IN THE
COURT OF APPEALS OF MARYLAND

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SEPTEMBER TERM, 2015

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NO. 96

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STATE OF MARYLAND,

Appellant,

v.

BRIAN RICE,

Appellee.

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ON WRIT OF CERTIORARI TO THE
COURT OF SPECIAL APPEALS OF MARYLAND

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# BRIEF AND APPENDIX OF APPELLANT

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## STATEMENT OF THE CASE

Appellant, the State of Maryland, appeals from the denial of the State's motion to compel witness William Porter to testify pursuant to § 9-123 of the Courts and Judicial Proceedings Article in the case of *State of Maryland v. Brian Rice*, No. 115141035. On January 14, 2016, the State filed a motion to compel Porter to testify as an immunized witness pursuant to § 9-123. (E. 4). On January 15, 2016, Brian Rice filed an opposition to the State's motion to compel. (E. 9). Porter also filed an opposition to the State's motion on January 19, 2016. (E. 17). On January 20, the State filed a response to Rice's opposition, arguing, among other things, that Rice had no standing to challenge the motion to compel. (E. 68).

After a hearing on January 20, 2016, the circuit court denied the motion to compel. (E. 140). On February 4, 2016, the State noted an appeal. (E. 164). The next day, the State requested that the circuit court stay the trial proceedings pending a resolution of the appeal, a request which Rice opposed. (E. 167, 195).

On February 10, 2016, the State petitioned this Court to issue a writ of certiorari. That same day, the circuit court denied the motion to stay the trial. (E. 213). On February 16, 2016, Rice filed an answer and motion to dismiss the State's petition. This Court granted the petition on February 18,

2016, and stayed all proceedings in the lower courts.

## QUESTIONS PRESENTED

1. Whether the circuit court's order denying the State's motion to compel Officer William Porter to testify is appealable, *i.e.* whether the order is a final judgment or an interlocutory order subject to appeal or an order appealable on any other basis?

2. Does Courts and Judicial Proceedings Article, § 9-123 require a court to order compelled, immunized witness testimony after verifying that the statutory pleading requirements of the prosecutor's motion to compel have been met, or does the statute instead permit a court to substitute its own discretion and judgment as to whether compelling the witness's testimony may be necessary to the public interest such that the court may deny a prosecutor's motion to compel even if the motion complies with the statute's pleading requirements?

## STATEMENT OF FACTS

On January 14, 2016, the State initiated proceedings to obtain compelled, immunized testimony in a criminal prosecution from a witness, William Porter, by filing a "Motion to Compel a Witness to Testify Pursuant to Section 9-123 of the Courts and Judicial Proceedings Article." (E. 4). The State filed the motion in the Circuit Court for Baltimore City under case number 115141035, *State of Maryland v. Brian Rice*, which is the underlying proceeding for which the State sought Porter's testimony. (E. 4). The State's motion was submitted and signed by Marilyn J. Mosby, the elected State's Attorney for Baltimore City. (E. 5). The motion averred that "[t]he State may call Officer William Porter to testify as a witness in the above-captioned criminal proceeding[,]" that the State's Attorney had "determined that the testimony of Officer William Porter . . . may be necessary to the public interest[,]" and that "Officer William Porter is likely to refuse to testify . . . on the basis of his privilege against self-incrimination." (E. 4).

On January 15, 2016, Brian Rice filed an "opposition" to the State's motion to compel, attacking it for failing to explain "why [Porter] is either material or necessary to the trial of [Rice] or how it is necessary to serve the public interest." (E. 9). Rice contended that "the State has never suggested, until the filing of the [motion to compel], that [Porter's] testimony was in any

way necessary to the prosecution of [Rice]." (E. 10). Rice further contended that "the present Motion is nothing more than a pretext to regain control of the order of the Defendants' trials,"[1] concluding that "compelling [Porter's] testimony at the trial of [Rice] is not necessary to the public interest and the present Motion must be denied." (E. 10-11).

On January 19, 2016, Porter also filed an "opposition" to the State's motion in which he requested that the court deny the motion on grounds that compelling his testimony would not be necessary to the public interest for all the reasons that Rice asserted. (E. 17-20). Porter also added that granting the State's motion would result in "trampling upon the Fifth Amendment rights, as well as the Article 22 rights, of Officer Porter." (E. 20). Lastly, he objected to being compelled to testify concerning matters about which the State had previously accused him of lying. (E. 21).

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[1] William Porter, Edward Nero, Caesar Goodson, Alicia White, Garrett Miller, and Brian Rice were all indicted on charges relating to the arrest or death of Freddie Gray. (E. 27). The circuit court, based on the State's request, scheduled Porter's trial first, followed by Goodson, White, Miller, Nero, and then Rice. (E. 27). Porter's trial ended in a mistrial on December 16, 2015. (E. 213). When Porter appealed the circuit court's order compelling him to testify in the trials of Caesar Goodson and Alicia White, the Court of Special Appeals stayed Goodson's trial and was expected to do the same to White's. (E. 429). The circuit court, in fact, stayed White's case on January 20, 2016. (E. 433).

The State responded to Rice's opposition by arguing that Rice "lacks standing to object" to the State's motion because § 9-123 does not provide "any right for the subject of the criminal prosecution—or the witness to be compelled—to file a responsive pleading or otherwise be heard to object to the merits of the State's Motion to Compel." (E. 69). The State urged that because its motion to compel complied with § 9-123's factual pleading requirements, the court was "statutorily required to issue the [immunity] Order upon finding those facts properly presented." (E. 72).

On January 20, 2016, the circuit court conducted a hearing on the State's motion to compel. (E. 75). At the hearing, the State contended that "the motion sets forth in the words of the statute [its] two prerequisites," and "[t]he statutory prerequisites having been met," "the Court should grant the immunity [order]" and not consider Porter's and Rice's objections. (E. 88-89).

The circuit court instead directed the prosecutor to "proffer to the Court what's the reasoned judgment for Porter's testimony in [Rice's case][.]" (E. 90). The prosecutor noted that he did not think it was necessary for the State to explain its decision making "once the State's Attorney has made that determination." (E. 91). The court asked what the State thought a court could do if it found that the State's request was "a ruse and subterfuge[.]" (E. 91). The prosecutor assured the court that the State was not engaging in a

subterfuge, but said "that it would be a violation of the separation of powers to interfere with [the State's Attorney's] determination" under the statute. (E. 91). Nevertheless, in order to comply with the court's request, the prosecutor explained that Porter's testimony was in the public interest because he could provide relevant testimony about the failure to seatbelt Gray and when during the trip to the police station Gray's injuries occurred. (E. 92-100). This testimony about the timing of those injuries is relevant, the prosecutor explained, because it helps establish one of the elements of reckless endangerment — that the conduct at issue "could lead to significant injury" — by proving that the conduct did, in fact, result in significant injury to Gray. (E. 132-134).

