

IN THE CIRCUIT COURT FOR BALTIMORE CITY, MARYLAND

STATE OF MARYLAND

vs.

Case Number:
115141037

WILLIAM PORTER,

DEFENDANT.

REPORTER'S OFFICIAL TRANSCRIPT OF PROCEEDINGS
(Excerpt - Closing Statement by the State)

Baltimore, Maryland

Monday, December 14, 2015

BEFORE:

HONORABLE BARRY G. WILLIAM, Associate Judge
(and a jury)

APPEARANCES:

For the State:

JANICE L. BLEDSOE, ESQUIRE

MICHAEL SCHATZOW, ESQUIRE

MATTHEW PILLION, ESQUIRE

JOHN BUTLER, ESQUIRE

For the Defendant:

JOSEPH MURTHA, ESQUIRE

GARY E. PROCTOR, ESQUIRE

* Proceedings Digitally Recorded *

Transcribed by:
Patricia Trikeriotis
Chief Court Reporter
111 N. Calvert Street
Suite 515, Courthouse East
Baltimore, Maryland 21202

T A B L E O F C O N T E N T S

	P a g e
Closing Arguments	
- By Ms. Bledsoe on Behalf of the State	3
- Rebuttal Argument by Mr. Schatzow on Behalf of the State	41

1 testimony, was Detective Teel.

2 And why is this important? Because the only
3 defense that William Porter has is to say, "I can't
4 breathe," didn't happen at Druid Hill and Dolphin.

5 But Detective Teel, a friend of William Porter,
6 hugs him at the hospital, hugs him when he comes in and
7 gives his statement, gets up on the stand, unequivocally,
8 under cross-examination, without a doubt tells you that
9 she had a conversation on April 15th with William Porter.

10 And she knew that conversation was so important
11 that she wrote it down word for word. That same report,
12 that the defense didn't show, Sergeant (indiscernible at
13 9:46:11 a.m.) That same report, her notes that we
14 constantly referred to, both by the defense and the
15 State, she wrote down those words because she knew how
16 important that was going to be.

17 So let's talk about the notes. You're only
18 going to have her testimony. And this is what her
19 testimony tells you. Detective Teel was on the FIT Team,
20 and she was investigating the route that the wagon took.

21 So she knows as an investigator, the way to
22 figure out how the wagon takes the route is to listen to
23 the KGA tape. So she orders the KGA tape. She figures
24 91, the wagon driver, is going to tell about the stops.
25 So she orders it, and she listens to it. And she writes

1 it down in her notes about the KGA tape.

2 And what does the KGA tape tell you? You can
3 listen to it. The KGA tape tells you that there's only
4 one reference between 91 and 43. 91 comes on and says, I
5 need to check this prisoner. And 43, who is Officer
6 Porter, responds.

7 And where does this occur? This occurs right
8 at Druid Hill and Dolphin. He stops his vehicle at Druid
9 Hill and Dolphin, and that's where Porter meets Officer
10 Goodson.

11 So she says, okay, I know who 91 is, but who is
12 43? Because 43 is going to tell me what happened at
13 Druid Hill and Dolphin. So she pulls the run sheet, and
14 she says it's Porter.

15 And she wants to make sure, so she called
16 Officer Porter on April 15th. And she says, hey, what
17 happened at Druid Hill and Dolphin? I'm listening to the
18 KGA tape. You're the one that responded to 91 at Druid
19 Hill and Dolphin. What happened? What happened at Druid
20 Hill and Dolphin?

21 Porter spontaneously says, yeah, Freddie said
22 he couldn't breathe, because he's talking to a friend.
23 He's talking to Teel, Detective Teel. He knows Detective
24 Teel. And he says Freddie couldn't get up. Help, help.
25 He can't get up. Can't breathe.

1 So she ends the conversation. She's, like,
2 whoa, wait a minute. She said that to you on the stand.
3 I asked her. She said I ended the conversation because I
4 knew he needed to have his Miranda Rights. So what does
5 she do? She writes it down. She writes it down because
6 she knows there's going to be a problem.

7 On my redirect, I asked her about every fact up
8 to a point when the judge was sustaining me about every
9 fact leading up to that conversation. And that
10 conversation -- every fact in that conversation is about
11 Druid Hill and Dolphin.

12 And when she was asked in cross-examination,
13 well, you put the word Baker in here. She said, yeah, I
14 made a mistake, I did put Baker. But she did not waver.
15 She knew that conversation was about Druid Hill and
16 Dolphin.

17 The only way Officer Porter can shift the blame
18 to somebody else is to say those words didn't happen at
19 Druid Hill and Dolphin.

20 And guess what? Officer Porter gave
21 statements. He gave a recorded statement. And on three
22 occasions, three times, he had the opportunity to say,
23 you know what, I remember at Presbury that Freddie said I
24 can't breathe, and I need an inhaler. Three times.

25 (Whereupon, at 9:51:31 a.m., a portion of a

1 recording was played in open court as follows:)

2 "He was yelling and screaming. The entire time
3 I could hear that there was someone one street over just
4 yelling. I could hear that he was yelling."

5 (Whereupon, the recording was stopped at
6 9:51:44, and the following ensued:)

7 MS. BLEDSOE: Three times he says, mmm, I hear
8 somebody screaming, I hear somebody yelling. Not once
9 did he say those words Freddie said I can't breathe at
10 Presbury.

11 So we come to court, and this is what we hear
12 from Officer Porter:

13 (Whereupon, at 9:52:18 a.m., a portion of a
14 recording was played in open court as follows:)

15 "If he had said I can't breathe, and you heard
16 him say I can't breathe, would you agree that that would
17 be a reason to get medical attention?"

18 "I do agree, yes."

19 (Whereupon, the recording was stopped at
20 9:52:29 a.m., and the following ensued:)

21 MS. BLEDSOE: Yes. I would have, yes.

22 You know why? I need a medic is so simple that
23 he has to say, yes, I would have gotten a medic because
24 any police officer would have gotten a medic in that
25 situation.

1 But it's not just Officer Porter that describes
2 the incident at Presbury as yelling and screaming. We
3 had police officers from the Western District. Novak,
4 Gladhill, they all testified, I heard yelling and
5 screaming.

6 Not one of them -- and they're defense
7 witnesses. Not one of them came in here and said I heard
8 Freddie say I can't breathe at Presbury. And do you know
9 why? Because it was never said at Presbury.

10 When you judge somebody's credibility, you want
11 to look at their motive to be honest. Who has the motive
12 to be deceitful? It's not Detective Teel. It's Officer
13 Porter.

14 And by the way, if it was as Officer Porter
15 said, that Detective Teel asked him about the very
16 beginning, why would she make the mistake and put the
17 second stop in there instead of the first stop? She
18 doesn't put Presbury. She writes Baker. That's not the
19 first stop. Baker is the second stop.

20 There's only one reasonable conclusion.
21 Detective Teel's testimony is 100 percent accurate. When
22 Freddie Gray, according to Officer Porter, said, at Druid
23 Hill and Dolphin, I need a medic, I can't breathe, I need
24 a medic. That's all it would have taken.

25 Let's talk about another issue that brings the

1 credibility of Officer Porter in a bad light. This is
2 the issue about putting Mr. Gray on the bench. Again,
3 let's look at the motive. Freddie Gray was paralyzed at
4 Druid Hill and Dolphin. But if he's paralyzed, it
5 doesn't fit the defense's medical theory. So in court,
6 Officer Porter tells you Mr. Gary assisted with his legs
7 pushing him up.

8 But you know, I always find that when the
9 closer to the event -- and I'm getting old. The closer
10 to the event, the better my memory. So when Officer
11 Porter gives his recorded statement, he says on no less
12 than five times words that describe putting somebody,
13 sitting somebody, placing somebody, like an object, onto
14 a bench. Listen:

15 (Whereupon, at 9:57:09 a.m., a portion of a
16 recording was played in open court as follows:)

17 "I pull him up. I -- I -- I -- I put him up on
18 the bench when -- at Druid Hill."

19 "When you stopped on Druid Hill and
20 Dolphin " --

21 "Mmm-hmm."

22 "You said you sat him up."

23 "Yes."

24 "So when you sat him up" --

25 "Right."

1 -- "you said he was on his chest, on his
2 stomach" --

3 "Yeah, yeah."

4 "So you sat him up on the bench?"

5 "Yeah."

6 "At Dolphin" --

7 "He was -- I was -- I put him up on the bench."

8 (Whereupon, the recording was stopped at
9 9:57:39 a.m., and the following ensued:)

10 MS. BLEDSOE: Five times he was asked about it.
11 Not once did he say Freddie Gray assisted himself up on
12 the bench. Five times he used words that indicate he put
13 Freddie Gray on the bench.

14 Not once in any of those five times did he say
15 it would be physically impossible for me to do that. I
16 did not just put him up on the bench. I couldn't do
17 that. Not once. But he told you that from the stand.

18 Ladies and gentlemen, there's only one
19 reasonable conclusion about what happened between Officer
20 Porter and Freddie Gray. He put him on the bench.
21 Freddie Gray didn't help get up on the bench. He put him
22 on the bench.

23 Let's talk about the third issue about
24 credibility, seatbelt. Officer Porter, in his videotaped
25 statement, never indicates that he has a safety concern

1 about his gun. In fact, he never even brings it up.
2 What he says are the wagons are small. Yes. He gets in
3 there, and the wagon is small. But there's an exchange
4 between him and Detective Anderson. Listen to it, and
5 watch it.

6 (Whereupon, at 9:59:37 a.m., a portion of a
7 recording was played in open court as follows:)

8 "Everybody's like tied up on the seatbelt
9 thing. The very -- those wagons are very small, you know
10 (Inaudible at 9:59:47 a.m.) to attempt to, you know, ask
11 him nicely to sit up, so you can buckle him."

12 "Okay."

13 "Well, with that -- with -- with that being
14 said, when -- when -- on Dolphin and Druid Hill" --

15 "Yeah."

16 -- "was he combative at that point?"

17 "No. He wasn't combative. No."

18 "Did you think about seat -- seatbelting him in
19 at that point?"

20 "No. No. I was in the wagon. I left before
21 the doors had been closed to Mr. Gray. I was going to
22 another backup."

23 "So when you sat him up" --

24 "Right."

25 -- "you said he was on his chest, on his

1 stomach" --

2 "Yeah. Yeah."

3 "You sat him up, put him on the bench."

4 "Right."

5 "Was he combative?"

6 "No. No. He wasn't."

7 "Did you seatbelt him at that point" --

8 "I didn't (Inaudible at 10:00:38 a.m.)"

9 "So what was -- what was Goodson doing? I
10 mean, did he seatbelt him in?"

11 "Well, he -- I -- (Inaudible at 10:00:44 a.m.)"

12 (Whereupon, the recording was stopped at

13 10:00:49 a.m., and the following ensued:)

14 MS. BLEDSOE: He wasn't combative. And Porter
15 describes Mr. Gray as docile, limp, lethargic. The
16 perfect question was my boss' question when he said,
17 well, he's docile, limp, lethargic, non-combative,
18 when -- when would be a situation when you would seatbelt
19 somebody? There's no danger. There's no reason not to
20 seatbelt somebody.

21 His own words tell you there's no reason,
22 except when he came into court, and he tells you this
23 concern about his gun, which has never been brought to
24 anybody's attention except when he came to court and
25 (inaudible at 10:01:47 a.m.)

1 There's only one reasonable conclusion about
2 the seatbelt issue. There was no safety issue. Officer
3 Porter just didn't care enough to seatbelt him. Click.
4 One second.

5 Let's talk about the timing because you noticed
6 in that video Officer Porter was talking about how he
7 left Druid Hill and Dolphin. So he suggests, implies,
8 hedges that he didn't have time to seatbelt Freddie
9 because he left. He left the scene. He said he didn't
10 have time to call a medic because he was called out on a
11 10-16. He says that he thought Goodson was going to
12 transport him to the hospital, so he left for this 10-16.

13 Let's talk about the 10-16. You will have the
14 KGA tape back there. And you will need to listen to the
15 KGA tape. But before we play it, let me tell you of how
16 it goes.

17 Lieutenant Rice was 09. He calls at 9:06:57.
18 09, 10-16, at 1600 North.

19 Unit 22 responds, I'm in route. Remember, he's
20 43, he's not 22.

21 10-4.

22 Then 09 calls for a wagon at 9:07:09. Wagon,
23 wagon.

24 Dispatcher calls 91. Calls.

25 Dispatcher calls again. 91. Baker 91.

1 9:07:17.

2 91 says hang on, I've got to turn around.

3 Then Rice comes back on, 09, we've got things
4 contained, but I need a unit down at Carey and North.

5 And then, finally, at 9:07, Porter -- 40 --
6 Officer Porter responds I'm coming behind 91.

7 You're coming behind 91. 91 has already
8 responded. So there was no sense of urgency that you had
9 to leave the scene at Druid Hill to go to a 10-16.

10 Now let's listen to it.

11 (Whereupon, at 10:05:03 a.m., a portion of
12 recording was played in open court as follows:)

13 "Baker 90, 10-16, 1600 North."

14 "1600 North need a 10-16."

15 "(Inaudible at 10:05:12) in route."

16 "10-4"

17 "Need a wagon, need a wagon."

18 "91."

19 "Baker 91."

20 "91. I'm going to turn around. I'm coming up
21 to (inaudible at 10:05:27 a.m.)"

22 "At 1600 North."

23 "(Inaudible at 10:05:31 a.m.)"

24 "We're going to take the (inaudible at 10:05:34
25 a.m.) There's a crowd forming at North and Carey, East

1 North and Carey (inaudible at 10:05:38 a.m.)

2 "Yeah, I need a unit at North and Carey also."

3 "43. I'm coming behind 91 (inaudible at
4 10:05:47 a.m.)"

5 "10-4."

6 (Whereupon, the recording was stopped at
7 10:05:53 a.m., and the following ensued:)

8 MS. BLEDSOE: There's only one reasonable
9 conclusion. Officer Porter doesn't leave Druid Hill and
10 Dolphin in an urgent matter calling a 10-16 before
11 Goodson.

12 But I need a medic. He had time to do that.

13 That's to show what I'm going to talk to you
14 about in terms of the credibility of Officer Porter is
15 the issue of the rejection at Central Booking. And you
16 heard testimony that Officer Porter thinks Mr. Gray is
17 playing the jailitis card; that somehow he was feigning
18 an injury so that he didn't have to go to Central
19 Booking.

