



January 13, 2016

VIA HAND DELIVERY

The Honorable Barry G. Williams
Associate Judge
Circuit Court for Baltimore City
534 Courthouse East
Baltimore, MD 21202

RE: State vs. Porter, No. 115141037
State vs. Goodson, No. 115141032
State vs. White, No. 115141036
State vs. Miller, No. 115141034
State vs. Nero, No. 115141033
State vs. Rice, No. 115141035

Dear Judge Williams,

I write on behalf of the State with regard to the trial scheduling of the above-referenced cases. The State requests that none of the cases be tried until the Court of Special Appeals resolves the *Porter* immunity appeal. After that resolution, the State requests that *Porter* be retried first, followed by the trials of *Goodson*, *White*, *Miller*, *Nero*, and *Rice*, in that order. After recounting the current schedule, I will address the reasons for the State's request.

As of now, the *Goodson* trial has been stayed. The *White* trial, now set for February 8, will likely soon be in the same or similar posture as the *Goodson* trial. *Porter* has filed a Notice of Appeal of your immunity order in the *White* case, and presumably that appeal will be consolidated with the previous *Porter* appeal, and the impact will be the same on the *White* case as the impact on the *Goodson* case. The Court of Special Appeals will hear argument on March 4, with its ruling presumably a reasonable time thereafter.

The *Miller* case is scheduled for March 7, and before the orders of the Court of Special Appeals, it was to be the next case tried after the *White* case. Although the *Nero* case is scheduled for February 22, and the *Rice* case for March 9, the plan was to reschedule *Nero* and *Rice* after the *Miller* case.

The State asks that *Porter* be retried before any of the other cases because that is the most practical thing to do. Retrying *Porter* first will (1) eliminate the need for a time consuming and potentially complex *Kastigar* hearing; (2) allow the State to avoid the costly redundancies of creating a "clean" team; and (3) moot virtually every objection made thus far by *Porter* in opposing the immunity conferred upon him. The savings in judicial and prosecutorial resources will be considerable and in the public interest.

The State has previously advised the Court of Porter's importance as a witness in the *Goodson* and *White* cases. Porter's testimony about the failure to seatbelt at the second stop is also critical to the trials of Miller, Nero and Rice. Each is charged with reckless endangerment and misconduct for failure to seatbelt Mr. Gray. The involuntary manslaughter and assault charges against Rice are also based, in part, upon the failure to seatbelt.

Also important is Porter's testimony concerning his interactions with Mr. Gray at the fourth stop. The State and its expert witnesses rely in part on Porter's evidence concerning that fourth stop to prove that Mr. Gray suffered his fatal injuries between the second and fourth stops. The defendants contend that these injuries occurred later, between the fifth and sixth stops. While not legally dispositive as to each and every charge against each defendant, where the injuries took place is important and will have impact upon the jury. It is directly implicated in the involuntary manslaughter and assault charges against Rice, and also relevant to the reckless endangerment charges against each of Miller, Nero, and Rice. If the injury happened where the State contends, it is directly traceable to the failure to seatbelt at stop two, and is therefore evidence that the conduct of Miller, Nero, and Rice "created a substantial risk of death or serious physical injury to another...." MPJI-Cr 4:26A. This is an objective test for which the actual injuries suffered are relevant: "Whether the conduct in issue has, indeed, created a substantial risk of death or serious physical injury is an issue that will be assessed objectively on the basis of the physical evidence in the case." *Williams v. State*, 100 Md. App. 468, 495 (1994).

Having closely observed the defense efforts in the *Porter* case to (1) assign the culpability for Mr. Gray's death to Goodson and to White, and (2) establish that Mr. Gray's injuries occurred between stops five and six, the State is persuaded of the importance of Porter's testimony in the trials of Miller, Nero, and Rice.

Finally, Goodson is charged with the most serious offenses of any of the defendants. Once Porter is first retried, for the reasons written above, it is fitting and in the public interest that Goodson be tried next. If the *Goodson* case is tried to a verdict, it may have an impact on both prosecutorial and defense decisions about the remaining cases.

Thank you for your consideration of these requests.

Very truly yours,



Michael Schatzow
Chief Deputy State's Attorney
Baltimore City State's Attorney's Office

MS/tsr

Cc: Matthew B. Fraling, III, Esquire, Via Email
Marc L. Zayon, Esquire, Via Email
Catherine Flynn, Esquire, Via Email
Joseph Murtha, Esquire, Via Email
Ivan Bates, Esquire, Via Email
Michael Belsky, Esquire, Via Email
Andrew Jay Graham, Esquire, Via Email
Gary Proctor, Esquire, Via Email
Amy Askew, Esquire, Via Email

RECEIVED FOR RECORD
CIRCUIT COURT FOR
BALTIMORE CITY

2016 JAN 14 A 9:58

STATE OF MARYLAND

v.

BRIAN RICE

* * * * *

IN THE
CIRCUIT COURT FOR
BALTIMORE CITY
CASE No. 115141035

STATE'S MOTION TO COMPEL A WITNESS TO TESTIFY PURSUANT TO SECTION 9-123 OF THE COURTS AND JUDICIAL PROCEEDINGS ARTICLE

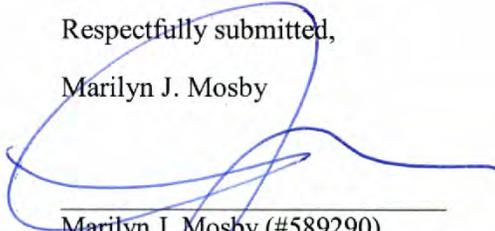
Now comes the State of Maryland, by and through Marilyn J. Mosby, the State's Attorney for Baltimore City, and pursuant to Section 9-123 of the Courts and Judicial Proceedings Article moves this Court to issue an order requiring Officer William Porter, D.O.B. 6/26/1989, in the above-captioned case to give testimony which he is likely to refuse to give on the basis of his privilege against self-incrimination. In support of this Motion, the State avers the following:

1. The State may call Officer William Porter to testify as a witness in the above-captioned criminal proceeding being held before this Court.
2. The State's Attorney for Baltimore City has determined that the testimony of Officer William Porter in the above-captioned case may be necessary to the public interest.
3. Officer William Porter is likely to refuse to testify in the above-captioned case on the basis of his privilege against self-incrimination because he has previously stated that he would refuse on those grounds to testify in cases involving the same underlying set of events as the present matter, namely the cases of *State v. Caesar Goodson* (# 115141032) and *State v. Alicia White* (# 115141036).
4. The State's Attorney for Baltimore City seeks to compel Officer William Porter to testify in the above-captioned case.

Wherefore, the State requests that this Court issue an order requiring Officer William Porter in the above-captioned case to give testimony which he is likely to refuse to give on the basis of his privilege against self-incrimination.

Respectfully submitted,

Marilyn J. Mosby



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mail@statorney.org

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of January, 2016, a copy of the State's Motion to Compel a Witness to Testify Pursuant to Section 9-123 of the Courts and Judicial Proceedings article was mailed and e-mailed to:

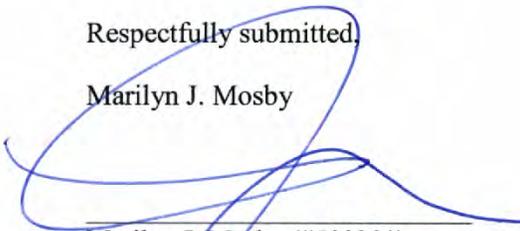
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Attorney for Lieutenant Brian Rice

Respectfully submitted,

Marilyn J. Mosby



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STATE OF MARYLAND

v.

BRIAN RICE

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IN THE
CIRCUIT COURT FOR
BALTIMORE CITY
CASE No. 115141035

ORDER

Having reviewed the State’s Motion to Compel a Witness to Testify Pursuant to Section 9-123 of the Courts and Judicial Proceedings Article, in which the State’s Attorney for Baltimore City seeks to compel Officer William Porter, D.O.B. 6/26/1989, to testify in the above-captioned criminal proceeding; finding that the State’s Attorney for Baltimore City has determined that Officer William Porter may be called by the State as a witness to testify in the above-captioned criminal proceeding but that Officer William Porter is likely to refuse to testify on the basis of his privilege against self-incrimination; further finding that the State’s Attorney for Baltimore City has determined that the testimony of Officer William Porter may be necessary to the public interest; and further finding that the State’s Motion to Compel Officer William Porter’s testimony complies with the requirements of Section 9-123 of the Courts and Judicial Proceedings Article, it is this ____ day of _____, 2016, by the Circuit Court for Baltimore City

ORDERED that the State’s Motion to Compel a Witness to Testify Pursuant to Section 9-123 of the Courts and Judicial Proceedings Article be and hereby is **GRANTED**; and it is further

ORDERED that Officer William Porter, D.O.B. 6/26/1989, shall testify as a witness for the State in the above-captioned criminal proceeding and may not refuse to comply with this Order on the basis of his privilege against self-incrimination; and it is further

ORDERED that no testimony of Officer William Porter, D.O.B. 6/26/1989, compelled pursuant to this Order and no information directly or indirectly derived from the testimony of Officer William Porter compelled pursuant to this Order may be used against Officer William Porter in any criminal case, except in a prosecution for perjury, obstruction of justice, or otherwise failing to comply with this Order.

Judge
Circuit Court for Baltimore City

STATE OF MARYLAND

* IN THE
* CIRCUIT COURT FOR
* BALTIMORE CITY

v.

LT. BRIAN RICE

* CASE NO. 115141035

* * * * *

**DEFENDANT LT. BRIAN RICE'S OPPOSITION TO THE STATE'S MOTION TO
COMPEL A WITNESS TO TESTIFY PURSUANT TO SECTION 9-123 OF THE
COURTS AND JUDICIAL PROCEEDINGS ARTICLE**

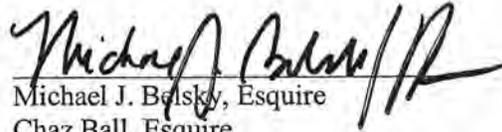
Defendant Lt. Brian Rice, by undersigned counsel, hereby files this Response in Opposition to the State's Motion to Compel a Witness to Testify Pursuant to Section 9-123 of the Courts and Judicial Proceedings Article. In support thereof, Defendant Lt. Rice states as follows:

1. On January 14, 2015, for the first time since the inception of the prosecution of these matters, the State asserted that it **may** call Officer William Porter to testify as a witness during the trial of Defendant Lt. Rice because Officer Porter's testimony "**may** be necessary to the public interest."
2. Beyond this bare assertion, the State provides absolutely no proffer in its two-page Motion as to why Officer Porter's testimony is either material or necessary to the trial of Defendant Lt. Rice, or how it is necessary to serve the public interest.
3. This request comes days after the Court of Special Appeals' injunction staying the trial of Officer Goodson, and a likely injunction staying the trial of Sergeant White. Both injunctions are the result of the State's characterization of Officer Porter as a material and necessary witness for the trials of Officer Goodson and Sergeant White, as well as the need to clarify the issues concerning Officer Porter's compelled testimony.
4. The State now attempts to place the Defendant's case in the same posture as those matters in an attempt to require a stay of this trial.

5. The State's past actions contradict the alleged need on which the present request rests. When the State was afforded the opportunity to select the order in which to call the cases in this matter, the State contended that "Defendant Porter is a necessary and material witness in the cases against **Defendants Goodson and White**, so it is imperative that Mr. Porter's trial takes place before their trials." Exhibit A, State's Letter dated September 15, 2015 (emphasis added). Consequently, the State suggested the following: "[w]ithout listing all the possible permutations, the State essentially seeks to have Mr. Porter tried before Mr. Goodson and Ms. White, to have Mr. Miller tried before Mr. Nero, and to have Mr. Miller and Mr. Nero tried before Mr. Rice." *Id.*
6. In the State's previous four trial witness lists to the Defendant, the State never once indicated that it intended to call Officer Porter as a witness. Moreover, the State has never suggested, until the filing of the present Motion, that Officer Porter's testimony was in any way necessary to the prosecution of Defendants Miller, Nero, or Lt. Rice.
7. In light of the State's past position, it is abundantly clear that the present Motion is nothing more than a pretext to regain control of the order of the Defendants' trials, and avoid trying the most factually and legally tenuous cases first.
8. However, in order to fulfill its procedural desires, the State is trampling upon the Fifth Amendment rights of Officer Porter, and placing the speedy trial rights of Defendants Miller, Nero, and Lt. Rice at peril. If the present Motion were granted, it would in essence reward the State for its tactical inadequacies and utter disrespect for the Defendants' constitutional rights.

9. For these reasons, compelling Officer William Porter's testimony at the trial of the Defendant Lt. Rice is not necessary to the public interest, and the present Motion must be denied.

Respectfully submitted,



Michael J. Belsky, Esquire
Chaz Ball, Esquire
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(410) 685-2022
Counsel for Lieutenant Brian Rice

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STATE OF MARYLAND

* IN THE
* CIRCUIT COURT FOR
* BALTIMORE CITY

v.

LT. BRIAN RICE

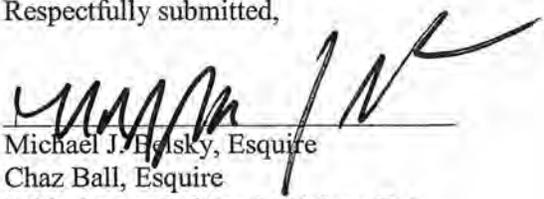
* CASE NO. 115141035

* * * * *

REQUEST FOR A HEARING

Defendant Lt. Brian Rice, by undersigned counsel, hereby requests a hearing on the State's Motion to Compel a Witness to Testify Pursuant to Section 9-123 of the Courts and Judicial Proceedings Article.

Respectfully submitted,



Michael J. Belsky, Esquire
Chaz Ball, Esquire
Schlachman, Belsky & Weiner, P.A.
300 East Lombard Street, Suite 1100
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(410) 685-2022
Attorneys for Lieutenant Brian Rice

STATE OF MARYLAND

v.

LT. BRIAN RICE

* IN THE
* CIRCUIT COURT FOR
* BALTIMORE CITY

* CASE NO. 115141035

* * * * *

ORDER

Having reviewed the State's Motion to Compel a Witness to Testify Pursuant to Section 9-123 of the Courts and Judicial Proceedings Article and Defendant Lt. Brian Rice's Opposition, it is this ____ day of _____, 2016, by the Circuit Court for Baltimore City

ORDERED that the State's Motion to Compel a Witness to Testify Pursuant to Section 9-123 of the Courts and Judicial Proceedings Article be and hereby is **DENIED**.

Judge
Circuit Court for Baltimore City

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of January, 2016, a copy of the foregoing Defendant Lt. Brian Rice's Opposition to the State's Motion to Compel a Witness to Testify Pursuant to Section 9-123 of the Courts and Judicial Proceedings Article, Request for Hearing, Proposed Order, and referenced exhibits were sent via electronic mail and mailed, first-class postage prepaid, to Janice Bledsoe, Deputy State's Attorney, Office of the State's Attorney for Baltimore City, 120 East Baltimore Street, Baltimore, Maryland 21202.


