

Filed

FEB 16 2016

**Bessie M. Decker, Clerk
Court of Appeals
of Maryland**

STATE OF MARYLAND

PETITIONER,

v.

CAESAR GOODSON

RESPONDENT¹

* * * * *

STATE OF MARYLAND

PETITIONER,

v.

ALICIA WHITE

RESPONDENT

* * * * *

* IN THE
* COURT OF APPEALS
* OF MARYLAND
* SEPTEMBER TERM, 2015
* PETITION NO. 663

* * * * *

* IN THE
* COURT OF APPEALS
* OF MARYLAND
* SEPTEMBER TERM, 2015
* PETITION NO. 662

* * * * *

**OFFICER GOODSON AND SERGEANT WHITE'S
MOTION TO LIFT STAY OF TRIAL**

Defendants, Officer Caesar Goodson ("Officer Goodson"), through his counsel, and Sergeant Alicia White ("Sergeant White"), through her counsel, file this motion to lift the stays ordered by the Court of Special Appeals of Maryland.

¹ Although Officer Goodson and Sergeant White are captioned as the "Respondents," neither were parties to the underlying app. 1. The Court of Special Appeals designated Officer William Porter ("Officer Porter"), as the Appellant in its January 11, 2016 Order. See Maryland Rule 8-111. It is unclear why Officer Porter's appeals were not captioned identifying him as the appellant. See *St. Joseph Medical Center, Inc. v. Cardiac Surgery Associates, P.A.*, 392 Md. 75 (2006) (non-party noting the appeal identified as the appellant); *Department of Social Services v. Stein*, 328 Md. 1 (1992) (same).

I. PRELIMINARY STATEMENT

Officer Goodson and Sergeant White will try not to repeat all of the arguments presented before the Court of Special Appeals. For the Court's ease of reference, the following filings are attached as exhibits to this motion:²

- Exhibit 1:** Officer Goodson's Motion to Lift Stay of Trial and Request for an Order Directing the Trial Court to Dismiss the Indictment;
- Exhibit 2:** The State's Response to Goodson's Motion to Lift the Stay and Order the Trial Court to Dismiss the Indictment;
- Exhibit 3:** Officer Goodson's Reply in Further Support of its Motion to Lift Stay of Trial;
- Exhibit 4:** The State's Motion to Stay Proceedings Pending a Ruling on the State's Petition for Writ of Certiorari;
- Exhibit 5:** Officer Goodson's Opposition to the State's Motion to Stay Proceedings Pending a Ruling on the State's Petition for Writ of Certiorari; and
- Exhibit 6:** Sergeant White's Motion to Lift Stay of Trial and Request for an Order Directing the Trial Court to Dismiss the Indictment and Opposition to the State's Motion to Stay Proceedings Pending a Ruling on its Petition for Writ of Certiorari.

Officer Goodson's trial was scheduled to commence on January 11, 2016. Had his trial gone forward, there likely would have been a verdict as of the filing of this Motion. However, the Court of Special Appeals, *sua sponte*, stayed his trial due to Officer Porter's appeal of the trial court's January 6, 2016 order forcing him to testify in Officer

² Officer Goodson and Sergeant White adopt and incorporate by reference their filings in the Court of Special Appeals of Maryland, as if fully set forth herein. The exhibits to the filings before the Court of Special Appeals are not attached, but will be made available at the Court's request.

Goodson's trial. Below and on appeal, Officer Porter argues that under the facts of his case, application of the "use immunity" statute (Md. Code Ann., Cts. & Jud. Proc. § 9-123), and resultant order compelling him to testify, violates his state and federal constitutional rights against self-incrimination.

Sergeant White's trial was scheduled to start on February 8, 2016. Similar to Officer Goodson's case, Officer Porter was ordered to testify in Sergeant White's case. As a result of the Court of Special Appeals' *sua sponte* order in Officer Goodson's case, it appears that the trial court felt compelled to stay Sergeant White's trial during the pendency of Officer Porter's appeal. The stay was issued based on the verbal request of the State to the trial court.

Officer Porter is not a party in the underlying cases.

Before the Court of Special Appeals, Officer Goodson moved to lift the stay, arguing that the imposition of the stay was not grounded in any applicable law and instead amounted to the Court of Special Appeals granting the State a continuance because one of its witnesses was not available. Officer Goodson also argued that his constitutional rights to a speedy trial were being violated as a result of the State's litigation tactics.

In its response, the State argued that the intermediate appellate court had the authority to issue the stay. It also argued that a denial of the stay would be unfair to the State and that the stay was not a result of anything it had done as it related to the prosecution of Officer Goodson's case. Further, the State suggested that Officer

Goodson's claim that his speedy trial rights were being violated should have no bearing on the determination of whether his trial should be continued.³

Before the Court of Special Appeals could rule on Officer Goodson's motion to lift the stay, the State filed a Petition for Writ of Certiorari with this Court, as well as a Motion to Stay all proceedings before the Court of Special Appeals. The State's Petition and Motion were filed on February 10, 2016. *The next day*, the Court of Special Appeals granted the State's Motion to Stay all proceedings before it. Officer Goodson filed an opposition to the State's Motion to Stay on the afternoon of February 11th. It is unclear if the Court of Special Appeals considered Officer Goodson's opposition prior to granting the motion, or if the court even desired to hear from the defendants whose trials had been stayed.

Officer Goodson and Sergeant White request that this Court lift the February 11th stay of the proceedings before the Court of Special Appeals and direct the lower court to lift the stay of their respective trials based on a lack of jurisdiction, and in consideration of Officer Goodson and Sergeant White's rights to a speedy trial which are being violated with each passing day.

II. ARGUMENT

A. There is no legal basis to stay a criminal defendant's trial pending an appeal filed by a non-party.

Without question, the issue of whether a defendant with an upcoming trial can be compelled to testify under the guise of "use immunity" is an important one. The State's

³ Sergeant White adopted and incorporated Officer Goodson's arguments relating to the stay. It is presumed that the State would provide the same response.

position is, in a word, terrifying, particularly for a defendant like Officer Goodson. During the initial investigation of Freddie Gray's death, Officer Goodson invoked his right to remain silent and did not give a statement. To date, Officer Goodson has not provided any public statement regarding the events of April 12, 2015. During his trial, whenever that finally occurs, Officer Goodson has the guaranteed constitutional right not to testify. However, under the State's interpretation and application of the "use immunity" statute, Officer Goodson could be compelled to testify in the cases of the other police officers charged in connection with Mr. Gray's death, either before or after his own trial. If the State has its druthers, Officer Goodson's choice -- indeed his **right** -- to stay silent so long as there are pending charges would be eviscerated.⁴

There seems to be no dispute that there is no Maryland authority on whether the statute should be applied under these circumstances, and that appellate review of the issue as it applies to Officer Porter, is warranted. Officer Porter's appeal, though, does not involve Officer Goodson or Sergeant White. Although Officer Goodson and Sergeant White, like all criminal defendants, will be impacted if the trial court's ruling is allowed to stand, they are not parties to the appeal. They do not have standing to file a brief or request any relief as it specifically relates to the issue on appeal.

Officer Goodson and Sergeant White do have a right to challenge the unprecedented stay unilaterally issued by the Court of Special Appeals. As this Court is aware, there are very few circumstances under which a *party* to a criminal case may note an interlocutory appeal *and* have the underlying case stayed pending resolution of the

⁴ Equally troubling is the State's desire to introduce testimony it considers perjury.

appeal.⁵ For example, the State may note an interlocutory appeal and obtain a stay only under situations set forth by way of a statute, namely Md. Code Ann., Cts. & Jud. Proc. § 12-302(c). Only under these circumstances may a State appeal orders that do not constitute a final judgment. If the State notes an appeal pursuant to § 12-302(c), in order for the underlying trial of the defendant to be stayed, it must certify that the appeal is not taken for the purpose of delay and that the evidence excluded is substantial proof of a material fact. *See* Md. Code Ann., Cts. & Jud. Proc. § 12-302(c)(3)(iii). If the State loses its appeal and the trial court's ruling stands, the charges against the accused may be dismissed, depending on the case. Stated differently, if the defendant's trial is stayed and it turns out the State is wrong, there is a penalty assessed to the State.

Indeed, a criminal trial may be interrupted where a *defendant* takes a permitted appeal. *See Pulley v. State*, 287 Md. 406, 419 (1980). For example, a criminal defendant may note an interlocutory appeal where a trial court denies his motion to dismiss an indictment and bar retrial based on the Double Jeopardy Clause of the 5th Amendment. *See id.* at 409. Even under those circumstances, however, a stay of the defendant's trial pending the defendant's appeal is not automatic. *See id.* at 409. The trial court *may* stay the trial or the appellate court *may* issue a stay in order to aid its review of the *defendant's appeal*.

Undersigned counsel has found no case law in Maryland that allows for a defendant's trial to be stayed pending the resolution of an appeal taken by a non-party.

⁵ The issuance of a stay pending an appeal in a civil matter, or a stay of a ruling for a non-party to a criminal case (but not the trial), makes sense, as the constitutional right of an accused is not implicated.

The reason is clear: the limited ways in which the State is permitted to obtain a stay or a continuance of Officer Goodson and Sergeant White's trials are not present here. For example, had the trial court denied the State's motion to compel Officer Porter's testimony, the State would not have an immediate right to an interlocutory appeal, as the order denying the motion does not fall under § 12-302. No stay would therefore ever come into play under that scenario.

Similarly, had the trial court denied the State's request for a continuance in order to secure the attendance of Officer Porter at trial (once his appeal rights were exhausted),⁶ it would not have the right to an immediate appeal, again because the denial of this type of pre-trial ruling is not one contemplated under § 12-302. Because it would not be an appeal under § 12-302, staying the underlying trial would not have been an option. The State should not be given the right to stay or continue the underlying trials by virtue of Officer Porter's appeal, when it never had the right to begin with.

In making the determination whether the Stay should be continued, this Court must consider the following: If this Court continues the stay, when will it end? After the Court issues its ruling? After the losing party exhausts their rights with the United States Supreme Court? When the trial of Officer Goodson and Sergeant White finally begin, what is their remedy for a delay that is through no fault of their own? Under the

⁶ The State requested a continuance on the eve of trial in order to secure the attendance of Officer Porter. The trial court was not given the opportunity to rule on that motion, as the Court of Special Appeals inserted itself into Officer Goodson's trial and *sua sponte* granted a stay. It should be noted that Maryland law does not support a party's request for a continuance of a trial until it can secure an absent witness who is invoking his 5th Amendment privilege. See *Davis v. State*, 207 Md. App. 298, *cert. denied*, 429 Md. 529 (2012).

circumstances permitting a stay pending an appeal in a criminal case that are actually contemplated by the law, there are penalties to the party who loses the appeal: the defendant cannot use the time as "delay" for speedy trial purposes; the State may have to dismiss the charges.

Officer Goodson and Sergeant White are in the current untenable situation because of the State's chosen course in prosecuting the charges against them. The State's Attorney represented that her office had done a "*comprehensive, thorough and independent investigation.*" As a result of that investigation, her review of the evidence, and her application of the evidence to the elements of the crime, the State's Attorney determined that there was probable cause to file charges against Officer Goodson, Sergeant White and the other police officer defendants. Yet we now know, through the State's admissions and conduct, that the prosecution against Officer Goodson and Sergeant White hinges solely on the testimony of Officer Porter.

The State is presumed to know the law. Therefore, prior to obtaining any indictments, the State knew the following:

1. There is no Maryland case law regarding the application and use of the immunity statute (§ 9-123) to a defendant with pending criminal charges. *See* State's Petition for Certiorari at 6 ("This case presents an issue of first impression. . .").
2. If Officer Porter was ordered to testify in one or more trials, it would be a final judgment as to Officer Porter only, and he could note an appeal. *See St. Joseph Medical Center, Inc. v. Cardiac Surgery Associates, P.A.*, 332 Md. 75 (2006).
3. If Officer Porter appealed, the circuit court would retain fundamental jurisdiction over the criminal trials and the cases would proceed. *See Pulley v. State*, 287 Md. 406, 417-18 (1980).

4. If the Court denied the State's Motion to Compel Officer Porter's testimony, the State could not appeal, as it would not be a final appealable judgment nor an interlocutory appeal under § 12-302. Therefore, no stay would be warranted. *See also Seward v. State*, No. 12, Sept. Term 2015, slip. op. at 6 (Md. Jan. 27, 2016) ("It is an often stated principle of Maryland law that appellate jurisdiction, except as constitutionally authorized, is determined entirely by statute, and that, therefore, a right of appeal must be legislatively granted." (citation omitted)).