20 Well, we know that's not true for two reasons.
21 First of all, 1.43 percent of all the arrestees taken
22 down to Central Booking are rejected, only 1.43 percent.
23 And you heard that from Captain Reynolds.

24 But more importantly, the conversation between
25 Officer Goodson and Officer Porter shows that Officer

1 Porter knew how serious the injury was because he says
2 Central Booking's not going to take him. Well, okay,
3 1.43 is the only rejection percentage. So (a), it has to
4 be serious. But, two, what do the Orders tell us about
5 what you have to do when you take a prisoner down to
6 Central Booking?

7 Look in the Orders. Look in K-14 and 11-14.
8 You will retain custody and provide emergency treatment
9 for your prisoner when there's obvious trauma and a need
10 for immediate medical care; there is a life threatening
11 injury or condition that requires immediate medical care.

12 They claim -- they claim to have one of the
13 above conditions and present some symptoms that verify
14 those conditions.

15 I can't breathe. I can't get up. I need a
16 medic.

17 They are unconscious or unable to walk under
18 their own power.

19 This is the Order under the Central Booking
20 section which indicates when you, a police officer, will
21 retain custody of an arrestee.

22 This shows that both Goodson and Porter knew
23 the seriousness of the injury. They knew that he wasn't
24 going to be accepted at Central Booking. And this
25 jailitis is a bunch of crap. 1.43 percent.

1 And who asked to go to the hospital or a medic?
2 It wasn't Freddie. He's not the one who's playing the
3 jail card. Porter is the one who said, hey, you need a
4 medic? You need a medic? Freddie said, yeah, I need a
5 medic. It's not like Freddie was saying, oh, take me to
6 the hospital. Take me to the hospital now. He didn't
7 play the jailitis card.

8 There's only one reasonable conclusion.
9 Officer Porter knew that Freddie was hurt badly, and he
10 knew that he wasn't going to be accepted at Central
11 Booking. But he did nothing.

12 There is one other small item I will talk to
13 you about this, which is there is a description in
14 Officer Porter's statement where he's asked did you see
15 his neck or anything. And Porter's like, nah, nah, I
16 didn't pay any attention that. But he was clear when he
17 came on the witness stand that Freddie was holding up
18 with his own (inaudible at 10:10:47 a.m.) Listen.

19 (Whereupon, at 10:10:50 p.m., a portion of a
20 recording was played in open court as follows:)

21 "Was his -- was his neck dangling, was it
22 moving, or was it just -- was it fixed" --

23 "Uh. I was -- I put him up on the bench. He
24 was talking to me. I don't recall. You know, the neck
25 wasn't an issue until we got to the hos -- until

1 (inaudible at 10:11:11 a.m.) So I wasn't really looking
2 for if it was dangling. I don't -- I don't recall."

3 (Whereupon, the recording was stopped at
4 10:11:18 a.m., and the following ensued:)

5 MS. BLEDSOE: In his trial testimony:

6 (Whereupon, at 10:11:23 a.m., a portion of a
7 recording was played in open court as follows:)

8 "Is he supporting his own head?

9 "Yes. He is supporting his own head."

10 (Whereupon, the recording was stopped at
11 10:11:28 a.m., and the following ensued:)

12 MS. BLEDSOE: How is it that the events -- his
13 memory closer to the event is very clear? I -- I wasn't
14 even paying attention to his neck. When he comes into
15 court, oh, yeah, he was supporting his own neck.

16 Let's move on to the Mount and Baker. Mount
17 and Baker is a complete contradiction from Officer
18 Porter. And it is objective at most. You're going to
19 hear Brandon Ross. You're going to hear what Brandon
20 Ross says. You're going to see how that event actually
21 occurred versus what Officer Porter says in his
22 statement.

23 (Whereupon, at 10:12:28 a.m., a portion of a
24 recording was played in open court as follows:)

25 "Like I said, when I pulled up, someone was

1 already placing him into the wagon. They were getting --
2 I never got to see who it was or anything."

3 "(Inaudible at 10:12:36 a.m.)"

4 "He was already in the wagon by the time I
5 pulled up."

6 "(Inaudible at 10:12:42 a.m.)"

7 "Okay. Was Mr. Gray kicking?"

8 "Yeah, he was kicking."

9 "Did he have on leg irons?"

10 "I know from being at the hospital, that he did
11 have on leg irons."

12 "But did you see" --

13 "I didn't see that part. I stopped my car and
14 (inaudible at 10:12:58 a.m.) and they're putting him into
15 the wagon. I hadn't even gotten halfway between the
16 wagon and my car before they already had him in, and I
17 talked to the crowd."

18 "(Inaudible at 10:13:08 a.m.) put him in, and
19 he got halfway in through the doors, and he's like
20 kicking his feet, throwing his feet."

21 "The officer goes around him and then pulls him
22 -- (inaudible at 10:13:15 a.m.)"

23 "(Inaudible at 10:13:17 a.m.) by himself?"

24 "Right."

25 "You saw all that, and you don't know which

1 officer it was?"

2 "I don't -- I was back out far."

3 "Is he all right?"

4 "No. He hurt."

5 (Whereupon, the recording was stopped at
6 10:13:26 a.m., and the following ensued:)

7 MS. BLEDSOE: Like I said, when I pulled up,
8 someone was already placing him in the wagon. When he
9 pulled up, Freddie Gray was on his knees at the back of
10 the wagon.

11 He's already in the wagon by the time I pull
12 up. Freddie Gray is not in the wagon. It's clear
13 Freddie Gray is not in the wagon.

14 I can't see -- I can't see if he has leg irons
15 because I was too far away. You're not too far away.
16 You're standing and looking into the wagon. How is that
17 too far away? You're looking into a wagon, and then you
18 turn your back on Freddie Gray.

19 You know who those officers are. You work with
20 them. One officer is within six inches of him.

21 He knew that Freddie Gray was placed in that
22 wagon with handcuffs, leg shackles, on his face, on the
23 floor of that wagon unseatbelted. But, man, I was just
24 too far away. That's what he says. Man, I was just too
25 far away.

1 There's only one reasonable conclusion.

2 Officer Porter was not telling the truth about his
3 involvement in this incident.

4 And what else does he say? Officer Porter gets
5 on the stand and says -- remember this was after Brandon
6 Ross had already testified. Brandon Ross who was so
7 distraught that he was down on his knees in court. He
8 was so distraught, he testified that he called 911, and
9 you can hear him on the video, come on, Porter, please,
10 sir, please, come on.

11 And Officer Porter gets up there, and he says,
12 oh, I told Brandon to call 911.

13 (Whereupon, at 10:16:16 a.m., a portion of a
14 recording was played in open court as follows:)

15 "And he asked for a supervisor. I pointed out
16 the supervisor on the scene and let him know Lieutenant
17 Rice was the (inaudible at 10:16:24 a.m.) District. He
18 would need to talk to Lieutenant Rice.

19 He said that wasn't good enough. I then
20 instructed him to call 911. He didn't think that was a
21 good enough fix. So he said, you know, we got it all on
22 video. And I told him, you know, if you've got it all on
23 video then, you know, go to the media with it and get it
24 broadcasted."

25 "Hey, Porter, can we get a supervisor up here,

1 please?"

2 "(inaudible at 10:16:50 a.m.)"

3 "Okay. Can we get somebody else up here,
4 please?"

5 "(Inaudible at 10:16:52 a.m.)"

6 "There got to be somebody else out here that
7 can -- that can come out here and calm it down. That's
8 not cool. That's not cool. (Inaudible at 10:17:07).
9 I'm saying, there's got to be somebody else, like, that's
10 not cool. That man (inaudible at 10:17:12 a.m.)
11 handcuffs (inaudible at 10:17:14 a.m.) handcuffs, and
12 tase him, (inaudible at 10:17:19 a.m.) hurt. That's not
13 cool, man. That's not cool. (Inaudible at 10:17:23).
14 They were doing that, yo. That's not cool."

15 "(Inaudible at 10:17:28 a.m.)"

16 "But what I'm saying, it's not cool, yo.

17 "Brandon (inaudible at 10:17:35 a.m.)

18 "It ain't cool, man."

19 "Brandon, you know where he goes at."

20 "Come on, man."

21 (Whereupon, the recording was stopped at
22 10:17:37 a.m., and the following ensued:)

23 MS. BLEDSOE: So here's Brandon Ross. He
24 starts out polite, come on, man, please. Come on,
25 Porter. Come on please. Okay. Can we get another

1 supervisor down here? Please, come on. And what does
2 Officer Porter say? Take it to the media. Then he comes
3 in here and he tells you I -- I told -- I told Brandon to
4 call 911.

5 You listen to that tape. There is no -- there
6 is no conversation in which Officer Porter tells Brandon
7 Ross, hey, Brandon, call 911.

8 Only reasonable conclusion you can from that is
9 that Officer Porter is not telling the truth.

10 Let's talk about responsibility. Specifically,
11 let's talk about the responsibilities of William Porter.

12 Ladies and gentlemen, responsibilities in life
13 don't come from just rules and orders. Responsibilities
14 from life come from common sense. You buckle. You
15 buckle people in because it's a safety issue. If
16 somebody's hurt, you call a medic. That's just common
17 sense.

18 So in addition to his common sense, and you saw
19 his mom. So he was taught things at the academy. He was
20 taught from veteran officers, and he was taught
21 specifically from Officer Carson-Johnson. And you'll
22 have the exhibits back there.

23 He completed the first responder course. He
24 was taught specifically the role of an officer in a
25 medical -- in a medical emergency. He knows what his

1 role as an officer is. And, ladies and gentlemen, this
2 isn't a course, as the defense wants to make it out to be
3 where somebody's reading, okay, does everybody understand
4 this.

5 This is a PowerPoint presentation with notes on
6 it, so that officer, Officer Carson-Johnson, knows every
7 single time what he's saying to that class. Look at it.
8 When you go back there, you'll have the entire chapter
9 three and chapter two. He knew what he was supposed to
10 do, and he knew what the role of -- role of an officer
11 was.

12 Not only that, on July 23rd, 2012, way before he
13 goes to the academy, as the defense pointed out, he gets
14 his General Orders. And what does he get it on? A flash
15 drive.

16 What do we know about Officer Porter? We know
17 that Officer Porter knows about computers. And we know
18 that he rebuilt computers. And we know that he knows how
19 to use a flash drive on a computer.

20 And why do you get it on July 23rd, and you
21 don't start the academy until later? Because you're
22 supposed to be prepared for the academy. Look at your
23 Orders. We're going to give them to you months in
24 advance. Look at your Orders.

25 What did Carson -- Officer Carson-Johnson say?

1 Absolutely, unequivocally, 100 percent certainty, if
2 someone asks for a medic, if someone says, I can't
3 breathe, you are to call a medic.

4 And then after you call a medic, click, I need
5 a medic. After you call a medic, do an assessment of the
6 patient. Not just is he talking. What's wrong? Okay.
7 Pinch his ear. Does he have sensory? Is he breathing?
8 Are you having trouble breathing, Mr. Gray? Why? What's
9 the problem? How do we expect a man who is paralyzed to
10 say, I'm paralyzed? He doesn't know what's going on with
11 him. What he knows is he has enough oxygen in there to
12 get the words out, I can't breathe; I need a medic; help
13 me.

14 And above all, Officer Carson-Johnson said you
15 have to call a medic because it's the difference between
16 life and death. And she teaches that in her notes. And
17 you can look through that when you look at the PowerPoint
18 chapters.

19 And how do we know that Officer Porter knew
20 about K-14? Well, because K-14, he said on the stand
21 that, well, if there reference materials that I was given
22 in my class, my EVOC (phonetic) class referenced an
23 Order. We actually got the Order and read it during
24 class. This was the lesson plan from his EVOC (phonetic)
25 class. Here it is, K-14, reference materials.

1 So he has K-14. He has 11-14 emailed to him.
2 And there's a copy of the email. It was a blast email
3 that went out to everyone of BPD.

4 Now, we know that Officer Porter, in his own
5 words, knows about 11-14 because of an exchange that
6 happened in court while Officer Porter was on the stand.
7 Okay? I want you to listen to this.

8 (Whereupon, at 10:24:46 a.m., a portion of a
9 recording was played in open court as follows:)

10 "Now, you don't like hospital details; right?
11 They're long and boring."

12 "No, I don't like hospital details much."

13 "But when you testified, you said that the
14 General Order provides that when you're on a hospital
15 detail, you only have to be there for two hours; is that
16 correct?"

17 "There's something in it about that. It also
18 says -- states that there need to be two officers and
19 some other things."

20 "And so let's take a look at Exhibit 11 in
21 evidence, which is 11-14 on page 8, one of the directives
22 is do not guard detainees for more than two consecutive
23 hours. When the hospital detail nears or exceeds two
24 hours, notify your supervisor and request a replacement
25 member; is that correct?"

1 "That is correct."

2 "Okay. So you're familiar with what 11-14
3 provides."

4 "No, sir. I'm not familiar. That was probably
5 adopted from the previous General Order."

6 "Here's Exhibit 8, take as much time as you
7 want, tell me where the two hour limitation is in there."

8 (Brief pause.)

9 "I don't know. I can't find it in here."

10 "It's not in there; is it?"

11 "It isn't, no."

12 (Whereupon, the recording was stopped at
13 10:27:06 a.m., and the following ensued:)

14 MS. BLEDSOE: Officer Porter said on the stand,
15 I'm not familiar with 11-14. I'm not familiar with that
16 part in 11-14. I'm not familiar with Order 11-14.

17 Mr. Schatzow says I -- I mean, and Mr. Porter
18 says it must have been in the other Order.

19 And Mr. Schatzow takes the other Order and
20 says, okay, where is it. Where is it in the other order?
21 It's not in the other Order. If it's not in K-14, then
22 you have to be familiar with 11-14, even though you stand
23 up on the stand to take an oath to tell the truth, and
24 then you say I'm not familiar with 11-14. That section
25 must be in K-14. But, oh, it's not K-14, which means you

1 were familiar with 11-14 because that provision is only
2 in 11-14.

3 Now, responsibility, shared responsibility.
4 The General Orders don't say it is the driver's
5 responsibility; it is the sergeant's responsibility; it
6 is the lieutenant's responsibility. The end -- the
7 General Orders say it is an officer's responsibility.