Michael J. Belsky



September 15, 2015

VIA HAND DELIVERY

The Honorable Barry G. Williams
Associate Judge
Circuit Court for Baltimore City
534 Courthouse East
Baltimore, MD 21202

Re: State v. Goodson, et al.,
Case Nos.: 115141032-37

Dear Judge Williams,

I write as directed concerning the order and anticipated length of trials. The anticipated length of trial does not include the time for hearing and resolving pretrial motions, the time for jury selection, nor the length of the defense cases. Because the State has not yet received discovery from any of the Defendants, the anticipated length of trial also does not include possible additional time in the State's case from meeting anticipated defenses. The State would call the cases in the following order.

- First: William Porter, No. 115141037 Five days
- Second: Caesar Goodson, No. 115141032 Five days
- Third: Alicia White, No. 115141036 Four days
- Fourth: Garrett Miller, No. 115141034 Three days
- Fifth: Edward Nero, No. 115141033 Three days
- Sixth: Brian Rice, No. 115141035 Four days.

Defendant Porter is a necessary and material witness in the cases against Defendants Goodson and White, so it is imperative that Mr. Porter's trial takes place before their trials. Defendant Porter's counsel has known this since before the grand jury returned indictments in these cases. On July 24, 2015, counsel for Defendants Porter and Rice were advised by the State that Porter's case would be called first, either with Defendant Rice or without him, depending on the Court's ruling on the joinder sought by the State. Presumably, counsel for Defendants Porter and Rice so advised counsel for the other defendants. In any event, counsel for all Defendants were notified that the State intended to call the Porter case first during the chambers conference with the court on September 2, 2015.

The trial date of October 13, 2015 was ordered on June 19, 2015, based on the availability of the court and all counsel. As Judge Pierson requested, we had cleared that date with Dr. Carol Allan, the Assistant Medical Examiner who conducted the autopsy. We were advised by Dr. Allan this morning that she will be out of Maryland from November 16 through November 30. The State will be ready to begin the case against Mr. Porter on October 13. Counsel for Mr. Porter has expressed his intent to seek a continuance. The State informed counsel for Mr. Porter over the past weekend that it had no objection to a continuance of Mr. Porter's case of up to three weeks, provided that his remains the first case to be tried. However, given Dr. Allan's schedule,

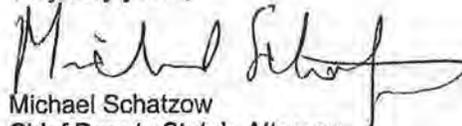


the State now believes that it cannot consent to a continuance beyond October 26. Given that no other Defendant is required to be ready for trial on October 13 (and the State has not received any discovery from any Defendant 30 days before October 13), a two week continuance would not unduly delay the time by which all six cases could be resolved. However, if the consequence of a continuance for Mr. Porter would be forcing the State to try a different Defendant first, then the State would vigorously oppose a continuance for Mr. Porter. Mr. Porter's counsel has been aware of the October 13 trial date for almost three months, and has known with certainty that Mr. Porter's case would be tried first for at least six weeks. In light of the long scheduled and agreed upon trial date, and the other background referenced above, Mr. Porter has no legitimate basis for a continuance, particularly one that would impact the State's traditional right to call cases in the order it chooses.

Finally, the Court directed the State to provide an alternative order in the event that Mr. Porter's case is not tried first. Without prejudice to the State's position that, in light of the facts of this case and the information in this letter, it should be able to call the cases in the order expressed above, the State's alternative order would be to try Mr. Miller first, and then, in order, Mr. Porter, Mr. Goodson, Ms. White, Mr. Nero and Mr. Rice. Without listing all the possible permutations, the State essentially seeks to have Mr. Porter tried before Mr. Goodson and Ms. White, to have Mr. Miller tried before Mr. Nero, and to have Mr. Miller and Mr. Nero tried before Mr. Rice.

Thank you for your consideration of these requests. Pursuant to your instructions, I have enclosed the transcript of each defendant's statement. I trust that this letter is clear and responsive to your direction. If you have any questions or think that a chambers conference would be useful, the State is available at the convenience of the Court.

Very truly yours,



Michael Schatzow
Chief Deputy State's Attorney
Baltimore City State's Attorney's Office

MS/tsr

Enclosures

Cc: Without Enclosures

Matthew B. Fraling, III, Esquire, Via Email
Marc L. Zayon, Esquire, Via Hand Delivery
Catherine Flynn, Esquire, Via Hand Delivery
Joseph Murtha, Esquire, Via Email
Ivan Bates, Esquire, Via Hand Delivery
Michael Belsky, Esquire, Via Hand Delivery
Andrew Jay Graham, Esquire, Via Hand Delivery
Gary Proctor, Esquire, Via Hand Delivery

STATE OF MARYLAND * IN THE
V. * CIRCUIT COURT
LT. BRIAN RICE * FOR BALTIMORE CITY
* CASE NO. 115141035

* * * * *

DEFENDANT WILLIAM PORTER'S OPPOSITION TO THE STATE'S MOTION
TO COMPEL A WITNESS TO TESTIFY PURSUANT TO
SECTION 9-123 OF THE COURTS AND JUDICIAL PROCEEDINGS ARTICLE

Now comes the defendant, William Porter, by and through undersigned counsel and hereby files this Opposition to the State's Motion to Compel a Witness to Testify Pursuant to Section 9-123 of the Courts and Judicial Proceedings Article. In support thereof, William Porter states the following:

1. The State has previously suggested, if not requested, that the Court consider postponing the trials of Officer Caesar Goodson, Sergeant Alicia White, Officer Garrett Miller, Officer Edward Nero, and Lieutenant Brian Rice until after the retrial of Officer William Porter. Such a suggestion was not adopted by the Court, and the trials of the remaining defendants were scheduled to proceed in the order identified. The order of the trials was disrupted after the Court of Special Appeals stayed the trial of Caesar Goodson after staying this Court's order compelling Officer Porter to testify as a witness in the trial of Officer Goodson. An order compelling the testimony of Officer Porter in the trial of Sergeant Alicia White has been appealed, and it is anticipated that the trial of Sergeant White will

be stayed upon the Court of Special Appeals staying of this Court's order compelling Officer Porter to testify as a witness for the State.

2. On more than one occasion the State has communicated its interest in retrying the matter of Officer Porter before trying the remaining defendants. By virtue of the Court of Special Appeals' order staying Officer Goodson's trial, and the anticipated stay of Sergeant White's trial, it appears that the State's strategy of postponing the remaining cases now involves a not previously revealed desire to have Officer Porter testify in each and every co-defendant's trial. This theory, offered for the first time in communication with the Court on January 13, 2016, suggests that Officer Porter's "testimony about the failure to seatbelt at the second stop is also critical to the trials of Miller, Nero and Rice." The problem with this representation is that a review of the trial testimony of Officer Porter reveals absolutely no testimony "about the failure to seatbelt at the second stop." The State's attempt to use Section 9-123 of the Courts and Judicial Proceedings Article as a vehicle to obtain postponements of the trials of Officer Miller, Officer Nero and Lieutenant Rice cannot be ignored by the Court.

3. On January 14, 2016, for the first time in a publicly filed pleading since the inception of the prosecution of these matters, the State asserted that it "may" call Officer William Porter to testify as a witness during the trial of Defendant Rice because Officer Porter's testimony "may be necessary to the public interest."

4. Beyond this bare assertion, and its factually inaccurate

representation to the Court in a separate document, the State offers no proffer in its two page motion as to why Officer Porter's testimony is either material or necessary to the trial of Defendant Rice, or how it is necessary to serve the public interest.

5. As noted, the request comes days after the Court of Special Appeals' injunction staying the trial of Officer Goodson, and a likely injunction staying the trial of Sergeant White. Both injunctions are the result of the State's characterization of Officer Porter as a material and necessary witness for the trials of Officer Goodson and Sergeant White, as well as the need to clarify the issues concerning Officer Porter's compelled testimony.

6. The State now attempts to place Lt. Rice's case in the same posture as those of Officer Goodson and Sergeant White in an attempt to require a stay of his trial.

7. The State's past actions contradict the alleged need on which the present request rests. When the State was afforded the opportunity to select the order in which to call the cases in this matter, the State contended that "Defendant Porter is a necessary and material witness in the cases against Defendants Goodson and White, so it is imperative that Mr. Porter's trial takes place before their trials." Exhibit A. State's Letter dated September 15, 2015. Consequently, the State suggested the following: "[w]ithout listing all the possible permutations, the State essentially seeks to have Mr. Porter tried before Mr.

Goodson and Ms. White, to have Mr. Miller tried before Mr. Nero, and to have Mr. Mr. Miller and Mr. Nero tried before Mr. Rice." *Id.*

8. In the State's previous four trial witness lists to Brian Rice, the State never once indicated that it intended to call Officer Porter as a witness. Moreover, the State has never suggested, until the filing of the present Motion, that Officer Porter's testimony was in any way necessary to the prosecutions of Defendants Miller, Nero or Rice.

9. In light of the State's past position, it is abundantly clear that the present Motion is nothing more than a pretext to regain control of the order of the Defendants' trials, and avoid trying the most factually and legally tenuous cases first.

10. However, in order to fulfill its procedural desires, the State is trampling upon the Fifth Amendment rights, as well as the Article 22 rights, of Officer Porter. The State essentially seeks to take Officer Porter hostage as an unwilling witness in five trials, three of which are solely for the sake of postponing the trials until after the retrial of Officer Porter. If the present Motion is granted, it would be in essence reward the State for its tactical inadequacies and utter disrespect for the constitutional protections afforded Officer Porter.

11. The State's actions in the cases before the Court are without precedent. Officer Porter is being used as the designated whipping boy in the State's case against Officer Goodson and Sergeant White, and now the State seeks to torture him even more by moving to compel him to testify in the trials of

Officer Miller, Nero and Lieutenant Rice. The State does not shy away from saying that Officer Porter committed perjury in his own trial, yet they continue to think that they can sponsor his testimony in the other officers' cases, and then prosecute him for the crimes that they allege in the charging document filed in his case. This cannot be tolerated, and particularly, should not be permitted as a means to obtain a postponement of the remaining three cases and dominate the order in which the trials proceed before the Court.

12. The Fifth Amendment to the U.S. Constitution declares in part that "No person ... shall be compelled in any criminal case to be a witness against himself." U.S. Const., 5th Amend. The Fifth Amendment creates a privilege against compelled disclosures that could implicate a witness in criminal activity and thus subject him or her to criminal prosecution. *Hoffman v. United States*, 341 US 479, 486-488, 71 S.Ct. 814, 818-819 (1951). The privilege against self-incrimination is a *constitutionally-based* privilege—not an evidentiary privilege.

13. To be clear: Porter is not saying that § 9-123 is unconstitutional: he is saying that it is unconstitutional as applied to this defendant in this setting. To quote Chief Judge Murphy, in his capacity as chair of the General Assembly Criminal Law Article Review Committee:

The granting of some form of immunity against prosecution arising from compelled incriminating testimony does not, of itself, cure the constitutional defect. The General Assembly may wish to explore the scope of immunity that may be required to allow compelled testimony in harmony with federal and State constitutional precedent.

See notes to Md. Code Ann., Crim. Law § 9-204. The General Assembly has failed to do so, so it falls to this Court to provide Officer Porter shelter from the storm.

14. While Officer Porter has many valid reasons as to why he cannot be compelled to testify, the Fifth Amendment, the Sixth Amendment, Article 22, to name but three, the overarching principle is that the judicial system is built on trust and respect of the public and relies on that trust and respect for effectiveness. "It is of fundamental importance that justice should not only, but should manifestly and undoubtedly be seen to be done." *Rex v. Sussex Justices*, 1 K.B. 256, 259 (1924). Similarly, the United States Supreme Court has said that trials themselves are "a reflection of the notion, deeply rooted in the common law, that justice must satisfy the appearances of justice," *Levine v. United States*, 362 U.S. 610, 616 (1960) (quoted source omitted), and that the perception of fairness of trials and judicial acts is essential to the effectiveness of the system itself. See *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555 (1980) (Brennan, J., concurring). Frankly, calling Porter as a witness in two (2) trials [OR FIVE], about the same matters upon which he faces a pending manslaughter trial, wrecks of impropriety.

15. On a related point, and as previously mentioned, on September 15, 2015 the State told the Court that it was "imperative" that Porter be tried first. Implicitly, maybe even explicitly, the state acknowledged in this pleading that Porter had to go first in order that he not have a Fifth Amendment Privilege. If the

State truly believes that Officer Porter can be called as a witness, with a pending manslaughter charge, why was it "imperative" that Officer Porter proceed to trial first?

16. Co-defendants trials are severed every day in Maryland. And yet there is not a single reported case of one co-defendant being compelled to testify against the other in the way the circuit court envisages happening here. There is a reason for that: it effectively renders constitutional protections all but meaningless.

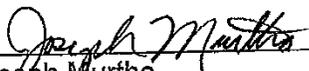
17. Even if there were nothing wrong, in theory, with proceeding as the State suggests, in this case it would nevertheless be impermissible with the factual scenario that is before this Court. While it might be a closer call if the State chose to insert a clean team, give transactional immunity, or if the State called Officer Porter after his case resulted in acquittal, ultimately he would still be an impermissible witness. The bottom line is that the State, who has sole charging authority, believes he will lie about matters that are material. And all the immunity in the world cannot cure that.

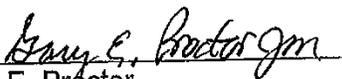
18. For the purpose of continuity, and to ensure that previously asserted issues are again considered by the Court, and preserved for any record that may be considered by an appellate court, Officer Porter incorporates, and adopts by reference, and attaches hereto as Exhibit B, Motion to Quash Trial Subpoena of Officer William Porter, filed in the matter of *State of Maryland v. Officer Caesar Goodson*, Case Number 115141032. Undersigned counsel understands that no

subpoena has yet to be served upon Officer Porter to testify in the trial of Officer Miller, but the arguments set forth in the referenced Motion to Quash were incorporated by reference in Officer Porter's opposition to the State's Motion to Compel his testimony in Officer Goodson's case. As such, he once again requests that this Court consider those related issues in determining the impropriety of granting the State's request.

WHEREFORE, for the reasons set forth in the body of this response, and the accompanying documents, William Porter requests that this Honorable Court find that compelling his testimony at the trial of Officer Garrett Miller is not necessary to the public interest, and offends the constitutional protections afforded by the Fifth Amendment and Article 22, and deny the State's Motion to Compel his testimony in the trial of Officer Garrett Miller.

Respectfully submitted,

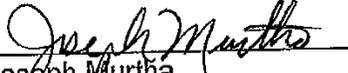

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Attorneys for Officer William Porter

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19th day of January, 2016, a copy of the foregoing Defendant William Porter's Opposition to the State's Motion to Compel a Witness to Testify Pursuant to Section 9-123 of the Courts and Judicial Proceedings Article, and referenced exhibits was sent via electronic mail to Janice Bledsoe, Deputy State's Attorney, Office of the State's Attorney for Baltimore City, 120 East Baltimore Street, Baltimore, Maryland 21202.


