

State v. Nero, Miller, Rice, White
January 20, 2016 BEFORE JUDGE BARRY G. WILLIAMS

1 terms of right now, we're a day short by my calculations,
2 although I could be off, we're a day short of being eight
3 months out from the indictment. That is not an
4 extraordinary long time. To the contrary, it's a pretty
5 short time in this court for cases of this magnitude.

6 And so I understand the Defendants are making
7 an objection, and I understand that that's their right to
8 make an objection. But I don't think that they meet the
9 four-part test for a speedy trial violation at this
10 point, and I doubt very seriously that they will be able
11 to when the Court promptly schedules the cases in for
12 trial, if the Court were to grant the relief we request,
13 and the Court of Special Appeals speaks to the issue.

14 THE COURT: Thank you.

15 MR. SCHATZOW: Thank you, Your Honor.

16 THE COURT: All right. This Court is very clear
17 that the State has broad power to seek immunity, and when
18 the request is pursuant to Maryland Courts and Judicial
19 Proceedings 9-123, again, as I read a number of times,
20 and the prosecutor determines that the testimony may be
21 necessary to the public interest, the Court shall issue
22 an order requiring the individual to give testimony.
23 Certainly this Court found in the White case and the
24 Goodson case that it was appropriate based on the proffer
25 of the State.

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1 The State effectively argues that they don't
2 believe they're required to proffer anything. Of course,
3 that's for another day for someone to determine whether
4 it's a requirement or not. The Court of Special Appeals
5 will make it clear. The Court of Appeals or Supreme
6 Court will make it clear whether there's a requirement
7 for the State to proffer to the Court what the
8 information is that they're using. Or is it simply a
9 matter of the Court being a rubber stamp once the
10 Executive Branch says we find that it is necessary to the
11 public interest that the Court is required to grant
12 immunity?

13 I don't believe that it's that simple. I think
14 under the circumstances presented in the White and
15 Goodson matter, although obviously people disagree with
16 the Court, based on the way it was presented I do believe
17 it was appropriate. This case is a little different and
18 may get to the same result, may not. But this is
19 different because at no point until January 13th did the
20 State make it clear that Miller, Nero and Rice would be
21 cases where Mr. Porter's testimony would be needed.

22 Mr. Schatzow indicates that they reassessed
23 things, and I believe that actually happened, that things
24 were reassessed, and they made a determination. But I
25 also do note that the request for immunity for Officer

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1 Porter is directly tied to the State's request to
2 postpone the matters until they can get a more favorable
3 outcome which is what both sides want. Both sides want a
4 favorable outcome to each of the scenarios that are
5 presented for Porter, Goodson, White, Miller, Nero and
6 Rice. So all sides are doing what they believe is
7 appropriate.

8 This Court, looking at the evidence that the
9 State has proffered, noting that it's for two issues, for
10 the seatbelt issue for Nero, Miller and Rice and for the
11 place of injury. I do note that in the January 13th
12 letter, the State referenced that is important -- also
13 important is Porter's testimony.

14 Now one could say we're splitting hairs. Is
15 testimony trial testimony, or is testimony, a statement?
16 Either way, I have taken the time to go through Mr.
17 Porter's statement and to go through Mr. Porter's trial
18 testimony. And as the State pointed out on page 39 of
19 his statement, Mr. Porter indicates, "I never saw them
20 seatbelt him again. But again" -- to page 40, says, "But
21 again, I didn't watch the entire ordeal." To allow the
22 State to put that testimony in during a trial against
23 Nero, Miller or Rice certainly would be possibly
24 problematic with 5-403, unfair prejudice, confusion of
25 the issues, misleading the jury or consideration of undue

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1 delay.

2 Undue delay in relationship to the time when
3 these cases are tried, I don't know. We have some trial
4 scheduled for February, that's for Nero. For Miller and
5 Rice, we are scheduled for March, and I do acknowledge
6 that the Court of Special Appeals will not come back with
7 its decision until obviously sometime after the arguments
8 which are March 4th. So I don't know when those cases
9 will come back.

10 But the State, in the manner in which it's
11 seeking to immunize Mr. Porter for Miller, Nero and Rice,
12 it does seem to this Court, candidly speaking, that it's
13 for a dual purpose: to get the postponement that they
14 want, to get around this Court's ruling that these cases
15 need to continue and possibly for the reason stated, that
16 Mr. Porter's testimony is relevant to the seatbelt issue
17 and relevant to the place of injury.

18 Based on the proffer that's presented by the
19 State and having gone through Mr. Porter's statement and
20 Mr. Porter's trial testimony, I don't necessarily see the
21 seatbelt issue playing out the way the State envisions
22 it. Now does that mean that I can't grant them the
23 request? No. It doesn't mean that. But of course, I
24 have to assess it because again, I say 5-403 is relevant
25 and 5-402 is relevant.

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1 If Mr. Porter gets on the stand and testifies
2 consistent to his statement, there may be issues, there
3 may not be. I don't know. But the issue with White and
4 Goodson was a simple one, from this Court's perspective.
5 The issue here for Miller, Nero and Rice is not simple.
6 I do not believe that based on the proffer presented by
7 the State for the seatbelt issue and the place of injury,
8 the concerns that this Court has with the speedy trial
9 rights of the Defendants, the concern that this Court has
10 with the position that Mr. Porter will be placed in by
11 the request of the State and again, I guess most
12 importantly, finding that the request for immunity has
13 more to do with getting around the Court's postponement
14 request than anything else, I do not find it is
15 appropriate, and the request for immunity for Mr. Porter
16 for Miller, Nero and Rice is denied.

17 Thank you.

18 MR. SCHATZOW: Thank you, Your Honor.

19 MP. MURTHA: Thank you, Your Honor.

20 THE COURT: Counsel, approach. All counsel
21 approach. Well, all --

22 MR. MURTHA: I'll --

23 THE COURT: One representative for each one. I
24 just want to quickly --

25 MR. MURTHA: Well, actually, I should --