The circuit court also pressed the prosecutor to explain why the State never told the court it intended to call Porter as a witness in all five of the other cases. (E. 98). The prosecutor responded that the State "tried to learn something from our experience in trying Mr. Porter, and we tried to learn something about what was effective" and "to read into what the jury did." (E. 98). "[W]e think we have the right to change our mind," the prosecutor added, "[a]nd we're acknowledging we're changing our mind." (E. 99).

The court also demanded to know why the State requested that Rice's trial be postponed until after Porter's retrial. (E. 105). The prosecutor said that "it's the most practical thing to do . . . because a postponement "would

eliminate the need for a *Kastigar* hearing" and "allow the State to avoid the expense and problems associated with putting together a clean team sometime before Porter testifies under immunity . . . ." (E. 105-106). A postponement of Rice's trial until after Porter's would also mean that "virtually every one of [Porter's objections for appeal] goes away." (E. 108). The court expressed displeasure at delaying the other defendants' trials and admonished the State regarding the need for Porter's testimony that it "should have figured this out" sooner. (E. 108-109).

After hearing arguments from Porter's counsel regarding the impact of the immunity order on Porter (E. 117-127), considering Rice's attorney's objection to any postponements (E. 127-132), and allowing the State a rebuttal argument (E. 132-136), the circuit court announced its ruling on the State's motion to compel. The court acknowledged "that the State has broad power to seek immunity" under § 9-123 and that "when . . . the prosecutor determines that the testimony may be necessary to the public interest, the Court shall issue the order requiring the individual to give testimony." (E. 136). The court "found that in the White case and the Goodson case that it was appropriate based on the proffer of the State." (E. 136). In fact, no proffer was requested from nor made by the State in the Goodson and White cases. (E. 431).

The court then considered whether § 9-123 is "simply a matter of the Court being a rubber stamp" once the Executive branch decides a witness's testimony is in the public interest, and concluded that the issue is not "that simple." (E. 137). Focusing on the timing of the State's request to use Officer Porter in Rice's case, the court found that "[the prosecutor] indicates that they reassessed things, and I believe that actually happened, that things were reassessed, and they made a determination." (E. 137). "But the State," the court then ruled, "in the manner in which it's seeking to immunize [Porter for Rice's trial], it does seem to this Court, candidly speaking, that it's for a dual purpose: to get the postponement that they need to continue and possibly for the reason stated, that Mr. Porter's testimony is relevant to the seatbelt issue and relevant to the place of injury." (E. 139).

Concluding, the court ruled:

> I do not believe that based on the proffer presented by the State for the seatbelt issue and the place of injury, the concerns that this Court has with the speedy trial rights of the Defendants, and the concern that this Court has with the position that Mr. Porter will be placed in by the request of the State and again, I guess most importantly, finding that the request for immunity has more to do with getting around the Court's postponement request than anything else, I do not find it is appropriate, and the request for immunity for Mr. Porter for [Rice] is denied.

(E. 140).

From this judgment docketed January 20, 2016, (E. 245), the State filed a notice of appeal on February 4, 2016. (E. 164). The following day, the

State filed a motion requesting that the circuit court stay the proceedings pending appeal. (E. 167). Rice filed a response opposing the stay on February 8, 2016. (E. 195). In its February 10, 2016, order denying the motion to stay, the court revisited its reasoning for denying the motion to compel. (E. 213). The court said that "rather than become a rubber-stamp for the State's Attorney, there should be a two-step process in granting immunity under § 9-123 when, and only when, the motives of the requesting party are called into question." (E. 214). The court wrote that it found "the State's motion was simply an attempt at subterfuge because they did not agree with the Court's order to continue with the other trials," and "[i]t is this action of the State that this Court found was not in the public interest." (E. 214).

On February 10, the State petitioned this Court to issue a writ of certiorari. On February 16, Rice filed an answer and motion to dismiss the petition. This Court granted the petition on February 18, 2016, and stayed all proceedings in the lower courts.

## ARGUMENT

### I.

### THE STATE CAN APPEAL THE DENIAL OF THE MOTION TO COMPEL PORTER'S TESTIMONY AS A FINAL, APPEALABLE JUDGMENT OR, ALTERNATIVELY, VIA THE COLLATERAL ORDER DOCTRINE OR THROUGH APPLICATION FOR AN EXTRAORDINARY WRIT.

The circuit court's denial of the State's § 9-123 request for an order compelling Porter to testify is appealable as a final judgment under Courts & Judicial Proceedings, Section 12-301. Alternatively, the court's denial is appealable under the common law collateral order doctrine. And even if this Court finds that neither of those avenues of appeal are available to the State, the refusal of the circuit court to perform its duties under § 9-123 is reviewable by this Court via the doctrine of extraordinary writs.

#### A. Porter, not Rice, is the proper party to this appeal

As an initial matter, there is a dispute regarding the identity of the appellee in this case. Rice filed in this Court a motion to dismiss the State's petition for certiorari, and has indicated his intent to file a merits brief. But Rice is not a proper party to this appeal.

Only "the adverse party" to an appeal "shall be designated the appellee." Md. Rule 8-111(a)(1) (2016). The State in this case appeals the denial of its motion for an order compelling Porter to testify as a witness in Rice's criminal trial. The adverse party, therefore, is Porter—the subject of

the State's motion to compel under §9-123, and the opposing party during the immunity proceeding in the circuit court.[2]

As this Court has long held, a "party" to an appeal is one who is "directly interested in the subject-matter" of the appeal, even if that person was not a named party in the lower court. *Hall v. Jack*, 32 Md. 253, 263 (1870). A named party below will not be deemed a party for purposes of an appeal unless the person has "[a]n interest . . . so closely and directly connected with the subject matter that the [person] will either gain or lose by the direct legal operation and effect of the decree." *Lickle v. Boone*, 187 Md. 579, 584 (1947).