Joseph Murtha

1

9

Exhibit A

STATE'S ATTORNEY
Marilyn J. Mosby



OFFICE of the STATE'S ATTORNEY for BALTIMORE CITY
120 East Baltimore Street - Baltimore, Maryland 21202

DIRECT DIAL
443-984-6011

September 15, 2015

VIA HAND DELIVERY

The Honorable Barry G. Williams
Associate Judge
Circuit Court for Baltimore City
534 Courthouse East
Baltimore, MD 21202

Re: State v. Goodson, et al.,
Case Nos. 115141032-37

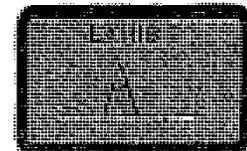
Dear Judge Williams,

I write as directed concerning the order and anticipated length of trials. The anticipated length of trial does not include the time for hearing and resolving pretrial motions, the time for jury selection, nor the length of the defense cases. Because the State has not yet received discovery from any of the Defendants, the anticipated length of trial also does not include possible additional time in the State's case from meeting anticipated defenses. The State would call the cases in the following order.

- First: William Porter, No. 115141037 Five days
- Second: Caesar Goodson, No. 115141032 Five days
- Third: Allola White, No. 115141036 Four days
- Fourth: Garrett Miller, No. 115141034 Three days
- Fifth: Edward Nero, No. 115141033 Three days
- Sixth: Brian Rice, No. 115141035 Four days.

Defendant Porter is a necessary and material witness in the cases against Defendants Goodson and White, so it is imperative that Mr. Porter's trial takes place before their trials. Defendant Porter's counsel has known this since before the grand jury returned indictments in these cases. On July 24, 2015, counsel for Defendants Porter and Rice were advised by the State that Porter's case would be called first, either with Defendant Rice or without him, depending on the Court's ruling on the joinder sought by the State. Presumably, counsel for Defendants Porter and Rice so advised counsel for the other defendants. In any event, counsel for all Defendants were notified that the State intended to call the Porter case first during the chambers conference with the court on September 2, 2015.

The trial date of October 13, 2015 was ordered on June 19, 2015, based on the availability of the court and all counsel. As Judge Pierson requested, we had cleared that date with Dr. Carol Allan, the Assistant Medical Examiner who conducted the autopsy. We were advised by Dr. Allan this morning that she will be out of Maryland from November 16 through November 30. The State will be ready to begin the case against Mr. Porter on October 13. Counsel for Mr. Porter has expressed his intent to seek a continuance. The State informed counsel for Mr. Porter over the past weekend that it had no objection to a continuance of Mr. Porter's case of up to three weeks, provided that his remains the first case to be tried. However, given Dr. Allan's schedule,

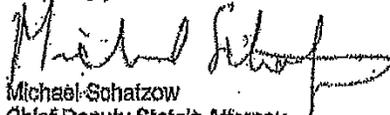


the State now believes that it cannot consent to a continuance beyond October 26. Given that no other Defendant is required to be ready for trial on October 13 (and the State has not received any discovery from any Defendant 30 days before October 13), a two week continuance would not unduly delay the time by which all six cases could be resolved. However, if the consequence of a continuance for Mr. Porter would be forcing the State to try a different Defendant first, then the State would vigorously oppose a continuance for Mr. Porter. Mr. Porter's counsel has been aware of the October 13 trial date for almost three months, and has known with certainty that Mr. Porter's case would be tried first for at least six weeks. In light of the long scheduled and agreed upon trial date, and the other background referenced above, Mr. Porter has no legitimate basis for a continuance, particularly one that would impact the State's traditional right to call cases in the order it chooses.

Finally, the Court directed the State to provide an alternative order in the event that Mr. Porter's case is not tried first. Without prejudice to the State's position that, in light of the facts of this case and the information in this letter, it should be able to call the cases in the order expressed above, the State's alternative order would be to try Mr. Miller first, and then, in order, Mr. Porter, Mr. Goodson, Ms. White, Mr. Nero and Mr. Rice. Without listing all the possible permutations, the State essentially seeks to have Mr. Porter tried before Mr. Goodson and Ms. White, to have Mr. Miller tried before Mr. Nero, and to have Mr. Miller and Mr. Nero tried before Mr. Rice.

Thank you for your consideration of these requests. Pursuant to your instructions, I have enclosed the transcript of each defendant's statement. I trust that this letter is clear and responsive to your direction. If you have any questions or think that a chambers conference would be useful, the State is available at the convenience of the Court.

Very truly yours,


Michael Schatzow
Chief Deputy State's Attorney
Baltimore City State's Attorney's Office

MS/ter

Enclosures

Cc: Without Enclosures

Matthew B. Fraling, III, Esquire, Via Email
Marc L. Zayon, Esquire, Via Hand Delivery
Catherine Flynn, Esquire, Via Hand Delivery
Joseph Murtha, Esquire, Via Email
Ivan Bates, Esquire, Via Hand Delivery
Michael Belsky, Esquire, Via Hand Delivery
Andrew Jay Graham, Esquire, Via Hand Delivery
Gary Proctor, Esquire, Via Hand Delivery

Exhibit B

IN THE CIRCUIT COURT
FOR BALTIMORE CITY

STATE OF MARYLAND

v.

OFFICER CAESAR GOODSON

Defendant.

CRIMINAL NO. 115141032

...00000...

**MOTION TO QUASH TRIAL SUBPOENA
OF OFFICER WILLIAM PORTER**

Comes NOW Witness Officer William G. Porter and hereby moves this Honorable Court to quash his trial subpoena in the case at bar, and in support thereof states as follows:

I. RELEVANT FACTS

PROCEDURAL POSTURE

Baltimore City Police Officer William Porter (hereafter "Officer Porter") has been charged with Manslaughter, Second Degree Assault, Reckless Endangerment and Misconduct in Office in Baltimore City Circuit Court Case Number 115141037. The undersigned are counsel for Porter in that case. The charges involve the in-custody death of Freddie Gray on April 12, 2015. There are six officers charged in the death of Mr. Gray: Officer Porter, Officer Caesar Goodson, Sergeant Alicia White, Officer Garrett Miller, Officer Edward Nero and Lieutenant Brian Rice. All were charged, and indicted, on the same day. As one

Judge was assigned to all six (6) cases, initially there was discussion about which case would go first.¹

On September 15, 2015 the State of Maryland, through Chief Deputy State's Attorney Michael Schatzow wrote to the specially assigned Judge, Judge Barry Williams, and told him that the state would be calling Officer Porter's case first, followed by Goodson, White, Miller, Nero and Rice. Exhibit A. The state's rationale for this was that:

Defendant Porter is a necessary and material witness in the cases against Defendants Goodson and White, so it is imperative that Porter's trial takes place before their trials. Defendant Porter's counsel has known this since before the grand jury returned indictments in these cases.

Id. The Court granted the state its wish, and Officer Porter proceeded to trial first.

THE TRIAL

Jury selection began in Officer Porter's trial on November 30, 2015. Ultimately, the case mistried on December 16, 2015 as the jury were unable to reach a verdict as to any of the four (4) charges placed against Officer Porter. Following the mistrial, this Court set the retrial for June 13, 2016.

During his trial, Officer Porter testified in his defense. During the state's closing argument by Ms Janice Bledsoe, and the rebuttal by Mr. Schatzow, both commented on Officer Porter's credibility, candor and truthfulness. The following

¹ Initially the state moved to consolidate some trials, but eventually the Court found that six (6) separate trials was appropriate.

are not all of the instances when the state, in effect, called Officer Porter a perjurer, but it sets out specific examples that are germane to the decision this Court must make in relation to this Motion:

The State's Opening Closing Argument

[A] during his testimony at trial Officer Porter stated under oath that he heard Freddie Gray say during his initial arrest that he could not breathe. The state's theory at trial, was that Mr. Gray had said this much later. In her closing Ms. Bledsoe stated that not one of the other witness officers testified that they heard Mr. Gray say during his initial arrest that he could not breathe and went on to assert that "you know why? 'Cause it was never said [during the initial arrest]." TS 9:53:20.² Ms. Bledsoe's assertion that it was never said leads to the inexorable conclusion that the state was accusing Officer Porter of perjury.

[B] The reason the state believed that Mr. Gray said he could not breathe much later was because of a report of a Detective Teel, who wrote memorialized a conversation she had with Officer Porter. In arguing that Officer Porter is not to be believed, Ms. Bledsoe stated that "who has the motive to be deceitful? It's not Detective Teel. It's Officer Porter." TS 9:54:07.

[C] Officer Porter testified that when he saw Mr. Gray in the back of the police wagon, at Druid Hill and Dolphin, he helped Mr. Gray (who was on the floor) onto

² The "TS" stands for Time Stamp. The State's closing and rebuttal have yet to be transcribed, but the undersigned have watched the video, and transcribed herein, the arguments of counsel as faithfully as possible.

the bench, but that Mr. Gray had power in his legs and bore the weight of his body. In calling Porter a liar, Ms. Bledsoe stated that:

five times [Officer Porter] was asked about it, not once did he say Freddie Gray assisted himself up on the bench. Five times he used words that indicate he put Freddie Gray on the bench. Not once in any of those five times did he say, "it would be physically impossible for me to do that, I did not just put him up on then bench I couldn't do that," not once, but he told you that from the stand.

TS 9:57:40.

[D] Officer Porter testified that he was aware that arrestees often feign injury in the hopes of avoiding a trip to jail. He testified that the term for it that many officers use is "jailitis." Ms. Bledsoe in her closing said that "this jailitis is a bunch of crap." TS 10:09:02.

[E] Officer Porter testified that, when he saw Freddie Gray at Druid Hill and Dolphin he believed that Mr. Gray was not injured. Officer Porter further stated under oath that if he knew Mr. Gray was injured he would have sought immediate medical attention. Ms. Bledsoe, in labeling Officer Porter a perjurer stated that Porter "knew Gray was hurt badly [at Druid Hill and Dolphin], he knew he wasn't going to be accepted at Central Booking and he did nothing." TS 10:10:10.

[F] Officer Porter testified that when Mr. Gray was loaded in the Wagon at Baker and Mount Streets, he did not know whether Mr. Gray was leg shackled or not. Ms. Bledsoe told the jury "he [Porter] knew Freddie Gray was placed into the wagon with handcuffs, leg shackles on..." TS 10:14:35.

[G] Because of the statements of Officer Porter referenced above, Ms. Bledsoe argued to the jury that "there's only one reasonable conclusion, Officer Porter **was not telling the truth** about his involvement in this incident." TS 10:15:15.

[H] After pointing out another statement that the state believed was inconsistent, regarding what Officer Porter told a civilian named Brandon Ross, Ms. Bledsoe again stated "the only reasonable conclusion you can come to is that **Ofc. Porter is not telling the truth.**" TS 10:18:27.

[I] Additionally, Ms. Bledsoe argued to the jury that Officer Porter lied under oath when he stated that on April 12, 2015 he was unaware of a General Order numbered 1114. TS 10:27:08.

[J] Officer Porter testified at trial that he believed the wagon was headed to the hospital at one point, with Mr. Gray inside of it. Ms. Bledsoe, at TS 10:39:45, stated that this was false testimony, because Officer Porter was behind the wagon and new it was headed in a different direction.

The State's Rebuttal

[K] Mr. Schatzow told the jury that "now that the defendant is on trial, he comes into court and **he has lied to you about what happened.**" TS 1:01:15.

[L] Less than a minute later, Mr. Schatzow repeated his assertion that "The state proved through the evidence that he [Porter] lied when he spoke to the [investigative] officers and **he lied on the witness stand.**" TS 1:02:09.³

[M] Mr. Schatzow stated that one of Porter's lies was "how he tried to pretend in his April 17th statement that he was too far away at stop 2, to know what was going on." TS 1:02:43.

[N] Mr. Schatzow stated that Officer Porter misrepresented what he saw when at Baker and Mount Street, asking the jury "what was he trying to cover up, was he trying to cover up his own knowledge of what had happened there?" TS 1:03:50.

[O] While opining on Officer Porter's credibility generally, Chief Deputy Schatzow stated that "you prove that people aren't telling you the truth by showing inconsistencies in their statements. You prove that the statements are inconsistent with each other. You prove that they're telling something that just is, makes no sense at all." TS 1:04:41.

[P] The state's attribution of perjury to Officer Porter was far from subtle:

[the state] proved that what he said at stop two **was a lie** and that this "I can't breath" nonsense that he came up with. You see what he's tried to do in his testimony, every place that he is stuck, every place that he is stuck in his April 17, and every place in his April 15

³ Of course, Mr. Schatzow's assertion that Officer Porter lied to the initial police officers that interviewed him, could lead to additional charges of misconduct in office and obstruction and hindering. See, for example, Cover v. State, 297 Md. 398, 400, 466 A.2d 1276, 1277 (1983) ("[b]oth this Court and the Court of Special Appeals have said that resisting, hindering, or obstructing an officer of the law in the performance of his duties is an offense at common law.")

statement **he now comes up with some new explanation for**. This business about that at stop 4 Mr. Gray used his own legs to get up. Nonsense. Five, six times on April 17, you'll see "I picked him up and I put him on the bench, I put him on the bench, I put him on the bench". You wont see anything about Freddie Gray using his own muscles, using his own legs.

TS 1:05:54.

[Q] In response to the defense's assertion that Officer Porter's testimony was credible, Mr. Schatzow stated that "[Porter] sits here in the witness stand and he tries to come up with explanations for why he said what he said. But credibility is not an issue in this case, credibility is not an issue, not at all." TS 1:07:21.

[R] While discussing Mr. Porter's contention that Mr. Gray said "I can't breathe" during his initial arrest, Mr. Schatzow tells the jury that the other witnesses "don't say that because **it didn't happen**, because **it didn't happen**." TS 1:08:10. If it did not happen then Officer Porter is being directly accused of perjury.

[S] Mr. Schatzow told the jury "this is what you were told, 'you have no reason to not believe defendant Porter.' I have already given you a bunch of reasons, you've heard reason. But the biggest reason of all is he's got something at stake here ladies and gentlemen, he's got motive to lie." TS 1:12:12.

[T] In accusing Officer Porter of lying when he said that he had very little conversation with Officer Goodson at Dolphin and Druid Hill, Mr. Schatzow stated that:

But that's like the [Baker and Mount] thing where, he can't identify his own shift commander that's sitting right in front of his face, that's

not a cover up, **that's not trying to hide the truth**, that's not trying to throw the investigators off. Naw, Naw that's not what that is.

TS 1:15:33.

While there are other examples of both prosecutors impugning William Porter's veracity, the above sets out a sufficient basis for this Motion.

The Subpoena

During Officer Porter's trial, he was handed a subpoena to testify in the trials of both Goodson and White. Exhibit B.

The Federal Investigation

Counsel have spoken with the members of the Civil Rights Division of the United States Attorney's Office that are investigating the in-custody death of Mr. Gray. As recently as October 22, 2015, the undersigned corresponded with the United States Attorneys involved in the investigation. It is standard practice for the Department of Justice not to be involved prior to the conclusion of the state prosecutions.

Counsel have had a similar experience with the witnesses. In meeting with one witness, that was called at Officer Porter's trial, the undersigned asked him a question and the response received was "the FBI also asked me that question." As such, there is an ongoing, verifiable, Federal investigation into the conduct of Officer Porter and others with regard to the death of Freddie Gray and, at this

time, it is impossible to predict whether this will result in charges in United States District Court.