Despite knowing the above, the State chose to pursue and prosecute the charges against Officer Goodson and Sergeant White. The State had been advised since May 1st that Officer Porter was going to invoke his rights under the 5th Amendment. The State knew, regardless of whether its Motion to Compel Officer Porter was granted, that Officer Porter would not be testifying absent an appellate authority ordering him to do so. It is reasonable to assume that the State did not think appellate resolution was going to occur within the month before Officer Goodson's trial. In light of the above, the State must have known that, more likely so than not, it was going to proceed against Officer Goodson (and Sergeant White) without Officer Porter's testimony.⁷ It was a risk that the State was willing to take.

The State should not be rewarded for its litigation strategy. The Court of Special Appeals' stay actually puts the State in a better position than it was prior to January 11th by giving it a right it did not have before. The State will have appellate review of an issue *and* a stay of a defendant's trial without facing any consequences (such as those contemplated under § 12-302(c)(3)(iii)). The State now has the luxury of time, all at the expense of Officer Goodson and Sergeant White's right to a speedy trial.

⁷ Even if Officer Porter had been convicted, his 5th Amendment privilege continues through disposition and all subsequent appeals. *See Davis*, 207 Md. App. at 308-09.

B. This Court should consider the impact of the stay on Officer Goodson and Sergeant White's right to a speedy trial.

The Court of Special Appeals and this Court do not have jurisdiction over Officer Goodson and Sergeant White's trials. The Court of Special Appeals did not have authority to issue the stay, and this Court does not have authority to continue it.

Although not an issue on appeal, it is "necessary and desirable" for this Court to consider the impact the stay has had (and will continue to have) on Officer Goodson and Sergeant White's right to a speedy trial. *See* Md. Rule 8-131. To date, their rights to a fair and speedy trial have been discounted, if in fact their rights are even being considered. This Court should not ignore Officer Goodson and Sergeant White's speedy trial rights, which are being violated each day the stay remains in place.⁸ When taking their constitutional rights into consideration, justice demands that the stay be lifted.

This Court must determine whether it wants to establish a precedent where a non-party's appeal of a pre-trial ruling can stay a criminal defendant's trial, and as a result trump a defendant's right to a speedy trial. This Court must decide if it is going to treat the State as a litigant differently than any other litigant who develops a litigation strategy

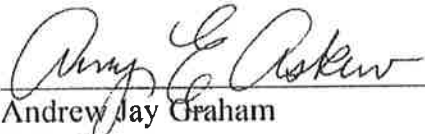
⁸ Typically this Court employs its own "independent constitutional appraisal" of the underlying facts (as supported by the record) when reviewing whether a defendant's right to a speedy trial has been violated. *See Collins v. State*, 192 Md. App. 192, 212 (2010). In so doing, the reviewing court accepts the circuit court's factual findings unless clearly erroneous. *Id.* There can be no dispute based on the history of this case that Officer Goodson and Sergeant White are blameless in the length of the delay and the reasons for it. Moreover, if the stay is continued, the delay will be directly attributable to the State, the Court of Special Appeals, and this Court. As a result, the only court that can conduct an "independent constitutional appraisal" of whether Officer Goodson and Sergeant White's constitutional right to a speedy trial has been violated will be the United States Supreme Court.

that is not successful. All other litigants must live with the consequences of their actions.
So should the State.

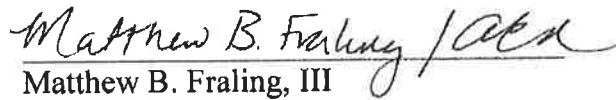
III. CONCLUSION

For the foregoing reasons, this Court should GRANT the Motion to Lift the Stay
of the trials of Officer Goodson and Sergeant White.

Respectfully submitted,



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This Motion was prepared in Times New Roman 13-point font.

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of February 2016, a copy of the foregoing

Motion was sent via electronic mail and mailed, first-class postage prepaid to:

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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)

* * * * *
**OFFICER GOODSON'S MOTION TO LIFT STAY OF TRIAL AND REQUEST
FOR AN ORDER DIRECTING THE TRIAL COURT
TO DISMISS THE INDICTMENT**

Defendant, Officer Caesar Goodson ("Defendant" or "Officer Goodson"),¹ through his counsel, and pursuant to Maryland Rule 8-431 and this Court's January 11, 2016 Order, moves to lift the stay of Officer Goodson's trial pending resolution of the interlocutory appeal filed by Officer Porter, and requests that an order be issued by this Court directing the trial court to dismiss the indictment.

I. INTRODUCTION

Officer Goodson objects to the Court of Special Appeals' January 11, 2016 Order staying, *sua sponte*, his criminal trial that was scheduled to begin on that same date ("Stay Order"). The interlocutory appeal filed by Officer William Porter (which is properly before this Court and should proceed as ordered) did not divest the circuit court of jurisdiction and this Court lacked the power and authority to stay Officer Goodson's trial.

¹ Although Officer Goodson is captioned as the "Appellant," this Court designated Officer William Porter ("Officer Porter") as the Appellant in its Order. See Maryland Rule 8-111. Officer Goodson has not noted an appeal on any issue, nor has the State noted any appeal in which Officer Goodson is the Appellee.



This Court's Stay Order, even if it were procedurally permissible, would violate Officer Goodson's right to a fair and speedy trial as guaranteed to him under the Sixth Amendment to the United States Constitution and Article 21 of the Maryland Constitution. It is not and cannot be in Officer Goodson's interests to stay this matter as it is in violation of his constitutional rights, and the Court's presumption that this was in the best interest of the defendant is mistaken.

On May 1, 2015, the State decided whom to charge and with what charges. Since that day, it has engaged in a litigation strategy based on the faulty premise that it could call Officer Porter to testify in Officer Goodson's case. However, the State knew that Officer Porter was going to invoke his right against self-incrimination in Officer Goodson's case. Despite that knowledge, the State continued its prosecution of Officer Goodson and deliberately chose to try him after Officer Porter.

Due to the State's litigation tactics, Officer Porter was forced to take an emergency interlocutory appeal in order to protect his constitutional rights against self-incrimination. Officer Porter's appeal is appropriate based on the "extraordinary circumstances" created by the State, in its attempts to deprive a defendant with pending charges of his constitutional rights. Indeed, an injunction was necessary to protect Officer Porter's rights.

However, there is no need for Officer Goodson's rights to get trampled in the process, particularly when it only rewards the State for its trial tactics, lack of preparation, and lack of evidence. Although the issue of a stay was not before this Court, in the end, this Court circumvented the trial court's authority and effectively granted the

State's motion for a continuance pending the resolution of Officer Porter's appeal. Any way it is to be packaged, the reason Officer Goodson's trial is stayed is because of the State's decisions and tactics. Officer Goodson should not have to pay the price while the State reaps the benefit.

Every day that passes, Officer Goodson's right to a speedy trial is further violated. Officer Goodson asks, and the law requires, that the stay be lifted. Further, because the State's tactics have forced Officer Goodson into this position, and assuming this Court has jurisdiction over Officer Goodson's case, we ask that this Court find that Officer Goodson's state and federal constitutional rights have been violated, and that justice requires that the indictment against him be dismissed.

II. BACKGROUND

On May 1, 2015, State's Attorney Marilyn Mosby publicly declared the following relating to the April 12th arrest of Freddie Carlos Gray, Jr. ("Mr. Gray") and his untimely death:

It is my job to examine and investigate the evidence of each case and apply those facts to the elements of a crime, in order to make a determination as to whether individuals should be prosecuted. This is a tremendous responsibility, but one that I saw and accepted when the citizens of Baltimore City elected me as the State's Attorney, and it is precisely what I did in the case of Freddie Gray.

Once alerted about this incident on April 13, investigators from my police integrity unit were deployed to investigate the circumstances surrounding Mr. Gray's apprehension. Over the course of our independent investigation, in the untimely death of Mr. Gray, *my team worked around the clock; 12 and 14 hour days to canvas and interview dozens of witnesses; view numerous hours of video footage; repeatedly reviewed and listened to hours of police video tape statements; surveyed the route, reviewed voluminous medical records; and we leveraged the information made*

available by the police department, the community and family of Mr. Gray.

The findings of our comprehensive, thorough and independent investigation, coupled with the medical examiner's determination that Mr. Gray's death was a homicide that we received today, has led us to believe that we have probable cause to file criminal charges.

See PBS News Hour (PBS television broadcast May 1, 2015), available at <http://time.com/3843870/marilyn-mosby-transcript-freddie-gray/> (emphasis added).

Ms. Mosby then read the State's version of the "facts," which it supposedly had evidence to support, in its Statement of Probable Cause and in the end, as it related to Officer Goodson, stated:

Officer Caesar Goodson is being charged with second-degree depraved heart murder, involuntary manslaughter, second-degree negligent assault, manslaughter by vehicle by means of gross negligence, manslaughter by vehicle by means of criminal negligence, misconduct in office by failure to secure prisoner, failure to render aid.

*Id.*² On that same day, Officer Goodson was suspended from the Baltimore City Police Department without pay.

Based on current filings by the State, Officer Goodson now knows that the "evidence" that was referenced by Ms. Mosby was in fact the testimony of Officer Porter. Thus, as early as May 1 of last year, the State's Attorney knew that the State's case depended upon Officer Porter's testimony. Even before the indictments were returned,

² On May 21, 2015, Officer Goodson was indicted. The seven-count indictment charged Officer Goodson specifically with 1) Second Degree Depraved Heart Murder; 2) Involuntary Manslaughter; 3) Second Degree Assault; 4) Manslaughter by Motor Vehicle; 5) Criminally Negligent Manslaughter by Motor Vehicle; 6) Misconduct in Office; and 7) Reckless Endangerment.

Officer Porter's counsel had been informed by the State of its position that he must be tried before Officer Goodson. See September 15, 2015 Letter from Chief Deputy State's Attorney Michael Schatzow, attached hereto as **Exhibit 1**.

On July 24, 2015, the State formally advised counsel for Officer Porter that his trial would go first. On September 2, 2015, after ruling that each defendant was to be tried separately, the trial court directed the State to identify the order in which it wished to try the defendants, as well as the anticipated length of each trial.

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. See **Ex. 1**. 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).³ After consultation between the trial court and counsel, the trials of Officer Porter and Officer Goodson were scheduled for November 30, 2015 and January 6, 2016, respectively. It is reasonable to assume that before deciding upon the order in which it would call the six cases, the State reviewed Maryland law to determine whether Officer Porter could, in fact, be required to testify at the subsequent trials.

³ If the State *truly* believed that it could compel *any defendant* at *any time* to give trial testimony through the grant of use and derivative use immunity, it would logically follow that the order of the trials would be irrelevant.

A. The State knew of Officer Porter's intention to quash the subpoena and file an appeal.

As early as May 2015, Officer Porter's attorneys informed the State of his intention to assert his 5th Amendment privilege if called to testify in the trials of other defendants. See Affidavits of Joseph Murtha, Esq. and Gary E. Proctor, Esq., attached hereto as **Exhibits 2** and **3**, respectively. During the months leading up to Officer Porter's trial, his counsel repeatedly informed the State of his intention to invoke his right against self-incrimination, and advised the State of his intention to quash any subpoena issued to him. See **Ex. 2** and **Ex. 3**.

On December 11th, before a verdict had been reached in his own trial, the State served Officer Porter with a subpoena to testify in Officer Goodson's trial, knowing that Officer Porter would move to quash it. During a bench conference with the trial court, Officer Porter's counsel stated on the record that Officer Porter would oppose any attempt by the State to compel him to testify. *Id.* On December 16, 2015, Officer Porter's trial ended in a mistrial.

The State had no reason to believe that Officer Porter's position had changed following the mistrial. On December 22, 2015, during a scheduling conference with the trial court and counsel for Officers Goodson and Porter, Mr. Proctor reminded the State of his client's intention to move to quash any subpoena and his intention to appeal the trial court's ruling if it entered an order compelling Officer Porter to testify. *Id.* Despite this knowledge, the State elected to proceed with the trial of Officer Goodson on January 6, 2016 and never requested that Officer Goodson's trial be moved to a later date. This

was a strategic trial decision made by the State, and it now must live with the consequences.

B. During the January 6, 2016, hearing on the Motion to Quash and Motion to Compel, the State acknowledged the absence of any Maryland appellate guidance.

At the hearing on Officer Porter's Motion to Quash the Subpoena and the State's Motion to Compel Testimony (pursuant to Md. Code Ann., Cts. & Jud. § 9-123),⁴ the State openly acknowledged that there are no Maryland appellate decisions that squarely address the issue confronted by the trial court, namely: can a defendant, without a plea agreement and with criminal charges pending against him, be compelled to testify in the trials of other defendants, involving the same facts and issues to be presented later at his own trial, under a grant of use and derivative use immunity?⁵ Indeed, the State

⁴ The Courts & Judicial Proceedings Article will be referred to as "CJP."