8 And if you look at the facts of this incident,
9 let's see who takes responsibility. Well, at Presbury
10 and Mount, does Goodson load the prisoners? No. You can
11 see that from Kevin Moore's video. Other officers do it.
12 Other officers load the prisoner at Presbury and Mount.

13 Okay. Let's go to Mount and Baker. Officer
14 Goodson load the prisoner, Mr. Gray? Nope, other
15 officers do.

16 The only time that Officer Goodson becomes
17 active with his prisoner is at Mosher and Fremont, when
18 something catastrophic happens in that van, and he stops
19 the van. Okay. He doesn't call. He stops the van, and
20 he goes behind the van, and he checks the van. Okay.

21 Here we go.

22 (Whereupon, at 10:29:53 a.m., a portion of a
23 video recording was played until 10:30:43 a.m., and then
24 the following ensued:)

25 MS. BLEDSOE: Two minutes after this stop is

1 when 91 calls in to check the prisoner, two minutes
2 later. And that's when Officer Porter meets Officer
3 Goodson at Druid Hill and Dolphin.

4 This is not Officer Goodson's sole
5 responsibility. When we get to Druid Hill and Dolphin,
6 who walks into the van? Does Officer Goodson walk into
7 the van? No. Officer Porter walks in to the van.

8 Officer Porter takes responsibility to go into
9 that van. And now he wants to say, whoa, wasn't my job.
10 Uh-uh. Nope. All I'm supposed to do is go in and talk
11 to the prisoner and come out.

12 This is a shared responsibility, even their
13 experts agree. Being a police officer, you don't live in
14 a silo. You have a shared responsibility to each one of
15 you, to each citizen in Baltimore, to keep them safe and
16 to protect them. It is not one person's to the exclusion
17 of another.

18 And listen to the statement by Officer Porter.
19 He doesn't say Goodson, Goodson, Goodson, Goodson. He
20 says our prisoner. We need to do this. It's our van.
21 We need to do this. It's a shared responsibility.

22 We're almost there. We're on the last phrase.
23 Criminal liability. I know. Criminal liability.

24 Criminal liability is the when did it happen,
25 how did someone get hurt, and who is responsible for the

1 crimes that were committed. Okay.

2 When. When did this happen? There's only one
3 reasonable conclusion about when this happened. Why
4 would Officer Goodson stop his van, get out, check the
5 back, and then two minutes later call for prisoner
6 assistance at Druid Hill and Dolphin? He called because
7 something happened to make him get out of his van, to
8 look in the back, and then call for help.

9 And that was when Freddie Gray got hurt. When
10 that van, somewhere, turned off of Riggs and onto
11 Fremont, it was a block before he stopped.

12 And that's what Dr. Allan concluded. And you
13 have the autopsy report. Look in her opinions. That's
14 what she says.

15 Look, I'm just using my common sense. You're
16 the driver of a van. You take a corner. About a block
17 later, something happens and you stop. And you check the
18 back of your van. And then two minutes later, you call
19 to check on the prisoner. There's only one reasonable
20 conclusion. Freddie Gray got hurt, and he was calling to
21 get help to check on Freddie Gray.

22 Ladies and gentlemen, all the medical experts
23 agree, every single expert agrees. It doesn't matter if
24 it's defense, doesn't matter if it's State. This was a
25 severe traumatic injury that was caused by high degree of

1 force.

2 And you probably know, except maybe for one of
3 you, know more about C4-C5, arterial arteries, locked
4 facet joints than you ever have in your entire life. I
5 am not going to sit here and go over each and every
6 injury. You have heard from every expert. Torn
7 ligaments, torn muscles, locked facet joint, the spinal
8 cord was not severed. That was very clear. Showed you a
9 picture. Dr. Allan made that very clear.

10 A high degree of force has to cause that
11 injury, which is why Goodson stops, which is why Goodson
12 asks for help.

13 So when somebody has that kind of injury, what
14 are the effects of that kind of injury? Dr. Soriano put
15 it the best. You have a hunger for air. Everybody
16 agrees the diaphragm stops working. Are you able to
17 breathe? Yes, you're still able to breathe. You're able
18 to use your accessory muscles. But you have a hunger for
19 air.

20 And as Dr. Allan described, as the time ticked
21 away, Freddie Gray suffocated. His brain stopped getting
22 air. And all the experts agree that the injury caused a
23 lack of oxygen to his brain, which killed him.

24 All the experts also agree that -- that the
25 sooner he would have been given oxygen, the better chance

1 his survival would have been.

2 Remember what a medic can do because Mr.
3 Herbert told you a medic can put a tube and air, and you
4 can start getting oxygen through your body into your
5 brain.

6 When Officer Porter failed to call for a medic
7 at Druid Hill and Dolphin, and that door closed, that van
8 door closed on Freddie Gray, that wagon became his casket
9 on wheels.

10 Even if Mr. Gray had been a quadriplegic all
11 his life, he would have had life.

12 So let's talk about the crimes. You're going
13 to have what the elements are back there, but it's easy
14 to remember it this way.

15 The moment you create the risk of injury or
16 death, you have created reckless endangerment. The
17 moment you create the risk of injury or death, you have
18 created the crime of reckless endangerment.

19 The moment that you create an injury, you have
20 committed the crime of assault.

21 And the moment that that person dies from that
22 injury, you have committed manslaughter.

23 Reckless endangerment. Everyone here knows
24 that you seatbelt someone. We know that BPD paid extra
25 money to have the seatbelt -- the seatbelts placed in the

1 van. Every caretaker knows that it's dangerous to travel
2 in a vehicle without being seatbelted.

3 But how about when you're completely
4 vulnerable? How about the situation where you're
5 handcuffed, legs shackled, put on a bench. You have no
6 way to brace yourself. You have no way to protect
7 yourself from falling.

8 And yet, Officer Porter doesn't bother to
9 seatbelt him. He knows at that point not only when he
10 doesn't seatbelt, he's going to create a risk, but that
11 he has a man who is injured, that that man in that wagon
12 is not going to a hospital. How does he know that?
13 Because he says he's behind the wagon. So he knows that
14 the wagon is going to North and Pennsy, and not the
15 hospital. That's reckless endangerment.

16 And remember, ladies and gentlemen, a risk -- a
17 behavior isn't reasonable because everybody else does it.
18 Just because police officers come in here and say, oh,
19 no, I never seatbelt. That's not reasonable. That's not
20 the standard for being reasonable. You know what that
21 does? That creates more risk. That means more officers
22 are engaging in risky behavior. Not that, oh, this is a
23 reasonable behavior.

24 Okay. Assault. Now, this is not the kind of I
25 hit you assault. We didn't charge that. This is what we

1 call a negligent assault. Negligent assault is when you
2 have Mr. Gray, who's vulnerable, being handcuffed and
3 legcuffed, unable to protect himself. He's unseatbelted.
4 And as a result of not being seatbelted, when the van
5 moves, he gets injured. And we know that he was sitting
6 on the bench at Druid Hill. And we know at North, he was
7 kneeling, so we know he fell off. Okay.

8 This is a hard concept, but the best way to
9 explain this is through a couple of examples. Okay. If
10 you're on a horse, and somebody whips the horse, and you
11 fall off the horse, that's a negligent assault. Okay.
12 You're not actually hitting the person on the horse.
13 What you're doing is you're hitting the instrument that
14 causes the injury, I fall off the horse.

15 Another example is if you and your roommate --

16 MR. PROCTOR: Judge.

17 MS. BLEDSOE: No problem. No problem.

18 THE COURT: Ladies and gentlemen, we'll take a
19 break.

20 Please do not discuss the testimony you've
21 heard, even among yourselves.

22 Please put your notepads on the chairs.

23 THE CLERK: All rise.

24 THE COURT: All rise for the jury.

25 (Whereupon, the jury was excused from the

1 courtroom at 10:42 a.m.)

2 THE COURT: Everyone may be seated.

3 Counsel, approach.

4 (Counsel and the defendant approached the
5 bench, and the following ensued:)

6 THE COURT: You're going to use an hour.

7 MS. BLEDSOE: I'm almost good. I know. I'm --

8 THE COURT: I'm --

9 MS. BLEDSOE: Just a little tiny bit.

10 THE COURT: I'm just letting you know.

11 MS. BLEDSOE: We just talked about it.

12 THE COURT: Okay. That's fine.

13 All right. As soon as they're ready, I'll
14 bring them back out.

15 MR. MURTHA: Can we still take a break, Your
16 Honor?

17 THE COURT: Well, yeah, because you'll need one
18 to get set up, so that will be fine.

19 MR. MURTHA: Thank you, Your Honor.

20 MR. SCHATZOW: I'm going to run to the men's
21 room, too. If she needs to get started, Your Honor --

22 THE COURT: Okay. Good enough.

23 MS. BLEDSOE: I've never talked an hour in my
24 life.

25 THE COURT: Yeah, well, that's -- well, he

1 better make sure he doesn't talk too long.

2 (Counsel and the defendant returned to the
3 trial table, and the following ensued:)

4 THE CLERK: Court's in recess for 10 minutes.

5 THE CLERK: All rise.

6 Recess for 10 minutes.

7 (Whereupon, a brief recess was taken at
8 10:43 a.m., and the matter resumed at 10:56 a.m.)

9 THE CLERK: All rise.

10 THE COURT: Thank you.

11 Everyone may be seated.

12 You may continue.

13 MS. BLEDSOE: Thank you.

14 I'll give you one more example of negligent
15 second-degree assault.

16 You and your roommate are in a house. It's
17 winter. It's cold, not like this winter. But you're
18 outside. You go inside, and you lock your roommate out.
19 And your roommate is outside in a t-shirt, no shorts --
20 shorts, no socks, no mittens, and your roommate gets
21 injured because he gets -- he or she gets frostbite.

22 Okay. It's not a battery where we're hitting
23 somebody. It's a negligent battery. You cause harm
24 because of your negligence.

25 Involuntary manslaughter. Easiest way to

1 remember involuntary manslaughter, it's reckless
2 endangerment, negligent assault, and a complete -- a
3 disregard for human life. Reckless endangerment,
4 negligent assault, and a disregard for human life.

5 So let me tell you how Officer Porter
6 disregarded Freddie Gray's life. Stop 2, he watches
7 passively as Freddie Gray was hogtied, put on the floor
8 of the wagon head first in the wagon, unsecured, no way
9 to protect himself. He turns his back on Freddie, and
10 refuses to do anything.

11 Brandon Ross is pleading with him to help.
12 Brandon knows something bad is going to happen. And he's
13 asking, please, sir, even politely, and Officer Porter
14 does nothing.

15 Stop 4. Freddie tells Officer Porter, I can't
16 breathe; help me; help me; I can't get up. Officer
17 Porter offers a medic. Yes, get me a medic, a medic.
18 Officer Porter puts him up on a bench; doesn't call a
19 medic; doesn't seatbelt him; knows that the wagon is
20 going to another stop instead of Central Booking; even
21 though he has had a conversation with Goodson about how
22 serious Mr. Gray's condition is; and still does nothing.

23 Stop 5. He sees the condition of Freddie Gray
24 deteriorating. He doesn't even bother getting in the
25 van, and he knows Freddie's in a different position. He

1 knows he fell off the bench. Doesn't bother getting in
2 the van. Doesn't bother to look to see if Freddie is
3 conscious. Doesn't bother to help Freddie at Stop 5.

4 He tells a supervisor. But the supervisor
5 doesn't do anything. So one of two things happened. He
6 didn't tell the supervisor what was really going on and
7 how serious it was. Or he could have, and their expert
8 said, go over the supervisor's head and call a medic.

9 Do you really think somebody's going to get in
10 trouble for calling a medic? I need a medic. Sarge, I'm
11 sorry, click, I need a medic.

12 Stop 6. Oh. And at Stop 5, doesn't even
13 bother following the wagon back. He doesn't leave when
14 the wagon leaves. Supposedly, he's been told he's got
15 hospital duty. And that's the video that we showed you.
16 Doesn't bother following the wagon. He doesn't get to
17 the -- he doesn't leave North and Pennsy until the wagon
18 actually arrived at the District, nice hospital duty.

19 Stop 6. Opens the door, sees Freddie in the
20 exact same position. Hey -- does he tell anybody, hey,
21 don't worry about Donta Allen. This guy's hurt.
22 Don't -- don't. When he gets there does he tell Goodson,
23 hey, no, no, no, no, we've got to go? No.

24 Novak comes in and tells you they unloaded
25 another prisoner. They took him in. They talked to him.

1 Oh, and then we walked out, and Officer Porter opens the
2 door. And there's Freddie in the exact same position.
3 The exact position as what? Unresponsive. Okay.

4 What do you do? If somebody's unresponsive,
5 what do you do? We need a medic. Does Porter do that?
6 No. Does Porter put his hand on Mr. Gray's chest to see
7 if he's breathing? No.

8 They do a sternum rub, something that was
9 clearly you're not supposed to do. It's in the chapter
10 on medical assessment taught by Officer Carson-Johnson.
11 He doesn't even do that.

12 And then Novak finally calls for a medic. And
13 the medic arrives. And according to Novak, Porter wasn't
14 doing any life supporting hold, he only did that when
15 Novak had to call a medic.

16 Okay. You're training tells you when somebody
17 is not breathing, and you will see it in the chapter,
18 you're supposed to give four or five breaths into the
19 person.

20 You don't call a medic. You don't check to see
21 if the person is breathing. And then when you find out
22 the person is not breathing, you don't even bother giving
23 him the first aid that you got your certificate for.
24 That is disregard for a human life. That is
25 manslaughter.

1 Ladies and gentlemen, the last one is
2 misconduct. And misconduct is not a reasonable officer
3 standard. It's just simply whether you failed to do your
4 duty.

5 You have a duty. You have a duty to be a human
6 being. You have a duty when you become a police officer
7 to uphold the law. And you heard Officer Bilheimer say
8 our Orders are based on the law. That's where we get our
9 Orders. We don't just make them up.

10 When you fail to call a medic, when you fail to
11 seat somebody, you're guilty of misconduct.

12 One last thing I want you to look at it. When
13 you go back there, look at the serology evidence, the
14 blood evidence. And you'll see that Freddie Gray's blood
15 was found on the wall of the wagon exactly where he was
16 seated at Druid Hill and Dolphin. And you will see on
17 this the very thing that could have helped save his life
18 has got Freddie Gray's blood on it.