Significantly: when Officer Porter testified *at his trial* the undersigned observed at least three (3) current members of the United States Attorney's Office for the District of Maryland in attendance, including the United States Attorney himself. It is therefore, surely, undeniable that Officer Porter remains in the sights of the United States.

II. RELIEF SOUGHT

Officer Porter seeks that this Court find that, notwithstanding any grant of immunity by the state, that he cannot be compelled to testify in either the Goodson or White matters, because such testimony would result in the abridgment of his rights under both the state and federal constitutions.

III. THE STATE'S PROPOSAL

On January 6, 2016 this Court proposes to hold a hearing. At said hearing, Officer Porter will assert his rights under state and federal constitutions to decline to testify at the trials of Goodson and White. Following that, the state proposes to give Porter immunity.

The immunity statute in question reads, in relevant part, as follows:

(b)(1) If a witness refuses, on the basis of the privilege against self-incrimination, to testify or provide other information in a criminal prosecution or a proceeding before a grand jury of the State, and the court issues an order to testify or provide other information under

subsection (c) of this section, the witness may not refuse to comply with the order on the basis of the privilege against self-incrimination.

(2) No testimony or other information compelled under the order, and no information directly or indirectly derived from the testimony or other information, may be used against the witness in any criminal case, except in a prosecution for perjury, obstruction of justice, or otherwise failing to comply with the order.

(c)(1) If an individual has been, or may be, called to testify or provide other information in a criminal prosecution or a proceeding before a grand jury of the State, the court in which the proceeding is or may be held shall issue, on the request of the prosecutor made in accordance with subsection (d) of this section, an order requiring the individual to give testimony or provide other information which the individual has refused to give or provide on the basis of the individual's privilege against self-incrimination.

(2) The order shall have the effect provided under subsection (b) of this section.

(d) If a prosecutor seeks to compel an individual to testify or provide other information, the prosecutor shall request, by written motion, the court to issue an order under subsection (c) of this section when the prosecutor determines that:

(1) The testimony or other information from the individual may be necessary to the public interest; and

(2) The individual has refused or is likely to refuse to testify or provide other information on the basis of the individual's privilege against self-incrimination.

Md. Code § 9-123. The state believes that, under the grant of immunity conferred on by this section, Officer Porter will have no Fifth Amendment Privilege, and will have to answer the questions, under penalty of contempt.

While it is known to the Court and the parties -- but may not be by the reader of this Motion -- the state fully intends to go forward with Officer Porter's

retrial on June 13, 2016 - - but in the interim seeks to compel him as a witness in their cases against Officer Goodson and Sergeant White.

IV. PORTER CANNOT BE COMPELLED TO TESTIFY

(a) Summary of the argument

The Fifth Amendment to the U.S. Constitution declares in part that "No person ... shall be compelled in any criminal case to be a witness against himself." U.S. Const., 5th Amend. The Fifth Amendment creates a privilege against compelled disclosures that could implicate a witness in criminal activity and thus subject him or her to criminal prosecution. *Hoffman v. United States*, 341 US 479, 486-488, 71 S.Ct. 814, 818-819 (1951). The privilege against self-incrimination is a *constitutionally-based* privilege—not an evidentiary privilege.

While Porter has many valid reasons as to why he cannot be compelled to testify, the overarching principle is that the judicial system is built on trust and respect of the public and relies on that trust and respect for effectiveness. "It is of fundamental importance that justice should not only, but should manifestly and undoubtedly be seen to be done." *Rex v. Sussex Justices*, 1 K.B. 256, 259 (1924). Similarly, the United States Supreme Court has said that trials themselves are "a reflection of the notion, deeply rooted in the common law, that 'justice must satisfy the appearances of justice,'" *Levine v. United States*, 362 U.S. 610, 616 (1960) (quoted source omitted), and that the perception of fairness of trials and judicial acts is essential to the effectiveness of the system itself. See

Richmond Newspapers, Inc. v. Virginia, 448 U.S. 555 (1980) (Brennan, J., concurring). Frankly, calling Porter as a witness in two (2) trials, about the same matters upon which he faces a pending manslaughter trial, wreaks of impropriety.

On a related point: on September 15, 2015 the state told this Court that it was "imperative" that Porter be tried first. Implicitly, maybe even explicitly, the state acknowledged in this pleading that Porter had to go first in order that he not have a Fifth Amendment Privilege. If the state truly believes that Porter can be called as a witness, with a pending manslaughter charge, why was it "imperative" that Officer Porter go first?

Concomitantly, America has racked up masses of jurisprudence in its independence. Indeed, as argued herein, Maryland had a running start with English jurisprudence pre-1776 as precedent. So, for example, plug "bear wrestling" into Westlaw and you'll find statutes from Louisiana (La. Stat. Ann. § 14:102.10), Oklahoma (Okla. Stat. Ann. Tit. 21, § 1700), Missouri (Mo. Ann. Stat. § 578.176) and Arkansas (Ark. Code Ann. § 5-62-124). You'll find cases from around the country discussing whether bear wrestling (or the undersigned's favorite: boxing with a kangaroo) constitutes animal cruelty, or is unconstitutionally vague. In short: the courts of this land have tackled almost every conceivable issue. And yet, the silence is deafening when it comes to one defendant with a pending homicide trial being compelled to testify against another defendant about the same event, over his objection. There is a reason for that: it effectively renders the Fifth Amendment all but meaningless.

(b) A grant of immunity by this Court in this case will not put Officer Porter in the same position

A grant of immunity must provide a protection coextensive with the Fifth Amendment, as required by *Kastigar*. The State attempted to impeach Officer Porter during his mistrial, and to do so, the State presented a theory during Officer Porter's trial which alleged that Officer Porter lied and attempted to cover up facts when giving a statement to police officers, and when taking the stand in his own defense. Effectively, the State wishes to compel Porter, through the farce of a grant of immunity, to lay a foundation for evidence that the State has deemed as constituting an obstruction of justice and perjury.

Perjury, of course, has no statute of limitations. Md. Crim. Code § 9-101(d). So Officer Porter can be charged with it as and when the state chooses to. It is also important to note that Md. Crim. Code § 9-101(c)(1) states that if a defendant gives two contradictory statements, the state does not have to prove which is false, it is enough that both statements under oath cannot be true. As such, if Officer Porter were to testify in Officer Goodson or Sergeant White's trial (or both) something that the state believes is inconsistent with his trial testimony, the state would not have to prove which is false, and all the immunity the state could confer would be rendered meaningless.

Further: a defendant, of course, always has a right to testify in his defense. At the bench during Officer Porter's trial the Court went to great lengths to inform

Officer Porter of his absolute right to testify and the corresponding right to remain silent. That said "a person convicted of perjury may not testify." Md. Code 9-104. As such, calling Officer Porter as a witness in the Goodson/White trials may result in him being stripped of his ability to testify at his own trial. Again, all the immunity in the world can do nothing to alleviate this concern.

MD. CODE, CTS. & JUD. PROC. § 9-123, "Privilege against self-incrimination provides:

(b)(1) If a witness refuses, on the basis of the privilege against self-incrimination, to testify or provide other information in a criminal prosecution or a proceeding before a grand jury of the State, and the court issues an order to testify or provide other information under subsection (c) of this section, the witness may not refuse to comply with the order on the basis of the privilege against self-incrimination.

(2) No testimony or other information compelled under the order, and no information directly or indirectly derived from the testimony or other information, may be used against the witness in any criminal case, except in a prosecution for **perjury, obstruction of justice**, or otherwise failing to comply with the order.

(Emphasis supplied). In addition, the Supreme Court ruled in *Kastigar* that a witness may be compelled to testify when given use and derivative use immunity, if after the immunity is granted, the immunity leaves the witness in the same position, as if the witness had simply claimed the privilege. *Kastigar v. United States*, 406 U.S. 441 (1972); see also *Murphy v. Waterfront Comm'n of New York Harbor*, 378 U.S. 52, 79 (1964) *abrogated by United States v. Balsys*, 524 U.S. 666 (1998). Thus, the Maryland statute and *Kastigar* are directly inapposite to the State's theory that Officer Porter committed an obstruction of justice during his

taped statement and Officer Porter committed perjury when he took the stand in his defense at trial.

Courts have agreed, that "[t]he exception in the immunity statute allows the use of immunized testimony only in prosecutions for future perjury, future false statements, and future failure to comply with the immunity order, not for past acts." *Matter of Grand Jury Proceedings of Aug., 1984*, 757 F.2d 108 (7th Cir. 1984). Truthful testimony under a grant of immunity may not be used to prosecute the witness for false statements made earlier. *In re Grand Jury Proceedings*, 819 F.2d 981 (11th Cir. 1987). Thus, based on the State's blatant impeachment of Officer Porter during his trial, the State is effectively presented with a Hobson's choice. The State either has to retract their previous theory, and admit that Officer Porter was truthful, or the State has to recognize that the grant of immunity would be a farce – that is, the State's grant of immunity would be coaxing Officer Porter into committing what the State believes is perjury and an obstruction of justice, both of which are crimes that falls outside the scope of immunity granted in the immunity statute. MD. CODE, CTS. & JUD. PROC. § 9-123. Such a farcical grant of immunity would fly in the face of *Kastigar's* holding that a witness may be compelled to testify when given use and derivative use immunity, if after the immunity is granted, the immunity leaves the witness in the same position, as if the witness had simply claimed the privilege. 406 U.S. 441.

An analogous scenario is found in *United States v. Kim*, 471 F. Supp. 467 (D.D.C. 1979). *Kim* held that when a defendant was found to have given a

perjurious response to a congressional committee's question, and then that same defendant is granted use and derivative use immunity to answer the same question, such a grant was not coextensive with scope of privilege that must be provided under *Kastigar*, as it could have resulted in the infliction of criminal penalties. *U.S. v. Kim* is similar to Officer Porter's scenario in that the prosecution cannot first allege that Porter has provided perjured testimony/committed obstructions of justice, and then thereafter grant immunity to suborn the very same testimony that was allegedly perjured. To summarize: "[i]t is well-established in federal courts that the privilege against self-incrimination can properly be invoked based on fear of a perjury prosecution arising out of conflict between statements sought to be compelled and prior sworn testimony." *Johnson v. Fabian*, 735 N.W.2d 295, 310-11 (Minn. 2007) (citing other cases).

Further: each additional statement by Officer Porter would be live tweeted and reported upon, resulting in an inability to receive a fair trial. Notably, this is a matter in which 100% of the jury panel was aware of the case. Likely the same percentage of a new panel would have at least some knowledge of preceding case(s). If Officer Goodson or Sergeant White were to be acquitted it is all but inevitable that jurors would conclude that Porter -- the star witness -- was not credible. If convicted, the jurors will assume that Officer Porter has knowledge of inculpatory acts that he has now revealed when granted immunity. Commentators will likely opine as to this regardless of the outcome of each trial.

Officer Porter's statement at his trial was unquestionably voluntary, and his statements to F.I.T. and Detective Teel were found by the Court to be voluntary. Contrarily, Officer Porter's potential statements in Officer Goodson's trial and Sgt. White's trial would not be. Officer Porter would thereby be subjected to jurors with some knowledge of the substance of his compelled statements. Parsing out whether a juror's knowledge of Officer Porter's previous testimony was from the initial voluntary statements, or the later compelled statements would not be possible in voir dire. A mini-Kastigar hearing would be required for each juror.⁴

Moreover, in Officer Porter's trial, and any retrial, the witness were and can be sequestered. The reason for this is obvious, that each witness should testify about his or her recollection, untainted by what every other witness said. And while the Court can compel witnesses at Officer Porter's trial from learning what the other witnesses have testified to, it can scarcely prohibit people from following accounts of Officer Porter's testimony in the Goodson and White trials.

If this Court buys what the state is selling, why wouldn't a prosecutor do it in every case? It is all too common that more than one person is charged with any given homicide. Because of a host of reasons, the cases are often severed or not joined. Why would an enterprising prosecutor not say "you know what, Defendant B may testify in his trial. So I'll give him immunity and call him as a witness in Defendant A's trial. I'll see how he responds to questions, get an advance preview of what he's going to say, get a feel for how to cross him,

⁴ See the related *Poindexter* argument below.

whether to offer him a plea, sure I can't use what he says, but they can't make me forget it, there's no prohibition against me getting a transcript, no brainer, right?" This is exactly the kind of harm the Eighth Circuit saw, when holding that "[s]uch use could conceivably include assistance in focusing the investigation, deciding to initiate prosecution, refusing to plea-bargain, interpreting evidence, planning cross-examination, and otherwise generally planning trial strategy." *United States v. McDaniel*, 482 F.2d 305, 311 (8th Cir. 1973).

A later *Kastigar* will be insufficient to remedy Officer Porter's testimony at two trials. As Officer Porter has "not yet delivered the...material, and he consistently and vigorously asserted his privilege. Here the 'cat' was not yet 'out of the bag' and reliance upon a later objection or motion to suppress would 'let the cat out' with no assurance whatever of putting it back." *Maness v. Meyers*, 419 U.S. 449, 463, 95 S. Ct. 584, 593, 42 L. Ed. 2D 574 (1975).

Should this Court give the state its imprimatur to make an end run around self-incrimination, the preceding sentence is a preview of coming attractions. "[E]ven if the sole purpose in calling a witness is other than subterfuge, the questioning by a party of its own witness concerning an "independent area of inquiry" intended to open the door for impeachment and introduction of a prior inconsistent statement could be found improper." *Walker v. State*, 373 Md. 360, 386, 818 A.2d 1078, 1093 (2003)

Mr. Schatzow will surely not ask Officer Porter the same questions six months later as he did the first go around. Even if he did, it is inconceivable that

Officer Porter will answer them the same way. All good cross examination is palimpsest, it builds on what you already know. To allow the state to have two (2) more runs at Officer Porter, prior to his retrial, is anathema to our notions of the right to remain silent.

The Maryland statute on immunity states that "if a witness refuses...the witness may not refuse to comply...may be used against the witness...if a witness refuses to comply..." *Id.* (emphasis supplied). The statute is designed for people without skin in the game: witnesses. Not Officer Porter.

To be sure: there are ways of compelling someone that the state believes to be less culpable in a criminal act to testify at the other's trial. *People v. Brunner*, 32 Cal. App. 3d 908, 911, 108 Cal. Rptr. 501 (CA Ct. App. 1973).

California sensibly holds that:

where, as here, the defendant properly invokes the privilege against self-incrimination in a felony proceeding and is compelled by invocation of [the California Immunity Statute] to testify to matters which tend to incriminate him as to presently charged offenses, he may not be prosecuted for them, notwithstanding that his testimony is not used against him.

People v. Campbell, 137 Cal. App. 3d 867, 187 Cal. Rptr. 340 (CA Ct. App.

1982).⁵ Accord *People v. Matz*, 68 Cal. App. 4th 1216, 80 Cal. Rptr. 2D 872, 875 (1998).

