

STATE OF MARYLAND

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IN THE
CIRCUIT COURT FOR
BALTIMORE CITY
CASE No. 115141036

v.

ALICIA WHITE

* * * * *

**STATE'S RESPONSE TO WITNESS WILLIAM PORTER'S MOTION FOR
INJUNCTION PENDING APPEAL**

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 responds as follows to Witness William Porter's Motion for Injunction Pending Appeal.

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 trial subpoenas to appear and testify as a witness in the above-captioned case involving Defendant White and also that of Defendant Caesar Goodson, both of whose charges stem from the same events underlying Officer Porter's indictment. On January 4, 2016, Officer Porter filed a Motion to Quash those trial subpoenas, and the State filed a Response to the Motion in the *Goodson* case

on the morning of January 6, 2015. At a hearing that afternoon, this Court denied the Motions 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 had been scheduled to begin jury selection and testimony the week of January 11. Officer Porter stated that he would not testify in the *Goodson* matter and invoked his federal and state privileges against self-incrimination. Through counsel, he stated that he also would not testify in the *White* case, likewise invoking his privileges to remain silent. The State then immediately filed a Motion to Compel Officer Porter's testimony in *Goodson* 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. Following that hearing, the State also filed a Motion to Compel Officer Porter to testify as a witness in the above-captioned case involving Defendant White, which at that time was scheduled to begin on January 25 and is now set for February 8. Based on Officer Porter's refusal to testify in the *Goodson* case and his statement through counsel that he would do likewise in *White*, the Court found that Officer Porter was likely to refuse to testify in the *White* case and so granted the State's Motion to Compel.

On January 7, 2016, Officer Porter filed in the Court of Special Appeals an interlocutory appeal of this Court's order compelling his testimony in the *Goodson* case. He also filed that same day motions addressed to this Court and to the intermediate appellate court requesting an

injunction of this Court's CJP §9-123 order. This Court denied that request on January 7, but the Court of Special Appeals on January 8 issued an order staying the requirement that Officer Porter testify in the *Goodson* case. The State then filed with this Court a request for a continuance of the *Goodson* trial on January 8, arguing that this Court had correctly compelled Officer Porter to testify such that forcing the trial to proceed would result in a grave injustice. Before this Court could act on the State's request, the Court of Special Appeals on the morning of January 11 issued an order staying the entire *Goodson* trial. That Court's order did not address the still pending *White* trial because Officer Porter had not actually yet filed an appeal in that case.

On January 12, however, Officer Porter filed in the *White* matter both a notice of an interlocutory appeal and the present request to enjoin this Court's CJP §9-123 order. Officer Porter argues, "[g]iven that the Court of Special Appeals has already stayed Porter's testimony in the *Goodson* matter and that the issue in the case at bar is its doppelganger, Porter suggests that the interests of justice require that a similar injunction be issued in the case at bar." Mot. for Injunction at 2. Because of the intermediate appellate court's actions on the identical issue, the State does not disagree that this Court should stay its order in the *White* case, provided, of course, that this Court as part of any such relief extends the stay in like fashion to the entire *White* trial or refers the *White* case back to the administrative judge to be postponed to a date sufficient to allow resolution of the appeal. Indeed, the Court of Special Appeals issued a scheduling order on January 12 announcing that oral arguments on Officer Porter's *Goodson* appeal will occur on March 4, 2016. Undoubtedly, Officer Porter's *White* appeal will be consolidated with his *Goodson* appeal, permitting an approximate timeline for any stay or postponement of the *White* case. In the absence of a delay to the entire *White* case, the State

responds to Officer Porter's Motion for Injunction in the above-captioned case by incorporating the State's response to his similar motion in the *Goodson* case: this Court's January 6 order was both legally correct and legally adequate to protect Officer Porter's rights such that enjoining the order without delaying the entire trial would result only in needlessly depriving the State of a necessary and material witness in a homicide trial, irreparably harming, not Porter, but the People of this State.

Wherefore, the State asks that this Court grant Witness William Porter's Motion for Injunction Pending Appeal only if this Court (or the administrative judge upon this Court's referral) delays the trial of the above-captioned matter pending resolution of Officer Porter's interlocutory appeal; short of such a delay, in the alternative, the State requests that the Motion for Injunction be denied.

Respectfully submitted,

Marilyn J. Mosby



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CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of January, 2016, a copy of the State's Response to Witness William Porter's Motion for Injunction Pending Appeal was mailed and e-mailed to:

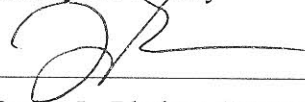
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