⁵ Officer Goodson agrees with the position taken by Officer Porter that the immunity statute was not written to be applied in this circumstance. The effect of this trial court's ruling leads to the conclusion that Officer Goodson, who never gave a statement regarding this matter (which was his right) and has the right not to testify in his own case, could have been compelled to testify in the trial of Officer Porter in December 2015 under the guise of use and derivative use immunity. Regardless of whether the State could ultimately meet its burden under a hearing based on the case of *Kastigar v. United States*, 406 U.S. 441 (1972), before his later trial, Officer Goodson's federally and state afforded rights would be breached. In fact, every single defendant involved in the April 12, 2015 arrest and transport of Mr. Gray could be compelled to testify in the case of Officer Porter (or any other defendant) under the State's theory. This is not only nonsensical but it completely eviscerates the purpose of their constitutional protections.

Moreover, only the State can grant immunity; a defendant cannot compel an individual to testify on his behalf if that person invokes the 5th Amendment. In multi-defendant cases like this one, the State alone would control the evidence and be able to deny a defendant equal access to witnesses. For example, assume that Defendants A and B were also officers who were indicted relating to the death of Mr. Gray. Both defendants refuse to testify in the trial of Officer Goodson and invoke their 5th Amendment privilege. Assume also that Defendant A has inculpatory testimony against Officer Goodson and Defendant B has exculpatory testimony. The State could subpoena Defendant A, provide immunity under § 9-123, and elicit inculpatory

commented to the effect that it would be nice to have appellate guidance in Maryland on the issue, but "someone has to go first."⁶ The trial court also recognized that it was wading into "uncharted territory." After acknowledging that there was a lack of precedent 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. Even after the trial court warned the State about the potential consequences of the entry of the order, the State requested that it be entered. See January 6, 2016 Order Compelling Testimony, attached hereto as **Exhibit 4**. This was yet another intentional, tactical decision made by the State.

During the January 6, 2016 hearing, Officer Porter orally moved to stay enforcement of the order pending the appeal. The trial court denied Officer Porter's motion from the bench and entered an order to that effect the next day. See January 7, 2016 Order Denying Stay, attached hereto as **Exhibit 5**. On January 7th, Officer Porter filed his Notice of Appeal and Motion for an Injunction of the trial court's January 6th

testimony and purposefully not call Defendant B because the testimony will hurt its case. Officer Goodson has no way of compelling Defendant B's testimony. As a result, this distorts the fact-finding process and essentially deprives a defendant of his right to a fair trial.

⁶ As of the filing of this Motion, Officer Goodson does not have a copy of the transcript. It is Officer Goodson's understanding that the Court has a DVD copy of the January 6, 2016 hearing.

order compelling his testimony pending an appeal.⁷ On January 8th, the State responded to Officer Porter's motion and this Court granted a temporary stay of the order.

Also on Friday, January 8, 2016, at approximately 2:30 p.m., Officer Goodson received the State's Motion for Continuance of his trial, pending the outcome of Officer Porter's appeal. *See* State's Motion for Continuance ("State's Motion"), attached hereto as **Exhibit 6**. The State claimed that refusing to grant a continuance would "result in irreparable harm to the People of Maryland by *effectively gutting* their government's prosecution against Caesar Goodson (and eventually Alicia White)" **Ex. 6 at 5** (emphasis added). It asserted that Officer Porter "is the only person[] capable of giving useful testimony" and that he was "the only witness able to testify to critical aspects of Defendant Goodson's alleged role in Mr. Gray's death." *Id.* at 5. Officer Goodson filed an Opposition to this motion on January 11, 2015.⁸

Before the trial court could rule on the State's Motion, this Court ordered a stay of Officer Goodson's trial.

⁷ Pleadings filed with this Court or generated by it will be identified in, but not attached to, Officer Goodson's Motion.

⁸ Because the arguments raised in Officer Goodson's Opposition to the State's Motion for Continuance are raised in his Motion to Lift Stay, a copy of the Opposition is not attached. Officer Goodson will provide a copy of his Opposition at the Court's request.

III. ARGUMENT

A. **Officer Goodson's trial should not have been stayed pending the resolution of Officer Porter's interlocutory appeal.**

The Court of Appeals has held that the fundamental jurisdiction of a trial court is not divested simply because an appeal is taken from an interlocutory order, and the underlying trial should continue at the discretion of the trial judge. *See Pulley v. State*, 287 Md. 406, 417-18 (1980).⁹ If all interlocutory appeals could halt underlying trials, there would be "havoc" with cases tried in this State. *Id.* at 418. However, the Court of Appeals recognized that there are some interlocutory appeals, particularly those involving the constitutional rights of the accused, where a stay may be warranted. *Id.* at 418-19 (identifying as an example an appeal related to the accused's guarantee against double jeopardy). In those circumstances, a stay of the underlying trial of the *accused asserting the constitutional violation* on appeal may be stayed either by the trial court or an appellate court, in order to aid in its appellate jurisdiction. *Id.* at 419.¹⁰

In the instant case, Officer Porter asserts that his constitutional rights were violated when the trial court ordered him to testify in Officer Goodson's case. Officer Porter noted an appeal and requested a stay in order to preserve and protect his rights. For this reason, a stay of an order relating to Officer Porter's constitutional rights was

⁹ The State agrees with this proposition. *See State's Response to William Porter's Motion for Injunction Pending Appeal*, at page 4.

¹⁰ The Court of Appeals also noted that if the trial court determines that the appeal is "utterly without merit and the defense was interposed merely to accomplish unwarranted delay," the trial may proceed. *Id.* at 419.

necessary and appropriate, and it was done in order to aid this Court's appellate jurisdiction relating to his appeal.

In contrast, Officer Goodson, the accused in this case, did not file any appeal to this Court, nor did he request a stay. While the stay of the circuit court's order compelling Officer Porter's testimony *protects Officer Porter's constitutional rights*, a stay of the *Goodson* trial *violates Officer Goodson's constitutional rights*.

B. Officer Goodson's right to a speedy trial is violated with each passing day.

In its papers below, the State has argued that the immunity statutes serve "the legitimate demands of government to compel citizens to testify' particularly where 'the only persons capable of giving useful testimony are those implicated in the crime.'" **Ex. 6 at 5** (citation omitted). The State did not identify any case that held that litigation to determine whether a statute applied to a non-party was a "legitimate demand[] of government," much less a case that holds that such litigation trumps an accused's constitutional right to a speedy trial.

Under Maryland law, Officer Goodson's trial was required to start within 180 days after his or his counsel's initial appearance, *i.e.*, November 23, 2015. *See* Md. Code Ann., Crim. Proc. § 6-103 (formerly Article 27 § 591); Md. Rule 4-271(a)(1); *State v. Hicks*, 285 Md. 310 (1979) (holding that the 180-day requirement is mandatory)

("Hicks"). Officer Goodson's trial was already postponed once to January 6th, well past the Hicks date.¹¹

Over and above the statutory requirement that he be tried within 180 days, Officer Goodson's right to a speedy trial is guaranteed by Article 21 of the Maryland Declaration of Rights and the Sixth Amendment to the United States Constitution. In this case, the State moved the trial court for a continuance and, by action of this Court, it was effectively granted. It is appropriate for this Court to consider the impact of a further delay on Officer Goodson's right to a speedy trial.

For speedy trial purposes, the length of delay is measured from the date of arrest or filing of indictment, information, or other formal charges to the date of trial. *Divver v. State*, 356 Md. 379, 388-89 (1999) (citations omitted). When the period of delay "is of constitutional dimensions, the court is required to consider a four-factor balancing test to determine whether the defendant has been deprived of his right to a speedy trial." *Schmitt v. State*, 46 Md. App. 389, 390 (1980) (citations omitted). See also *Divver*, 356 Md. at 388 (holding that the trigger for a speedy trial analysis is when the pretrial delay becomes "presumptively prejudicial"). The factors are: 1) the length of delay; 2) the reason for the delay; 3) the defendant's assertion of his right, and 4) prejudice to the defendant. See *Divver*, 356 Md. at 388. An evaluation of all four factors demonstrates

¹¹ Officer Goodson does not waive his right to argue in the future that his original trial date in January 2016 was in violation of *Hicks* and his right to a speedy trial and expressly reserves the right to do so. Officer Goodson also does not waive his right to argue that there will be an inordinate delay between January 6, 2016 and his rescheduled trial date, and that dismissal will be warranted. *State v. Brown*, 355 Md. 89, 108-09 (1999).

that a stay for an indefinite period of time will violate Officer Goodson's right to a speedy trial.

1. Length of delay.

Officer Goodson was indicted on May 21, 2015. The day jury selection was scheduled to begin—January 11, 2016—was the 236th day after he was indicted (or seven months and 22 days). There is no set date for Officer Goodson's trial to resume. A stay of his trial has been put in place "pending resolution of [Officer Porter's] interlocutory appeal or further order from this Court." The time frame for the resolution of Officer Porter's appeal is unknown, given his right to exhaust all appellate avenues, including petitioning the United States Supreme Court for review of this important constitutional issue. Maryland has held that delays of six and one half months to nine and one half months cross the threshold of being of "constitutional dimension." See *Schmitt*, 46 Md. App. at 391-92 (citations omitted). The evaluation of the length of delay focuses on the "amount of time reasonably necessary for trial preparation" (*Coleman v. State*, 49 Md. App. 210, 221 (1981)), which is often dependent on the peculiar circumstances of the case, *i.e.*, the level of complexity of a case. *Schmitt*, 46 Md. App. at 391 (citing *Barker*, 407 U.S. at 530-31). In this case, the State cannot and has not argued that the reason it requested a continuance was for additional time to prepare for trial.

Officer Goodson submits that any further delay, much less a delay for an indefinite period of time, will be of a constitutional dimension and presumptively prejudicial.

2. *Reasons for delay.*

The delay of an indefinite period of time was due solely to the State's unsuccessful litigation tactics and its reliance on a single witness to substantiate the charges against Officer Goodson, and this weighs heavily against the State. In *Schmitt*, this Court held that the State's need for a delay in order to have a particular witness available to testify was an insufficient reason for the delay. See *Schmitt*, 46 Md. App. at 393-94 (finding that a witness's unavailability due to back surgery was an insufficient reason, particularly where there had been no efforts by the State to reach a stipulation as to testimony). The case of *State v. Hiken*, 43 Md. App. 259 (1979), is also instructive. In *Hiken*, this Court affirmed the dismissal of an indictment, where the reason for the delay was the State's need to obtain evidence from another jurisdiction. The Court found that the evidence was not available for trial due to the State's lack of diligence. *Hiken*, 43 Md. App. at 272-74 (finding that the State did not make any earlier efforts to secure the evidence for use at trial).

In this case, the State has known since May 2015 that Officer Porter would be invoking his 5th Amendment privileges. The State knew that Officer Porter would aggressively challenge the issuance of any subpoena, and that he had the right to appeal any adverse ruling. Yet it made no efforts to secure Officer Porter's testimony until one month before Officer Goodson's trial. The failure to have this supposedly "necessary" and "material" evidence is the State's fault, and Officer Goodson's constitutional rights should not have to suffer for it.

3. *Assertion of the right.*

On May 27, 2015, shortly after he was indicted, Officer Goodson filed a motion demanding a speedy trial. *See* Online Docket (May 27, 2015) ("Motion for Speedy Trial"), **Ex. 7**. On September 2, 2015, the trial court severed the cases of the six defendants and Officer Goodson's trial date was set for October 13, 2015. *See* Hearing Notice, **Ex. 8**. Then, on September 29, 2015, without a waiver of Officer Goodson's *Hicks* rights, the trial court postponed his original trial date past the 180-day limit to January 6, 2016. *See* Hearing Notice, **Ex. 9**; *see also* **Ex. 7** (Sept. 29, 2015, "Postponement Form Filed; *Hicks*, Md. Rule 4-271 Not Waived"). The State filed a Motion for Continuance of that trial, which Officer Goodson opposed on January 11, 2016, arguing, among other things, that it would violate his right to a speedy trial. Most recently, on January 15th, Officer Goodson filed an objection to this Court's Order staying his case based on those same reasons. *See* **Exhibit 10**. Officer Goodson has asserted his rights at each turn.