⁵ Again, California holds that, under its statute "The measure of what incriminates defines the offenses immunized. Thus, the inference ("link") from compelled testimony to implicated offense serves to identify and hence define the offense immunized from prosecution." *People v. Campbell*, 137 Cal. App. 3d 867, 874, 187 Cal. Rptr. 340 (CA Ct. App. 1982) (emphasis in the original).

(c) Porter has not been immunized federally

As this Court is aware:

The assistant United States attorney testified that she too was authorized to grant [a witness] immunity from any federal prosecution within the...District [that that Federal prosecutor practices in] based upon his testimony or the fruits thereof. She also indicated that the immunity she was offering was not immunity under the federal immunity statute, 18 U.S.C. §§ 6001-03 (1982), which requires federal judicial approval, but rather immunity granted solely under the authority of her office and without the approval of a federal judge.

State ex rel. Munn v. McKelvey, 733 S.W.2d 765, 767 (Mo. 1987). Of course, Federal prosecutors and Judges also have the ability pursuant to 18 U.S.C. §§ 6001-03 to grant a more formal immunity.

Neither such Orders have been provided in this case. And that notwithstanding, as stated earlier, that the United States Department of Justice is very much aware and monitoring all that is going on in the case at bar.

As the Court is aware, and as will be discussed further later, when the United States Government becomes aware of immunized testimony it typically develops a "taint" team.⁶ The undersigned provides two (2) examples for the purposes of making a record in this case.

1) the undersigned both represented correctional officers that were accused of beating an inmate. The officers, and others that worked on their shift, were compelled to testify in administrative hearings. As a result of this compelled

⁶ Sometimes the respective teams are called "clean" and "dirty."

testimony the Federal Government put a "taint" team in place. The FBI Agents and the United States Department of Justice had two prosecution teams. The first got to read everything. The compelled testimony, the information developed through other sources, all of it. The second got to read only what the first team decided was untainted. So the prosecutors did not know what was said by people compelled to answer questions. Nor were the agents actually proactively investigating the case aware what was said during the compelled statements.

2) Under Federal law a defendant in a capital case has a right to raise mental diseases and defects, not amounting to insanity, to argue that he should not receive a sentence in death. Fed. R. Crim. P. § 12.2. The wrinkle is that the Government has a right to advance notice of it, and the opportunity to get their own assessment. What if a capital defendant, not raising insanity, decides to testify at his guilt phase? Well, any prosecutor worth his salt would surely work that information into his cross. Even if a defendant doesn't testify, it could, almost inadvertently, be brought out through other witnesses. IQ scores, personality disorders, defects that go to an ability to accurately recall events, all would be fair game. So the United States Attorney's Office provides two (2) sets of attorneys. Team 1 tries the case. Team 2 receives the mental health disclosure from the defense, hires their own experts, files whatever challenges they believe may lie. And, here's the important part, Team 2 does not share anything that they are doing with Team 1 unless and until said mental health evidence becomes a factor at the penalty phase of the trial.

These two examples are provided solely to point out that there are no such dichotomous participants in this case. The same prosecutors that presented the case to the grand jury, participated in pretrial hearings, and tried Officer Porter's case are now seeking to compel his testimony in the trials of two others, and will be counsel of record when Porter round 2 commences. No walls will be erected around this testimony, the spill over effect will be instantaneous and indelible. For that reason alone this Court must disallow the calling of Officer Porter as a witness.

(d) The state would be suborning perjury

Firstly, it will surely have escaped no-one's notice that Maryland does not allow for a prosecutor or a Court to immunize perjury. Which makes sense from a societal standpoint: 'here's your immunity, now go say whatever you want' is scarcely in the public interest. So, whatever grant this Court makes will have no effect on the ability of the State of Maryland to charge Officer Porter with perjury later.

If Officer Porter is compelled to testify at Goodson trial, and were to testify differently from his own trial: it is surely axiomatic that he would have committed perjury during at least one of the trials. However, even if he testifies consistently with his previous trial: as narrated above the prosecution already believes he has committed multiple instances of perjury. And, as detailed below, what is of crucial importance is what they, the state, believe.

The state's commenting on Officer Porter's testimony would be admissible in Goodson and White's trial as an admission of a party oponent. See, for example, *Wisconsin v. Cardenas-Hernandez*, 219 Wis. 2d 516, 529, 579 N.W.2d 678, 684 (1998) (collecting cases).

Similar situations

The Tennessee Bureau of Investigation investigated a Tri-Cities attorney for perjury, after he was accused of advising one of his clients to "lie under oath" in a DUI case. The lawyer sent the following email to the client, "they won't have anyone there to testify how much you had to drink. You won't be charged with perjury. I've never seen them charge anyone with perjury, and everybody lies in criminal cases, including the cops. If you want to tell the truth, then we'll just plead guilty and you can get your jail time over with."⁷

In *State Bar of Cal. v. Jones*, 208 Cal. 240, 280 P. 964 (1929), the Supreme Court of California held that a one-year suspension from practice for attorney's attempt to cause miscarriage of justice through inducing clients to give perjured testimony was not an excessive penalty.

In *Premium Pet Health, LLC v. All American Proteins, LLC, et al.* the Court reprimanded counsel for suborning perjury by submitting an affidavit stating that counsel did not have relevant materials, after counsel deleted all of the relevant

⁷ Available at <http://crimlaw.blogspot.com/2005/12/from-dont-leave-written-evidence-of.html>

materials the day before. The judge took particular issue with this turn of events, since Bryan Cave partner Randall Miller was aware of this before he filed an affidavit that denied this, “[Miller] reviewed the Landers Affidavit and filed it ... thereby suborning perjured testimony ... Miller also failed to alert the Court or opposing counsel to the spoliation that Bryan Cave had ordered the day before, another clear violation of professional and ethical obligations.”⁸

In *Tedesco v. Mishkin*, an attorney, against whom sanctions were sought both as an attorney and as a litigant in a securities action, suborned perjury of witness in violation of 18 U.S.C.A. § 1622 and aided and abetted witness to commit perjury in violation of 18 U.S.C.A. §§ 2, 1621 by not advising witness, after hearing his proposed testimony and knowing it to be false, against testifying in that manner. *Tedesco v. Mishkin*, 629 F. Supp. 1474 (S.D.N.Y. 1986). The attorney's later telling witness to do what he had to do was insufficient to stop witness from carrying out agreement given attorney's knowledge that witness would go to drastic lengths to protect attorney. *Id.*

The harm to due process

The relevant law governing a prosecutor's use of perjured testimony is set forth in *Napue v. Illinois* (1959):

[I]f it is established that a conviction obtained through use of false evidence, known to be such by representatives of the State, must fall

⁸ Available at <http://abovethelaw.com/2015/06/biglaw-partner-and-associate-destroyed-evidence-suborned-perjury/2/>.

under the Fourteenth Amendment. The same result obtains when the State, although not soliciting false evidence, allows it to go uncorrected when it appears.

The principle that a State may not knowingly use false evidence, including false testimony, to obtain a tainted conviction, implicit in any concept of ordered liberty, does not cease to apply merely because the false testimony goes only to the credibility of the witness. The jury's estimate of the truthfulness and reliability of a given witness may well be determinative of guilt or innocence, and it is upon such subtle factors as the possible interest of the witness in testifying falsely that a defendant's life or liberty may depend.

360 U.S. 264, 269 (citations omitted.) Accordingly, *State v. Yates*, decided by the Supreme Court of New Hampshire, presents a legal scenario that is analogous to that of the instant matter. 629 A.2d 807, 809 (1993). In *Yates*, the prosecutor reasonably believed that a witness presented false testimony when the witness denied any involvement in illicit drugs, and that witness' false testimony was integral to the conviction of the defendant. Id. The defendant's "entire defense depended on the premise that [the witness] owed [the defendant] money from a cocaine sale." Id. The prosecutor knew before trial that the witness had recently been indicted for drug possession, yet, the prosecutor failed to correct the witness' statement when the witness denied any involvement in illicit drugs.

Importantly, the *Yates* court stated that one does not need to prove that the prosecutor had *actual knowledge* of the uncorrected false testimony; one "need only show that the prosecutor *believed* [the witness'] testimony was probably false." See *May v. Collins*, 955 F.2d 299, 315 (5th Cir.), *cert. denied*, 504 U.S.

901 (1992); *United States v. Mills*, 704 F.2d 1553, 1565 (11th Cir. 1983), *cert. Denied*, 467 U.S. 1243 (1984); *cf. Giglio v. United States*, 405 U.S. 150, 154 (1972) (knowledge of one attorney in prosecutor's office attributed to other attorneys in office). The Supreme Court of New Hampshire ultimately held that a lawyer's duty of candor to the tribunal "is neglected when the prosecutor's office relies on a witness's denial of certain conduct in one case after obtaining an indictment charging the witness with the same conduct in another case." *Yates*, 629 A.2d at 809.⁹ For the prosecution to offer testimony into evidence, knowing it or believing it to be false is a violation of the defendant's due process rights. *Mills*, 704 F.2d at 1565 *citing United States v. Sutherland*, 656 F.2d 1181, 1203 (5th Cir.), *cert. denied*, 455 U.S. 949 (1981); *United States v. Brown*, 634 F.2d 819, 827 (5th Cir. 1981). As noted by the District of Columbia Court of Appeals, "the nondisclosure of false testimony need not be willful on the part of the prosecutor to result in sanctions." *Hawthorne v. United States*, 504 A.2d 580, 591 n. 26 (D.C. 1986) *citing Giglio v. United States*, 405 U.S. at 154.

⁹ The parallel rule in Maryland is Maryland Rule 16-812, Maryland Rule of Professional Conduct 3.3 "Candor Toward the Tribunal," which provides:

(a) A lawyer shall not knowingly:

(1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;

(2) fail to disclose a material fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act by the client;

...

(4) offer evidence that the lawyer knows to be false. If a lawyer has offered material evidence and comes to know of its falsity, the lawyer shall take reasonable remedial measures.

So while Officer Porter one "need only show that the prosecutor *believed* [the witness'] testimony was probably false," he need go no further than the factual summary above to evince that both Ms. Bledsoe and Mr. Schatzow stated unambiguously that what Officer Porter said was demonstrably false.

There is no way around this

It is of no moment if the state makes claims that Officer Porter is very unlikely to be prosecuted for any statement he might make at the White / Goodson trials. That is because:

We find no justification for limiting the historic protections of the Fifth Amendment by creating an exception to the general rule which would nullify the privilege whenever it appears that the government would not undertake to prosecute. Such a rule would require the trial court, in each case, to assess the practical possibility that prosecution would result from incriminatory answers. Such assessment is impossible to make because it depends on the discretion

United States v. Miranti, 253 F.2d 135, 139 (2nd Cir.1958) (cited with approval in *Choi v. State*, 316 Md. 529, 539 (1989).

Even if (which they cannot) the state could somehow confine their direct questioning to areas in which they have never levied a perjury accusation against Officer Porter, this would still not solve the issue.

This is because "a judge must allow a defendant wide latitude to cross-examine a witness as to bias or prejudices." *Smallwood v. State*, 320 Md. 300,

307-08, 577 A.2d 356, 359 (1990). Accordingly, whatever narrow focus the state may decide to employ in an attempt to cure the unconstitutional ill set out herein, nothing would bind counsel for Goodson and White from a much wider foray on cross-examination. And, in the event that Officer Porter withstands their cross with his reputation intact, the prosecutors could then become character witnesses to impugn his veracity (see further below).

To allow Porter to testify, is likely to result in him being unavailable for cross-examination. While the state may give him immunity, the defense cannot. And any new areas that they enquire into are likely to result in Porter declining to answer. No part of any statement Porter has ever given can be used if he is unavailable for cross-examination. *Crawford v. Washington*, 541 U.S. 36, 124 S.Ct. 1354, 158 L.Ed.2d 177 (2004); *State v. Snowden*, 385 Md. 64, 867 A.2d 314 (2005).

(e) The cases cited by the State

They do not stand for the proposition that Officer Porter can be compelled to testify

The state principally relies on *United States v. Balsys*, 524 U.S. 666, 680-682 (1998). There are several points to make about this case. Firstly, even the portions that the state relies on cannot be said to be anything more than *dicta*. The holding of *Balsys* was that "[w]e hold that concern with foreign prosecution is beyond the scope of the Self-Incrimination Clause." *Id.* at 669.

Balsys was an immigration case. *Balsys* was not given any immunity, and so is dissimilar to the case at bar. And *Balsys*' purported fear was that he might be prosecuted in "Lithuania, Israel and Germany." *Id.* at 670. Of course, no prosecution at that time was pending, indeed there was nothing in the record that Lithuania had had any contact with the defendant since his immigration from that country 37 years earlier. The Supreme Court distilled the issue into one sentence: could *Balsys* "demonstrate that any testimony he might give in the deportation investigation could be used in a criminal proceeding against him brought by the Government of either the United States or one of the States, [then] he would be entitled to invoke the privilege." Here: Officer Porter has demonstrated, **conclusively**, that there is an ongoing investigation by the United States.

Moreover, *Balsys* reiterates that "the requirement to provide an immunity as broad as the privilege itself." As stated herein, given that the same prosecutors will take Mr. Porter's testimony not once: but twice -- in the trials of Goodson and White, will then cross-examine Officer Porter again at his retrial, he will not, and cannot be, placed in the same position as if he had never testified. The state gets an advantage, and what Mr. Schatzow learns of Officer Porter's knowledge during the compelled testimony during the trials of Goodson and White cannot be unknown to him on June 13, 2016.

Further, what the state is in effect asking this Court to find is that as a matter of Federal law, Officer Porter's testimony at the Goodson and White trials cannot be used against him later. Respectfully, this matter is proceeding in the Circuit Court for Baltimore City, and this Court cannot make such an inferential leap as to what a separate sovereign may decide in the future.

Following *Balsys*, the state next cites *United States v. Cimino*, 2014 U.S. Dist. LEXIS 155236 (10/29/14). Firstly, an unreported United States District Court decision from another circuit is scarcely a reason for this Court to make law that flies in the face of 12 score years of Anglo-Maryland jurisprudence. Secondly, the reluctant witness in *Cimino* was an "agent of the FBI...carrying out the controlled buys orchestrated by the Bureau." *Id.* at 5. This is a world away from the case at bar. While the *Cimino* witness may have had a snowball's chance in hell of being prosecuted, no matter what she said, Officer Porter has already been tried once for homicide, with another to follow anon. Lastly, in *Cimino*:

However, the immunity arguments pressed on this Court by defendant are of no relevance to the case at bar. The informant has not been immunized by anyone, for anything. She has no agreement that requires any sovereign to forbear from prosecuting her for any crimes she may commit, including crimes committed during the course of her work as an informant

Id. at 11-12. Thus, the portion cited by the state cannot be said to be anything other than unreported, non-binding, *dicta*.