Rice has no direct interest which will be gained or lost by the ruling on this appeal. In fact, whether the circuit court erroneously denied the State's statutorily compliant request for an order compelling Porter to testify does not directly affect Rice at all. While Rice may well be tangentially impacted by this Court's decision, in so far as it impacts the strength of the State's case against him at trial, that interest falls far outside of the procedural

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[2] Indeed, Porter is the designated appellant in *Caesar Goodson and Alicia White v. State of Maryland*, No. 99, Sept. Term, 2015. In those cases, Porter argues that the circuit court's order compelling him to testify in the Goodson and White trials violates his constitutional privilege against self-incrimination. If Porter is the aggrieved party in the *Goodson* and *White* cases, then he is the prevailing party in this one.

protections § 9-123 provides to a witness whom the State seeks to compel. Porter, not Rice, is the witness whom the State seeks to compel to testify. As such, only Porter stands as the proper party to this appeal.[3]

Indeed, other appeals stemming from witness immunity actions have named the witness, not the defendant in the underlying criminal action, as the proper party. In *In re Criminal Investigation No. 1-162*, 307 Md. 674 (1986), the witnesses whom the State sought to compel to testify before a grand jury were deemed the appellees in the State's appeal of the denial of its motion to compel. And in *United States v. Herman*, 589 F.2d 1191, 1200-02 (3d Cir. 1978), the Third Circuit expressly held that the defendant in the underlying criminal case lacks standing to seek review of a prosecutor's "public interest" immunity determination because the defendant is not "within the zone of interests to be protected" by the immunity statutes.

Rice is not a party to this appeal, and has no standing to file a brief, unless he does so as a properly accepted amicus curiae.

[3] The State has no objection to Rice filing a brief as an amicus curiae. *See* Md. Rule 8-511 (2016).

### B. The order denying the motion to compel is appealable as a final judgment under § 12-301

In a case materially indistinguishable from the present appeal, both this Court and the Court of Special Appeals in *In re Criminal Investigation No. 1-162*, 66 Md. App. 315, *rev'd* 307 Md. 674 (1986), permitted the State to directly appeal a circuit court's denial of a motion to compel immunized witness testimony. In its brief to the Court of Special Appeals, the State briefly addressed the appealability issue, arguing that the denial of an immunity request was appealable as either a final judgment or pursuant to the collateral order doctrine.[4] *Br. of Appellant in In re Criminal Investigation No. 1-162* at 3-4, n. 2 (1985) (App. 3-4).[5]

While the appellees in *No. 1-162* did not challenge appealability, neither this Court nor the Court of Special Appeals questioned the State's right to take an appeal. And either Court surely could have, as "the issue of appealability is a threshold one . . . which must be addressed, and will be, by the Court on its own motion, whether raised [by a party] or not." *Office of the*

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[4] The limits on the State's right to appeal in 1986 when *No. 1-162* was decided were substantially the same as they are today. *See State v. Manck*, 385 Md. 581, 589-97 (2005) (discussing the history of the State's right to appeal).

[5] The materials contained within Appellant's Appendix were previously provided as attachments to the petition for writ of certiorari and are reproduced in the Appendix for the convenience of the Court.

*State Prosecutor v. Judicial Watch, Inc.*, 356 Md. 118, 125 (1999). In fact, appealability is more than just a matter of convenience, it is a question of proper jurisdiction. "[A]n order of a circuit court must be appealable in order to confer jurisdiction upon an appellate court, and this jurisdictional issue, if noticed by an appellate court, will be addressed sua sponte." *Johnson v. Johnson*, 423 Md. 602, 605-06 (2011).

Moreover, as this Court has recognized, "parties cannot agree to the exercise of [] appellate jurisdiction." *Miller & Smith at Quercus, LLC v. Casey PMN, LLC*, 412 Md. 230, 240 (2010). The reviewing court is "obligated" to address the issue of appealability where it is in doubt. *Id.* at 241 (quoting *Liberty Mut. Ins. Co. v. Wetzel*, 424 U.S. 737, 740 (1976).

It can be inferred from this Court's silence in *No. 1-162* that the right of the State to appeal the denial of a motion to compel witness testimony did not give this Court pause. Nor should it have. The denial of a motion to compel is a final order that is collateral to, but does not arise from, a criminal case. As such, it is appealable under Courts and Judicial Proceedings § 12-301.

1. *The State's right to appeal in this case is not limited by Courts & Judicial Proceedings § 12-302 because the State does not seek to appeal from a criminal case*

This Court has held that "[t]he right to appeal in this State is wholly statutory" and is set forth in §§ 12-101 *et. seq.* of the Courts and Judicial

Proceedings Article. *Pack Shack, Inc. v. Howard Co.*, 371 Md. 243, 247 (2002). "The statutory scheme is structured to confer a broad, general right of appeal that subsequently is limited by enumerated 'exceptions.'" *Id.* at 249. "The general right of appeal is contained in § 12-301," while "[§] 12-302 contains the exceptions, or limitations, on that general right of appeal." *Id.* at 250. Section 12-301 provides:

> Except as provided in § 12-302 of this subtitle, a party may appeal from a final judgment entered in a civil or criminal case by a circuit court. The right of appeal exists from a final judgment entered by a court in the exercise of original, special, limited, statutory jurisdiction, unless in a particular case the right of appeal is expressly denied by law. In a criminal case, the defendant may appeal even though imposition or execution of sentence has been suspended. In a civil case, a plaintiff who has accepted a remittitur may cross-appeal from the final judgment.

Md. Code Ann., Cts. & Jud. Proc. § 12-301 (2015).

Section 12-302(c) limits the State's right to appeal "[i]n a criminal case," to only a few specific circumstances. Md. Code Ann., Cts. & Jud. Proc. § 12-302. "Unless the issue presented may properly be categorized as one of the actions enumerated in [§ 12-302(c)], the State has no power to seek appellate review" in a criminal case. *State v. Manck*, 385 Md. 581, 597-98 (2005). On the other hand, the only limitation §12-302 places on the right to appeal from a final judgment in a civil case is when the judgment is from a "decision of the judges of a circuit court sitting in banc[.]" Cts. & Jud. Proc. Art. § 12-302(d) (2015); *see also State v. Hicks*, 139 Md. App. 1, 6 (2001) (remanded in

light of *Skok v. State*, 361 Md. 52 (2000), and holding that in a "civil proceeding," like a coram nobis, "the State is not limited to the circumstances described in CJ § 12-302(c).").