4. *Prejudice to the accused.*

A delay of his trial prejudices Officer Goodson. The Court of Appeals recognizes that there are personal factors that should be considered when determining prejudice to a defendant, such as "the disruption of his employment, the drain of his financial resources, the curtailment of his associations, his subjection to public obloquy and the creation of anxiety in him, his family and friends." *Divver*, 356 Md. at *Id.* at 274-75 (citations omitted). The media scrutiny Officer Goodson has been subjected to, by itself, shows actual prejudice. With each day, Officer Goodson suffers fear, anxiety, and exposure to

public scrutiny and criticism. Additionally, because the State chose to charge him with a felony, Officer Goodson was suspended without pay on May 1, 2015. Further delay will not only violate Officer Goodson's constitutional and statutory rights, but it will impact his livelihood and the welfare of his family. Finally, Officer Goodson's defense will also be impaired, as evidence turns stale, by witnesses relocating or forgetting critical information with the passage of time. *Id.*

Due to this Court's *de facto* grant of the State's Motion for Continuance, Officer Goodson is now forced to wait for an unknown period of time for his trial to begin. The constitutional issues raised by Officer Porter, the lack of authority on the application of CJP § 9-123 to defendants with pending charges, and the State's pronouncement that the absence of Officer Porter's testimony effectively guts its case against Officer Goodson, makes it reasonable to assume that there will be future appeals, even to the United States Supreme Court. Should the stay continue until the resolution of Officer Porter's interlocutory appeal, it could be years before Officer Goodson's trial occurs, through no fault of Officer Goodson. This would be a violation of Officer Goodson's right to a speedy trial and should not be permitted.

- C. If the State's motion for continuance had been granted by the trial court on January 11th, this Court would be compelled to find that it was an abuse of discretion.**

In ordering the stay, this Court essentially stepped into the shoes of the trial court and granted the State's Motion for a Continuance because of the need to secure an absent witness.

Under well-established Maryland law, a trial court's decision to grant or deny a request for continuance based on the absence of a witness will be reviewed by the appellate courts for an abuse of discretion. *Jackson v. State*, 214 Md. 454, 459 (1957). In determining whether a continuance should be granted, the party making the request must show the following: "1) he had a reasonable expectation of securing the evidence of the absent witness . . . within some reasonable time; 2) that the evidence is competent and material, and he believed that the case could not be fairly tried without it; and 3) that he had made diligent and proper efforts to secure the evidence." *Id.* (citations omitted) (generally referred to as the "*Jackson* factors"). The State has failed to provide proof that it satisfies these requirements as it has to in order to warrant a continuance, much less continued enforcement of this Court's Order.

1. *The State has not demonstrated, nor can it, that it had a reasonable expectation that Officer Porter would testify.*

Almost since making the determination that it wanted to have Officer Porter's trial proceed first, the State has known that he would be invoking his right not to testify. In light of the State's (and the trial court's) recognition that the State's request to compel Officer Porter to testify because of a grant of use and derivative use immunity ventured into "uncharted territory," the State cannot argue that it truly believed it had well established Maryland precedent on its side.¹² Indeed, the Maryland cases and the

¹² In light of the statements made by the State and the trial court on January 6th regarding the lack of precedent on point, it is unclear why the State argues that Officer's Porter's appeal is "doomed to fail." See Ex. 6 at 3. The cases cited by the State as support for the appeal's forecasted failure do not involve a criminal defendant, with current charges pending and a trial date scheduled, being given use and derivative use immunity. See Ex. 6 at 4.

statutory language plainly do not support this argument. As the Court is aware, "A person may not be compelled to testify in violation of his privilege against self-incrimination. The failure of a defendant to testify in a criminal proceeding on this basis does not create any presumption against him." *See* CJP § 9-107. That statute is clear and unequivocal on its face.

The State attempts to circumvent Officer Porter's unassailable right against self-incrimination by granting him use and derivative use immunity under CJP § 9-123. But CJP § 9-123 applies to "witnesses," not current defendants. The State has presented no case law in which use and derivative use immunity was ever given to a defendant in Officer Porter's current situation—a fact the State does not dispute.

Maryland law does not support the State's use of § 9-123, or the State's request for a continuance (and this Court's stay). The recent case of *Davis v. State*, 207 Md. App. 298, *cert. denied*, 429 Md. 529 (2012), is instructive. In *Davis*, the defendant requested a continuance on the first day of his trial in order to present the testimony of a co-defendant (a juvenile, "Jerquan"), whose adjudication was not scheduled to take place until two months later.¹³ The defendant argued that he needed a continuance because Jerquan was refusing to testify based on his 5th Amendment privilege until after his adjudication. *Davis*, 207 Md. App. at 304-05. The defendant characterized Jerquan's statements as exculpatory. *Id.* at 305. The trial court denied the defendant's request. *Id.*

¹³ Although *Davis* involved a defendant's request for a continuance, there is no reason why the same factors would not apply to the State's request for a continuance due to an absent witness.

On appeal, this Court found that the trial court did not abuse its discretion in denying the continuance under the first two *Jackson* factors. As it relates to the reasonableness of the defendant's expectation to secure Jerquan's live testimony (factor 1), the Court said the following:

Under *Jackson*, the first factor that appellant must show in order to be entitled to a continuance is that "he had a reasonable expectation of securing the evidence of the absent witness or witnesses within some reasonable time." 214 Md. at 459, 135 A.2d 638. Here, it is undisputed that Jerquan was not going to waive his Fifth Amendment privilege and testify at appellant's trial. In *Tann v. State*, 43 Md. App. 544, 548, 406 A.2d 448 (1979), this Court held "that where the absent witness is also a co-defendant and there is no showing that he will waive his privilege against self-incrimination and exonerate the appellant, the trial judge may deny the postponement of a trial."

Appellant, nevertheless, asserts that, because Jerquan's trial was scheduled only two months after appellant's trial, "there was a reasonable likelihood that [Jerquan] would cease to have a Fifth Amendment basis for refusing to testify after that point." Appellant's contention overlooks the fact that Jerquan's Fifth Amendment privilege would not end with his trial, unless he was found not involved. If Jerquan was found involved, his Fifth Amendment privilege would continue through disposition and *all subsequent appeals*. Any appeal to this Court could take anywhere from nine months to over a year. At the hearing on appellant's motion for a continuance, there was no indication that Jerquan was going to enter a plea of involved. Therefore, because Jerquan was not going to waive his Fifth Amendment privilege to testify at appellant's trial and there was no indication that he would enter a plea of [*sic*] involved, we conclude that appellant failed to show that Jerquan would be available to testify "within some reasonable time." See *Jackson*, 214 Md. at 459, 135 A.2d 638.

Davis, 207 Md. App. at 308-09 (emphasis in original). Like the State in this case, the defendant in *Davis* knew that the co-defendant was *not* going to waive his 5th Amendment Privilege and, like the State in this case, the defendant was unable to say when the co-defendant would become a compellable witness.

Any claim by the State that it had a reasonable expectation of securing Officer Porter's testimony is belied by opinions from the Court of Appeals of Maryland. In *Archer v. State*, 383 Md. 329 (2005), the Court of Appeals noted that a defendant becomes a compellable witness when "no appeal or sentence review was pending and the time for appeal and sentence review had expired." *Archer*, 383 Md. at 344 (citing *Ellison v. State*, 310 Md. 244 (1987)). The Court also observed that a government can compel a defendant who entered into a plea agreement with the State *and* could not be further incriminated by answering questions. *Id.* (citing *United States v. Gernie*, 252 F.2d 664 (2d Cir. 1958)).

In the case at bar, the State failed to cite to the trial court any law whatsoever relating to the factors to be considered when requesting a continuance. It was well known to the State that Officer Porter would invoke his rights against self-incrimination under state and federal law. Further, it was and is well known to the State that it is within a court's discretion to deny a request for a postponement where a party "desires to secure the Fifth Amendment protected testimony of a co-defendant." See Brief of the State of Maryland in *Davis v. State*, No. 953, Sept. Term 2011, 2012 WL 2153708 (Mar. 15, 2012), a copy of which is attached hereto as **Exhibit 11**. Indeed, in *Davis*, the State argued, in pertinent part,

Moreover, the basis for Davis's postponement request cannot, *as a matter of simple logic*, be an adequate basis for a postponement. Davis was demanding, essentially, that he not be tried until after his co-defendant had been tried, so that his co-defendant could be available to testify in his case. If both co-defendants took that same position, no trial could ever be held. (...) Had Jerquan H. demanded that his proceeding be halted until Davis was available to testify (on the grounds that he wished to take advantage of

Davis's exculpatory statement), *the courts would have been paralyzed* if, as a matter of law, a desire to wait for a co-defendant's case to conclude constitutes grounds for an automatic continuance.

In terms of the three *Jackson* requirements noted above, Davis has *categorically failed* to show that he had a "reasonable expectation of securing the evidence or witness in a reasonable time." His "expectation of securing" Jerquan's testimony was itself was [*sic*] unreasonable; one co-defendant has no right to be tried before or after another. And the time required to "secure" the witness was not reasonable; Jerquan's case would not be heard for months, and he would then have time to note exceptions, then file an appeal, and *otherwise exhaust all of the available remedies which must be exhausted before he could no longer invoke his Fifth Amendment right to remain silent.*

2012 WL 2153708, at *7 (emphasis added).

"Simple logic" compels the conclusion that the State's unreasonable hope of securing Officer Porter's testimony was not an adequate basis for a delay in Officer Goodson's trial. In essence, the State wants Officer Goodson to wait an indeterminate amount of time, either until Officer Porter has exhausted his appellate rights relating to this Court's Order to Compel (assuming it is ultimately upheld) or, if convicted, his appellate rights relating to his conviction. As held by this Court (and recognized by the State) in *Davis*, this cannot be said to be a "reasonable amount of time."

2. *The State fails to meet its burden of showing that the evidence it wishes to elicit from Officer Porter is "competent" and "material."*

In its Motion for Continuance, the State argues that a failure to grant a continuance will "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." Ex. 6 at 5. The State further argues that Officer Porter "is the only witness able to testify to critical aspects of Defendant

Goodson's alleged role in Mr. Gray's death." *Id.* These admissions by the State confirm that in the absence of Officer Porter's testimony, its case cannot proceed against Officer Goodson.¹⁴ At the same time, it fails to articulate what the competent evidence is and how it is material to the charges against Officer Goodson. No proffer has been made to date. In essence, the State expects the judiciary *not to question* its ill-conceived tactics and allow the State to conduct Officer Goodson's trial in any manner it sees fit. The State needs to be reined in and required to present the information required by law.

3. *The State fails to demonstrate that it made diligent and proper efforts to secure the evidence.*

As to the third *Jackson* factor, the State does not explain what efforts it made to secure the evidence other than issuing a subpoena on December 11th, knowing since May of last year that Officer Porter was going to move to quash it. For months, the State made no efforts to get this issue resolved by any court, despite knowing that the law in this area was far from settled. The State never requested a hearing before the trial court in Officer Goodson's case to resolve or clarify the issue. The State could have served a subpoena upon Officer Porter at any point after the trials were severed, but it chose not to do so.¹⁵

¹⁴ The State's decision to charge Officer Goodson with seven crimes, including second degree murder, based solely on the testimony of an individual it has publicly called a liar is a decision it will have to live with.

¹⁵ In order to get this issue resolved, the State could have served a subpoena with the initial trial date (October 13, 2015) after this Court severed the cases on September 2, 2015 and then reserved a subpoena once the trial date was moved at its request. The State did neither.

The State did nothing to minimize any delay or potential impact on Officer Goodson's trial.¹⁶

The State's efforts to secure this evidence have been anything but diligent. If the State truly believes that it can deprive a criminal defendant with pending charges of his 5th Amendment rights so long as use or derivative immunity is offered, then the State has had many months to try to secure Officer Porter's testimony. Instead, the subpoena was not served until less than a month before the then-scheduled start of trial.

The delays in the case are a direct result of the State's choices. Because it would have been an abuse of discretion for the trial court to grant the State's Motion for Continuance, this Court likewise has no legal basis for staying Officer Goodson's trial.

D. This Court should lift the stay and direct the trial court to dismiss the indictment against Officer Goodson.

If this Court finds that it has jurisdiction over Officer Goodson's trial, then it should lift the stay and enter an order directing the trial court to dismiss the indictment against Officer Goodson for a violation of his right to a fair and speedy trial.

The State represents that without Officer Porter's testimony, its case against Officer Goodson will be "gutted." That may be, but it was the State's decision in the first instance to charge Officer Goodson with seven crimes, including murder, based solely on the testimony of a co-defendant, whom it has publicly declared to be a liar. It was the State's decision to schedule Officer Goodson's trial after Officer Porter's trial, despite

¹⁶ The State must have expected further delays if the trial court denied Officer Porter's motion to quash. The State does not dispute that Officer Porter had the right to appeal the order compelling him to testify. Given Officer Porter's consistent invocation of his 5th Amendment privilege, the State cannot credibly assert that it did not anticipate the current situation.

knowing he would move to quash the subpoena. It was the State's failure to appreciate the consequences that its actions would have upon Officer Goodson's constitutional rights.