The third case in the state's trifecta of cases it cited is *United States v. Poindexter*, 698 F. Supp. 300 (D.D.C. 1988). The primary thrust of the case concerns the steps taken by grand jury members to avoid learning of immunized testimony given at Congress, prior to their returning of an indictment. That is night-and-day from what we have here. The reason Poindexter supports Officer Porter's position, however, is that:

there must be noted several administrative steps which were taken by Independent Counsel from an early date to prevent exposure of himself and his associate counsel to any immunized testimony. Prosecuting personnel were sealed off from exposure to the immunized testimony itself and publicity concerning it. Daily newspaper clippings and transcripts of testimony before the Select Committees were redacted by nonprosecuting "tainted" personnel to avoid direct and explicit references to immunized testimony. Prosecutors, and those immediately associated with them, were confined to reading these redacted materials. In addition, they were instructed to shut off television or radio broadcasts that even approached discussion of the immunized testimony. A conscientious effort to comply with these instructions was made and they were apparently quite successful. In order to monitor the matter, all inadvertent exposures were to be reported for review of their possible significance by an attorney, Douglass, who played no other role in the prosecution after the immunized testimony started...Overall, the file reflects a scrupulous awareness of the strictures against exposure and a conscientious attempt to avoid even the most remote possibility of any impermissible taint.

Id. at 312-313. It is therefore, readily apparent that the prosecution team in *Poindexter* went out of their way to avoid learning anything -- let alone anything of consequence -- from the immunized testimony. In the case at bar, however, there is but one prosecution team. The same people that crossed Officer Porter last time will be in the room when he is called as a witness next time, and the

time after that and, potentially, a fourth time at his retrial. The state's failing to Chinese wall the different prosecutions means that they cannot now remove the indellible taint.

Even if the cases said what the state believes they say, Officer Porter has a separate right not to testify under the Maryland Declaration of Rights

Assuming, *arguendo*, that *Murphy* signaled a sea change in federal constitutional jurisprudence in its ruling that the federal constitutional privilege against self-incrimination protects a state witness against incrimination under federal and state law, and a federal witness against incrimination under state and federal law. *Murphy*, 378 U.S. 52, 78. Very importantly, in making its decision, the *Murphy* Court discussed, in detail, two English common law cases decided before 1776:

In 1749 the Court of Exchequer decided *East India Co. v. Campbell*, 1 Ves.Sen. 246, 27 Eng.Rep. 1010. The defendant in that case refused to 'discover' certain information in a proceeding in an English court on the ground that it might subject him to punishment in the courts of India. The court unanimously held that the privilege against self-incrimination protected a witness in an English court from being compelled to give testimony which could be used to convict him in the courts of another jurisdiction.

Id. at 58. The Supreme Court also cited *Brownsword v. Edwards*, 2 Ves.sen. 243, 28 Eng.Rep. 157, decided in 1750, one year after *East India Co. v. Campbell*, in which the defendant refused to divulge whether she was lawfully married to a certain individual, on the ground that if she admitted to the marriage she would be confessing to an act which, although legal under the common law, would

render her 'liable to prosecution in ecclesiastical court.' *Murphy*, 378 U.S. 52, 58-59. Thus, as the Supreme Court stated, *Brownsword* applied the ruling from *East India Co.* in a case involving separate systems of courts and law located within the same geographic area.

Why this matters is that the Maryland Declaration of Rights Article 5(a)(1) provides, "That the Inhabitants of Maryland are entitled *to the Common Law of England, . . . as existed on the Fourth day of July, seventeen hundred and seventy-six.*" (Emphasis supplied). Thus, pursuant to Article 5 of the Maryland Declaration of Rights, Maryland common law retains the dual sovereignty doctrine in its entirety, as Maryland retains the rulings set forth in England pre-1776, providing a different protection for its citizens than its federal counterpart.

As stated *supra*, Article 22 of the Maryland Declaration of Rights¹⁰ is the state parallel to the self-incrimination clause of the Fifth Amendment. Counsel has located no case which holds that *Murphy* or *Balsys'* rulings are applicable in Maryland under Article 22 grounds.

Further support is found in *Choi v. State*, 316 Md. 529, 545, 560 A.2d 1108, 1115-16 (1989). Because while a witness may have:

waived her Fifth Amendment privilege, she certainly did not waive her privilege against compelled self-incrimination under Art. 22 of the Maryland Declaration of Rights. Long ago, in the leading case of *Chesapeake Club v. State*, 63 Md. 446, 457 (1885), this Court expressly rejected the waiver rule now prevailing under the Fifth Amendment and adopted the English rule that a witness's testifying

¹⁰ Article 22 states, "[t]hat no man ought to be compelled to give evidence against himself in a criminal case."

about a matter does not preclude invocation of the privilege for other questions relating to the same matter.

Id. This is authority for Officer Porter's contention herein that, while immunity cannot cure his Fifth Amendment concerns, it most certainly cannot assuage his Maryland rights.

Maryland retains the dual sovereignty doctrine in its entirety. *Evans v. State*, 301 Md. 45 (1984) (adopting the dual sovereignty principle as a matter of Maryland common law); see also *Gillis v. State*, 333 Md. 69, 73, 633 A.2d 888, 890 (1993) (holding that "[u]nder the 'dual sovereignty' doctrine, separate sovereigns deriving their power from different sources are each entitled to punish an individual for the same conduct if that conduct violates each sovereignty's laws). *Bailey v. State*, 303 Md. 650, 660, 496 A.2d 665, 670 (1985) (stating that "[t]his Court has adopted, as a matter of common law, the dual sovereignty doctrine.").

Article 22 of the Maryland Declaration of Rights reads that "That no man ought to be compelled to give evidence against himself in a criminal case." Id. Under Article 22, "[t]he privilege must be accorded a liberal construction in favor of the right that it was intended to secure." *Adkins v. State*, 316 Md. 1, 8, 557 A.2d 203, 206 (1989).

Massachusetts Declaration of Rights, Article XII states, similarly, that no one can be "compelled to accuse, or furnish evidence against himself." And in Massachusetts "[o]nly a grant of transactional immunity" will suffice. Attorney

Gen. v. Colleton, 387 Mass. 790, 801, 444 N.E.2d 915, 921 (1982). Thus, Officer Porter could not be called, were we in Massachusetts, "so long as the witness remains liable to prosecution criminally for any matters or causes in respect of which he shall be examined, or to which his testimony shall relate." Id. at 797.

(e) The state would be making themselves witnesses

There have been only two people that called Officer Porter untruthful. It was not Officer Porter. It was not the Detective Teel, the lead investigator, to the contrary she said he was trying to be candid in her discussions with him. It was not the coroner, nor was it Dr. Lyman, who did not opine as to the reasonableness of Porter's actions. It was not any members of the jury, who presumably at least partly credited his testimony in failing to return a guilty verdict.

The only two (2) persons that have called Officer Porter a liar -- to date -- are Janice Bledsoe and Michael Schatzow. As stated, *supra*, Mr. Schatzow's greatest hits include that Porter "lied to you [the jury] about what happened... lied when he spoke to the [investigative] officers and he lied when he spoke on the witness stand;" while Ms. Bledsoe penned the one hit wonder "Officer Porter was not telling the truth about his involvement in this incident...the only reasonable conclusion you can come to is that Ofc. Porter is not telling the truth." Id. Coming from two deputies in the States Attorney's Office these comments are that much more significant because:

Attorneys' representations are trustworthy, the [The Supreme] Court [has] reasoned, because attorneys are officers of the court, and when they address the judge solemnly upon a matter before the court, their declarations are virtually under oath.

Lettlely v. State, 358 Md. 26, 47, 746 A.2d 392, 404 (2000) (internal citations omitted).

If Officer Porter is called to testify in the Goodson and White trial there are two (2) people, and only two (2) people, that can be called to impugn his credibility, Ms. Bledsoe and Mr. Schatzow. Thus, "[i]n order to attack the credibility of a witness, a character witness may testify...that, in the character witness's opinion, the witness is an untruthful person." Md. Rule 5-608.

This presents all sorts of problems because:

MLRPC Rule 3.7(a). The policy behind this rule is succinctly stated in the Comment: "Combining the roles of advocate and witness can prejudice the opposing party and can involve a conflict of interest between the lawyer and client." MLRPC Rule 3.7 cmt. With regard to the mixing of roles, the Comment continues:

The opposing party has proper objection where the combination of roles may prejudice that party's rights in the litigation. A witness is required to testify on the basis of personal knowledge, while an advocate is expected to explain and comment on evidence given by others. It may not be clear whether a statement by an advocate-witness should be taken as proof or as an analysis of the proof.

Id.

Klupt v. Krongard, 126 Md. App. 179, 205-06, 728 A.2d 727, 740 (1999). The advocate-witness rule "assumes heightened importance in a criminal case."

Walker v. State, 373 Md. 360, 397 (2003). In short: calling Officer Porter at the

Goodson and White trials will not only result in his rights being violated, but will necessitate a quagmire in which rights are trampled on all sides in the ensuing free-for-all.

WHEREFORE, for the foregoing reasons and any others that appear to this Court, Officer Porter prays that the Court grant his Motion to Quash the Subpoena he received for the case at bar.

Respectfully Submitted,



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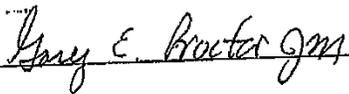


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Attorneys for Officer William Porter

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of January, 2016, a copy of witness William Porter's Motion to Quash the subpoena was hand delivered to Ms. Bledsoe at 120 E. Baltimore Street, 9th Floor, Baltimore MD 21202.



GARY E. PROCTOR

2016 JAN 20 A 9:50

STATE OF MARYLAND

v.

BRIAN RICE

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IN THE
CIRCUIT COURT FOR
BALTIMORE CITY
CASE No. 115141035

* * * * *

**STATE'S RESPONSE TO DEFENDANT BRIAN RICE'S OPPOSITION TO THE
STATE'S MOTION TO COMPEL A WITNESS TO TESTIFY PURSUANT TO
SECTION 9-123 OF THE COURTS AND JUDICIAL PROCEEDINGS ARTICLE**

Now comes the State of Maryland, by and through Marilyn J. Mosby, the State's Attorney for Baltimore City; Michael Schatzow, Chief Deputy State's Attorney for Baltimore City; Janice L. Bledsoe, Deputy State's Attorney for Baltimore City; and Matthew Pillion, Assistant State's Attorney for Baltimore City; and responds herein to Defendant Brian Rice's Opposition to the State's Motion to Compel a Witness to Testify Pursuant to Section 9-123 of the Courts and Judicial Proceedings Article.

1. Background

On January 14, 2016, the State filed in the above-captioned case a Motion to Compel a Witness to Testify Pursuant to Section 9-123 of the Courts and Judicial Proceedings Article. The witness in question was Officer William Porter. The State's Motion, submitted and signed by the State's Attorney herself, averred that the State may call Officer Porter to testify against the Defendant and set forth her determinations that Officer Porter's testimony may be necessary to the public interest but that he is likely to refuse to testify on the basis of his privilege against self-incrimination given his similar refusal to testify in the related cases of *State v. Caesar Goodson* and *State v. Alicia White*.

On January 15, 2016, the Defendant filed his Opposition to the State's Motion to Compel. The Defendant attacks the State's Motion as lacking an explanation of "why Officer

Porter is either necessary or material to the trial of Defendant Miller or how it is necessary to serve the public interest.” Def. Opp. at 1. The Defendant argues that Officer Porter’s testimony is, in fact, *not* necessary to the public interest based on his assessment of the State’s reasons for filing the Motion and his view of the Motion’s effect on both his and Officer Porter’s constitutional rights. Def. Opp. at 2-3. As such, he urges the Court to deny the Motion.

2. The Defendant Lacks Standing to Object that it is not Necessary to the Public Interest to
Compel Officer Porter to Testify as a Witness

The Defendant’s Opposition should pose no barrier to this Court’s granting the State’s Motion to Compel because, in short, the Defendant lacks standing to object that it is not necessary to the public interest to compel Officer Porter to testify as a witness. Indeed, nowhere in CJP § 9-123’s provisions does there even exist any right for the subject of the criminal prosecution—or the witness to be compelled—to file a responsive pleading or otherwise be heard to object to the merits of the State’s Motion to Compel. Instead, the statute sets forth the following as the only prerequisites to a court order compelling testimony:

(c) Order requiring testimony

(1) If an individual has been, or may be, called to testify or provide other information in a criminal prosecution or a proceeding before a grand jury of the State, *the court in which the proceeding is or may be held shall issue, on the request of the prosecutor made in accordance with subsection (d) of this section, an order requiring the individual to give testimony or provide other information which the individual has refused to give or provide on the basis of the individual's privilege against self-incrimination.*

(2) The order shall have the effect provided under subsection (b) of this section.

CJP § 9-123(c) (emphasis added). Subsection (d) outlines what such a prosecutorial request should entail:

(d) Prerequisites for order. -- If a prosecutor seeks to compel an individual to testify or provide other information, the prosecutor shall request, by written motion, the court to issue an order under subsection (c) of this section when the prosecutor determines that:

(1) The testimony or other information from the individual may be necessary to the public interest; and

(2) The individual has refused or is likely to refuse to testify or provide other information on the basis of the individual's privilege against self-incrimination.

CJP § 9-123(d). Absent from this subsection is any requirement that the State even file the Motion with the Clerk, much less does the statute require that the State explain in any additional detail its determination to seek immunity and then permit the defendant or the witness to argue against the grant of immunity. So long as the State's immunity request complies with the pleading requirements under subsection (d), the Court "*shall* issue" an immunity order. The immunity statute does not grant a defendant or a witness standing to object, nor does the statute permit the Court to consider such objections, even if made.

While Maryland's appellate courts have yet to construe CJP § 9-123 on the question of standing to object, the federal courts have had occasion to consider standing under the federal immunity statutes—which are virtually identical to Maryland's § 9-123—and have viewed them as deliberately denying standing to a defendant or witness to object to a prosecutor's immunity decision and as limiting judicial review to verifying prosecutorial compliance with the statute's formal prerequisites. In *United States v. Herman*, 589 F.2d 1191, 1200-01 (3d Cir. 1978), the United States Court of Appeals for the Third Circuit rejected the notion that a defendant had standing to seek judicial review of the government's decision about whether it is in the "public interest" to seek compelled testimony under a grant of immunity authorized in 18 U.S.C. §§ 6002-6004. The Court considered that such review would not only involve an impermissible

intrusion into prosecutorial discretion in violation of separation of powers principles but that allowing review of such objections would be contrary to the purpose of immunity statutes:

The legislative history of the immunity statutes also shows no sign of a purpose to benefit defendants. The narrow purpose of the use immunity provisions was twofold: to eliminate those federal immunity statutes that required conferral of transactional rather than use immunity and to reduce the number and complexity of immunity statutes. The shift to use immunity was intended to take advantage of the more favorable view of use immunity expressed by the Supreme Court in *Murphy v. Waterfront Commission*, 378 U.S. 52, 84 S. Ct. 1594, 12 L. Ed. 2d 678 (1964). See *Kastigar v. United States*, 406 U.S. 441, 455-59, 92 S. Ct. 1653, 32 L. Ed. 2d 212 (1972). The clear intent of the shift to use immunity was to make it less costly for the United States Attorney to grant immunity, by allowing for fuller prosecution of both the defendant and the immunized witness. In broader perspective, it is apparent that the immunity statute was part of a massive program of legislation whose central purpose, as its opponents recognized, was to strengthen the hand of the prosecution and to weaken that of the criminal defendant, in many cases to the full extent permitted by the protections of the Bill of Rights.