There is no question that the State can be a party in both civil and criminal cases, nor that the State has the same right to appeal from final judgments in civil cases as any other party. *See State v. WBAL-TV*, 187 Md. App. 135, 146 (2009) ("The State . . . has the same right under CJ § 12-301 as other parties to appeal in a civil proceeding."); *Seward v. State*, ___ Md. ___, No. 12, Sept. Term, 2015 (filed Jan. 27, 2016) (slip op. at 11 n.3) (coram nobis actions are appealable by the State because they are final judgments in civil actions).

Section 12-101(e) defines the terms "'[c]riminal action,' 'criminal case,' 'criminal cause,' or 'criminal proceeding'" for purposes of Title 12. A "criminal action, criminal case, etc." "includes a case charging violation of motor vehicle or traffic laws and a case charging violation of a rule or regulation if a criminal penalty may be incurred." Md. Code Ann., Cts. & Jud. Proc. § 12-101(e) (2015). While this definition is not comprehensive, the types of cases identified as criminal are those matters "charging a violation" of a law for which "a criminal penalty may be incurred." Similarly, § 12-301 specifies that "[i]n a criminal case, the defendant may appeal even though imposition

or execution of sentence has been suspended[,]" thus contemplating that a criminal case will have a defendant and the possibility of a criminal sanction.

Likewise, § 12-302(c) refers to "a criminal case" as involving an "indictment, information, presentment, or inquisition," § 12-302(c)(2); a case with a "sentence specifically mandated" by law, § 12-302(c)(3); "a case involving a crime of violence," § 12-302(c)(4)(i); and a case brought for appeal "before jeopardy attaches to the defendant," § 12-302(c)(4)(ii).

A request for an order compelling a witness to provide immunized testimony has none of the hallmarks of a criminal case. The State's § 9-123 request did not charge Porter with violating a law, or a rule or regulation with a criminal penalty.[6] And the State's appeal from the improper denial of

[6] While it is true that a witness who refuses to comply with a § 9-123 order will, upon the prosecutor's written motion, be found in direct contempt of court, that does not transform the request for a § 9-123 order into a criminal case for three reasons. First, direct contempt can be either civil or criminal, *see State v. Roll and Scholl*, 267 Md. 714, 728 (1973), and § 9-123 does not specify which type of proceedings the trial court must institute. Second, unless a court summarily imposes sanctions for direct contempt, Rules 15-204 and 15-205 mandate that criminal contempt "shall be docketed as a separate criminal action," and not in the action where the contempt occurred. Md. Rules 15-204, 15-205 (2016). Third, appeals from contempt proceedings are treated as entirely separate from the underlying case. Appeals in contempt cases are governed by Courts and Judicial Proceedings, § 12-304, which allows for a person adjudged in contempt to appeal from that adjudication "whether or not a party to the action" attached to the contempt proceedings.

the request is not an appeal from a criminal case simply because the request arose in the context of the State's criminal prosecution of Edward Rice.

Indeed, both this Court and the Court of Special Appeals have upheld the State's ability to seek appellate review under § 12-301 of certain judgments arising from a court exercising criminal jurisdiction but resolving a procedural or substantive controversy collateral to and separate from the controversy embodied in the State's criminal case against the defendant.

One such appeal was *In re Special Investigation No. 231*, 295 Md. 366 (1983), which involved the State's appeal from the denial of a motion to disqualify an attorney from jointly representing four persons subpoenaed to testify before a grand jury. In allowing the appeal to proceed despite the appellee's argument that it was not statutorily authorized, this Court reasoned:

> With certain limited exceptions not applicable to this case, appeals from circuit courts are limited to ones from final judgments by [§ 12-301.] We have consistently held that a final judgment from which an appeal will lie is one which settles the rights of the parties or concludes the cause. In this case the proceeding consisted only of a motion to disqualify the attorney in question. Once the motion was denied there was nothing more to be done in this particular case. There was nothing else before the court. There was nothing pending. Hence, we conclude that the order of the trial judge here settled the rights of the parties and terminated the cause. Thus, it was a final judgment.

*Id*. at 370 (internal citations removed). Likewise, this Court's decision in *In re Special Investigation No. 236*, 295 Md. 573 (1983), allowed the State to

appeal from a circuit court's grant of a motion to obtain the return of financial records from a grand jury. Relying on *No. 231*, the Court concluded that the circuit court's action constituted an appealable final order under § 12-301 because "[o]nce that motion was granted there was nothing more to be done in this particular case," and "[i]t thus settled the rights of the parties and terminated the cause." *Id.* at 575.

Though the Court did not specifically label these appeals as "civil," they must have been in order to proceed under § 12-301. In fact, in *St. Joseph Med. Ctr., Inc. v. Cardiac Surgery Associates, P.A.*, 392 Md. 75, 90 (2006), this Court cited *No. 231* and *In re Special Investigations No. 185*, 293 Md. 652 (1982), as supporting the proposition that "a trial court discovery or similar order" can be a final judgment in the appropriate circumstances. Specifically, "where the aggrieved appellant . . . is not a party to the underlying litigation in the trial court, or where there is no underlying action in the trial court but may be an underlying administrative or investigatory proceeding, Maryland law permits the aggrieved appellant to appeal the order because, analytically, it is a final judgment with respect to that appellant." *Id.*

The circuit court's denial of the § 9-123 order in this case is directly analogous to the types of "trial court discovery or similar order[s]" discussed in the grand jury cases and cited in *St. Joseph*. While, unlike the grand jury cases, in this case there is an underlying collateral action in the trial court,

there is no principled reason why that should affect the State's right to appeal. If, as this Court said in *No. 231* and *No. 236* and did not dispute in *No. 1-162*, the State has the right to appeal the denial of a final civil order issued during the grand jury investigation stage of a related criminal investigation, there is no reason why that same civil order should not be appealable once criminal proceedings (against a separate defendant) are instituted.

There is, moreover, precedent for finding proceedings filed within a criminal case to nevertheless be civil in nature. The Court of Special Appeals' reasoning in *State v. Strickland*, 42 Md. App. 357, 359 (1979), is instructive on this point. There, the State appealed a circuit court's order returning property to a criminal defendant. In considering whether the State could appeal the order, which had been entered in the defendant's criminal case, the Court of Special Appeals said: "It does not follow . . . that simply because a motion is filed in a court that exercises criminal jurisdiction, that the proceeding arising from the motion must, *ipso facto*, be criminal in nature, *e.g.* civil contempt." *Id.* at 359. The court concluded that even though the defendant's motion seeking return of the property, and the court's order granting that motion, was filed in a criminal case, "that aspect of the case is civil, not criminal, and it matters not one whit that the money was

introduced as evidence in a trial for a violation of a criminal statute." *Id.* at 360.