Officer Goodson is constitutionally guaranteed the right to a fair trial before an impartial jury. He has the right to prepare and present a defense, and to confront and examine witnesses. Officer Goodson's attorneys were prepared to proceed to trial on January 11th. Expert witnesses spent time reviewing the evidence and reserved certain dates on their busy schedules to testify on his behalf. Fact witnesses made arrangements to be present at trial. Because of this stay by the Court, whether these witnesses will be available in the future is unknown. Witnesses may relocate or their memories may fade. Additional expense will be necessitated for preparation and possible retention of new experts. Depending on when this case is re-set for trial, Officer Goodson's counsel may not be available and new counsel may have to be engaged. It may be the case that in order for Officer Goodson to be able to present his defense—a defense he was prepared to give with a January 11 start date—he will be forced to sacrifice his right to a fair and speedy trial.

Unfortunately, Officer Goodson's rights have already been irreparably harmed by the simple grant of this stay. One judge has been assigned to the cases arising out of Mr. Gray's death and the trials of the other officers have been scheduled. If the stay is lifted, the task of rescheduling Officer Goodson's trial will be fraught with practical problems and constitutional violations. A three week window of time will be needed and, based on the currently scheduled trials of the other officers, that time is not available for months.

Further, the other co-defendants will argue that it is not just or reasonable to violate their rights to speedy trials in order to accommodate the rights of Officer Goodson. There is also the practical consideration of having a sufficient jury pool in order to impanel a fair and impartial jury.

Officer Goodson is facing this precarious and untenable situation solely because of the State's litigation strategy. A criminal defendant should not be penalized because of a prosecutor's lack of foresight. The State could not know with any certainty the outcome of Officer Porter's trial. But, the State knew in advance that Officer Porter would move to quash any subpoena and appeal any order compelling him to testify. The State knew it lacked appellate guidance directly supporting its position, yet chose to proceed into these "uncharted waters," apparently with the unreasonable and naïve assumption that Officer Porter would suddenly have a change of heart.

After a little over two weeks of "investigation," the State, in a rush to judgment, charged Officer Goodson with the most serious crimes related to Mr. Gray's death. Now, the State, after hurriedly issuing charges, is dragging its heels, unwilling to try Officer Goodson's case. Without question, Officer Goodson's right to a speedy trial means nothing to the State. The Court must put an end to this bizarre circus that the State has created.

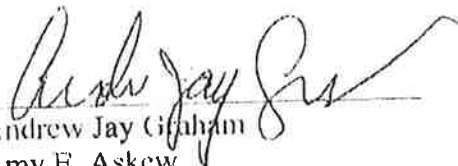
Officer Goodson's right to a speedy trial is actively being violated by virtue of this stay. He has had no role in the delay. When his trial will be re-scheduled is unknown.¹⁷

¹⁷ On January 13th, the State made it known to the circuit court and counsel for all defendants that it wanted to delay all of the defendants' trials until Officer Porter's appeal is

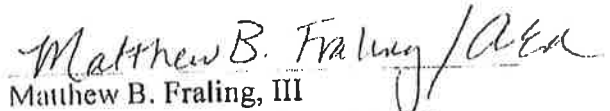
Officer Porter should be accorded the right to pursue his appeal and vindicate his rights under the 5th Amendment. In the meantime, the only appropriate remedy for the violation of Officer Goodson's rights, and as a sanction against the State for deliberately causing the delay, is to lift the stay and direct the trial court to dismiss the indictment.

IV. CONCLUSION

This Court should grant Officer Goodson's Motion to Lift Stay and order the trial court to dismiss the indictment.



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resolved. The State also requests that upon final resolution, Officer Porter's re-trial be scheduled first, whenever that may be. Whether or not the stay is lifted, the State is determined to delay the trial of Officer Goodson, without regard for the additional prejudice he will undoubtedly experience, much less the further violation of his constitutional rights. Officer Goodson does not know if this request will be granted.

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of January 2016, a copy of the foregoing paper was sent via electronic mail and mailed, first-class postage prepaid to:

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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

Upon consideration of Officer Caesar Goodson's Motion to Lift Stay and Request for Order Dismissing Indictment, any opposition thereto, the applicable law, the record in this case and for good cause shown, it is this _____ day of _____, 2016,

ORDERED that Officer Goodson's Motion to Lift Stay is GRANTED; and it is further,

ORDERED, that Officer Goodson's rights under the 6th Amendment to the United States Constitution and Article 21 of the Maryland Constitution have been violated; and it is further,

ORDERED, in the interests of justice, that the trial court is directed to **DISMISS** the indictment against Officer Goodson with prejudice.

Judge,
Court of Special Appeals of Maryland

CAESAR GOODSON,

Appellant,

v.

STATE OF MARYLAND,

Appellee.

IN THE

COURT OF SPECIAL
APPEALS

OF MARYLAND

September Term 2015

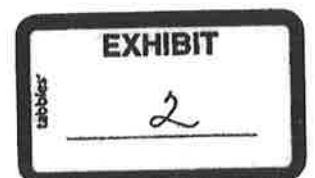
No. 2308

**STATE'S RESPONSE TO GOODSON'S MOTION TO LIFT
THE STAY AND ORDER THE TRIAL COURT
TO DISMISS THE INDICTMENT**

On January 15, 2016, Caesar Goodson filed in this Court a "Motion to Lift Stay of Trial and Request for an Order Directing the Trial Court to Dismiss the Indictment." The State, by its attorneys, Brian E. Frosh, Attorney General of Maryland, and Carrie J. Williams, Assistant Attorney General, offers the following response.

A. Summary of Argument

Lifting the stay of Goodson's trial would irrevocably deny the State its right to a fair trial of Goodson for his role in the death of Freddie Gray. Unlike Goodson, who is free to litigate his speedy trial claim in the circuit court, the State will be without a remedy if it is forced to go to trial without William Porter's testimony. And



the State will suffer this prejudice despite the fact that it has acted with diligence and good faith, and that its legal position is supported by federal case law and the plain language of the relevant statute. Goodson's motion to lift the stay and for an order of dismissal should be denied.

B. This Court has jurisdiction to stay Goodson's trial

Goodson first contends that this Court was without the authority to stay his trial proceedings. (Motion at 10-11). He seems to believe that the trial court's retention of fundamental jurisdiction over his criminal case means that this Court is without the ability to intervene. This is, of course, incorrect. The case that Goodson relies upon makes that clear.

The Court of Appeals in *Pulley v. State*, 287 Md. 406 (1980), did say that a trial court retains jurisdiction when an appeal is noted, but immediately clarified that the lower court's "right to exercise such power may be interrupted by (i) statute or Maryland Rule, (ii) the posting of authorized appeal bond, or bail following a conviction and sentence, or (iii) **a stay granted by an appellate court[.]**" *Id.* at 417 (emphasis added). The Court made the propriety of an appellate stay clear in a footnote, saying that "[t]he

appellate courts of this State may issue writs or other appropriate orders deemed necessary to preserve, or in aid of, their appellate jurisdiction.” *Id.* at 419, n.3. This Court was squarely within its rights to issue an order staying Goodson’s trial.

C. This court correctly balanced the rights of all parties when it stayed Goodson’s trial proceedings after staying the order compelling Porter to testify

Goodson moves to lift the stay of his trial proceedings because, he argues, his “right to a speedy trial is violated with each passing day.” (Motion at 11). His rights have already been “irreparably harmed,” he claims, because his trial did not begin on January 11, 2016, and will now have to be rescheduled. (Motion at 24-25). Goodson’s rights have not been violated, and he has not been harmed, much less irreparably so. Indeed, the State is the only party at risk of irreparable harm. Goodson will have ample opportunity to litigate his speedy trial claim at the appropriate time and in the appropriate court. His current “request for an order directing the lower court to dismiss the indictment,” however, is procedurally flawed, and must be denied.

1. Goodson's motivations are clear

According to Goodson, this Court's stay of the order compelling Porter to testify was "necessary and appropriate[.]" (Motion at 10-11). This Court's order staying his trial, on the other hand, was a violation of his constitutional rights. (Motion at 11). It is easy to see the driving force behind Goodson's legal position — if the stay of the order compelling Porter to testify remains in effect, but the order staying Goodson's criminal trial is lifted, the State will be forced to proceed to trial against Goodson without Porter's critical testimony. Goodson's desire to be brought to trial before a final ruling on whether Porter can be compelled to testify against him is not a valid reason to lift this Court's stay.

2. The State is the only party at risk of irreparable harm

The State has a right to a fair trial. *See Gonzales v. State*, 322 Md. 62, 74 (1991) ("[a] fair trial is the entitlement of the 'People' as well as of an accused"); *In re: Miles*, 269 Md. 649, 655 (1973) ("justice, though due an accused, is due to the accuser also"); *In re Kinlein*, 15 Md. App. 625, 631 (1972) ("the concept of a fair trial extends both to the prosecution and the defense"). If this Court grants Goodson's motion to lift the stay of his trial, but

leaves the stay of the order compelling Porter to testify in place, it will permanently and irrevocably deprive the State of its rights.

As the State argued in its response to Porter's motion for an injunction, allowing Goodson's trial to proceed, while enjoining the State from compelling Porter's testimony, irreparably harms the government's ability to prosecute Goodson for the death of Freddie Gray.¹ The State has one opportunity to bring Goodson to trial. If the State is forced to try Goodson while still enjoined from calling Porter as a witness, there is no remedy.

On the other hand, the order staying his trial has no effect on Goodson's ability to litigate his speedy trial claim. Goodson is free to move to dismiss the charges against him prior to his trial in the circuit court. If his motion is denied, he can appeal that decision to this Court and beyond. If Goodson is correct that his right to a speedy trial was violated, an avenue for relief is available to him. His claim that he is suffering irreparable harm is incorrect.

¹ Although the State argued, in its response to Porter's motion for an injunction, that the order compelling Porter to testify should not be stayed, the reason was because Goodson's trial was still pending. The State does not oppose the stay of the order compelling Porter's testimony, so long as the trials of the other officers are postponed until a decision is reached on Porter's appeal.

3. This Court should not consider Goodson's speedy trial claim.

Goodson will have ample opportunity to litigate his speedy trial claim, but his request that this Court issue an order directing the circuit court to dismiss the indictment against him is procedurally inappropriate. Goodson has not yet asked the circuit court to rule on his speedy trial claim. As such, there has been no hearing on the issue, no findings of fact, and no ruling for this Court to review.

This Court is not a fact-finding court. *See, e.g., Rounds v. Maryland-Nat. Capital Park & Planning Comm'n*, 441 Md. 621, 658 (2015) (a question of fact is “appropriate for the fact finder, not the appellate court”), *reconsideration denied* (2015); *Thompson v. State*, 411 Md. 664, 683 n.8 (2009) (declining “the State’s invitation to make factual determinations, as that is not the role of an appellate court”). When reviewing a speedy trial claim, this Court “accept[s] a lower court's findings of fact unless clearly erroneous.” *Jules v. State*, 171 Md. App. 458, 482 (2006).

There are disputes of fact in this case that cannot be resolved based on Goodson’s affidavits and allegations. For example, at any

future hearing on a motion to dismiss on speedy trial grounds, the State will challenge Goodson's contention that he "asserted his [speedy trial] rights at each turn[.]" and will proffer that Goodson's defense counsel expressed indifference to a postponement of Goodson's trial at a December chambers conference. Further, the State disputes Goodson's claim that it "never requested" a postponement of Goodson's trial prior to the stay of the order compelling Porter's testimony. In fact, the State requested as early as December 17, 2015, to postpone Goodson's January 11, 2016 trial date, and repeated the request on December 21, 2015.

It is for the trial court to hear the competing evidence on Goodson's speedy trial claim, weigh the credibility of the information, and make findings of fact. If Goodson feels he is aggrieved by the lower court's decision, he can appeal to this Court at the appropriate time. But this Court should not countenance Goodson's attempt to leapfrog over the circuit court and have this Court act as a finder of fact.²

² Although this Court should not decide Goodson's speedy trial claim, it is worth noting that Goodson was indicted on May 21, 2015, less than eight months ago. A delay of this length barely qualifies as one of constitutional dimension regardless of the facts of the case. See *Carter v. State*, 77 Md. App. 462, 466, n.3 (1988) (a delay of less than six months "is almost never of constitutional

D. The State has done nothing to forfeit its rights, nor does it come to the table with unclean hands.

The theme of Goodson's motion is that the State should be punished for what he contends are illegitimate litigation tactics that have caused his trial to be delayed. First, Goodson implies that the prosecution did something untoward by subpoenaing Porter to testify after it learned that Porter intended to invoke his Fifth Amendment rights. (Motion at 6-8). Goodson seems to suggest that the State was required to abandon any hope of calling Porter as a witness the moment it learned that Porter would claim a Fifth Amendment privilege. What Goodson ignores is the State's position, supported by federal precedent and the plain language of Courts & Judicial Proceedings, Section 9-123, that it could provide Porter with use immunity and compel him to testify, without violating his right against self-incrimination.