Id. at 1202.

The Third Circuit also drew upon the reasoning of the Supreme Court's construction of a predecessor immunity statute in *Ullmann v. United States*, 350 U.S. 422 (1956). There the Supreme Court considered the question of whether a witness could properly request a judge to deny an immunity application that otherwise comported with the statutory pleading prerequisites, which at the time required an averment that "in the judgment of a United States Attorney, the testimony of [the] witness . . . is necessary to the public interest" and also required that the United States Attorney obtain "the approval of the Attorney General" before making an application to the court. *Id.* at 423-424. The Government argued "that the court has no discretion to determine whether the public interest would best be served by exchanging immunity from prosecution for testimony [and] that its only function is to order a witness to testify if it determines that the case is within the framework of the statute." *Id.* at 431. The

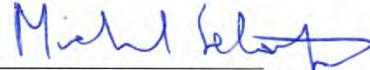
Supreme Court agreed that “[a] fair reading of [the immunity statute] does not indicate that the district judge has any discretion to deny the order on the ground that the public interest does not warrant it”; rather, the court’s “duty under [the statute] is only to ascertain whether the statutory requirements are complied with by . . . the United States Attorney and the Attorney General” *Id.* at 432-34.

The reasoning of the Supreme Court and the Third Circuit holds true for CJP § 9-123. Certainly nothing within CJP § 9-123’s provisions indicates that it was intended in any way to confer any rights on a defendant. The statute is a prosecutorial tool granted by the legislature requiring only a few prerequisites to its use. Here, the State’s Motion to Compel unquestionably complied with § 9-123(d). The Motion was submitted in writing to the Court and signed by the State’s Attorney herself, setting forth her averred determinations that Officer Porter’s testimony may be necessary to the public interest but that he is likely to testify based on his prior refusal to do so in related cases. The Court needs no more before issuing its Order and, indeed, is statutorily required to issue the Order upon finding those facts properly presented. As such, the Defendant’s Opposition—which does not dispute that the State has met the statutory pleading requirements—raises no cognizable objection and should not be considered by this Court.

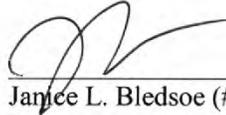
Wherefore, the State requests that this Court grant the State’s Motion to Compel a Witness to Testify Pursuant to Section 9-123 of the Courts and Judicial Proceedings Article notwithstanding the Defendant’s Opposition thereto.

Respectfully submitted,

Marilyn J. Mosby



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CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of January, 2016, a copy of the State's Response to Defendant Brian Rice's Opposition to the State's Motion to Compel a Witness to Testify Pursuant to Section 9-123 of the Courts and Judicial Proceedings Article was mailed and e-mailed to:

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COPY

1

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

STATE OF MARYLAND,	*	IN THE
	*	
	*	CIRCUIT COURT
v.	*	
	*	FOR
	*	
EDWARD MICHAEL NERO,	*	BALTIMORE CITY
	*	
Defendant.	*	115141033
	*	
* * * * *	*	* * * * *
	*	
STATE OF MARYLAND,	*	IN THE
	*	
	*	CIRCUIT COURT
v.	*	
	*	FOR
	*	
GARRETT EDWARD MILLER,	*	BALTIMORE CITY
	*	
Defendant.	*	115141034
	*	
* * * * *	*	* * * * *
	*	
STATE OF MARYLAND,	*	IN THE
	*	
	*	CIRCUIT COURT
v.	*	
	*	FOR
	*	
BRIAN RICE,	*	BALTIMORE CITY
	*	
Defendant.	*	115141035
	*	
* * * * *	*	* * * * *
	*	
STATE OF MARYLAND,	*	IN THE
	*	
	*	CIRCUIT COURT
v.	*	
	*	FOR
	*	
ALICIA WHITE,	*	BALTIMORE CITY
	*	
Defendant.	*	115141036
	*	
* * * * *	*	* * * * *

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January 20, 2016 BEFORE JUDGE BARRY G. WILLIAMS

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TRANSCRIPT OF OFFICIAL PROCEEDINGS
(Motions Hearing)

BEFORE: THE HONORABLE BARRY G. WILLIAMS, JUDGE

HEARING DATE: January 20, 2016

APPEARANCES:

For the State: MICHAEL SCHATZOW, Esquire
JANICE L. BLEDSOE, Esquire
MATTHEW PILLION, Esquire
JOHN BUTLER, Esquire

For Defendant Nero: MARC L. ZAYON, Esquire
ALLISON R. LEVINE, Esquire

For Defendant Miller: CATHERINE FLYNN, Esquire
BRANDON MEAD, Esquire

For Defendant Rice: MICHAEL J. BELSKY, Esquire
CHAZ R. BALL, Esquire

For Defendant White: IVAN I. BATES, Esquire

For Defendant Porter: JOSEPH MURTHA, Esquire

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Transcription

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PROCEEDINGS

(On the record - 02:06:52 p.m.)

THE CLERK: All rise. The Circuit Court For
Baltimore City, Part 31, will start the morning session.
The Honorable Barry G. Williams presiding.

THE COURT: The afternoon session, too.

THE CLERK: Say it again?

THE COURT: Maybe the afternoon session, too.
Everyone can be seated.

You said morning.

THE CLERK: Oh, I did? Okay.

THE COURT: Call the case, please.

MR. SCHATZOW: Good afternoon, Your Honor. Call
the case of State versus Alicia White, Number 115141036.
Present on behalf of the State is myself, Michael
Schatzow, Deputy State's Attorney Janice Bledsoe and
Assistant State's Attorney Matthew Pillion and John
Butler.

THE COURT: Good afternoon.

MR. SCHATZOW: Good afternoon, Your Honor.

MR. PILLION: Good afternoon.

MR. BATES: Good afternoon, Your Honor. My name
is Ivan Bates. I represent Sergeant Alicia White
standing to the left of me at the trial table.

THE COURT: Good afternoon. And you're here,

State v. Nero, Miller, Rice, White
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1 too, so say --

2 MR. MURTHA: Good afternoon, Your Honor. Joseph
3 Murtha on behalf of Officer Porter.

4 THE COURT: All right. Good afternoon to all.
5 Mr. Bates filed a motion to strike the Court's order
6 compelling Officer Porter's testimony during Alicia
7 White's trial. Court has had an opportunity to review
8 it. I've seen the response from the Defense.

9 Mr. Bates, do you want to be heard at all, sir?

10 MR. BATES: Yes, I do, Your Honor. First of
11 all, Your Honor, I would like to state that I do feel
12 that we do have standing. Do feel at this moment in time
13 this case is a little different in the sense that the
14 State wishes to introduce evidence that we feel is not
15 admissible in the trial.

16 One of the issues we look at, Your Honor, with
17 this order, it states that under subsection D, Your
18 Honor, D-1, the testimony or other information from an
19 individual may be necessary to the public interest.
20 Well, Your Honor, one of the things we have to do --
21 before we were judges, prosecutor or defense attorneys we
22 were lawyers, brand new lawyers. In looking at the
23 preamble, what it states is that a lawyer shall aid the
24 legal profession in pursuing these objectives and should
25 help the bar regulate itself in the public interest.

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1 What is important, Your Honor, is to sit down
2 and look at the rules of professional candor, 3.3.

3 THE COURT: Well, actually, Mr. Bates, what I'm
4 more concerned about is whether or not when the Goodson
5 matter was called, and Mr. Murtha made it clear to this
6 Court that his client wasn't going to testify and that he
7 made it clear, because there was a subpoena in your case
8 also, that he wasn't going to testify in your case also,
9 whether it was appropriate for me to allow basically the
10 State and Mr. Murtha to make the same arguments that he
11 made in Goodson which were appropriate to make, to make
12 them in your case. I believe that it was appropriate,
13 but what I will acknowledge that it was inappropriate for
14 me not to allow you to be there. So for that, I will
15 apologize.

16 MR. BATES: Yes, sir.

17 THE COURT: So --

18 MR. BATES: But Your Honor, we do feel that it's
19 inappropriate -- we do feel that we have standing to make
20 the arguments, some of which that Mr. Murtha may have
21 made to the Court, Your Honor.

22 THE COURT: Well, what do you mean you have
23 standing to make the -- what do you -- I don't understand
24 what you're saying.

25 MR. BATES: Well, we feel that because the State

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1 wishes to call Officer Porter, that as an officer of the
2 court, when we sit down and we see something that we view
3 as unethical in terms of the rules of professional
4 candor, that we must bring those issues to the Court.
5 However, these issues directly affect my client. When
6 you sit down and look, the rules are clear. You
7 cannot -- in reference to false evidence, when evidence
8 that a lawyer knows to be false is provided by a person
9 who is not the client, the lawyer must refuse to offer it
10 regardless of the client's wishes. Here --

11 THE COURT: So basically, Mr. Bates, what I
12 understand is you're saying --

13 (Loud noise)

14 THE COURT: That's my cane falling. Don't worry
15 about it. I'll probably blame that on you, too, though.

16 MR. BATES: That's fine. I'm used to it.

17 THE COURT: I know you are. What you're saying
18 is that the State is offering information and would be
19 offering information in your case that they can't offer.
20 Is that effectively what you're saying?

21 MR. BATES: That is effectively, Your Honor.
22 Under the professional rules --

23 THE COURT: But isn't that a trial issue? And
24 that would be for the Court to make a determination
25 whether it's appropriate to allow the evidence in or not,

State v. Nero, Miller, Rice, White
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1 not for you, as a lawyer -- you're talking about when we
2 started out -- as a lawyer looking at the canons of
3 ethics? Isn't that more appropriate?

4 MR. BATES: Yes, Your Honor.

5 THE COURT: Okay.

6 MR. BATES: Well, because what it states under
7 the 9-123 that it must be for the public interest. And
8 one of the problems we have with the public interest, the
9 State has already called Officer Porter a liar. Based on
10 that, it's important that the judicial system is not seen
11 as caving in to the State's wishes in which they try to
12 manipulate the system. What we have --

13 THE COURT: I'll take that as a jab at me but go
14 ahead. Here's what I'm going to say. The Court granted
15 the motion from the State in the Goodson matter based on
16 the arguments that were presented, and I granted the
17 motion in the White matter based on the arguments that
18 were presented on that day. Goodson was here because it
19 was pretrial motions. You were not here, as I noted,
20 because didn't expect, candidly speaking, the Court of
21 Special Appeals to take this case in the manner in which
22 they did. They did. Otherwise, you would have had an
23 opportunity at your trial to make the arguments that you
24 wanted to make wherever I believed it would be
25 appropriate to do so.

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1 Under the circumstances as presented here,
2 again, I've already apologized to you for not allowing
3 you to be at the hearing, but I do not believe that
4 necessarily you had a right to make any arguments at all.
5 But also, I do not believe that it would be appropriate
6 to grant your motion given the circumstances that we find
7 ourselves in where the Court of Special Appeals has
8 accepted the Goodson matter, and they're going to have
9 hearings in March and that I do believe that the factual
10 scenario and the legal issues presented in the White case
11 are extremely similar. So for those reasons, I'm going
12 to deny your motion.

13 And if at the appropriate time, when you are
14 before me for a trial, I'm going to kind of guess that
15 you're going to have a number of arguments that you want
16 to make. Am I right in that?

17 MR. BATES: Yes, Your Honor.

18 THE COURT: I kind of figured that. Okay. So
19 for this moment --

20 MR. BATES: I do have one --

21 THE COURT: Every time you talk --

22 MR. BATES: That was my fault.

23 THE COURT: -- every time you talk that thing
24 falls.

25 MR. BATES: Well, that's because --

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1 THE COURT: Every single time.

2 MR. BATES: -- the cane is telling you that
3 you're wrong on the ruling, Your Honor.

4 THE COURT: Is that what the cane is telling me?

5 MR. BATES: So it falls because you're wrong.

6 THE COURT: Okay. I'll accept that.

7 MR. BATES: Respectfully. Respectfully.

8 THE COURT: And you know I hate when lawyer say
9 "respectfully" because it means the exact opposite.

10 MR. BATES: I know. I know.

11 THE COURT: The exact opposite. So your motion
12 is denied.

13 MR. BATES: Yes, sir. I do have one question.
14 I guess we'll deal with scheduling at a later time
15 period, correct?

16 THE COURT: Absolutely.

17 MR. BATES: Thank you, Your Honor. May I be
18 excused?

19 THE COURT: You don't want to stick around?

20 MR. BATES: I'm going to stick around but just
21 excused from the trial table.

22 THE COURT: You can move on. Thank you.

23 MR. BATES: Thank you.

24 THE COURT: All right. And as long as we're
25 still on this particular issue, I do note that,

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1 Mr. Murtha, you filed a request for injunction pending
2 appeal in the White case. Clearly, the matter is already
3 before the Court of Special Appeals in the Goodson
4 matter. Based on the Court's rulings, I do believe that
5 under the circumstances it would be appropriate for me to
6 grant your request. I note there's no objection from the
7 State. So the injunction in the Alicia White matter,
8 that will be granted.

9 MR. MURTHA: Thank you, Your Honor.

10 THE COURT: All right. You can call the other
11 three now.

12 MR. SCHATZOW: Your Honor, just with regard to
13 that, just so I -- you're staying not just your order in
14 the case, but you're staying the trial as well?

15 THE COURT: Well, given the fact that the Court
16 of Special Appeals --

17 MR. SCHATZOW: Yes.

18 THE COURT: -- kind of told me that they wanted
19 that in the Goodson matter -- oh, sit down.

20 MR. BATES: Your Honor, just for the record, I
21 want it to be clear that we object on behalf of Alicia
22 White. We invoke our speedy trial rights.

23 THE COURT: How about I assume that you object
24 to everything I do?

25 MR. BATES: That would be perfect, Your Honor.

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1 THE COURT: There we go. Appreciate that. All
2 right.

3 MR. SCHATZOW: Your Honor, do you want me to
4 call all three of the other cases now at once?

5 THE COURT: I do. Um-hum.

6 MR. SCHATZOW: Very well. Your Honor, then
7 State would call the following three cases: State versus
8 Miller, Number 115141034, State versus Nero, Number
9 115141033, and State versus Rice, Number 115141035.
10 Again, Your Honor, on behalf of the State, Michael
11 Schatzow, Deputy State's Attorney Janice Bledsoe and
12 Assistant State's Attorneys Matthew Pillion and John
13 Butler.

14 THE COURT: You may as well speak first.

15 MR. MURTHA: Thank you, Your Honor. Good
16 afternoon again, Your Honor. Joseph Murtha on behalf of
17 William Porter. I will note that Officer Porter is not
18 here with the Court's permission. He has waived his
19 appearance consistent with what he has done in the past
20 when permitted to do so, Your Honor.

21 MS. FLYNN: Good afternoon, Your Honor.
22 Catherine Flynn and Brandon Mead here on behalf of
23 Officer Miller who's standing to my right.

24 MR. ZAYON: Your Honor, good afternoon. For the
25 record, Marc Zayon and Allison Levine present on behalf

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1 of Officer Edward Nero.

2 MR. BELSKY: Good afternoon, Your Honor.
3 Michael Belsky and Chaz Ball on behalf of Lieutenant Rice
4 who's present and standing behind me.