19 With great power comes great responsibility.
20 You know who said that, Voltaire and Spiderman.

21 Porter had the opportunity on four to five
22 occasions to wield his power and save Freddie Gray, who
23 has no power. He abused his power. He failed his
24 responsibilities.

25 And now the State is asking you to hold him

1 responsible for the oath that he took for his job, for
2 being a human being, and find him guilty of involuntary
3 manslaughter, reckless endangerment, assault, misconduct.

4 Thank you.

5 THE COURT: Thank you, Counsel.

6 Ladies and gentlemen, we will take another
7 break to allow the Defense to prepare for their closing
8 argument.

9 Even at this time, do not discuss the testimony
10 you've heard, even among yourselves. We'll bring you
11 back in about five or ten minutes.

12 All rise for the jury.

13 Leave your notepads on the chair.

14 (End of excerpt - closing argument by Ms.
15 Bledsoe on behalf of the State concluded at 11:07 a.m.)

16 *****

17 (Excerpt - Rebuttal argument by Mr. Schatzow on
18 behalf of the State began at 12:59 p.m.)

19 THE COURT: Thank you. Everyone may be seated.
20 At your pleasure, sir.

21 MR. SCHATZOW: Thank you, Your Honor.

22 REBUTTAL ARGUMENT ON BEHALF OF THE STATE

23 MR. SCHATZOW: Ladies and gentlemen, the State
24 does not contend, and the State has never contended, that
25 the defendant set out on April 12th to kill Mr. Gray or

1 even to injure Mr. Gray.

2 That's why all four -- excuse me, the three
3 charges, other than the misconduct charge, are all based
4 on either reckless behavior or grossly negligent
5 behavior.

6 Misconduct charge is simply based on deliberate
7 behavior.

8 The defendant had a duty to keep Mr. Gray safe,
9 and he just didn't care about it. He didn't care about
10 following his training. He didn't care about following
11 his orders. He didn't care about protecting Mr. Gray.
12 He didn't care about whether Mr. Gray was hurt or would
13 be hurt. And, ultimately, he didn't care whether Mr.
14 Gray lived or died. That indifference, that callous
15 indifference, to human life is what killed Mr. Gray.

16 And now that the defendant is on trial, he
17 comes into court, and he has lied to you about what
18 happened.

19 Now, Mr. Murtha, one of the defendant's lawyer,
20 stood here and just talked to you for over an hour. And
21 he spoke in a very calm, reasonable tone. But he said to
22 you some things that are as far from reasonable as you
23 can get, and we're going to talk about them now in the
24 limited time that I have.

25 He said, astonishingly, issues of credibility

1 have no place in this case. This man's credibility when
2 he was on the witness stand is at issue in this case,
3 ladies and gentlemen.

4 And the State proved through the evidence that
5 he lied when he spoke to the officers and he lied on the
6 witness stand.

7 Issues of credibility have no place in this
8 case? The defense attorneys can't understand why we
9 spoke about Stop 5? You -- you -- you're going to have
10 his statement, his April 17th statement, that was
11 recorded. And you saw this when Detective Teel
12 testified. And you saw it when the defendant testified.
13 How he tried to pretend in his April 17th statement that
14 he was too far away at Stop 2 to know what was going on.

15 He describes what happens, and then Detective
16 Anderson -- you'll see him on the tape. Detective
17 Anderson says you saw all that, and you can't identify
18 the officers to me? Officers you work with all the time.

19 It was the shift commander, Lieutenant Rice,
20 coming out of the wagon, and you -- and what did he say?
21 He said I only got about half -- I parked about 20 feet
22 away, and I couldn't see anything because I only got
23 about -- by the time I was halfway up there, he was
24 already in the wagon. You saw.

25 Anderson asked him on the tape, did you -- did

1 he have on leg irons? I was too far back, man, to see.
2 And you saw him. If this is the tailgate on the back of
3 the van, he was standing right here. Lieutenant Rice
4 couldn't get out of the van without him backing up.

5 Why wouldn't he identify the other officer?
6 Why would he not identify the other officers? What was
7 he trying to cover up? Was he trying to cover up his own
8 knowledge of what had happened there?

9 He didn't put him in the van, but don't you
10 think a reasonable police officer might have said to the
11 lieutenant or to the other officers there, why are we
12 throwing him in there like he's a piece of meat? Why
13 don't we put him up on the bench and seatbelt him like
14 our Orders and our training say to do. Isn't that what
15 people expect a reasonable police officer to do?

16 What else did the defense attorney tell you?
17 You should believe the defendant because when he was on
18 the witness stand, he never said you got me and
19 confessed. This isn't a movie. We're not on television.

20 You prove that people aren't telling the truth
21 by showing inconsistencies in their statements. You
22 prove that the statements are inconsistent with each
23 other. You prove that they're telling you something that
24 just is -- makes no sense at all. People don't say, oh
25 yeah, you're right. Let's go home. Trial's over.

1 That's an absurd expectation.

2 But what did we prove? The State proved when
3 it said it lied -- at Stop 2 was a lie. And this I can't
4 breathe nonsense that he came over. You'll see what he's
5 trying to do in his testimony.

6 Every place that he is stuck, every place that
7 he is stuck in his April 17th statement and in his April
8 15th statement, he now comes up with some new explanation
9 for it.

10 Asked repeatedly, this business about at Stop 4
11 used his own legs to get up, nonsense. Five, six times
12 on April 17th you'll see. Asked what happened, I picked
13 him up, and I put him on the bench. I put him on the
14 bench. I put him on the bench. I put him on the bench.
15 You won't find anything in there about Freddie Gray using
16 his own muscles, using his own legs.

17 But the real one is the I can't breathe. Ha,
18 his credibility is not at issue here. He admitted on the
19 witness stand that if Mr. Gray said I can't breathe at
20 Stop 4, he should have called a medic, his own testimony.

21 And what did Detective Teel say on the stand?
22 I called him about Stop 4. That's what I knew about from
23 the KGA. I wanted to confirm what happened there.
24 Everything I asked him was about Stop 4. Every note I
25 took was about Stop 4. And he said, I can't breathe. He

1 said that Freddie Gray said, I can't breathe, at Stop 4.

2 And Detective Teel said that on direct
3 examination. Deputy Bledsoe was asking her questions.
4 She said it on cross-examination when the defense
5 attorney asked her questions. And she said it again on
6 her redirect. She never wavered in that.

7 And Detective Teel is not somebody who was out
8 for Mr. Porter's blood. She's his friend. They work
9 together in the Western. She hugged him when she saw him
10 in Shock Trauma. When he came down to be questioned on
11 the 17th, she hugged him again.

12 And what -- what does he tell you? He was read
13 his Miranda Rights, which the defense attorney told you
14 about here. When he sits here on the witness stand, and
15 in trying to come up with explanations for why he said
16 what he said, well, I didn't realize that I was a
17 suspect. I thought I was just a witness.

18 So is there one version of the truth when
19 you're a suspect and a different version of the truth
20 when you're a witness?

21 Credibility is not at issue in this case.
22 Credibility is not at issue in this case. Not at all.

23 I can't breathe. I can't -- no where in his
24 statement does he say that he heard anything specific at
25 that Stop 1, when he now claims that he's a block away

1 behind houses, yet he can hear something that you can't
2 hear on the cell phone video. That none of the officers,
3 these three officers came in, the three immunized
4 officers, who work with him on a daily basis, who come in
5 and testify, they didn't even say it.

6 And what -- what did the defense attorneys say,
7 they could say anything. But they don't say that because
8 it didn't happen. Because it didn't happen.

9 Because he said -- on April 15th when Detective
10 Teel called him on the phone, he said that when he -- the
11 doors to the van opened, the first thing Mr. Gray says,
12 help. And it's not just new version now. Help is --
13 really means help me up. That's not what Detective Teel
14 testified. He -- Mr. Gray said help. He said I can't
15 breathe.

16 The defendant told him to get up, and he said I
17 can't get up, and he helped him up. That's what
18 Detective Teel said.

19 And this whole jailitis. Have you heard
20 anything so ridiculous in your life? Everybody's trying
21 to get out of jail.

22 Did Freddie Gray introduce the topic of a
23 medic? Did he introduce the topic of hospital? The
24 defendant did. The defendant, who hates hospital
25 details, the defendant who thinks they're a big waste of

1 time. Why in the world would he have asked Mr. Gray
2 about the hospital or medic unless he knew that Mr. Gray
3 needed one?

4 You would have to believe that Mr. Gray was
5 some kind of evil mastermind. I'm just going to wait --
6 I'm going play the jailitis card, but I'm going to wait
7 and make him say it first. Have you ever heard of
8 anything so absurd?

9 And the whole jailitis card, oh, you know, as
10 soon as people say they have a hangnail or make any kind
11 of complaint at all, Central Booking won't take them.
12 Won't take them. Won't take them. So what happens?
13 Captain Reynolds gets on the stand, and what does he tell
14 you? 42,000 people plus a year go through Central
15 Booking. 20 to 30 percent of them complain about some
16 injury.

17 If you believe the defendant, you would think
18 then that 20 to 30 percent of them would be rejected by
19 Central Booking. And officers would have to go take them
20 to the hospital and have that long and boring hospital
21 detail.

22 But it's not 20 to 30 percent. It's 1.43
23 percent of people who are medically rejected. Those were
24 the statistics for 2014 out of the mouth of their own
25 witness, Captain Reynolds.

1 And we're going to talk about Captain Reynolds.
2 Let -- you know, when they talk about their experts
3 coming in, remember what Captain Reynolds said, he was
4 not given Detective Teel's notes about the statement I
5 can't breathe at Stop 4. They didn't give it to him.

6 I guarantee you, ladies and gentlemen, I could
7 get any expert in the world to say anything if I control
8 the information they get. How can you have any faith and
9 reliance in expert testimony of experts who are not given
10 the documents that are crucial to the back -- basis and
11 background of their testimony?

12 So let's talk about a couple of other things
13 that are pretty astonishing.

14 There was help, and then -- well, let me just
15 run out the credibility. You have no reason -- this is
16 what you were told, you have no reason to not believe
17 Defendant Porter. I've already given you a bunch of
18 reasons. You heard reasons. But the biggest reason of
19 all is he's got something at stake here, ladies and
20 gentlemen. He's got a motive to lie.

21 Dr. Allan, what's her motive to lie? They said
22 nobody came in here and testified for free. Well, Dr.
23 Allan did. It's her job. And she doesn't work for the
24 State's Attorney's Office or the Grand Jury. She doesn't
25 work for the Court. She works for the State of Maryland.

1 I was going to talk about something else first,
2 but since we're talking about Dr. Allan, let's talk about
3 Dr. Allan. Let's talk about how there's no basis for her
4 conclusion that this injury resulting in his death
5 occurred between Stops 2 and 4.

6 Well, I can't find it in my notes but -- oh,
7 here we go.

8 All right. What do we know? What do we know
9 that tells us this happened between Stops 2 and 4? We
10 know a few things. We know, because you'll see it -- I'm
11 sorry I don't have it here, but you know that chart I did
12 in the opening, the map that had the little dots on it.
13 It showed every time a car stopped or when we had it
14 turning.

15 You'll see the car make that right turn on
16 Fremont Avenue. And you'll see how -- you'll -- you
17 judge yourself how -- the speed it was moving. The van
18 makes the right turn, and then van stops; okay?

19 Now, what were you just told? You were just
20 told that under General Policy 11-14, when the van driver
21 is on his way somewhere, he's not supposed to stop the
22 van unless there is a life threatening injury. That's
23 what he just told you.

24 Okay. He stops the van and looks at him. He
25 then proceeds to what we've called Stop 4, Druid Hill and

1 Dolphin. And he calls on his radio. We don't know
2 whether he called before he got there or after it, but he
3 calls for somebody to meet him, I need to check the
4 prisoner out. Why does he need to check the prisoner
5 out?

6 The defendant arrives and pulls up.
7 Defendant's credibility. Do you believe this story? His
8 story, you'll hear it when you listen to his statement,
9 no conversation with Officer Goodson. Now, do you
10 believe -- does that sound to you reasonable? Does that
11 sound to be truthful? Does that sound credible? Does
12 that sound -- here, he's responding to a call to check
13 this prisoner out, and he doesn't say, well, what
14 happened, man? Why do you -- why do you need me to check
15 the prisoner out? What are you doing? What -- what --
16 what's going on? No conversation.

17 But that -- you know, that's like the Stop 2
18 thing where he can't identify his own shift commander
19 who's sitting right in front of his face. That's not a
20 cover up. That's not trying to hide the truth. That's
21 not trying to throw the investigators off. Nah, nah.
22 That's not what that is.

23 Okay. So then he goes into the van. He, this
24 defendant. You know -- you know, it's almost laughable
25 when these witnesses sit on the stand, and they tell you

1 the driver has the responsibility for this, and the
2 driver has the responsibility for that. The driver has
3 this responsibility of driving the van.

4 In this case, we know that the driver did
5 nothing but drive the van. When -- when they say, well,
6 how do you know he was never seatbelted by the driver,
7 well, I'll tell you why.

8 We know that the driver didn't put Freddie Gray
9 in the van at Stop 1. We know he wasn't belted at Stop
10 1.

11 We know the driver didn't put him in the van at
12 Stop 2. And we know he wasn't seatbelted at Stop 2.

13 And we know that at Stop 3, when the driver
14 gets out and looks at the back of the van and gets back
15 in, we know he wasn't seatbelted then, because at Stop 4
16 he's not seatbelted either.

17 And we know he wasn't seatbelted at Stop 4
18 because at Stop 5, when they opened the doors, he's not
19 in a seatbelt.

20 And we know he wasn't seatbelted at Stop 6.
21 That's when they opened it up and they found him near
22 death.

23 So that van driver was driving the van, and he
24 wasn't doing anything else. And the defendant is the
25 person who got in the van, who got in the van. The same

1 person -- he -- he's had so many excuses for not
2 seatbelting.

3 First, too much of a hurry to take that one or
4 two seconds because he was responding to this urgent
5 backup call. And you've seen the evidence about that.
6 The wagon driver responds before he does.

7 Then it's too dangerous. My -- my gun. I
8 can't expose my gun to him. I -- I'm not making this up.
9 You saw the three of them enact this whole scene in the
10 back of the van. You see him kneeling on his knees and
11 reaching over and picking up Mr. Gray. He puts him on
12 the seat. How much closer was he going to get for his
13 gun to be at risk? He was already in there.

