Order 1/7/2016). As a result, the Defendant and her attorneys were denied an opportunity to be present at a critical stage in the proceedings and make argument with respect to the *ex parte* motions hearing held in her case. Likewise, Defendant White was denied the assistance of counsel at this proceeding since counsel had not been informed a motion would be occurring on Defendant White's case on this date.³ Further, undersigned counsel was not informed that an order had been signed by this Court until another attorney happened to see the Order listed on the Baltimore City Judiciary's Website and notified undersigned counsel. It appears the Order was not sent to undersigned counsel or his client.

Because Defendant White has been denied the right to be present, and because she was denied the right to counsel at a hearing in her case that consisted of "arguments and testimony," Defendant White is compelled to ask for this Court to strike its Order that was based on that hearing.

³ It is also entirely unclear to undersigned counsel whether the State complied with Section 9-123 of the Courts & Judicial Proceedings article by filing a written request with the Court in Defendant White's case or simply used the request from Officer Goodson's case.

WHEREFORE, Defendant Alicia White, respectfully moves this Honorable Court to STRIKE its Order of January 7, 2016, compelling Officer Porter to testify in Defendant White's case.

Respectfully submitted,


Ivan J. Bates

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12th day of January, 2016 a copy of the foregoing Motion to Strike was hand delivered to the Office of the State's Attorney for Baltimore City, 120 E. Baltimore Street, 9th Floor, Baltimore, Maryland 21202.


Ivan J. Bates

STATE OF MARYLAND

v.

ALICIA WHITE

Defendant.

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IN THE

CIRCUIT COURT

FOR

BALTIMORE CITY

CASE NO. 115141036

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ORDER

Upon consideration of Defendant Alicia White's Motion to Strike Court's Order Compelling Officer Porter's Testimony During Her Trial, it is this ____ day of _____, 2016,

ORDERED, that Defendant's Motion to Strike Court's Order Compelling Officer Porter's Testimony During Her Trial be, and hereby is, GRANTED.

The Honorable Barry G. Williams