Similarly, in *State v. WBAL-TV*, 187 Md. App. 135 (2009), the Court of Special Appeals applied *Strickland*'s reasoning to permit the State to appeal from the granting of a motion for press intervention and trial exhibit access in a criminal case. The Court held that "[t]he State . . . has the same right under CJ § 12-301 as other parties to appeal in a civil proceeding." *Id.* at 146. "Although the Motion for Access was filed in the criminal proceeding, the relief sought was civil in nature and could have been sought in a separate civil action," meaning "the State's right to appeal in [that] case was not limited by CJ § 12-302(c)." *Id.* at 149 (quotations omitted.).

The relief sought by the State here is the circuit court's compliance with its ministerial duties to issue an order granting Porter immunity and compelling him to testify. The dispute between Porter and the State is entirely collateral to the underlying criminal case between the State and Rice. In fact, as discussed *supra* in Section I (A), Rice lacked standing to object to the issuance of an order compelling Porter's testimony, and lacks standing to defend this appeal. Indeed, the circuit court acknowledged as much when it issued the order compelling Porter's testimony in White's trial without White or her defense counsel present. When White objected, the court said that it did not believe that White "had a right to make any

arguments at all" at this stage, because the concerns she voiced about Porter's testimony were "a trial issue." (E. 81-83).

2. *The denial of the State's motion to compel is a final judgment*

Reflecting "Maryland's long established policy against piecemeal appeals," § 12-301 only allows a party "to seek appeal when there is entry of a final judgment." *Waterkeeper Alliance, Inc. v. Md. Dept. of Agric.*, 439 Md. 262, 278 (2014). "An order will constitute a final judgment if the following conditions are satisfied: (1) it must be intended by the court as an unqualified, final disposition of the matter in controversy; (2) it must adjudicate or complete the adjudication of all claims against all parties; and (3) the clerk must make a proper record of it on the docket." *Id*. (internal quotations omitted). A "claim" for purposes of this test "is defined as a substantive cause of action that encompasses all rights arising from common operative facts." *Id*. at 279 (quotations omitted). Stated differently, "the judgment must be so final as to determine and conclude rights involved, or deny the appellant means of further prosecuting or defending his rights and interests in the subject matter of the proceeding." *Sigma Reproductive Health Center v. State*, 297 Md. 660, 665 (1983) (internal quotations omitted). Important to this determination is whether "any further order is to be issued

or whether any further action is to be taken in the case." *Douglas v. State*, 423 Md. 156, 171 (2011).

The circuit court's denial of the State's motion to compel under § 9-123 satisfies the final judgment test. The circuit court's order denying the motion: (1) rendered an unqualified, final disposition of the question of whether the State can compel Porter to testify against Rice; (2) adjudicated all claims between the State and Porter regarding his immunized, compelled testimony in the case captioned *State of Maryland v. Brian Rice*; and (3) has been docketed by the clerk of the court. (E. 245). The circuit court's order concluded and disposed of all claims in the immunity action in their entirety, along with the rights and liabilities of the proper parties to that separate immunity action, *i.e.* the State and Porter. *See also Fred W. Allnutt, Inc. v. Comm'r of Labor & Indus.*, 289 Md. 35, 41 (1980) (where district court issued an administrative search warrant and denied a motion to quash, that motion was a final judgment because "nothing remained before the court").

The circuit court's denial of the State's § 9-123 motion to compel was a final judgment issued in a civil proceeding collateral to the underlying criminal case against Brian Rice. As such, it is appealable as a final judgment under § 12-301.

### C. The denial of the motion to compel is appealable under the collateral order doctrine

Alternatively, to the extent this Court does not believe that the present appeal stems from a final, civil judgment cognizable under § 12-301, the denial of a motion to compel immunized witness testimony is also appealable by the State under a narrow exception to the final judgment rule. Maryland's appellate courts "have long recognized . . . a narrow class of orders, referred to as collateral orders, which are offshoots of the principle litigation in which they are issued and which are immediately appealable as 'final judgments' without regard to the posture of the case." *Ehrlich v. Grove*, 396 Md. 550, 561-62 (2007). As this Court has explained:

> The collateral order doctrine is based upon a judicially created fiction, under which certain interlocutory orders are considered to be final judgments, even though such orders clearly are not final judgments. The creation of the collateral order doctrine was based on the perceived necessity, in a very few extraordinary situations, for immediate appellate review. […] It is applicable to a small class of cases in which the interlocutory order sought to be reviewed (1) conclusively determines the disputed question, (2) resolves an important issue, (3) resolves an issue that is completely separate from the merits of the action, *and* (4) would be effectively unreviewable if the appeal had to await the entry of a final judgment.

*Id.* at 562-63 (internal citations, quotation marks, and ellipses omitted) (emphasis in original).

This Court has invoked the collateral order doctrine in situations where, for example, a discovery order is directed at "high level government

decision makers" or where "separation of powers principles are implicated." *Id*. at 562-64. The *Ehrlich* Court held that a discovery order directing the Governor of Maryland to produce thousands of documents from his gubernatorial transition team as part of a wrongful termination suit was immediately appealable under the collateral order doctrine. The Court also invoked the doctrine in *Public Service Comm'n. v. Patuxent Valley*, 300 Md. 200 (1984), to review a circuit court's order to depose public service commissioners about their reasons for granting PEPCO permission to build a high-voltage power line. Likewise, in *Montgomery County v. Stevens*, 337 Md. 471 (1995), this Court used the doctrine to review a trial court's order to depose a chief of police about his reasons for administratively punishing a police officer under the Law Enforcement Officers' Bill of Rights.