14 If you think -- if he had any sense of personal
15 danger that he would have gotten into that van? Freddie
16 Gray was calm. Freddie Gray was not combative. Freddie
17 Gray was docile. And he was afraid? You -- you don't
18 leave your common sense behind.

19 And, yes, credibility is important.
20 Credibility is very important.

21 And so Dr. Allan knows that at Stop 4 Mr. Gray
22 said I can't breathe. He's asking for help. He can't
23 get up off the floor himself, where he had gotten up
24 before because he was rocking that van at Stop 2 from
25 side to side. You don't do that lying -- you might rock

1 it front to back. Maybe if you were really strong, you
2 could really arch your back, but you can't get it going
3 side to side.

4 Well, he'd gotten to his feet. He had gotten
5 to his feet. Dr. Allan knew that. You'll see it in her
6 report. It's in there.

7 Now, Defendant puts him on the bench at 4. At
8 5, he's not longer on the bench. He's kneeling. You saw
9 the van. You think there is anybody in the world who
10 would choose to ride in that van on their knees on the
11 floor instead of seated on the bench? Saw the little
12 hatch patterns on that steel -- that hard steel deck.
13 Think anybody in the world would choose to ride on their
14 stomach? Choose to ride on their knees? With that
15 ground, do that?

16 And then Dr. Allan also knows what this
17 defendant said was the position of Mr. Gray was at stop,
18 the same, the same as his position at the fifth stop.
19 Now you tell me, or tell yourselves because you're not
20 allowed to talk to me now --

21 THE COURT: Mr. Schatzow --

22 MR. SCHATZOW: Five?

23 THE COURT: Mmm-hmm.

24 MR. SCHATZOW: Yes. Thank you, Your Honor.

25 THE COURT: Mmm-hmm.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. SCHATZOW: Appreciate it.

How in the world could this injury have taken place from Stop 5 to Stop 6 and him be in the exact same position? And that's what the defendant said, and it's on the statement that you're going to listen to.

And this Donta Allen -- every expert, this was a high energy injury, tremendous amount of force.

Between Stop 5 and Stop 6 is the only time there was anybody other than Mr. Gray in that passenger compartment. He was on the right side, Allen is on the left side.

And what's the testimony? They get to the Western District. Allen walks out of the van. He walks into the back. He walks back out when Teel sees him.

So, yeah, they had some experts that came in here and said it happened between Stop 5 and 6. But how in the world could it have happened between 5 and 6? One man gets a broken neck, and the other man doesn't get a scratch.

You know, this bad faith, evil motive, doesn't care whether somebody lives or dies, whether they're hurt or not, when you have a duty to protect them, well you should call that bad (indiscernible at 1:22:26 p.m.), and you should call that an evil motive.

And when they have nerve to tell you -- and I'm

1 wrapping up now, ladies and gentlemen. We have time
2 limits. And if the judge didn't impose time limits, I
3 might talk to you for the rest of your lives. So nobody
4 blame the judge about this one.

5 THE COURT: Thanks.

6 (Laughter.)

7 MR. SCHATZOW: They tell you -- they have the
8 nerve to tell you that the defendant was traumatized.
9 And what did he say on the stand? He and Freddie Gray
10 had mutual respect for each other, mutual respect. Who
11 is he to talk to you or anybody else about what Freddie
12 Gray felt?

13 How much respect did the defendant show for Mr.
14 Gray when he saw him being thrown into -- into the van at
15 Stop 2, and he doesn't say anything to any officers about
16 how about putting him on the seat and seatbelting him?

17 How much respect does he have for him when he
18 doesn't call for a medic at Stop 4? How much respect
19 when he doesn't even take the two seconds to put him in a
20 seatbelt at Stop 4? How much respect was that?

21 And how much respect do you think Freddie Gray
22 had for him at Stop 4 when he's lying there with a broken
23 neck. In response to the defendant's questions, he says
24 yes, medic, yes, hospital. But he doesn't see this
25 defendant taking any action to get him to a hospital or

1 to get a medic.

2 You know what he knows is he's been put on the
3 bench. He hasn't even been seatbelted. What he knows is
4 he's hitting that floor again when this van gets going.
5 That's what he knows. That's all he knows when he's
6 sitting back there.

7 As he's got what Dr. Soriano, who by the way,
8 despite what you were told, Dr. Soriano testified that
9 the defendant's conduct contributed to the death, what
10 caused the death. So that's in the record.

11 He had a hunger for air. His brain is
12 beginning to die. He was suffocating. And as he's
13 sitting there, instead of a medic pulling up, the last
14 thing he sees are the doors to the van close. Those were
15 the doors to his life closing, and that was it.

16 So here we are, ladies and gentlemen, we're at
17 the end. And it's now time for you to decide. And what
18 you have is exactly what the defendant had at Dolphin
19 Hill -- excuse me, at Druid Hill and Dolphin Avenues.
20 You have the opportunity and the obligation to do your
21 duty. Do your duty.

22 Thank you.

23 THE COURT: Thank you, Mr. Schatzow.

24 (End of Excerpt - Rebuttal Argument by
25 Mr. Schatzow on Behalf of the State ended at 1:25 p.m.)

REPORTER'S CERTIFICATE

I, Patricia A. Trikeriotis, the Chief Court Reporter of the Circuit Court for Baltimore City, do hereby certify that the proceedings in the matter of State of Maryland vs. William Porter, Case Number 115141037, on December 9, 2015, before the Honorable Barry G. Williams, Associate Judge, were duly recorded by means of digital recording.

I further certify that the page numbers 1 through 57 constitute the official transcript of the proceedings as transcribed by me or under my direction from the digital recording to the within typewritten matter in a complete and accurate manner.

In Witness Whereof, I have affixed my signature this 18th day of January, 2016.

Patricia Trikeriotis

Patricia A. Trikeriotis
Chief Court Reporter

IN THE CIRCUIT COURT FOR BALTIMORE CITY, MARYLAND

STATE OF MARYLAND

vs.

Case Numbers:

CAESAR GOODSON

115141032

and

WILLIAM PORTER,

115141037

DEFENDANTS.

REPORTER'S OFFICIAL TRANSCRIPT OF PROCEEDINGS
(Motions' Hearing)

Baltimore, Maryland

Wednesday, January 6, 2016

BEFORE:

HONORABLE BARRY G. WILLIAMS, Associate Judge

* Proceedings Digitally Recorded *

Transcribed by:
Patricia Trikeriotis
Chief Court Reporter
Circuit Court for Baltimore City
111 N. Calvert Street
Suite 515, Courthouse East
Baltimore, Maryland 21202

APPEARANCES:

For the State:

MICHAEL SCHATZOW, ESQUIRE

JANICE BLEDSOE, ESQUIRE

MATTHEW PILLION, ESQUIRE

JOHN BUTLER, ESQUIRE

For the Defendant Caesar Goodson:

MATTHEW FRALING, III, ESQUIRE

ANDREW GRAHAM, ESQUIRE

AMY E. ASKEW, ESQUIRE

For the Defendant William Porter:

JOSEPH MURTHA, ESQUIRE

GARY PROCTOR, ESQUIRE

T A B L E O F C O N T E N T S

	P a g e
Motion for Alternating Challenges (Granted)	9
State's Motion in Limine to Allow Jurors to View the Transport Wagon (Granted)	9
State's Motion Concerning the Relationship Between Prosecutors and Their Friends, Partners or Spouses (Granted)	11
State's Motion Concerning Prosecutors involving the underlying events of this case (Granted)	11
State's Motion Concerning Prosecutors Past Coordination with Police to Address Crime in Certain Neighborhoods (Granted)	11
State's Motion Concerning Prosecutor's Involvement in Obtaining Search and Seizure Warrants (Granted)	11
State's Motion to Request to Preclude Inquiry Into the Drafting/editing of the Statement of Probable Cause (Granted)	11
State's Motion to Disallow Inquiry into Prosecutor's Involvement in Coordinating or Prioritizing Aspects of the Police Investigation into the Death of Mr. Gray (Denied)	12
State's Motion to Disallow Inquiry into the Prosecutor's Coordination with the Office of the Chief Medical Examiner (Denied)	12
State's Motion in Limine to Preclude Evidence of, Argument About, or Reference to Certain Information Regarding the Victim (Denied)	13

T A B L E O F C O N T E N T S

	P a g e
Defense Motion in Limine to Preclude the Testimony of Dr. Carol Allan (Denied)	17
Defendant's Motion to Make the Jurors Anonymous (Granted)	18
Defendant's Motion for Full Sequestration of the Jurors (Denied)	18
Defendant's Second Motion for Reconsideration of Denial of the Motion for Removal (Denied)	21
Defendant's Motion in Limine to Preclude Testimony and Evidence concerning Baltimore Police Department General Orders and Policies Related to the Use of Seatbelts in Police Vehicles (Denied)	22
Defendant's Motion to Strike the State's Expert, Stanford O'Neill Franklin (Denied)	27
Defendant's Motion to Quash the Subpoena of Officer William Porter (Denied)	40
State's Motion to Compel (Granted)	69

					VOIR
<u>STATE'S WITNESSES:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>DIRE</u>
William Porter	43	45	--	--	--

* * *

pages 5-37 omitted

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A F T E R N O O N S E S S I O N

(2:08 p.m.)

THE CLERK: All rise.

The Circuit Court for Baltimore City, Part 31, will start the afternoon session, the Honorable Barry G. Williams presiding.

THE COURT: Thank you.

Everyone may be seated.

Call the case please.

MS. BLEDSOE: Good afternoon, Your Honor.

State versus Caesar Goodson, Case Number 115141032.

Jan Bledsoe on behalf of the State with Michael Schatzow, Matt Pillion, and John Butler.

THE COURT: Afternoon.

THE ATTORNEYS: Good afternoon, Your Honor.

MR. GRAHAM: Your Honor, I assume you want us to step back because we're not arguing the motion?

THE COURT: That is absolutely correct.

MR. GRAHAM: Thank you, Your Honor.

MR. MURTHA: Good afternoon, Your Honor.

Joseph Murtha and Gary Proctor on behalf of Officer Porter, who is present at trial table, in regard to the Motion to Quash the Subpoena that has been issued for Officer Porter.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Thank you.

THE COURT: Good afternoon.

All right. Let's see, as a --

I'll be with you in one second. I just want to set the stage to some degree.

I do note that, let's see, on September 15th of 2015, so that was last year, in a letter to the Court, the State indicated they intended to try William Porter first, as they believed he was a necessary witness in the trials of Caesar Goodson and Alicia White.

The State then proceed -- then proceeded to trial against Mr. Porter, where I had to declare a mistrial because the jury indicated they could not reach a verdict.

On December 11th, 2015, in the middle of the trial, the State did serve Mr. Porter with a subpoena, noting that he would be testifying in the trial of Caesar Goodson and Alicia White.

We did set this date for a hearing because we note that attorneys for Mr. Porter, while aware of the fact that their client received a subpoena to testify, filed a Motion a Quash the trial subpoena. The State then filed a response to the Motion to Quash.

And also in anticipation of Mr. Porter asserting his privilege against self-incrimination,

1 presented the Court with a Motion to Compel a witness to
2 testify pursuant to Section 9-123 of the Court and
3 Judicial Proceedings Article.

4 And in their pleadings, the State argues that
5 Mr. Porter failed to show that there was good cause to
6 quash the subpoena based on annoyance, embarrassment,
7 oppression, or undue burden or expense. One could argue
8 that to be compelled to testify under the circumstances
9 could rise to the level of oppression. I do not make
10 that finding.

11 But I have reviewed the Motion to Quash and the
12 State's response, and I do not believe it is appropriate
13 to quash the subpoena, so the Motion to Quash is denied.

14 That said, I do believe that because -- that's
15 of little import because we're here at the State's
16 request to compel, and the lawyers for Mr. Porter will be
17 able to make the exact same arguments in the Motion to
18 Compel. So that said, that's where we are.

19 It's your Motion to Compel.

20 You'll have a chance to respond.

21 MR. SCHATZOW: Your Honor, may I hand up to you
22 the actual signed motion, which has not been filed?

23 THE COURT: That's fine.

24 MR. SCHATZOW: Counsel has already been
25 provided with copies. But here, this one should have a

1 signature on it.

2 THE COURT: Thank you.

3 MR. SCHATZOW: Your Honor, in terms of
4 procedure, I'm happy to make the argument now, but before
5 you -- before you rule, we'll need to have --

6 THE COURT: Well, there's going to be a lot
7 before I rule.

8 MR. SCHATZOW: So -- but let me get right to
9 the argument, if you will, Your Honor.

10 The State is -- as you've pointed out, we've
11 reviewed the 38 page Motion to Quash, and we have filed a
12 response this morning.

13 And I think, Your Honor, when you -- when you
14 strip it all away, it comes down essentially to two
15 things. The Motion to Quash --

16 THE COURT: Well, we're not here for the Motion
17 to Quash. I've already denied that.

18 MR. SCHATZOW: Okay. Well, in terms of the
19 Motion to Compel and the anticipating response, we have
20 subpoenaed Officer Porter, as you have stated Your Honor,
21 on the date that you have stated.

22 The State's Attorney for Baltimore City has
23 determined that the testimony of Officer Porter may be
24 necessary to the public interest.

25 Officer Porter, through his counsel, has

1 indicated that he will refuse to testify in this case on
2 the basis of his privilege against self-incrimination.

3 And what we seek is to compel Officer Porter to
4 testify in this case. Because those are the statutory
5 requirements, Your Honor, under Courts and Judicial
6 Proceedings Article Section 9-123, we ask the Court to
7 act in accordance with that statute and -- which provides
8 that once the State's Attorney makes this -- the showing
9 that we have made in the motion, that the Court shall
10 issue the order for immunity.

11 And so what we would ask is that at this time
12 that Mr. Porter take the stand, indicate that he is going
13 to invoke his Fifth Amendment privilege. And when that
14 record has been sufficiently established, we would ask
15 the Court at that time to enter the order as presented to
16 the Court with the motion.