Goodson alleges that the State knew Porter intended to invoke his Fifth Amendment privilege "[a]s early as May 2015[.]"

dimension") In Goodson's case, when he is one of six defendants in a factually complex case involving multiple expert witnesses and complicated legal issues, the length of the delay is reasonable. See *Glover v. State*, 368 Md. 211, 224 (2002) (delay of 14 months not "inordinate" for a murder case involving complex DNA evidence).

and that he would move to quash any subpoena issued for him, but the State nevertheless “chose to proceed into these ‘unchartered waters’” in the hopes that Porter would “suddenly have a change of heart” and agree to testify. (Motion at 6, 25). The State did no such thing. The State always intended to, if necessary, provide Porter with use immunity and seek an order compelling him to testify pursuant to § 9-123.³

As will be set forth in the State’s merits brief, its position that Porter can be compelled to testify is supported by federal case law.⁴ The use immunity granted to Porter by the State is sufficient to prohibit the federal government from using his testimony in a future prosecution. *See, e.g., Murphy v. Waterfront Comm’n of New York Harbor*, 378 U.S. 52, 79 (1964) (where a witness is given

³ Goodson’s claim that the State’s belief in its ability to compel Porter’s testimony is belied by its desire to try Porter before any of the other defendants is wrong. Trying Porter first was sensible for two reasons: 1) it avoided the need for the State to prove an independent source for all its evidence, *see Kastigar v. United States*, 406 U.S. 441, 460 (1972); and 2) if Porter was acquitted, he no longer had a Fifth Amendment privilege and immunity would be unnecessary.

⁴ Goodson makes much of the State’s acknowledgement that neither this Court nor the Court of Appeals has directly addressed the issue present in this case. That is, of course, of no moment. Issues of first impression are frequently raised in the lower courts, and ultimately litigated on appeal.

immunity and compelled to testify, in order to protect the Fifth Amendment rights of witnesses and “accommodate the interests of the State and Federal Governments in investigating and prosecuting crime, the Federal Government must be prohibited from making any such use of compelled testimony and its fruits”); accord *United States v. Hampton*, 775 F.2d 1479, 1485 (11th Cir. 1985). And both the State and the federal government will be barred from using Porter’s immunized testimony to prove a past act of perjury. See, e.g., *United States v. DeSalvo*, 26 F.3d 1216, 1221 (2d Cir. 1994).

Moreover, transactional immunity is not necessary to protect Porter’s Fifth Amendment privilege under either the federal constitution or the Maryland Declaration of Rights. Once the State compels Porter’s testimony, it will be obligated to prove that any evidence it intends to introduce against Porter has a source independent of that testimony. *Kastigar*, 406 U.S. at 460. If the State fails to meet its burden, the evidence is inadmissible. *Id.* The Court of Appeals has, in dicta, suggested that use immunity is sufficient to balance the interest “in prosecuting unlawful conduct” against the need to “respect[] the accused’s constitutional rights.” *In re Ariel G.*, 383 Md. 240, 255 (2004). The State’s legal

argument stands on firm ground (even in the absence of a Maryland decision directly on point), and the State did nothing wrong in advancing it.

Goodson also suggests that the State was required to subpoena Porter months prior to the trial date, in order to accommodate Porter's desire to appeal any order compelling him to testify. (Motion at 14). Goodson cites no authority supporting this position. In any event, the State was not put on notice that Porter believed the immunity conferred upon him by § 9-123 was insufficient to protect his Fifth Amendment rights until late November, 2015. Porter was subpoenaed just a few weeks later.

Finally, Goodson's ad hominem attack that "[w]ithout question," his "right to a speedy trial means nothing to the State[.]" and his demand that this Court "put an end to this bizarre circus that the State has created[.]" are inappropriate and unfounded. (Motion at 25). In the face of a complex, multi-defendant trial involving no less than eight defense counsel and multiple expert witnesses, the State has acted in good-faith and with all due diligence to bring Goodson to trial.

The decision to grant Porter use immunity and seek an order compelling his testimony was within the prosecution's discretion.

That Porter seeks to appeal the order compelling his testimony is not the State's fault. The State is not putting on a circus, and it is not disregarding Goodson's rights. The motion staying Goodson's trial should remain in effect.

Respectfully submitted,

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**CERTIFICATION OF WORD COUNT AND
COMPLIANCE WITH MD. RULE 8-112.**

This response complies with the font, line spacing, and margin requirements of Md. Rule 8-112, and contains 2,409 words, excluding the parts exempted from the word count by Md. Rule 8-503.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 21, 2016, a copy of the Response to Caesar Goodson's Motion to Lift the Stay and Order the Trial Court to Dismiss the Indictment was delivered via electronic mail and first-class mail, postage pre-paid to Andrew Jay Graham, Kramon & Graham, P.A., One South Street, Suite 2600, Baltimore, Maryland 21202, and Matthew B. Fraling, III, Harris Jones & Malone, LLC, 2423 Maryland Avenue, Suite 1100, Baltimore, Maryland 21218.

CARRIE J. WILLIAMS

CAESAR GOODSON
Appellant,
v.
STATE OF MARYLAND
Appellee.

* IN THE
* COURT OF SPECIAL APPEALS
* OF MARYLAND
* SEPTEMBER TERM, 2015
* NO. 2308 (CC# 115141032)

* * * * *
**OFFICER GOODSON'S REPLY IN FURTHER SUPPORT OF HIS
MOTION TO LIFT STAY OF TRIAL AND REQUEST FOR AN ORDER
DIRECTING THE TRIAL COURT TO DISMISS THE INDICTMENT**

Defendant, Officer Caesar Goodson ("Officer Goodson"), through his counsel, files this Reply in further support of his motion to lift the stay ordered by this Court, and request for dismissal of the indictment.

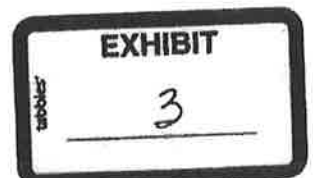
I. PRELIMINARY RESPONSE

The State argues that it will be "irrevocably denied" *its* right to a fair trial if it is required to proceed to trial against Officer Goodson without Officer William Porter's testimony. In so doing, the State suggests that it has a right to appellate involvement in a collateral issue at the expense of Officer Goodson's right to a speedy trial. The State is incorrect and the stay should be lifted.

II. ARGUMENT

A. The State fails to present any case law supporting this Court's exercise of jurisdiction over Officer Goodson's trial proceedings.

The State argues that *Pulley v. State*, 287 Md. 406 (1980), is dispositive of the issue of whether this Court has jurisdiction to stay Officer Goodson's trial. The State is wrong.



In *Pulley*, the defendant moved to dismiss the indictment and avoid a retrial arguing that the prosecution was precluded based on the Double Jeopardy Clause of the 5th Amendment. *Id.* at 409. The trial court denied his motion and, on the eve of trial, the defendant noted an appeal. *Id.* The trial of the defendant proceeded, and he was convicted. *Id.* On appeal, the Court of Appeals found that the defendant could take an interlocutory appeal from an order that would deny an absolute constitutional right. *Id.* at 414. However, the Court rejected the defendant's arguments that his interlocutory appeal deprived the trial court of jurisdiction to proceed with his trial while his appeal was pending. *Id.* In holding that a contrary policy would "play havoc with the trial of cases in this State," the Court of Appeals expressly held that a trial court retains fundamental jurisdiction over the criminal proceeding,

but its right to exercise such power may be interrupted by (i) statute or Maryland Rule, (ii) the posting of authorized appeal bond, or bail following a conviction and sentence, or (iii) a stay *granted* by an appellate court, or the trial court itself, in those cases where a permitted appeal is taken from an interlocutory or final judgment.

Pulley, 287 Md. at 417 (emphasis added).

In this case, the State suggests that the third method, *i.e.*, a stay granted by the appellate court, gives this Court jurisdiction to issue a stay of Officer Goodson's trial. The State ignores the plain language of the holding that a stay may be "granted," as opposed to issued. A stay of an underlying trial pending the defendant's permitted interlocutory appeal may be "granted" or "obtained" if *the defendant requests one*. *Id.* at 419 ("In this case, a stay of Pulley's criminal trial pending the appeal was not *granted* by the trial court *nor was one requested of* or granted by either the Court of Special Appeals

or this Court." (emphasis added)).¹ The Court noted that where a constitutional right of the *accused* is at issue, a trial court should "ordinarily permit a defendant who wishes to immediately appeal its ruling an opportunity to do so without requiring other stay procedures," unless the appeal is completely without merit and the defense is advanced for the sole purpose of delay. *Id.* at 418-19. *Pulley* does not stand for the proposition that an appellate court may *sua sponte* issue a stay of a defendant's trial where a non-party notes an interlocutory appeal to preserve his separate, individual constitutional rights.²

Authority to issue orders, such as a stay, deemed necessary to preserve or aid appellate jurisdiction presupposes that a court has appellate jurisdiction of the issue. In this regard, as it relates to the appellate rights of the State, the Court of Appeals has held:

Concomitantly, because of the strictures placed on our jurisdiction throughout the Maryland Code, we cannot use the writ "in aid of appellate jurisdiction" to confer appellate jurisdiction on the court. To use the writ to create jurisdiction beyond the boundaries set forth in statutes would essentially vest four members of this Court with the power to define what can be appealed by the State merely by identifying the judicial act under consideration as extraordinary. We cannot confer upon ourselves appellate jurisdiction under the guise of being "in aid of appellate jurisdiction."

State v. Manck, 385 Md. 581, 599-600 (2005). *See also Seward v. State*, No. 12, Sept. Term 2015, slip. op. at 6 (Md. Jan. 27, 2016) ("It is an often stated principle of Maryland

¹ It is hard to imagine under what circumstances the State would want to request a stay of an underlying criminal trial when a defendant appeals an order that was granted in its favor.

² Further, *Pulley* most certainly does not stand for the proposition that an appellate court can issue a stay because the continuation of the underlying trial will "irreparably harm" the State. Noticeably absent from the Court of Appeals' opinion is any consideration of the impact a stay will have on the State or its presentation of evidence.

law that appellate jurisdiction, except as constitutionally authorized, is determined entirely by statute, and that, therefore, a right of appeal must be legislatively granted." (citation omitted)). The stay of Officer Goodson's trial does not "aid" this Court's determination of Officer Porter's appeal as it is a separate and distinct issue. This Court's jurisdiction over Officer Porter's appeal cannot be properly expanded to create appellate jurisdiction over a non-appealable issue concerning a party who is not the appellant.

Prior to this Court's unilateral issuance of the stay, the State moved the trial court for a continuance of Officer Goodson's trial pending the outcome of Officer Porter's interlocutory appeal, claiming, as it does here, that the absence of Officer Porter's testimony effectively guts its prosecution against Officer Goodson in January. Had that motion been denied, the State would not have had the right to appeal the trial court's order denying the continuance and would have been required to proceed to trial against Officer Goodson. In ordering the stay, this Court has in essence allowed the State to have appellate consideration of a non-appealable issue – namely, whether there is good cause to postpone Officer Goodson's trial. By keeping the stay in place, this Court necessarily determines that there is good cause and that the State's request of the Circuit Court for a continuance should have been granted. Without any appeal being noted by either the State or Officer Goodson, this Court has not only usurped the fundamental jurisdiction of the trial court,³ but also given the State an appellate right it does not have.

³ "All postponements of a circuit court criminal trial must be done in accordance with the requirements set forth in [Article 27, § 591 and Maryland Rule 4-271]. Thus, every postponement must be granted by the county administrative judge or his designee and must be supported by good cause." *Ross v. State*, 117 Md. App. 357, 364 (1997)

Officer Goodson never requested a stay of his trial, and this Court lacked the authority to issue a stay in the absence of such a request. The issue of whether a continuance should have been granted has not been properly placed before this Court, nor could it be. In short, this Court did not have the authority to issue the stay order, and therefore, the stay should be lifted.

B. The State's argument that it will be "irreparably harmed" is of no legal consequence.

The State argues that it would be "unfair" for Officer Goodson's trial to proceed without Officer Porter's testimony because it would "irreparably harm" its case. State's Response ("State's Resp.") at 4. It is unclear why the State thinks that argument has any legal merit (and it is worth noting that it cites to no authority as support). A litigant is often required to proceed to trial with evidence it considers less than optimal or when key evidence is not available, for whatever reason. As it relates specifically to the State, it is also not unusual for a postponement to be requested in order to secure critical evidence, and for that request to be denied, leaving a prosecutor faced with the choice of dismissing the indictment or proceeding with such evidence as is available. *See State v. Price*, 385 Md. 261, 278 (2005) ("The effect of that ruling was to mandate that the trial proceed, as scheduled. The consequence of the State not going forward or not producing evidence

(citations omitted) (emphasis in original). The Court of Appeals has held that the administrative judge or his designee is in a much better position than "an appellate court to make the judgment as to whether good cause for the postponement of a criminal case exists." *Id.* at 286 (quoting *State v. Frazier*, 298 Md. 422, 453-54 (1984)).

was the dismissal of the case or an acquittal."').⁴ See also *Ross v. State*, 117 Md. App. 357, 370 (1997) (affirming the denial of the State's request for a postponement for it to secure necessary evidence and ultimate dismissal of the indictment, even though the denial of the postponement inured to the benefit of the defendant).