Here, the circuit court's denial of the State's motion to compel meets the elements of the collateral order doctrine in that the lower court's order (1) conclusively determined the disputed question of whether the State may compel Porter to testify as a witness; (2) resolved the important separation of powers issue of whether a circuit court has any discretion when faced with a statutorily compliant request for an order to compel under § 9-123; (3) resolved a witness immunity action that is completely separate from the merits of the State's charges against the underlying defendant; and (4) would be effectively unreviewable if the appeal had to await the final resolution of

the underlying defendant's criminal trial because the conclusion of the underlying trial (held without Porter's compelled testimony) would render the denial of the motion to compel Porter's testimony moot.[7]

### D. The denial of the motion to compel is appealable through an application for an extraordinary writ

Although the State does not contend it necessary to reach the merits of the State's appeal, this Court's decision in *Manck* specifically left open the possibility of issuing a prerogatory writ in aid of the Court's appellate jurisdiction "in the proper circumstances." 385 Md. at 601, n. 14. While *Manck* itself foreclosed the use of prerogatory writs issued "in aid of appellate jurisdiction in circumstances of a criminal case where appellate review could *not* be exercised," *id*. at 600 (emphasis supplied), because the present appeal involves a judgment that is civil in nature and separate from the criminal

[7] With regard to the second prong of the collateral review doctrine, it is worth noting that in *No. 1-162*, this Court held that interpreting a prior immunity statute was important enough to the public interest that it addressed the merits of the State's case even though the issue was moot. 307 Md. at 682-83. The Court noted that "the public has an interest in the effective investigation and prosecution of violations of this State's criminal laws[,]" and "limiting the scope of immunity granted by [the former immunity statute] . . . would severely hamper the State's ability to prosecute" cases. *Id*. The issue presented in this case is equally important.

case serving as its appellate caption, a prerogatory writ could be issued in this case to correct the circuit court's actions.

As this Court explained, prerogatory writs "are used to prevent disorder, from a failure of justice, where the law has established no specific remedy, and where in justice and good government there ought to be one." *Id*. at 587-88. If ever there were a case justifying the use of such an extraordinary remedy, the circuit court's actions here would be that case. In a high-profile case closely watched by the public, the lower court refused to perform its ministerial duties in the face of a proper request by members of the Executive Branch. This Court could issue a prerogatory writ here without damage to *Manck* while at the same time preventing further damage to the separation of power principles that are vital to our government's effective operation.[8]

[8] This Court should not resort to "considered dicta" to guide the circuit court in this case, and circuit courts throughout the state, on this crucial issue. *See Hudson v. Hous. Auth. of Baltimore City*, 402 Md. 18, 22 (2007) (reaching the merits of an unappealable order in "considered dicta"). If this Court finds, notwithstanding the State's analysis, that *Manck* imposes an impenetrable barrier to the State's ability to appeal the lower court's order, then the State contends that *Manck* was wrongly decided to the extent it would allow the State no remedy here.

## II.

## COURTS AND JUDICIAL PROCEEDINGS ARTICLE, § 9-123 REQUIRES A COURT TO ORDER COMPELLED, IMMUNIZED WITNESS TESTIMONY AFTER VERIFYING THAT THE STATUTORY PLEADING REQUIREMENTS OF THE PROSECUTOR'S MOTION TO COMPEL HAVE BEEN MET.

The circuit court's denial of the State's motion to compel Porter's testimony pursuant to § 9-123 was error. It violated the separation of powers doctrine by subjecting prosecutorial discretion to a form of judicial review that asks whether a trial court agrees with the lawful use of that discretion. If adopted by other trial courts, it threatens to permit every criminal defendant, every grand jury witness, and every grand jury target to file objections to a prosecutor's decision to immunize a particular witness and to litigate whether such immunity *is really in the public interest*.

All of these problems stemmed from the lower court's flawed and inconsistent application of § 9-123. The circuit court acknowledged when it granted the State's motions to compel Porter to testify in the trials of Goodson and White, that it viewed the judicial role as ministerial — it was to verify the prosecutor's averred determinations and then issue the immunity order as the statute mandates. (E. 136).

When the State made the identical § 9-123 request in Rice's case, however, the court probed the State's Attorney's judgment for possible

ulterior motives, made findings of fact about matters far outside the averments in the motion to compel, and exercised its own discretion and judgment about what the public interest may necessitate. (E. 91-140). In denying the motion to compel, the court found no fault with the technical aspects of the prosecutor's request — there was no allegation that the motion failed to comply with § 9-123. (E. 136-140). Rather, the court found fault in the manner in which the State's Attorney exercised her discretion to offer a witness immunity in exchange for compelled testimony. (E. 137-140).

Moreover, when reviewing the State's Attorney's discretionary decision, the circuit court did not consider what the statute requires the State's Attorney to determine: whether Porter's testimony may be necessary to the public interest. Instead, the court's criticism was trained on what it perceived as the State's ultimate goal of "getting around" the denial of its postponement request. (E. 140). And while, at the hearing on the motion to compel, the court found that the State had a "dual purpose" in seeking the order, namely to get Porter's testimony *and* to "get the postponement," (E. 139), in the subsequent written order the court expressly said that it was not opining on the State's public interest determination, but rather denied the motion because it found that the request was a "subterfuge" to avoid continuing with the trials. (E. 214).

The circuit court has no right to deny a motion to compel under § 9-123 because the court does not like the State's "public interest" determination, and certainly has no right to deny a motion to compel because, while it does not quarrel with the State's "public interest" determination, it questions the State's motives. The circuit court in this case had it right the first time. A circuit court must issue an order compelling a witness's testimony when faced with a proper § 9-123 request. The denial of the motion to compel was error.

When this Court reviews a lower court's order that "involves an interpretation and application of Maryland statutory and case law, [the] Court must determine whether the lower court's conclusions are 'legally correct' under a *de novo* standard of review." *Walter v. Gunter*, 367 Md. 386, 392 (2002). "The cardinal rule of statutory interpretation is to ascertain and effectuate the real and actual intent of the legislature . . . by looking, first, to the plain language of the statute, on the tacit theory that the Legislature is presumed to have meant what it said and said what it meant." *Haile v. State*, 431 Md. 448, 466 (2013) (internal citations omitted). "If there is no ambiguity in that language," "the inquiry as to legislative intent ends . . . ." *Id.* at 466-67. "[A]s a confirmatory process" done "in the interest of completeness," the Court will also sometimes "look at the purpose of the statute and compare the result obtained by use of its plain language with that which results when the

purpose of the statute is taken into account." *Mayor & City Council of Baltimore v. Chase*, 360 Md. 121, 131 (2000) (internal citations omitted).