17 THE COURT: Who -- Mr. Porter -- Mr. Proctor or
18 Mr. Murtha?

19 MR. PROCTOR: I'm arguing. But in the event
20 Mr. Porter were to testify, Mr. Murtha would advise him.

21 THE COURT: Well, we know he's not going to
22 testify. But --

23 MR. MURTHA: Well, then I would assume that the
24 State would call him, rather than we would call him.

25 THE COURT: I would absolutely agree with that.

1 I just wanted to know where we were. Whose going -- so
2 you're speaking once he gets on the stand?

3 MR. MURTHA: That is correct, Your Honor.

4 THE COURT: All right. This is the case of
5 Caesar Goodson, you may call him to the stand.

6 MR. SCHATZOW: Thank you, Your Honor.

7 At this time the State calls William Porter.

8 THE COURT: I don't know if the statute does
9 actually require you to do that, but that's fine.

10 THE CLERK: Raise your right hand, sir.

11 Whereupon,

12 WILLIAM PORTER,

13 a witness produced on call of the State, having first
14 been duly sworn, was examined and testified as follows:

15 THE CLERK: Thank you, sir.

16 Have a seat.

17 And state your name for the record.

18 THE WITNESS: William Porter.

19 DIRECT EXAMINATION

20 BY MR. SCHATZOW:

21 Q. Officer Porter, were you employed as a member
22 of the Baltimore City Police Department on April 12,
23 2015?

24 MR. MURTHA: Objection.

25 THE COURT: Sustained.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

BY MR. SCHATZOW:

Q. Mr. Porter, were you -- on April 12th of 2015, how were you employed?

MR. MURTHA: Objection.

THE COURT: Sustained.

BY MR. SCHATZOW:

Q. Mr. Porter, is it your intention to evoke your Fifth Amendment privilege against testifying in response to all questions that I ask you today?

A. Yes.

MR. SCHATZOW: Your Honor, if -- if I may, let me just ask another question then to have the Fifth Amendment privilege actually invoked.

BY MR. SCHATZOW:

Q. Mr. Porter, were you present on April 12th of 2015 at or about the intersection of Dolphin and Druid Hill Avenues?

MR. MURTHA: Objection.

THE COURT: Sustained.

BY MR. SCHATZOW:

Q. Is it your intention, Mr. Porter, to invoke your Fifth Amendment privilege against testifying when called as a witness in the trial of Officer Caesar Goodson?

A. Yes.

1 MR. SCHATZOW: Your Honor, we submit that the
2 record is sufficiently made with regard to the witness'
3 invocation of his Fifth Amendment.

4 THE COURT: You could have shown that it was
5 likely, but that's fine.

6 MR. PROCTOR: Can I ask one follow-up?

7 THE COURT: Yes, you can.

8 CROSS-EXAMINATION

9 BY MR. PROCTOR:

10 Q. If it also your intention to invoke, pursuant
11 to Article 22 of the Maryland Declaration of Rights?

12 A. Yes, sir.

13 THE COURT: That's fine.

14 You may step down.

15 (Whereupon, the witness was excused from the
16 witness stand, and resumed his seat at the trial table.)

17 MR. MURTHA: Your Honor, and I apologize, but I
18 guess the other portion would be not only in regard to
19 the State's questions, but also any cross-examination
20 where he may be questioned by the defense.

21 THE COURT: Well --

22 MR. MURTHA: I would just proffer that he would
23 invoke at that time, too.

24 THE COURT: -- the bigger issue also is are we
25 going to do this a second time because there's -- he's

1 been subpoenaed in two cases, and you filed it for both,
2 but I only had questions about one. But that's -- you
3 know.

4 MR. MURTHA: I would proffer that whatever
5 testimony the Court has just heard would be asserted in
6 the Alicia White case also, Your Honor.

7 THE COURT: Any objection to that, State?

8 MR. SCHATZOW: There's no objection to the
9 statement, Your Honor.

10 THE COURT: Okay. Well, with that then --
11 again, since -- remember the motion was filed to quash,
12 but the subpoenas were served for both trials, both the
13 White trial and the Goodson trial.

14 All right. State?

15 MR. SCHATZOW: Your Honor, that's correct.
16 Although the Motion to Compel was only filed in the
17 Goodson case, Your Honor, there are subpoenas in both
18 cases.

19 THE COURT: Okay.

20 MR. SCHATZOW: Your Honor, I believe the record
21 is now clear that Mr. Porter, Officer Porter, intends to
22 invoke his Fifth Amendment privilege in the trial of
23 Officer Goodson with regard to any questions that might
24 be asked of him by either side in the case.

25 And, therefore, we have established that

1 Officer Porter has refused to testify on the basis of his
2 privilege against self-incrimination. And, therefore, we
3 ask the Court to enter the order, which we passed up,
4 which is in the language of the, excuse me, the statute
5 9-123.

6 THE COURT: You -- or who's arguing?

7 MR. MURTHA: Mr. Proctor, Your Honor.

8 THE COURT: I'll hear any argument you have
9 now.

10 I have reviewed your motion. And, again,
11 although I denied your Motion to Quash, as I stated, I do
12 believe that all arguments that you make in your Motion
13 to Quash will be appropriate at this point in time.

14 MR. PROCTOR: So I would just incorporate that
15 by reference, Judge, so that the record is real clear for
16 appeal --

17 THE COURT: That's fine.

18 MR. PROCTOR: -- that on January 4th, in both
19 cases, I did file a Motion to Quash the subpoena. And
20 while the Court denied that, I would incorporate by
21 reference in objecting to the State's Motion to Compel.

22 THE COURT: Okay.

23 MR. PROCTOR: So I was going to start with the
24 issue of the subpoena, but that's moot --

25 THE COURT: Yeah.

1 MR. PROCTOR: -- now that we're here
2 compelling.

3 THE COURT: Yeah.

4 MR. PROCTOR: Yeah. I had a look at lunchtime
5 at the State's reply to my motion. And, you know, the
6 only Maryland case they cite is In Re: Criminal
7 Investigation. That's the only Maryland case they cite.

8 And what's important about that is that was
9 talking about an old statute that said, and I quote,
10 "Exempt from prosecution, trial, or punishment for any
11 and all such crimes and offenses for which such persons
12 so testifying may have been guilty or a participant, and
13 about which he was so compelled to testify."

14 So In Re: Criminal Investigation is talking
15 about an old immunity statute that gave transactional
16 immunity, which is obviously not what we have. And no
17 one is saying 9-123 requires transactional immunity, and,
18 of course, it doesn't.

19 And the crux of our argument, the fulcrum is
20 that 9-123 would be an unconstitutional application were
21 the Court to apply it to Officer Porter.

22 And the reason I asked him that one question
23 about is he also objecting to Article 22 is separate and
24 above the Fifth Amendment, we have Article 22 rights here
25 in Maryland.

1 And I cited the Maryland case -- or the
2 Massachusetts case and the Massachusetts statute that's
3 really the Maryland's doppelganger. And Massachusetts in
4 that instance said that only transactional immunity will
5 cut it.

6 So when the State, other than that case -- you
7 know, even when you look at the legislative history that
8 they cited -- and first of all, I believe the statute is
9 clear on its face.

10 We don't need to go to the legislative history
11 because you can't immunize perjury. And both prosecutors
12 have accused Officer Porter multiple times of perjury.

13 But even so, it talks about under
14 circumstances, certain circumstances, the prosecution can
15 ask for, except under certain circumstances they can't be
16 used. So the legislative history clearly doesn't say in
17 every instance the Court shall grant it; in every
18 instance it's can't be used. They talk about certain
19 circumstances. And these are the circumstances here that
20 it would be harm to do it.

21 And even if it were all true, and it says what
22 the State thinks it says, it can't abrogate state
23 constitution, and it can't abrogate federal
24 constitutions.

25 And the State in its pleading talks about how

1 the Fifth Amendment and Article 22 are essentially the
2 same. But the Troy (phonetic) I cited, Judge, which is
3 is a 1999, which came after In Re: Special
4 Investigation, whatever it was called, talks about how
5 while it's possible the witness did waive their Fifth
6 Amendment rights, they sure didn't waive their Article 22
7 rights is what that case says.

8 So, in fact, I think there's solid precedent
9 for our position that even if you find that this passes
10 muster under the Fifth Amendment, which it doesn't, it
11 doesn't pass muster under Article 22.

12 THE COURT: So you're saying that Section 9-123
13 flies in the face of the Maryland Constitution?

14 MR. PROCTOR: I'm saying, as applied to Officer
15 Porter.

16 THE COURT: Specifically why then?

17 MR. PROCTOR: It would violate.

18 THE COURT: Why?

19 MR. PROCTOR: Because 9-123, I mean, if you
20 look at the cases, the cases the State's cited and the
21 cases I cited, they're in the investigation phase.
22 They're trying to gather evidence to decide if any
23 wrongdoing happened, and if so, who did it.

24 People are saying I don't want to answer that.
25 Usually, it's In Re: Grand Jury, In Re: Corporations.

1 They want documents from the corporations, and CFO says
2 you ain't getting it.

3 THE COURT: Let me ask you a question, you say
4 that's usually, but where in the statute, or where in
5 what you're talking about, says it cannot be used in the
6 circumstances that we have been presented with?

7 MR. PROCTOR: Well, of course, it doesn't say
8 in the statute, but the state and federal constitutions
9 say that.

10 THE COURT: I -- I didn't hear what you said.

11 MR. PROCTOR: I'm saying the state and federal
12 constitutions would trump the silence on the issue in the
13 statute.

14 The statute talks about a witness shall, a
15 witness -- it used the word witness like five different
16 times in there. He's not a witness. He's a defendant
17 with a pending manslaughter trial.

18 THE COURT: He's both. He has a pending trial,
19 and he is a witness.

20 MR. PROCTOR: Right. And in this instance,
21 obviously, the rights of defendants are stronger than the
22 rights of witnesses.

23 You know --

24 THE COURT: But isn't that what immunity is
25 for? To make sure that you can't be prosecuted,

1 theoretically.

2 MR. PROCTOR: Right. But (a) the federal
3 government can and may well still prosecute, and (b) he
4 is going to be prosecuted, and (c) they'll derive a
5 benefit from seeing him testify not once, but twice more.

6 THE COURT: Well, but see now what you're
7 doing, you're doing different issues. You started with
8 the issue of the constitution and the statutes, and now
9 you're getting into the trial issue of whether or not
10 there's a benefit. So --

11 MR. PROCTOR: Right.

12 THE COURT: -- just be clear about where we're
13 going. So I -- you may or may not be right, but you
14 started with the constitution and saying that Statute
15 9-123 is not consistent with the constitution. And now
16 you're talking about they may derive a benefit.

17 MR. PROCTOR: I think the State in their
18 pleading says, and I agree with them, that there isn't
19 single appellate reported case on 9-123 in Maryland.

20 THE COURT: Great for me. Yes, I know.

21 MR. PROCTOR: So, yeah, we're res nova on this.
22 You know, yesterday -- let's talk about public
23 policy.

24 Yesterday, I was in front of Judge Peters.
25 Three defendants. It's clear to me, I don't know if it's

1 clear to the State yet, but under Bruton, they have to be
2 tried separately. And I was thinking, like, when one of
3 them goes first, why wouldn't the State call the second
4 guy, and the third guy. Sure, they can give -- you know,
5 but they can't un-know what they know.

6 They can see maybe he gets away with murder,
7 but he gets charged with perjury because he says
8 something different in his trial than he says in the
9 first trial.

10 They can see his demeanor. You know, one of
11 the cases, I think it's a Minnesota case, talks about you
12 can decide whether to make plea bargain, you can get a
13 preview of the defense's case. You know, it's impossible
14 that we go down this road a second time in trial.

15 Witnesses have a -- you've no doubt had
16 retrials when the jury's hung or something. I have, too.
17 You know, and it always comes up on cross, that's not
18 what you said the last time you testified; is it. I
19 mean, he's got to testify three more times.

20 THE COURT: He doesn't have to do anything.
21 And that's the key thing.

22 MR. PROCTOR: Well, if you rule, he's got to
23 testify twice.

24 THE COURT: That's different.

25 You -- I agree with you. If I rule for the

1 State, he would have to testify in the Goodson trial and
2 the White trial.

3 MR. PROCTOR: And that may well impact his
4 ability to testify at his trial.

5 So, you know, forewarned is forearmed. And I
6 just don't see how immunity -- you know, the thing I
7 agree with the State is the immunity has to put you in
8 coextensive, I think is the word the statute uses, in the
9 same position as if it never happened.

10 THE COURT: Right.

11 MR. PROCTOR: Right. Learning how he's going
12 to answer cross from Mr. Fraling or whoever does it,
13 cross from Mr. Bates. And I don't want to get -- the
14 statements haven't been public yet, so I don't want to
15 get into them.

16 But there are material variations in what
17 Officer Porter would say on the stand and what other
18 officers who face trial in this matter said in police
19 interviews. So if the State doesn't wave it in Officer
20 Porter's face, one of those guys sure will. What is his
21 response to that, what is his answer to that, the State
22 doesn't know.

23 You know, one of the -- a Supreme Court case I
24 cited talks about when the cat comes out of the bag, you
25 may not be able to put it back in it. Well, if he

1 testifies at two trials, the cat is going to come out of
2 the bag is my point, Judge.

3 THE COURT: Okay. But is that really your
4 concern?

5 MR. PROCTOR: Absolutely.

6 THE COURT: And I'm not being funny. How is
7 that really your concern? Isn't that the State's concern
8 because the burden would be on them at that point?

9 MR. PROCTOR: My concern is putting Officer
10 Porter in the best position possible to win at his re-
11 trial on June 13th.

12 THE COURT: Understood.

13 MR. PROCTOR: That's my only concern, in fact.

14 THE COURT: As it should be.

15 MR. PROCTOR: What happens to Officer Goodson
16 is not my fight to have.

17 THE COURT: Absolutely not.

18 MR. PROCTOR: And, again, seeing Officer
19 Porter testify, seeing him subject to cross-examination.
20 He testified for, I think, four hours in our trial. So
21 even if it's half that, that's 240 minutes, the State
22 gets to see him on the stand.

23 THE COURT: Mmm-hmm.

24 MR. PROCTOR: Without him being able to, you
25 know, having to answer questions, whether he likes it or

1 not. It's compelled testimony. The jury pool is seeing
2 it.

3 And, you know, if Officer Goodson is acquitted,
4 a juror may decide he's not credible. If he's convicted,
5 a juror may decide, well, when compelled to do so, he
6 told the true story or whatever. I can't control
7 sequestration of witnesses in a trial that isn't mine.