In its Response, the State cites to three cases for the proposition that it "has a right to a fair trial," thereby implying that this right is somehow equivalent to Officer Goodson's constitutional rights. State's Resp. at 4. The cases cited by the State, however, do not stand for the proposition that the State's right to what it considers a fair trial can justify the denial of a defendant's right to a speedy trial. To the contrary, the Court of Appeals noted that consideration of an accused's constitutional and statutory rights is always the paramount concern when evaluating the State's "right" to a fair trial. See *Gonzales v. State*, 322 Md. 62, 74 (1991). In *Gonzales*, the trial court dismissed an

⁴ *Price* is instructive. In *Price*, the State requested a continuance because it had not yet received the DNA analysis of certain evidence. *Id.* at 266. The trial court denied the State's request finding a lack of good cause. *Id.* The State considered the DNA evidence to be vital to its case and therefore chose to *nolle prosequere* the charges in lieu of proceeding to trial. *Id.* at 266. The defendant was re-indicted for the identical charges, and moved to dismiss the indictment for a violation of the *Hicks* rule. *Id.* The trial court rejected the defendant's argument that the State attempted to circumvent the *Hicks* rule. *Id.* at 267. However, the trial court dismissed the indictment, finding that the sole purpose of dismissing the indictment and then subsequently refiling it was to avoid the trial court's denial of its request for a postponement. *Id.* at 268.

The Court of Appeals agreed with the trial court. *Id.* at 277-78. The Court found that there is an express procedure in place for postponing trials that is designed to comport with the chief legislative objective that "there should be a prompt disposition of criminal charges in the circuit court." *Id.* at 278 (citations omitted). The Court found that the State's purpose was to circumvent the decision of the trial court denying the continuance. *Id.* The State's argument that the DNA was critical to its prosecution did not have any role in the Court of Appeals' analysis.

indictment due to a prosecutor's lack of preparedness. *Id.* at 73. Although the Court noted that the "slipshod manner" in which the case was handled by the State should not be tolerated, it held that under the particular circumstances of that case, principles of fairness dictated that the dismissal was unwarranted. *Id.* However, the concept of "fairness" is not without limits. As recognized by the Court of Appeals in *Gonzales*, "[t]he State, as the representative of the public, may not be deprived of trying a person duly charged with the commission of a crime merely to teach the prosecutor a lesson for his lack of diligence in pursuing a prosecution, *there being no constitutional or statutory rights of an accused to be timely tried involved.*" *Id.* at 74 (emphasis added). It is clear that the rights of the accused override what the State considers its "right" to a fair trial.

The State does not deny that Officer Goodson's rights to a fair and speedy trial are implicated with each passing day the stay is in place. The State does not challenge the fact that his rights are being impacted through no fault of his own. Instead, the State argues that at an unknown date in the future, Officer Goodson can raise this issue with the trial court and, if unsuccessful, can raise the issue on appeal if he is convicted. State's Resp. at 5. *See also Stewart v. State*, 282 Md. 557, 572 (1978) (holding that a denial of a motion for dismissal based on a violation of a defendant's right to a speedy trial cannot be appealed until a final judgment). The State argues that this Court is not a "fact finder" and therefore resolution of purported disputes of fact is improper at this juncture. State's Resp. at 6. The State's argument is ironic in light of the fact that by imposing a stay – the continuance of which it claims is vital to its prosecution – this Court necessarily invaded the fact finding province of the trial court and in essence granted the State's request for a

postponement. In truth, this Court made that determination on a record that is devoid of any facts that would justify a postponement. Even now, the State has failed to meet its burden in setting forth facts that would warrant a continuance of Officer Goodson's trial other than its own *ipse dixit*.

C. The State offers no facts to warrant the continuation of the stay.

The State does not dispute that the factors that a trial court must consider in determining whether there is good cause for a postponement are set forth in *Jackson v. State*, 214 Md. 454, 459 (1957).⁵ Yet, the State has not even attempted to identify for this Court (nor the trial court) why the circumstances presented in this case warrant a postponement under *Jackson*. The State's silence speaks volumes. The State cannot assert that it ever had any reasonable expectation that Officer Porter would testify in Officer Goodson's January trial in light of the communications it had with counsel.⁶ Further, because it is unknown when Officer Porter's appellate rights will be exhausted and a final decision made as to whether or not he can be compelled to testify, the State cannot say that it believes it can secure Officer Porter's testimony within a reasonable time.

⁵ In determining whether a continuance should be granted, the party making the request must show the following: "1) he had a reasonable expectation of securing the evidence of the absent witness . . . within some reasonable time; 2) that the evidence is competent and material, and he believed that the case could not be fairly tried without it; and 3) that he had made diligent and proper efforts to secure the evidence." *Id.* (citations omitted) (generally referred to as the "*Jackson* factors").

⁶ See *Tann v. State*, 43 Md. App. 544, 548 (1979) ("[W]e hold that where the absent witness is also a co-defendant and there is no showing that he will waive his privilege against self-incrimination and exonerate the [defendant], the trial judge may deny the postponement of the trial.").

Similarly, other than serving a subpoena on December 17, 2015, the State does not articulate any efforts it undertook in advance of Officer Goodson's trial to secure Officer Porter's testimony. The State's position that it acted reasonably and diligently cannot be accepted given its recently minted assertion that the entire prosecution of Officer Goodson hinges on Officer Porter's testimony. Why did the State not put this constitutional issue it knew was going to be hotly contested before the trial court sooner? The circumstances of this case and the State's knowledge of Officer Porter's position almost eight months prior to the start of Officer Goodson's trial compel the conclusion that the State failed to act diligently or responsibly, and now must live with the outcome.⁷

The State also makes no attempt to elucidate for the Court the specifics of the evidence, how it is material or why the trial of Officer Goodson cannot be fairly tried without it. The State offers no explanation for why it is not subject to the proof requirements that other litigants would be required to meet.

The State admits that the entire purpose of its request for a postponement (or the continued imposition of this stay) is simply to improve its odds of prevailing at trial. No court would agree that this would justify the denial of the defendant's constitutional

⁷ Unlike the State, Officer Goodson's "strategy" has not hinged on whether Officer Porter would be compelled to testify in his upcoming trial. Officer Goodson was prepared to proceed to trial on January 11th. Officer Goodson took no position regarding the State's subpoena to Officer Porter or its motion to compel his testimony. Officer Goodson had no involvement in Officer Porter's request for an injunction of the trial court's order. The State simultaneously filed a opposition to Officer Porter's request for an injunction before this Court and moved to stay Officer Goodson's trial pending the outcome of the appeal. Any suggestion that Officer Goodson is playing a game of "wait and see" (as opposed to asserting his right to a speedy trial) is contradicted by the record in this case.

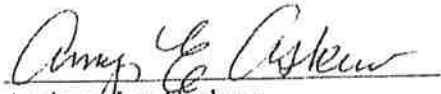
rights. *See State v. Becker*, 24 Md. App. 549, 561 (1975) (finding that a deliberate delay for the purpose of gaining a tactical advantage over the defendant weighs heavily against the State when evaluating whether a defendant's right to a speedy trial was violated).⁸ In its opposition, the State again confirms that it "always intended to, if necessary, provide Porter with use immunity and seek an order compelling him to testify pursuant to § 9-123." State's Resp. at 9. It is therefore clear that the only reason why Officer Goodson is currently being deprived of his right to a speedy trial is because of a litigation strategy the State elected but failed to implement promptly or successfully.

III. CONCLUSION

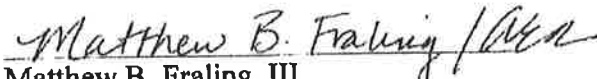
If this Court concludes that it has jurisdiction to issue a stay, then this Court must also consider the stay's impact on Officer Goodson's right to a speedy trial. For the foregoing reasons, as well as those set forth in Officer Goodson's opening motion, this Court should grant Officer Goodson's Motion to Lift Stay and order the trial court to dismiss the indictment.

⁸ For the first time, the State suggests that Officer Goodson's case is "factually complex" and involves "complicated legal issues," in an attempt to justify the need for the postponement and the infringement of Officer Goodson's right to a speedy trial. State's Resp. at 8 n.2. This argument is specious, at best. The State determined that it was to have one trial team to prosecute all six cases. The State determined the order in which the cases were to be tried. And the State determined in December that it was ready to go forward with Officer Goodson's January trial. For the State to suggest that anything other than its own litigation strategy is the basis for this postponement and resultant delay is a sham.

Respectfully submitted,



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This Reply was prepared in Times New Roman 13-point font.

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of January 2016, a copy of the foregoing

Reply was sent via electronic mail and mailed, first-class postage prepaid to:

Brian E. Frosh, Attorney General of Maryland
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Counsel for Appellant


Amy L. Askew

CAESAR GOODSON,
Appellant,
v.
STATE OF MARYLAND,
Appellee.

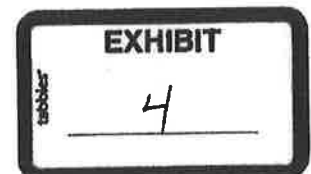
IN THE
COURT OF SPECIAL APPEALS
OF MARYLAND
September Term 2015
No. 2308

**MOTION TO STAY PROCEEDINGS PENDING A RULING
ON THE STATE'S PETITION FOR WRIT OF CERTIORARI**

On January 7, 2016, an order was issued, pursuant to Courts & Judicial Proceedings, § 9-123, compelling William Porter to testify as a witness in the above captioned case. Porter filed a notice appealing the order that same day.

On January 26, 2016, Porter filed his brief before this Court. The State filed its responsive brief on February 10, 2016. Oral argument is currently scheduled for March 4, 2016.

On February 10, 2016, the State filed a petition for writ of certiorari in this case with the Court of Appeals. The State is



asking the Court to grant the petition and hear the case prior to this Court's resolution of the appeal.

The State, therefore, respectfully moves this Court pursuant to Maryland Rule 8-431 to stay all proceedings in this Court in the above-captioned case pending resolution of the petition for writ of certiorari.

CONCLUSION

The State accordingly asks that the above-captioned proceedings be stayed in the Court of Special Appeals pending a ruling from the Court of Appeals on the State's petition for writ of certiorari.

Dated: February 10, 2016

Respectfully submitted,

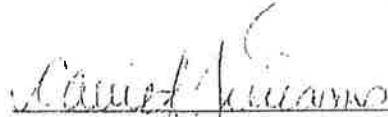
BRIAN E. FROSH
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Counsel for Appellee

CERTIFICATE OF SERVICE

I certify that on this day, February 10, 2016, a copy of the Motion to Stay Proceedings was delivered electronically and mailed by first-class U.S. Postal Service, postage prepaid, to Gary Proctor, 8 East Mulberry Street, Baltimore, Maryland 21202, and Joseph Murtha, 1301 York Road, Suite 200, Lutherville, Maryland 21093.


CARRIE J. WILLIAMS
Assistant Attorney General

CAESAR GOODSON,

Appellant,

v.

STATE OF MARYLAND,

Appellee.

IN THE

COURT OF SPECIAL APPEALS

OF MARYLAND

September Term 2015

No. 2308

ORDER

Pending before the Court is the State of Maryland's motion to stay proceedings in this Court pending the Court of Appeals' ruling on the petition for writ of certiorari. Having considered the motion and any response, the Court hereby grants the motion to stay.

So ORDERED this ____ day of _____, 2016.

PETER B. KRAUSER
Chief Judge

ALICIA WHITE,

Appellant,

v.

STATE OF MARYLAND,

Appellee.

IN THE

COURT OF SPECIAL APPEALS

OF MARYLAND

September Term 2015

No. 2489

**MOTION TO STAY PROCEEDINGS PENDING A RULING
ON THE STATE'S PETITION FOR WRIT OF CERTIORARI**

On January 7, 2016, an order was issued, pursuant to Courts & Judicial Proceedings, § 9-123, compelling William Porter to testify as a witness in the above captioned case. Porter filed a notice appealing the order that same day.

On February 10, 2016, the State filed a petition for writ of certiorari in this case with the Court of Appeals. The State is asking the Court to grant the petition and hear the case prior to this Court's resolution of the appeal.

The State, therefore, respectfully moves this Court pursuant to Maryland Rule 8-431 to stay all proceedings in this Court in the

above-captioned case pending resolution of the petition for writ of certiorari.

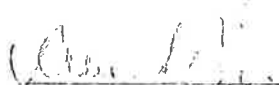
CONCLUSION

The State accordingly asks that the above-captioned proceedings be stayed in the Court of Special Appeals pending a ruling from the Court of Appeals on the State's petition for writ of certiorari.