By its plain language, § 9-123 leaves no ambiguity about the respective roles of the prosecutor and the court—the prosecutor makes the discretionary determination of the public's interest and then requests immunized testimony, and the judge determines only the request's accordance with the statute and then orders the immunized testimony. In relevant part, § 9-123 states:

> (c) Order requiring testimony. --
>
> (1) If an individual has been, or may be, called to testify or provide other information in a criminal prosecution or a proceeding before a grand jury of the State, *the court in which the proceeding is or may be held shall issue*, *on the request of the prosecutor made in accordance with subsection (d) of this section, an order* requiring the individual to give testimony or provide other information which the individual has refused to give or provide on the basis of the individual's privilege against self-incrimination.
>
> (2) The order shall have the effect provided under subsection (b) of this section.
>
> (d) Prerequisites for order. -- If a prosecutor seeks to compel an individual to testify or provide other information, the prosecutor shall request, by written motion, the court to issue an order under subsection (c) of this section *when the prosecutor determines* that:
>
> (1) The testimony or other information from the individual may be necessary to the public interest; and
>
> (2) The individual has refused or is likely to refuse to testify or provide other information on the basis of the individual's privilege against self-incrimination.

Md. Code Ann., Cts. & Jud. Proc. § 9-123(c)-(d) (2015) (emphasis added). Nowhere does this language permit the circuit court to inquire into the prosecutor's decision-making, devise its own factors relevant to the public interest determination, or allow the subject of the immunity request or the underlying defendant to object to the manner in which the prosecutor has exercised her discretion. The court has no discretion to deny a prosecutor's immunity request properly pled under subsection (d).

The history of § 9-123 confirms that this plain language achieves precisely the result that the legislature intended. As described by the General Assembly, the immunity statute enacted with House Bill 1311 was intended:

> FOR the purpose of authorizing certain prosecutors in certain circumstances to file a written motion for a court order compelling a witness to testify, produce evidence, or provide other information; specifying the effect of the order; prohibiting testimony or other evidence compelled under the order or certain information derived from the compelled testimony or evidence from being used against the witness except under certain circumstances; *requiring a court under certain circumstances to issue an order requiring a witness to testify or provide other information upon request by a prosecutor*; establishing procedures for enforcement of an order to testify or provide other information; defining certain terms; and generally relating to immunity for witnesses in proceedings before a court or grand jury.

1989 Md. Laws, Ch. 289 (H.B. 1311) (emphasis added) (App. 34-35). A formal Position Paper contained within the legislative history bill file

for H.B. 1311 similarly describes the procedural mechanism of the immunity statute:

> By far the most significant changes provided by the proposed statute are procedural. Immunity would no longer be conferred automatically or accidentally, but rather only through court order. To ensure coordinated, responsible requests for immunity, the decision to seek a court order requires approval by the State's Attorney, Attorney General, or State Prosecutor. The State's Attorney, Attorney General, or State Prosecutor will thereby have central control and ultimate responsibility for the issuance of grants of immunity.
>
> *The judicial role under this statute is ministerial. The judge verifies that:*
>
> > *1. The State's Attorney, Attorney General, or State Prosecutor has approved the request for an immunity order;*
> >
> > *2. The witness has refused or is likely to refuse to testify;*
> >
> > *3. The prosecutor has determined that the witness's testimony may be necessary to be the public interest [sic].*
>
> *Once the judge concludes these three requirements are met, he issues a court order compelling testimony and immunizing the witness.*
>
> *The Judge will not himself determine whether the witness's testimony may be necessary to the public interest. To do so would transform the Judge into a prosecutor and require him to make delicate prosecutorial judgments which are inappropriate. Furthermore, a particular immunity grant may be a very small aspect to a large scale investigation, making it impossible for the judge to make any meaningful evaluation of the public interest.*

Position Paper on HB 1311, *Witness Immunity*, 8-9, 1989 Reg. Sess. (1989) (App. 49-50).[9] (emphasis added).

Similarly, the legislature's Division of Fiscal Research submitted a Fiscal Note for House Bill 1311, summarizing the proposed immunity statute as follows:

> SUMMARY OF LEGISLATION: This amended bill provides for the granting of 'use' immunity to witnesses compelled to testify regarding a criminal matter. Specifically, if a witness refuses to testify on a criminal matter, on the grounds of privilege against self-incrimination, the Court may compel the witness to testify or provide information by issuing a court order to that effect. *The court order would only be granted upon the written request of the prosecutor, who has found that the testimony or information of a witness may be necessary to the public interest, and that the testimony or information would not be forthcoming absent the order.*
>
> Criminal prosecution would be allowed against the witness for the crimes that were testified about; such testimony, however, would not be 'used' against the witness in any criminal case except those involving the failure to comply with the Court's order.

Md. Gen. Assembly Div. of Fiscal Research, *Fiscal Note Revised for H.B. 1311*, 1989 Reg. Sess. (Apr. 4, 1989) (emphasis added) (App. 51-52).

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[9] The Position Paper bears no author but was contained within the microfilm legislative bill history for HB 1311 on file at the Library of the Department of Legislative Services in Annapolis.

The statute's legislative history also suggests that another ready source of guidance in construing § 9-123's procedural mechanism lies in federal law. As the Position Paper on HB 1311 correctly noted at the time § 9-123 was being considered, "[t]he proposed statute is based substantially on the federal immunity statutes: 18 U.S.C. §§ 6001-04 (1985)." *Position Paper, supra* at 2. That federal statutory scheme provides in relevant part:

> § 6003. Court and grand jury proceedings
>
> (a) In the case of any individual who has been or may be called to testify or provide other information at any proceeding before or ancillary to a court of the United States or a grand jury of the United States, the United States district court for the judicial district in which the proceeding is or may be held *shall issue*, in accordance with subsection (b) of this section, *upon the request of the United States attorney for such district*, an order requiring such individual to give testimony or provide other information which he refuses to give or provide on the basis of his privilege against self-incrimination, such order to become effective as provided in section 6002 of this title [18 USCS § 6002].
>
> (b) *A United States attorney may*, with the approval of the Attorney General, the Deputy Attorney General, the Associate Attorney General or any designated Assistant Attorney General or Deputy Assistant Attorney General, *request an order under subsection (a) of this section when in his judgment—*
>
> > *(1) the testimony or other information from such individual may be necessary to the public interest*; and
> >
> > (2) such individual has refused or is likely to refuse to testify or provide other information on the basis of his privilege against self-incrimination.

18 U.S.C. § 6003 (emphasis added). This provision uses a materially identical procedure as that outlined in § 9-123, and federal courts have amassed a substantial body of law construing this provision's distribution of power between the court and the prosecutor.