8 THE COURT: Mmm-hmm.

9 MR. PROCTOR: I can't control the wider public
10 seeing -- I know you can't live tweet, much to the
11 chagrin of the folk back there, but it's almost
12 instantaneous.

13 THE COURT: We won't go down that path.

14 Go ahead.

15 MR. PROCTOR: And, you know -- and so -- and
16 then I cited in my pleading, it's really important and,
17 you know, you and I talked about this in chambers, of how
18 -- if it at least been a (inaudible at 2:27:05 p.m.)
19 team, a clean and a dirty team.

20 THE COURT: When you say you and I, please
21 include the fact that they were there.

22 (Laughter.)

23 MR. PROCTOR: That's fair. They were. They
24 were. They were.

25 THE COURT: Jesus. Yeah. I know.

1 MS. BLEDSOE: Uh-huh.

2 THE COURT: With him.

3 MR. PROCTOR: Yeah.

4 So, you know, the Poindexter case, which the
5 State actually cited, talks about how newspapers were
6 redacted. And there was a guy whose only job was to take
7 all the information that's compiled --

8 THE COURT: I'm pretty aware of how that works,
9 I think.

10 MR. PROCTOR: Yes, you are.

11 THE COURT: I've got an idea.

12 MR. PROCTOR: And so we don't have that here.
13 You know, it's the same people that are going to take his
14 testimony in the Goodson trial, in the White trial, and
15 then they're going to do his re-trial.

16 You know, I touched on it in the pleading. I
17 don't think I need to repeat it, but there's this huge
18 issue of they called him a perjurer, I think 15 times, if
19 my math is right.

20 THE COURT: I don't think they called him a
21 perjurer. They said he lied.

22 MR. PROCTOR: That --

23 THE COURT: Just saying what they said.

24 MR. PROCTOR: And they said he lied --

25 THE COURT: Or he's not to be believed, things

1 along those lines. They didn't call him a perjurer.

2 MR. PROCTOR: Right. Well, what he lied about
3 this material, which is the definition for perjury. I
4 mean, they may not have cited the statute, but their
5 words clearly import the fact that they believe he did.

6 You know, again, Article 22 we believe assists
7 us in this argument, in addition to the Fifth Amendment.
8 But there's just -- the bottom line is it's never
9 happened before. I can't find a Maryland case on point.

10 And it should have -- something this grave as
11 one co-defendant being compelled to testify in the states
12 around this country, it has a chilling Sixth Amendment
13 right on our right to a fair trial, if Your Honor compels
14 it and puts Officer Porter on the stand.

15 And 9-123 cannot and does not protect someone
16 who the State believes, and they have the sole authority
17 to charge someone, committed perjury.

18 And so for all those reasons, Judge, we would
19 ask you deny the State's Motion however it's -- to Compel
20 Officer Porter's testimony because you can't unring that
21 bell.

22 THE COURT: Okay.

23 State?

24 MR. SCHATZOW: Yes, Your Honor.

25 First, the Article 22 argument was resolved by

1 the Court of Appeals as we cited in that case, In Re:
2 Criminal Investigation, page 6 of our brief.

3 The -- the set -- the court comes right out and
4 says: To withstand the constitutional challenge, an
5 immunity statute must provide either use and derivative
6 use, or transactional immunity, citing Kastigar. That's
7 exactly what we've done.

8 And they went on to say that Article 22
9 provides protection identical to that provided by the
10 Fifth Amendment privilege. That's in that same case at
11 page 683, footnote 3.

12 And the Supreme Court has resolved this issue
13 already. The threat of a federal investigation, real or
14 imagined, is only relevant to whether the witness has a
15 Fifth Amendment privilege. And we don't dispute that he
16 has a Fifth Amendment privilege.

17 We're asking for immunity to put him in the
18 same position so that we, as the Supreme Court has
19 recognized, the Court of Appeals recognized, the General
20 Assembly recognizes, we get the choice because it's
21 important to have the testimony of citizens, and because
22 sometimes the only people who can testify about certain
23 facts are people who are implicated in the crimes
24 themselves, that we get to make that choice.

25 And when we make that choice, yes, we pay a

1 price for that choice. We're going to have -- we have to
2 go through a Kastigar hearing.

3 But all of -- this parade of horrors
4 that's -- that appears in the motion and that counsel was
5 talking about now is what will be dealt with at the
6 Kastigar hearing where we have the burden of showing that
7 the evidence we're relying on is not tainted by his
8 immunized testimony.

9 And this -- and in this case, we'll have a good
10 basis for that because we've already tried him once for
11 that.

12 There is no immunity for past perjury. There
13 just isn't. And the statute talks about immunity not
14 covering perjury, and that's been interpreted to mean
15 future perjury.

16 And the point is what -- what he's either
17 trying to do here is get transactional immunity for what
18 he testified about in the previous -- in his previous
19 trial, or he's trying to force us to have a Kastigar
20 hearing today, many months in advance of the trial. And
21 there's -- there's just no basis for it. And --

22 THE COURT: Ehh.

23 MR. SCHATZOW: And in a case that we did not --

24 THE COURT: It might be.

25 MR. SCHATZOW: What?

1 THE COURT: Once I'm done, there might be.

2 MR. SCHATZOW: Okay.

3 Then in a case that we did not cite, and I
4 apologize for not citing it, while there's no discussion
5 of 9-123, a 2004 Maryland Court of Appeals case In Re:
6 Ariel G, 383 Md. 240, 2004 case, was deciding an issue
7 where the family court had forced someone to try to
8 testify about their child without any immunity.

9 And the court went on to say in Footnote 11
10 that 9-123 allows a prosecutor to seek a grant of use
11 immunity from the court when the testimony of a witness
12 may be necessary to the public interest where prosecutor
13 anticipates that the witness will invoke the Fifth
14 Amendment.

15 And it goes on to say -- say, and this is the
16 last paragraph of the opinion, all that the Fifth
17 Amendment requires is that a criminal defendant not be
18 forced to give testimony that could be used to
19 incriminate himself or herself.

20 And what the Supreme Court has said repeatedly,
21 going back to Murphy in 1964, is once the witness has
22 both use and derivative use immunity, then they're not
23 being forced to incriminate themselves because they are
24 in the same position they would be if they had never
25 testified.

1 And when -- when Mr. Proctor talks about his
2 hypothetical of the three co-defendant case in front of
3 Judge Peters, that is exactly the situation in the Graves
4 case from the District of Columbia that we cited on
5 approximately page 11 or 12 or 13, I will find it, page
6 12 of our opposition that we filed this morning, our
7 response.

8 It was a co-defendant case, and that's exactly
9 what the government did in that case, the District of
10 Columbia case, they immunized the co-defendant, and he
11 refused to testify. He was held in contempt, and the
12 contempt conviction was upheld by the District of
13 Columbia Court of Appeals because the -- there's no
14 differentiation in status contemplated by either the
15 constitution or the statute.

16 Officer Porter, in the Officer Goodson case and
17 in the Officer White case, is a witness. That's the only
18 status he has. And the statute doesn't talk about
19 whether one is a witness or one is a defendant in another
20 case or one is a future defendant or a potential
21 defendant or a convicted defendant. It just talks about
22 a person.

23 And so those arguments just -- they -- they
24 don't hold weight. There is no difference in the state
25 constitution and federal constitutional analysis. The

1 federal -- the Supreme Court has repeatedly said
2 immunity, use and derivative use by the federal
3 government prevents the states from using or deriving use
4 from testimony, and it prevents the federal government
5 from using or deriving use from the state's testimony.
6 That law has been settled for more than 50 years.

7 And so when they say will derive a benefit,
8 that's what a Kastigar hearing is about, Judge. It
9 doesn't go to the question of jumping back and stopping
10 the witness from -- from being able to testify. It
11 doesn't prevent the state from getting the immunity
12 grant.

13 And the fact that this has -- is not the
14 subject of a Court of Appeals decision, I agree, Your
15 Honor, this would be -- while I don't think it's a
16 difficult legal question, obviously, it would be nice if
17 we had decisives from the Court of Appeals, but that's
18 not they way the law develops. Somebody has to be the
19 first. And I don't know whether we're the first --

20 THE COURT: Why does it got to be me?

21 MR. SCHATZOW: And who would be better?

22 (Laughter.)

23 THE COURT: You've got about 75 or 100 other
24 judges that would be better than me.

25 MR. SCHATZOW: Not in our opinion, Your Honor.

1 THE COURT: Oh, so kind and so believable.

2 Thank you. Go ahead.

3 MR. SCHATZOW: It didn't sound sincere? I'm
4 sorry, Your Honor?

5 THE COURT: Ehh. It's all right. Don't worry
6 about it.

7 MR. SCHATZOW: So, Your Honor, we incorporate,
8 of course, the -- our response, which I know you've read,
9 and I'm not going to go read that.

10 But there's just -- there really is, other than
11 the hyperbole and the rhetorical flourishes throughout
12 the 38 pages, there's no substance to the point that the
13 Court has to decide today what the impact will be on the
14 retrial. That's simply not the law.

15 The law is when we make the showing, and
16 there's been no argument that we haven't made the showing
17 required by the statute, what they're asking you to do is
18 find that the statute is unconstitutional in this case,
19 or unconstitutional as applied to the defendant. And no
20 court in this country, in any state, in any federal
21 court, has ever held the immunity statute to be
22 unconstitutional.

23 And that's what they're asking you to find,
24 Your Honor. And we submit that this is -- the
25 circumstances may be unusual, but it's a straightforward

1 application of the statute and the constitutional law of
2 Maryland and the constitutional law of the United States.

3 He is a person who has refused to testify on
4 the basis of his self-incrimination rights under the
5 Fifth Amendment. We have asked you to give him use and
6 derivative use immunity. The Supreme Court and Maryland
7 Court of Appeals say that is all that is necessary to be
8 co-extensive with the witness' Fifth Amendment privilege.
9 And because that's co-extensive, that's all that need be
10 done.

11 And, yes, we have a burden prior to his retrial
12 of having a Kastigar hearing. And, you know, Your Honor,
13 you will determine when that hearing will be, and you
14 will make the determination whether we've met our burden
15 or not. But that's the time when the issues that they
16 have been raising are to be addressed, not in terms of
17 whether the State has complied with the statute and
18 whether the statute is constitutional.

19 And so I urge you, Your Honor, to -- to issue
20 the order as signed. There's no complaint about the form
21 of the order or whether the order is in the right
22 language. The complaint is beyond that, Your Honor.

23 THE COURT: Thank you.

24 All right. I find myself in unchartered
25 territory.

1 I'm agreeing with Mr. Schatzow to some degree.
2 It is a simple decision in one sense. It's a simple
3 decision because I do believe that the statute as
4 written, 9-123, immunity for compulsory testimony, it is
5 clear that if the State is willing to give use and
6 derivative use immunity to a witness, and they have made
7 the appropriate finding. And I don't think there's any
8 dispute from the lawyers for Mr. Porter that the State
9 has made it clear from the very beginning that they want
10 Mr. Porter's testimony. They find that it's extremely
11 important testimony and is needed in the Goodson and
12 White cases. So that aspect of it is relatively clear,
13 and there's no dispute on that.

14 The issue then becomes whether the statute as
15 written is in violation of the federal constitution, in
16 violation of the Maryland Constitution. I make the
17 finding right now that it is not; it is very clear. That
18 as long as use and derivative use immunity is offered by
19 the State to a witness, then it's fine. Then there is no
20 violation there because the witness, whether it happens
21 to be a person who has been charged, is pending a charge,
22 or is on appeal, if that particular individual as a
23 witness is being offered immunity for their testimony in
24 a trial, that seems to satisfy this Court.

25 I will note that generally immunity is given to

1 someone at a Grand Jury so you can testify. Or immunity
2 is given to someone whose been charged with the crime,
3 and they are allowed to plead to a lesser charge and
4 testify at a trial.

5 We have a different situation here, where
6 someone who has been charged with a crime, has already
7 been tried, and there is another trial coming up. I've
8 not seen that happen before. And great for me to have to
9 be the one to have that in my courtroom.

10 But here's the other issue, I can certainly
11 sign this order, and the State alludes to the Kastigar
12 hearing that would have to come at some point.

13 I guess the issue is if we're talking use and
14 derivative use without a taint team to show that they've
15 not used anything that Mr. Porter says, I do understand
16 the argument made by the lawyers for Mr. Porter.

17 I don't need to make a decision at this exact
18 second, but I will note that if Mr. Porter testifies at a
19 trial that is not his, and if he testifies under the
20 grant of immunity, I pose to the State, the second he
21 says something, you've heard it. And when you've heard
22 it, how do you take that out of your mind when you cross
23 him? Or if he decides not to get on the stand? That's a
24 question I pose to you right now before I sign or not
25 sign an order.

1 But I do note that it would seem to be nigh
2 impossible without a taint team to show that the
3 testimony that Mr. Porter may give, if you require him to
4 give it, has not been used in your thought process, in
5 your investigation. You've indicated in your pleadings
6 that you have a lot of testimony -- hours of testimony
7 from Mr. Porter. You've indicated in your pleadings that
8 there's a statement from Mr. Porter and a long
9 investigation.

10 I do note though that the second he testifies,
11 that may change the game.

12 But, again, I will agree at this exact moment
13 at this exact time, this Court will not require a
14 Kastigar hearing, but I do note that that is something
15 that is extremely important.

16 And, again, without a taint team, I'm not sure
17 how you do it, but I'm sure you'll figure a way out, or
18 you won't be able to try Mr. Porter if I sign this order.

19 That said, the State's still seeking immunity
20 for Mr. Porter in the Goodson and White trials?

21 MR. SCHATZOW: Yes, Your Honor.

22 THE COURT: All right.

23 I do find that under 9-12 -- 9-123, under the
24 Courts and Judicial Proceedings Article that requests for
25 witness immunity as presented by the State, Motion to

1 Compel the Witness, they have subpoenaed Mr. Porter. He
2 did get on the stand indicating that he was going to
3 assert his right not to testify.

4 I do believe that in order for him to testify
5 in the Goodson matter and the White matter, he would be
6 required to receive use and derivative use immunity
7 pursuant to, again, 9-123, over the objection of Mr.
8 Porter's lawyers.

9 I assume you want to object.

10 MR. PROCTOR: Yes, sir.

11 THE COURT: There you go.

12 I do believe it is appropriate to allow the
13 State, having presented to me information that they
14 believe Mr. Porter's testimony is critical to the various
15 trials that are going forward, allow them the opportunity
16 to compel, and order Mr. Porter to testify in the trial
17 of Caesar Goodson.