Dated: February 10, 2016

Respectfully submitted,

BRIAN E. FROSH
Attorney General of Maryland



CARRIE J. WILLIAMS
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Counsel for Appellee

ALICIA WHITE,

Appellant,

v.

STATE OF MARYLAND,

Appellee.

IN THE

COURT OF SPECIAL APPEALS

OF MARYLAND

September Term 2015

No. 2489

ORDER

Pending before the Court is the State of Maryland's motion to stay proceedings in this Court pending the Court of Appeals' ruling on the petition for writ of certiorari. Having considered the motion and any response, the Court hereby grants the motion to stay.

So ORDERED this ____ day of _____, 2016.

PETER B. KRAUSER
Chief Judge

CAESAR GOODSON
Appellant,
v.
STATE OF MARYLAND
Appellee.

* IN THE
* COURT OF SPECIAL APPEALS
* OF MARYLAND
* SEPTEMBER TERM, 2015
* NO. 2308 (CC# 115141032)

* * * * *
ALICIA WHITE
Appellant,
v.
STATE OF MARYLAND
Appellee.

* * * * *
* IN THE
* COURT OF SPECIAL APPEALS
* OF MARYLAND
* SEPTEMBER TERM, 2015
* NO. 2489 (CC# 115141036)

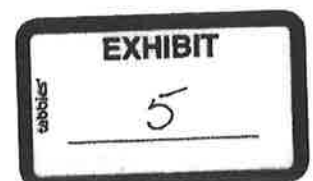
* * * * *

**OFFICER GOODSON'S OPPOSITION TO THE STATE'S
MOTION TO STAY PROCEEDINGS PENDING A RULING ON
THE STATE'S PETITION FOR WRIT OF CERTIORARI**

Defendant, Officer Caesar Goodson ("Officer Goodson"), through his counsel, files this Opposition to the State's Motion to Stay Proceedings Pending a Ruling on the State's Petition for Writ of Certiorari ("Motion to Stay"), and for reasons states:

1. The State's Motion to Stay requests that "all proceedings" be stayed pending resolution of its petition for writ of certiorari, *State's Motion to Stay* at 2.

2. If granted, the State's request would preclude this Court from ruling on Officer Goodson's Motion to Lift Stay of Trial and Request for an Order Directing the Trial Court to Dismiss the Indictment ("Motion to Lift Stay"), filed on January 15, 2016.



3. Officer Goodson opposes the State's Motion to Stay, to the extent that it prevents this Court from ruling on Officer Goodson's Motion to Lift Stay of his trial, as any stay continues to violate Officer Goodson's right to a speedy trial.

4. Officer Goodson adopts and incorporates by reference his arguments in his Motion to Lift Stay and his Reply in further support of that motion, as if fully set forth herein.

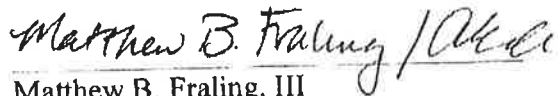
5. Officer Goodson takes no position on the State's request to stay the proceedings specifically related to Officer Porter's appeal.

WHEREFORE, Officer Goodson respectfully requests that the State's Motion to Stay be denied, to the extent it impacts Officer Goodson's Motion to Lift Stay, and this Court's ruling on same.

Respectfully submitted,



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Counsel for Officer Caesar Goodson

This Opposition was prepared in Times New Roman 13-point font.

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of February, 2016, a copy of the foregoing
Opposition was sent via electronic mail and mailed, first-class postage prepaid to:

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Carrie J. Williams, Assistant Attorney General
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1301 York Road, Suite 200
Lutherville, Maryland 21093

Counsel for Appellant



Amy E. Askew

CAESAR GOODSON

Appellant,

v.

STATE OF MARYLAND

Appellee.

* * * * *

ALICIA WHITE

Appellant,

v.

STATE OF MARYLAND

Appellee.

* * * * *

* IN THE
* COURT OF SPECIAL APPEALS
* OF MARYLAND
* SEPTEMBER TERM, 2015
* NO. 2308 (CC# 115141032)
* * * * *
* IN THE
* COURT OF SPECIAL APPEALS
* OF MARYLAND
* SEPTEMBER TERM, 2015
* NO. 2489 (CC# 115141036)
* * * * *

ORDER

Upon consideration of the State's Motion to Stay Proceedings Pending a Ruling on The State's Petition for Writ of Certiorari ("Motion to Stay"), any opposition thereto, the applicable law, the record in this case, and for good cause shown, it is this ____ day of February, 2016,

ORDERED, that the State's Motion to Stay is DENIED in part; and it is further

ORDERED, that the State's Motion Stay is DENIED as to this Court's proceedings relating to Officer Goodson's Motion To Lift Stay of Trial and Request for an Order Directing the Trial Court to Dismiss the Indictment.

Judge,
Court of Special Appeals of Maryland

CAESAR GOODSON

Appellant,

v.

STATE OF MARYLAND

Appellee.

* * * * *

ALICIA WHITE

Appellant,

v.

STATE OF MARYLAND

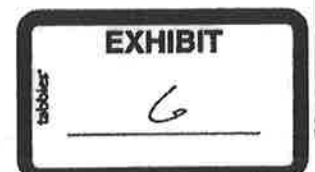
Appellee.

* * * * *

**SERGEANT WHITE'S MOTION TO LIFT STAY OF TRIAL AND REQUEST
FOR AN ORDER DIRECTING THE TRIAL COURT
TO DISMISS THE INDICTMENT AND OPPOSITION TO THE STATE'S
MOTION TO STAY PROCEEDINGS PENDING A RULING ON ITS PETITION
FOR WRIT OF CERTIORARI**

Defendant, Sergeant Alicia White ("Defendant" or "Sergeant White"),¹ through her counsel, and pursuant to Maryland Rule 8-431, moves to lift the stay of Sergeant White's trial pending resolution of the interlocutory appeal filed by Officer Porter, and requests that an order be issued by this Court directing the trial court to dismiss the

¹ Although Sergeant White is captioned as the "Appellant," this Court designated Officer William Porter ("Officer Porter") as the Appellant in its Order. See Maryland Rule 8-111. Officer White has not noted an appeal on any issue, nor has the State noted any appeal in which Officer White is the Appellee.



indictment. Sergeant White also opposes the State's Motion to Stay Proceedings Pending a Ruling on its Petition for Writ of Certiorari.

I. INTRODUCTION AND BACKGROUND

Sergeant White adopts and incorporates the Introduction, Background and Preliminary Response set forth in Officer Caesar Goodson's Motion to Lift Stay of Trial and Request for an Order Directing the Trial Court to dismiss the indictment, as well as his Reply in further support of that motion, as if fully set forth herein. Sergeant White further states:

On May 21, 2015, Sergeant White was indicted. The four-count indictment charged Sergeant White specifically with 1) Manslaughter; 2) Second Degree Assault; 3) Misconduct in Office; and 4) Reckless Endangerment.

On May 27, 2015, shortly after she was indicted, Sergeant White filed a motion demanding a speedy trial. *See* Online Docket (May 27, 2015) ("Motion for Speedy Trial"). Under Maryland law, Sergeant White's trial was required to start within 180 days after her or her counsel's initial appearance, *i.e.*, November 23, 2015. *See* Md. Code Ann., Crim. Proc. § 6-103 (formerly Article 27 § 591); Md. Rule 4-271(a)(1); *State v. Hicks*, 285 Md. 310 (1979) (holding that the 180-day requirement is mandatory ("*Hicks*").

On September 2, 2015, the trial court severed the cases of the six defendants and Sergeant White's trial date was set for October 13, 2015. Then, on September 29, 2015, without a waiver of Sergeant White's *Hicks* rights, the trial court postponed her original trial date past the 180-day limit to January 25, 2016. *See* On-line Docket (Sept. 29, 2015)

("Postponement Form Filed; *Hicks*, Md. Rule 4-271 Not Waived"). January 25th was the 250th day after she was indicted.

On January 6, 2016, a pre-trial hearing was held in the case of *State of Maryland v. Officer Caesar Goodson*. During that hearing, arguments were heard on the State's motion to compel the testimony of Officer Porter in Officer Goodson's trial. Counsel for Sergeant White was not present. After the hearing, the State provided the trial court with its written Motion to Compel Officer Porter's testimony in Sergeant White's case. Despite the fact that the hearing was on a different case and that her counsel was not present, on January 7, 2016, the trial court granted the State's Motion to Compel. Sergeant White received the State's Motion to Compel on or about January 8th.

On January 8, 2016, the State filed a request for a postponement, which was granted, and Sergeant White's trial was rescheduled for February 8, 2016. *See* On-line Docket (Jan. 8, 2016) ("Postponement Form Filed; *Hicks*, Md. Rule 4-271 Not Waived"). February 8th was the 264th day after she was indicted.

On or about January 12, 2016, Sergeant White learned of the January 7th Order and moved to strike it. *See* Sergeant White's Motion to Strike Court's Order Compelling Officer Porter's Testimony During Her Trial. Sergeant White also filed a motion to preclude Officer Porter's testimony on January 15th.

On January 20, 2016 during a pre-trial hearing, the circuit court apologized for making a determination in Sergeant White's trial without an opportunity for her and her counsel to be present. The court denied Sergeant White's motion to preclude Officer Porter's testimony and indicated that it would deal with scheduling issues at a later time.

Jan. 20, 2016 Hearing Transcript at 10. The trial court did not orally modify its January 7th order compelling Officer Porter to testify in Sergeant White's trial.

During this hearing the State inquired whether the underlying trial would be stayed. Jan. 20, 2016 Hearing Transcript at 11. Prior to this inquiry, the State had not requested a stay of Sergeant White's trial and, as a result, she did not have an opportunity to provide a written opposition. In response to this inquiry, the trial court stated, "Well, given the fact that the Court of Special Appeals-- kind of told me that they wanted that in the Goodson matter...." Jan. 20, 2016 Hearing Transcript at 11. The transcript does not reflect a more complete ruling. Sergeant White verbally objected based on her right to a speedy trial. On January 21, 2016, the trial court issued an order which reads, in pertinent part,

On January 12, 2016, this Court received Witness William Porter's Motion for Injunction Pending Appeal, asking this court to stay its ruling pending Officer Porter's interlocutory appeal in this matter.

Having reviewed the Defendant's motion,² and in light of the Court of Special Appeals [*sic*] order of January 11, 2106, granting a stay in *Goodson v. State*... pending the interlocutory appeal, and noting that the legal issues involved in the two cases are the same, this Court finds that it is appropriate to grant a stay in the above-captioned matter. Therefore, it is this 20th day of January, 2016, hereby

ORDERED that Witness William Porter's Motion for Injunction Pending Appeal is **GRANTED**.

See January 20, 2016 Order. The Order did not indicate that Sergeant White's trial was to be stayed.

² It is unclear which motion the trial judge was referring to, but undersigned counsel assumes it means Sergeant White's Motion to Strike.

On February 10, 2016, this Court granted Officer Porter's motion to consolidate his appeals in the cases of Officer Goodson and Sergeant White. On that same day, the State filed a Petition for Writ of Certiorari, as well as a Motion to Stay Proceedings Pending a Ruling on the State's Petition for Writ of Certiorari. This Court granted the State's Motion to Stay the very next day, without receiving a response from Sergeant White.³

II. ARGUMENT

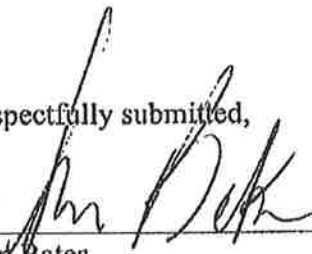
Sergeant White adopts and incorporates the arguments set forth in Officer Goodson's Motion to Lift Stay of Trial and Request for an Order Directing the Trial Court to Dismiss the Indictment (filed January 15, 2016), as well as his Reply (filed January 29, 2016) in further support of that motion, as if fully set forth herein. Sergeant White also adopts and incorporates the arguments set forth in Officer Goodson's Opposition to the State's Motion to Stay Proceedings Pending a Ruling on its Petition for Writ of Certiorari (filed February 11, 2016), as if fully set forth herein.

III. CONCLUSION

Wherefore, Sergeant White respectfully requests that this Court deny the State's Motion to Stay, lift the Stay of the case and remand the case to the trial court.

³ Officer Goodson filed an opposition on the afternoon of February 11, 2016. It is unclear whether this Court reviewed Officer Goodson's opposition prior to making its determination.

Respectfully submitted,



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Mary M. Lloyd

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Counsel for Sergeant Alicia White

This pleading was prepared in Times New Roman 13-point font.

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I hereby certify that on this 16th day of February 2016, a copy of the foregoing paper was sent via electronic mail and mailed, first-class postage prepaid to:

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