The foundational federal precedent is the Supreme Court's construction of a predecessor immunity statute in *Ullmann v. United States*, 350 U.S. 422 (1956). There the Court considered whether a witness could properly request that a judge deny an immunity application that otherwise comported with the statutory pleading prerequisites. *Id.* at 423-424. The Government argued "that the court has no discretion to determine whether the public interest would best be served by exchanging immunity from prosecution for testimony [and] that its only function is to order a witness to testify if it determines that the case is within the framework of the statute." *Id.* at 431. The Supreme Court agreed, holding that "[a] fair reading of [the immunity statute] *does not indicate that the district judge has any discretion to deny the order on the ground that the public interest does not warrant it*"; rather, the court's "duty under [the statute] is *only to ascertain whether the statutory requirements are complied with* by [prosecutors]." *Id.* at 432-34 (emphasis supplied).

After Congress enacted the procedurally similar present-day immunity scheme, the federal Circuit Courts of Appeal have uniformly construed those

provisions in accordance with *Ullmann*. For example, in *In re Kilgo*, 484 F.2d 1215 (4th Cir. 1973), a witness who was held in contempt after refusing to testify despite being compelled under the federal immunity statute claimed, in part, "that the immunity order, on which the contempt citation rest[ed], [was] invalid [because] neither he nor the court was apprised of the basis of the United States Attorney's conclusion that his testimony was necessary to the public interest [.]" *Id*. at 1217. The Fourth Circuit found no merit in this contention, explaining that because the immunity statute "does not authorize the district court to review the United States attorney's judgment that the testimony of the witness may be necessary to the public interest, no evidence pertaining to this judgment need be offered." *Id*. at 1218-19.

Similarly, the Third Circuit described the procedural operation of the federal immunity statutes in *In re Grand Jury Investigation*, 486 F.2d 1013, 1016 (3d Cir. 1973), saying, "[u]nder the language of [18 U.S.C. § 6003] the judge is required to issue the order when it is properly requested by the United States Attorney," and "[h]e is given no discretion to deny it." Likewise, the First Circuit in *In re Lochiatto*, 497 F.2d 803, 805, n. 2 (1st Cir. 1974), construed § 6003 in accordance with *Ullmann*, saying that the modern statute "does not indicate that the district judge has any discretion to deny the order on the ground that the public interest does not warrant it." *Accord United States v. Levya*, 513 F.2d 774, 776 (5th Cir. 1975) (holding that the

witness was not entitled to notice and a hearing before an immunity order is granted and construing that "since the court's duties in granting the requested order are largely ministerial, when the order is properly requested the judge has no discretion to deny it."); *Ryan v. Commissioner*, 568 F.2d 531, 541 (7th Cir. 1977) (rejecting the claim that an immunity order was invalid because the record "did not contain facts showing that the prosecutor had any basis for making the judgment that the grant of immunity would be in the public interest" and explaining that "[s]ince that judgment is entirely a matter for the executive branch, unreviewable by a court, there is no need for the record to contain any facts supporting the decision of the United States Attorney"); *Urasaki v. United States District Court*, 504 F.2d 513, 514 (9th Cir. 1974) ("In passing upon an immunity application, the district court is confined to an examination of the application and the documents accompanying it for the purpose only of deciding whether or not the application meets the procedural and substantive requirements of the authorizing statute. […] Adversary procedure is not a part of the legislative scheme in connection with the district court's performance of its limited duties in granting or denying the application for immunity.").

In addition to this guidance from the federal courts, the New Jersey Supreme Court has squarely considered the propriety of the judiciary questioning a prosecutor's decision that there exists a public need to grant

immunity to a witness. In *In re Tuso*, 376 A.2d 895 (N.J. 1977), the appellant was a lawyer who had been subpoenaed to testify before a grand jury. When the lawyer asserted his privilege against self-incrimination, the New Jersey Attorney General petitioned the court to compel his testimony under New Jersey's use and derivative use immunity statute, which provides that upon such a petition "the court shall so order and that person shall comply with the order." *Id*. at 896. Before the court could rule on that petition, a different state grand jury indicted the lawyer on charges involving the same subject matter as the testimony that the Attorney General sought to compel. *Id*.

When the court nevertheless granted the petition and ordered the lawyer to testify, the lawyer appealed. New Jersey's intermediate appellate court held that the order compelling the lawyer to testify was improper because, the court concluded, "the State did not need the information it was seeking[;]" it had sufficient evidence to get an indictment without the compelled testimony. *Id.* While the court recognized that a trial court typically does not have the right to deny a properly requested order, the court found an exception where the order sought was "'basically unfair, inequitable or totally unnecessary.'" *Id*. at 896.

New Jersey's Supreme Court rejected the exception carved out by the intermediate appellate court and reversed. Looking at the plain language of the statute, the court held that "it delegates the function of determining need

in such a situation to the Attorney General (or prosecutor, with the approval of the Attorney General), not the court[.]" *Id.* at 896. Upon a proper request, the court held, "the statute directs that the [lower] court 'shall' order the witness to testify." *Id.*

In enacting § 9-123, it was the clear intent of the legislature that the Executive Branch, not the Judiciary, have the discretion to determine whether a particular witness's testimony may be necessary to the public interest. Courts interpreting similar statutes, including the federal statute on which § 9-123 was based, agree.

The circuit court's attempt to limit and appropriate to itself the prosecutor's statutorily vested immunity authority impermissibly undermined the State's case in a pending proceeding, violated Maryland's separation of powers principles, and, if allowed to stand, threatens to impede criminal prosecutions and investigations throughout the State. The circuit court's judgment should be reversed.

## CONCLUSION

The State respectfully asks the Court to reverse the judgment of the Circuit Court for Baltimore City and to direct the court to issue an order compelling Porter to testify.

Dated: February 24, 2016

Respectfully submitted,

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

This brief complies with the font, line spacing, and margin requirements of Md. Rule 8-112 and contains 9928 words, excluding the parts exempted from the word count by Md. Rule 8-503.

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PERTINENT PROVISIONS

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|---|---|
| STATE OF MARYLAND, | IN THE |
| Appellant, | COURT OF APPEALS |
| v. | OF MARYLAND |
| EDWARD NERO, | September Term, 2015 |
| Appellee. | No. 660 |

## CERTIFICATE OF SERVICE

I certify that on this day, February 24, 2016, three copies of the Brief of Appellant were delivered electronically and mailed by first-class U.S. Postal Service, postage prepaid, to Gary Proctor, 8 Mulberry Street, Baltimore, Maryland 21202; Marc L. Zayon, 201 N. Charles Street, Suite 1700, Baltimore, Maryland 21201; and Joseph Murtha, 1301 York Road, Suite 200, Lutherville, Maryland 21093.

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