18 The Court will sign an order compelling that
19 witness to testify at the trial at the appropriate time
20 if, again, the State chooses to use him for that.

21 That is the Court's ruling.

22 MR. PROCTOR: Judge, before you leave --

23 THE COURT: Go ahead.

24 MR. PROCTOR: -- I intend to be -- first of
25 all, I would ask you to sign the order because --

1 THE COURT: Well, I plan to.

2 MR. PROCTOR: Well, right now.

3 THE COURT: I'm not going to sign this very
4 second. But I'll sign it before I get out of here.

5 MR. PROCTOR: Okay. Because tomorrow morning,
6 I plan to be standing in the Court of Special Appeals in
7 Annapolis moving for an injunction under 8-425.

8 And 8-425 says, "Unless it is not practical to
9 do so, a party shall file a motion in the Circuit Court
10 requesting relief prior to requesting relief from an
11 appellate court under this rule."

12 So I would request that the Court injunct the
13 State from calling Officer Porter unless and until we
14 have sought --

15 THE COURT: You're requesting me to --

16 MR. PROCTOR: I have to before I can ask the
17 Court of Special Appeals to do it.

18 THE COURT: Okay.

19 MR. PROCTOR: So I'm asking you to grant an
20 injunction against Officer Porter testifying.

21 THE COURT: I'm going to deny that right that
22 this very second. But once I see it, and have a chance
23 to review it, I certainly will do whatever I believe is
24 appropriate.

25 But I need to obviously see it first.

1 MR. PROCTOR: Okay. So you want me to just
2 file a motion saying pursuant to --

3 THE COURT: How many times I have accepted
4 things in court?

5 MR. PROCTOR: That's just what the Rule says.
6 I'm just reading you the Rule.

7 THE COURT: Yeah, I know. You can file it.

8 MR. PROCTOR: Would you like to see it?

9 THE COURT: No. I've seen it once or twice
10 before.

11 MR. PROCTOR: Okay. So are you denying it? So
12 I can tell the appellate court I asked, and you said no.

13 THE COURT: I'm not doing anything now because
14 I haven't signed the order yet.

15 MR. PROCTOR: Okay. Well, should I hang on?

16 THE COURT: You can hang on as long as you
17 like, but I have a few other things to do.

18 So anything else?

19 MR. MURTHA: Your Honor, if -- I have actually
20 gone through a Kastigar hearing --

21 THE COURT: So have I.

22 MR. MURTHA: -- in a state proceeding. And the
23 only -- and let me just explain my concern.

24 THE COURT: Okay.

25 MR. MURTHA: Because I've also been through

1 federal proceedings where we've dealt with a taint team,
2 which has avoided the Kastigar hearing.

3 THE COURT: Understood.

4 MR. MURTHA: My concern, and I heard exactly
5 what the Court said, is that it -- that they can't remove
6 from their minds what they actually have heard.

7 THE COURT: Well, I didn't say that.

8 MR. MURTHA: But -- well, I --

9 THE COURT: What I said was, we'll see.

10 MR. MURTHA: Let me then ask these questions,
11 and ask the Court for some direction in regard to whether
12 it should be appropriate to file a motion.

13 THE COURT: Okay.

14 MR. MURTHA: One is is that in order to avoid
15 any taint -- actually, in the case I was involved in, the
16 State actually accessed transcripts of all the immunized
17 testimony.

18 THE COURT: Mmm-hmm.

19 MR. MURTHA: And used them in the
20 investigation. And then did not have a taint team.

21 So one of the things --

22 THE COURT: I'm sorry. Say that again.

23 MR. MURTHA: They actually accessed -- the
24 State --

25 THE COURT: Right.

1 MR. MURTHA: -- accessed the transcripts of the
2 testimony, which was provided under a grant of immunity,
3 and incorporated it in their investigation of the crime
4 which they were charged, which ultimately led to the
5 demise of their ability to prosecute the person.

6 THE COURT: One would hope. Okay.

7 MR. MURTHA: But one of the things, and I
8 suppose I put this in a motion, but I want to bring it to
9 the Court's attention. In order to protect Officer
10 Porter in the future would be if the State elects not to
11 use a taint team, I would be inclined to file a motion
12 which would preclude the State from accessing a
13 transcript or video recording, audio recording, of
14 Officer Porter's testimony in either one of -- either
15 Officer Goodson or Alicia White's trial without Court
16 permission.

17 THE COURT: Well, you can file what you want.
18 But I'm just curious, why would you file that? Why would
19 -- that's fine. If you want to file that. Why would you
20 file that?

21 MR. MURTHA: To protect. What if they get the
22 transcript, and they say --

23 THE COURT: Stop right there. Stop right
24 there. What if they get the transcript where they gave
25 him immunity?

1 MR. MURTHA: Then the --

2 THE COURT: What follows?

3 MR. MURTHA: You'd have to go through a
4 Kastigar hearing. That's --

5 THE COURT: That would be idiotic. And I'll
6 say that. I mean, if they do thatn they're granting him
7 immunity. If they look at it, don't you think you win?

8 MR. MURTHA: I -- we would have a Kastigar
9 hearing. And they would try to prove that they have an
10 independent source of information.

11 THE COURT: Okay. But like I said, file
12 whatever you want. But I -- I just don't see --

13 MR. MURTHA: I hear what you're saying. I've
14 never had this come up in this situation before, so it's
15 a precautionary measure.

16 THE COURT: Regardless of what everyone may
17 think of the State --

18 Nothing against you people right now.

19 -- but that is idiotic. If they were to do
20 that, I would call them idiots on the record.

21 MR. MURTHA: It's -- it's --

22 THE COURT: And they would call themselves
23 idiots on the record.

24 Would you not, Counsel?

25 MS. BLEDSOE: Oh, Judge, don't put me in that

1 position.

2 THE COURT: I always put you in that position.

3 MR. SCHATZOW: Your Honor, I have been called
4 an idiot by Ms. Bledsoe so many times.

5 THE COURT: Thank you. Thank you.

6 MR. MURTHA: What about their notes though,
7 Your Honor? That's the other concern that I have.

8 THE COURT: But that's a different issue. You
9 specifically said if they went to go get the transcripts.
10 That -- but again --

11 MR. MURTHA: Well, that was issue number one,
12 transcripts.

13 THE COURT: Okay.

14 MR. MURTHA: But then how do we deal with their
15 notes?

16 THE COURT: I don't care right now. And when I
17 say I don't care right now, because of what I made very
18 clear. If that's what the State decides to do, they
19 decide to put Mr. Porter on, they have been placed on
20 notice, and I think I'm being fair for doing that, that
21 they have an interesting burden to show that they didn't
22 use it in any way, shape, or form. How they do that is
23 not my concern.

24 MR. MURTHA: There's a lot of people over here
25 taking notes. So I'm just bringing it to the Court's

1 attention.

2 THE COURT: He hasn't testified yet.

3 MR. MURTHA: That's true. But at trial,
4 there's --

5 THE COURT: But we're not there yet.

6 MR. MURTHA: I understand. It's a
7 precautionary measure, Your Honor.

8 THE COURT: Ehh. What else?

9 MR. MURTHA: That's it for now.

10 THE COURT: You sure? All right.

11 And you just want me to sign it. I can't right
12 now. But I'll get it at some point. Okay.

13 Can I go, please?

14 MR. SCHATZOW: Oh.

15 THE COURT: No? Okay.

16 MR. SCHATZOW: There -- on this case, Your
17 Honor --

18 THE COURT: Mmm-hmm.

19 MR. SCHATZOW: Since we submitted the order
20 only on the Goodson case, we will get to your chambers
21 this afternoon an identical order captioned in the White
22 case.

23 THE COURT: You're going to do it in both?

24 MR. PROCTOR: Yes, sir.

25 THE COURT: Okay.

1 MR. SCHATZOW: And there was one matter --

2 MR. PROCTOR: Actually, probably not. Because
3 the injunction will be argued because the harm can't be
4 undone.

5 THE COURT: Right. Okay. So it would just be
6 for --

7 MR. PROCTOR: We've got some time before, so
8 I'll probably just do it in Goodson's.

9 THE COURT: Okay. That's fair.

10 MR. SCHATZOW: There's one unrelated matter,
11 Your Honor, perhaps we should approach the bench about.

12 THE COURT: Approach.

13 MR. PROCTOR: Us or --

14 MS. BLEDSOE: Any. Any.

15 MR. SCHATZOW: Come on up.

16 THE COURT: You're sitting there. Come on.

17 (Counsel and the defendant approached the
18 bench, and the following ensued:)

19 THE COURT: No, I'm good. This is not an upset
20 head rub.

21 MS. BLEDSOE: I know.

22 THE COURT: This is my hands are cold rub, and
23 my head is warm.

24 MS. BLEDSOE: I just -- I talked to Catherine,
25 and those dates are fine.

1 THE COURT: Okay. Oh, okay. Well, I saw her
2 sitting there, and that's why -- did I not see her?

3 MS. BLEDSOE: No, I don't think so. She's up
4 in Harford County.

5 THE COURT: Oh, I thought I --

6 MR. SCHATZOW: I think that's her.

7 MS. BLEDSOE: Oh.

8 THE COURT: Yeah. That's --

9 MS. BLEDSOE: Oh, yeah.

10 MR. SCHATZOW: She's here. Yeah.

11 THE COURT: I thought we needed to talk about
12 it.

13 MS. BLEDSOE: No. She said it was fine.

14 THE COURT: Oh.

15 MS. BLEDSOE: Sharon said it was fine that she
16 -- I told her she didn't have to show up.

17 MR. SCHATZOW: Maybe we should have her come
18 up.

19 THE COURT: I'll get to her in a second.

20 MS. BLEDSOE: Okay.

21 THE COURT: Okay. Yeah. I appreciate that.

22 MS. BLEDSOE: I didn't see her or --

23 THE COURT: So what do you want to do?

24 MR. PROCTOR: I want to get -- seek an
25 injunction. You're supposed to seek it at the Circuit

1 Court first. Once they deny it, you go to Court of
2 Special Appeals.

3 MS. BLEDSOE: Yeah.

4 MR. PROCTOR: And so I'm taking interlocutory
5 appeal.

6 THE COURT: Yeah, I figured.

7 MR. PROCTOR: But there's no way to get those
8 done any faster, even with the agreement of the parties.

9 THE COURT: Okay.

10 MR. PROCTOR: So the -- the relief sought is an
11 injunction prior to the interlocutory appeal.

12 THE COURT: All right. File something.
13 They'll look at it, and I'll look -- and I'll see. I'll
14 get it by tomorrow. I'll sign this at some point today.

15 MR. SCHATZOW: You don't want to hear from us
16 on that now I take it.

17 THE COURT: No, I don't.

18 MR. SCHATZOW: Okay.

19 THE COURT: But bring Catherine up since she's
20 here.

21 MS. BLEDSOE: Okay.

22 MR. MURTHA: It's nice seeing you. Happy New
23 Year, Your Honor. Good to see you just for a short
24 period of time though.

25 THE COURT: Give it time, or not.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. MURTHA: I like the "or not."

THE COURT: I'm leaning toward it. I'm leaning toward doing it today, but I said no.

Hi, there.

MS. FLYNN: Hi.

MS. BLEDSOE: Yeah, we called them. And then they saw you, so they weren't sure if something had changed.

THE COURT: Okay. I didn't want to --

MS. FLYNN: Oh no. The right hand knew what the left hand was doing.

MS. BLEDSOE: Good.

THE COURT: Okay. Understand.

MS. FLYNN: Yeah. Mmm-hmm.

THE COURT: Okay.

MS. BLEDSOE: All right.

MS. FLYNN: I just -- I have a feeling that Nero and Rice's attorneys --

THE COURT: I'm sure.

MS. FLYNN: -- are going to ask --

THE COURT: I'm sure. But I just want to deal with the ones we have now.

MS. FLYNN: I understand.

THE COURT: So we've got White. We've got you.

MS. FLYNN: Yeah.

1 THE COURT: I'm going to send you to
2 Administrative Court at some point in time.

3 MS. BLEDSOE: Okay. Thank you.

4 (Counsel and the defendant returned to the
5 trial table, and the following ensued:)

6 THE COURT: Thank you.

7 So that was a scheduling issue.

8 Anything else from the State?

9 MR. SCHATZOW: No, Your Honor.

10 THE COURT: Anything else from attorneys for
11 Mr. Porter?

12 MR. MURTHA: No, Your Honor.

13 THE COURT: Anything else from the attorneys
14 for Mr. Goodson; where'd you all go?

15 MR. GRAHAM: No.

16 MR. FRALING: No, Your Honor.

17 MR. GRAHAM: Thank you.

18 THE COURT: Okay.

19 Not you.

20 But I'll see the other parties Monday morning.

21 Okay. Not here. Across the street.

22 MS. BLEDSOE: Thank you.

23 THE COURT: Thank you.

24 MR. FRALING: What time will that be, Your
25 Honor?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

THE COURT: That's a fair question.

MS. BLEDSOE: Yeah.

THE COURT: I do know that the -- they can actually go.

You all can go. Go. Thank you.

Because the Grand Jury is being sworn in at nine o'clock. So what I've got to find out is whether we're going to start at 9:30 or 10:00. I'll know the next day or so. I'll let you know. I personally prefer to start at 9:30, but I'll find out from Judge Pierson.

MS. BLEDSOE: Thank you.

THE COURT: Thank you.

Everyone -- I'm going to be here for a second. So feel free to just --

MS. BLEDSOE: Okay. Thank you.

(Whereupon, the matter concluded at 2:52 p.m.)

REPORTER'S CERTIFICATE

I, Patricia A. Trikeriotis, an Official Court Reporter of the Circuit Court for Baltimore City, do hereby certify that the proceedings in the matter of State of Maryland vs. Caesar Goodson and William Porter, Case Number 115141032 and 115141037, on January 6, 2016, before the Honorable Barry G. Williams, Associate Judge, were duly recorded by means of digital recording.

I further certify that the page numbers 1 through 82 constitute the official transcript of the proceedings as transcribed by me or under my direction from the digital recording to the within typewritten matter in a complete and accurate manner.

In Witness Whereof, I have affixed my signature this 17th day of January, 2016.

Patricia Trikeriotis

Patricia A. Trikeriotis, CVR
Official Court Reporter