5 THE COURT: All right. We are here because --
6 if you want to just sit down, however you want to set up
7 doesn't really matter to me. We are here because the
8 State has filed a request to compel Officer Porter's
9 testimony in the trials of Officer Miller, Nero and Rice.

10 Mr. Murtha, I'll hear from you.

11 MR. MURTHA: Thank you, Your Honor. Your Honor,
12 this is unlike the two other cases which the Court has
13 actually heard. In the Goodson matter, the White matter,
14 those two individuals that were going to trial,
15 previously the State had clearly identified that they
16 anticipated that Officer Porter would be a material
17 witness in both of those cases and had put us on advance
18 notice.

19 And for the purpose of the record, there has
20 been an opposition to the motion to compel that has been
21 filed with the Court. I would adopt and incorporate by
22 reference that document. There is an attachment. That
23 attachment is the motion to quash the subpoena that
24 has -- that was served in both the White and Goodson
25 cases. I would note that no subpoena has been served in

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1 regard to Officer Miller, Officer Nero and Lieutenant
2 Rice's cases, but the arguments were incorporated by
3 reference for the purpose of the record and once --

4 THE COURT: Mr. Murtha, I'm going to make your
5 job a little bit easier at the moment. Can you proffer
6 to the Court what your client's testimony would be or
7 position would be as far as testifying in the cases of
8 Miller, Nero and Rice?

9 MR. MURTHA: If he would be called to the
10 witness stand right now, he would indicate to the Court
11 that he would invoke his Fifth Amendment privilege.

12 THE COURT: Thank you. You may be seated.

13 MR. MURTHA: May I be heard at all, Your Honor?

14 THE COURT: You will at some point, but not
15 right now.

16 MR. MURTHA: Okay.

17 THE COURT: State?

18 MR. SCHATZOW: Your Honor, in light of that, we
19 renew our motion to compel. The motion sets forth in the
20 words of the statute what the two prerequisites, that is,
21 that the State's Attorney for Baltimore City has
22 determined that the testimony of Officer Porter may be
23 necessary to the public interest. And we also assert
24 that the State's Attorney determined that Officer Porter
25 is likely to refuse to testify, which his counsel has

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1 just represented.

2 The statutory prerequisites having been met,
3 Your Honor, we believe that the Court should grant the
4 immunity orders. The issues raised by Mr. Porter are
5 issues that A, the Court of Special Appeals is looking
6 at, and B, are issues that are for the Kastigar hearing,
7 not for this stage of the proceedings.

8 And with regard to the -- I don't know if you
9 want to hear me yet on this, and if you don't, I'm sure
10 you'll tell me. But with regard to the Defendants'
11 motions, our -- the State's position is they have no
12 standing to make these arguments. Their concerns, as you
13 mentioned, are trial concerns which are to be raised at
14 trial. They have no standing --

15 THE COURT: Well, as I mentioned for Mr. Bates'
16 argument --

17 MR. SCHATZOW: Yes.

18 THE COURT: -- I didn't say anything about the
19 others.

20 MR. SCHATZOW: Yes. But I think logically the
21 same thing is true, Your Honor, when the State -- when
22 the State wishes to have a witness immunized, obviously
23 the Court -- only the Court has the authority to do it;
24 the State makes the motion to the Court but we -- but in
25 analogous situations, there's no room for the Defense.

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1 If we're conducting a grand jury investigation, and we
2 want to immunize a grand jury witness, we don't have to
3 consult with a putative defendant about it.

4 THE COURT: We have actual Defendants here,
5 right?

6 MR. SCHATZOW: We do have actual Defendants.
7 You're right, Your Honor. But if you look at the Herman
8 case, which we cited in the oppositions that we filed
9 this morning to the Defendants', the three Defendants'
10 motions, Third Circuit relying on an old Supreme Court
11 case which was decided before there was use and
12 derivative use immunity but based on transactional
13 immunity, both the Supreme Court and the Third Circuit
14 came to the same position, that the immunity statute was
15 not designed to confer rights upon defendants. Their
16 rights are trial rights. Their rights are not to
17 interfere with the State's ability to make reasoned
18 judgments about what may or may not be necessary and what
19 may or may not be in the public interest in terms of
20 making those, you know --

21 THE COURT: Well, can you proffer to the Court
22 what's the reasoned judgment for Porter's testimony in
23 Officer Miller's case and Officer Nero's case and Officer
24 Rice's case?

25 MR. SCHATZOW: Yes, Your Honor, I can, although

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1 just -- if I might for the record say, Your Honor, I'm
2 going to do that. I'm going to do it willingly but as --
3 just for the record, as a matter of law, we don't think
4 it's necessary once the State's Attorney has made that
5 determination. But I'm going to proffer it.

6 THE COURT: Well, let me ask you something. If
7 the State's Attorney makes the determination, but the
8 Court finds that it's a ruse and subterfuge, what would
9 the Court have to do at that point in time?

10 MR. SCHATZOW: Well, Your Honor, that's an
11 interesting question. And I certainly don't want to
12 suggest that the Court is without power to deal with
13 ruses and subterfuges. That's not what we have here.
14 But it is true that both the Supreme Court of the United
15 States and the Third Circuit have said that as long --
16 that that is a decision that's entrusted to the State's
17 Attorney and that the -- that it would be a violation of
18 the separation of powers to interfere with that
19 determination.

20 THE COURT: Okay.

21 MR. SCHATZOW: So I'm not saying that, Your
22 Honor, to insult you or because I'm not going to answer
23 your question --

24 THE COURT: And you're saying it respectfully,
25 I'm sure just --

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1 MR. SCHATZOW: I'm not going to use that word.

2 I was going to use that but --

3 THE COURT: Everyone uses it.

4 MR. SCHATZOW: I'll just say it with a great
5 deal of respect. And --

6 THE COURT: Thanks.

7 MR. SCHATZOW: -- so that's our legal position,
8 Your Honor.

9 But to answer your question, to answer your
10 question, there are two areas --

11 THE COURT: Okay.

12 MR. SCHATZOW: -- in which this testimony
13 becomes significant and in the public interest. The
14 first is the failure to seatbelt at the second stop. And
15 what Mr. Porter has to say about that in his papers
16 because he was aware, Your Honor, just, you know, that
17 we --

18 THE COURT: Are you talking about his statement
19 or his trial testimony?

20 MR. SCHATZOW: Yes. His statement because his
21 trial testimony --

22 THE COURT: Okay.

23 MR. SCHATZOW: -- no. There was no testimony
24 about it. But it is in the transcript that we used as a
25 demonstrative aid during the trial of Mr. Porter. At

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1 both pages 39 and page 71, he indicates that the --

2 Mr. Gray, the decedent --

3 THE COURT: And 71?

4 MR. SCHATZOW: And 71, Your Honor.

5 THE COURT: Okay.

6 MR. SCHATZOW: It's very clear on 39. Seventy-
7 one is a little broader, but it's clear on context.

8 THE COURT: Okay.

9 MR. SCHATZOW: Pages 39 and 71 says he was not
10 seatbelted.

11 THE COURT: Um-hum.

12 MR. SCHATZOW: The --

13 THE COURT: Well, doesn't page 40 say, "But
14 again, I didn't watch the entire ordeal."?

15 MR. SCHATZOW: That's what he says then and we
16 also -- of course, we also have the video where he's
17 standing there as he's put in the wagon, and Lieutenant
18 Rice is coming out of the wagon so --

19 THE COURT: So basically what you're saying is
20 you're proffering to the Court that in the case of
21 Officer Miller, Nero and Rice, you need Porter to testify
22 that he was never seatbelted in?

23 MR. SCHATZOW: That's right, Your Honor, because
24 they're all -- each of them -- each of them are charged
25 with assault and -- just give me one second. Reckless --

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1 excuse me, not assault. Take that back. Each of the
2 three are charged with recklessness -- with reckless
3 endangerment and misconduct for the failure to seatbelt
4 at that stop. And in addition, Lieutenant Rice is
5 charged with manslaughter and assault which we contend
6 stem from the failure to seatbelt at the second stop. So
7 that's one of the two bases, Your Honor, is the failure
8 to seatbelt at the second stop.

9 THE COURT: So what's the second one?

10 MR. SCHATZOW: The second one is the place where
11 the injury occurred.

12 THE COURT: Okay.

13 MR. SCHATZOW: As I'm sure you recall, there
14 was -- the State's position, which has been relied on by
15 both its experts and the State in proving its case, is
16 that the injury to Mr. Gray that proved fatal took place
17 between the second stop and the fourth stop. And the
18 Defense has contended that the injury took place between
19 the fifth stop and the sixth stop and that is -- the
20 State does not contend that that's --

21 THE COURT: Well, I'm sorry. Excuse me one
22 second. You said that you need Officer Porter's
23 testimony based on his statement on pages 39 and 71?

24 MR. SCHATZOW: Yes, Your Honor.

25 THE COURT: Okay. Go ahead.

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1 MR. SCHATZOW: Excuse me. So in terms of the --
2 and that was related to the second stop, failure to
3 seatbelt, Your Honor.

4 THE COURT: Um-hum.

5 MR. SCHATZOW: In terms of the place of injury,
6 Officer --

7 THE COURT: Well, I'm -- I got to back up. I'm
8 sorry. You're talking about page 71, but if you look at
9 page 70, the question has to do with what Goodson did.
10 So how does that have any relevance to Nero, Miller and
11 Rice for page 70 and 71?

12 MR. SCHATZOW: My recollection, Your Honor, and
13 I don't have it in front of me, my recollection was
14 that --

15 THE COURT: I do.

16 MR. SCHATZOW: I know you do. My recollection
17 was that in the context of 70 and 71, they're talking
18 about the totality, not just at the fourth stop, but the
19 totality --

20 THE COURT: Page 70, line 20, Detective
21 Anderson, "So what -- what was Goodson doing? I mean,
22 did he seatbelt him in?"

23 Officer Porter, "Well, he -- I -- I -- I guess
24 he didn't seatbelt him after I left. No."

25 Again, Anderson, "So he -- so he wasn't

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1 seatbelted in? Okay."

2 Detective Teal, "Do you own a taser?"

3 Officer Porter, "No. I don't have one."

4 And so Detective Anderson again, down at
5 line 11, "All right. So at no time did you see him
6 seatbelted in?"

7 "No. Right." Any further question, Detective
8 Anderson. That's what's there.

9 MR. SCHATZOW: Yes, Your Honor. "So at no time
10 did you see him seatbelted in?" Your Honor. When I was
11 referring to, it was broader in context than just the
12 second stop. He's saying at no time on that day --
13 this -- page 71 is near the very end of the interview, as
14 I recall. And so he's summing -- Detective Anderson in
15 his question is summing up on an overall basis what is
16 set forth in terms of --

17 THE COURT: Well, is Detective Anderson going to
18 testify to that, that he was summing up?

19 MR. SCHATZOW: I can't tell you, Your Honor,
20 that I've asked him that specific question. All I can
21 tell you is we -- that's how we read the transcript --

22 THE COURT: Okay.

23 MR. SCHATZOW: -- in addition to what's on
24 page 39 which is specific to the second stop.

25 THE COURT: And page 40.

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1 MR. SCHATZOW: Yeah. This continues on.

2 THE COURT: Okay.

3 MR. SCHATZOW: Yes.

4 THE COURT: Go ahead.

5 MR. SCHATZOW: Okay. So that's one discrete
6 area. And the second area, Your Honor, the second
7 discrete area involves the place of injury.

8 THE COURT: Okay.

9 MR. SCHATZOW: And there is a dispute, as you're
10 well aware, that -- between the State, which contends
11 that the fatal injuries took place between the second
12 stop and the fourth stop, and the Defense, which contends
13 that the injuries took place between the fifth stop and
14 the sixth stop. And part of what the State relies on and
15 part of what the State's experts rely on are Officer
16 Porter's description of what occurred at the fourth
17 stop --

18 THE COURT: And you're talking about in his
19 statement or in the trial testimony?

20 MR. SCHATZOW: In both.

21 THE COURT: Okay.

22 MR. SCHATZOW: In both. In both. And so we
23 don't contend, Your Honor, that it is legally dispositive
24 of every single charge against each of Mr. -- Messrs.
25 Miller, Nero and Rice. But we do think it's important,

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1 when there's a dispute like that, it's important to the
2 jury when they start weighing how they're going to decide
3 the case. And --

4 THE COURT: Well, didn't the dispute start when
5 he gave his statement? What I'm obviously concerned with
6 is you made it very clear to this Court when this case
7 started back when I got involved, sometime in June, what
8 your order was going to be and why. You made it clear
9 that you needed Officer Porter's testimony for Goodson
10 and for White. Whether the Court agreed with that or not
11 was irrelevant. Doesn't matter but you made that clear.
12 At no point at all did you ever make it clear to me --
13 you may have talked to the Defense attorneys, I don't
14 know -- but you never made it clear to the Court that
15 there would be a reason for Officer Porter to effectively
16 testify in every single case.

17 So it's either the issue of you didn't know,
18 and you didn't figure it out until after the trial,
19 although you had his statement, or for some other reason.
20 So I don't understand so explain.

21 MR. SCHATZOW: Your Honor, what you just said is
22 accurate. We didn't take that position. But we tried to
23 learn something from our experience in trying Mr. Porter,
24 and we tried to learn something about what was effective
25 in what we did, what was effective in what the Defense

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1 did, what we tried to read into what the jury did. And
2 we think we have the right to change our mind, Your
3 Honor. And we acknowledge we're --

4 THE COURT: Sure.

5 MR. SCHATZOW: -- changing our mind.

6 THE COURT: Okay.

7 MR. SCHATZOW: Nobody's trying to mislead you,
8 and we haven't tried to mislead you, and we're not
9 misleading you now. You are absolutely right in what you
10 described as the order that we presented. It's still the
11 order that we want -- would like to try the cases in
12 ultimately. That would be a question for you and -- but
13 the --

14 THE COURT: More so the Court of Special
15 Appeals, but we'll see about that, too.

16 MR. SCHATZOW: And the Court of Special Appeals.
17 But we do think, having watched the case play out, that
18 it's going to become important particularly because in
19 the case of the -- of Miller, Nero and Rice, if the jury
20 believes and concludes that the injury happened between
21 stops two and four, I think they look at their
22 culpability in a much different way than if they believe
23 the injury happened between five and six. It may not be
24 legally dispositive, but I think it's very important for
25 the jury. And I think that's something that got hammered

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1 home to us as we looked back on our experience in the
2 Porter case and watched the trial unfold and that's
3 the -- those are the two reasons, Your Honor. It's as
4 simple as that is, or whether it's complicated or simple,
5 that's what the reasons are.

6 THE COURT: All right. So as far as the
7 seatbelting, you say that you need Officer Porter's
8 testimony. At what stop you're talking about?

9 MR. SCHATZOW: Two.

10 THE COURT: Stop two. That's where the video
11 is, correct?

12 MR. SCHATZOW: Correct, Your Honor. That was
13 the -- yeah, the video with him being -- you know, where
14 they show Mr. Gray on his knees and the leg chains on him
15 and putting him in the van.

16 THE COURT: So if I understand what you're
17 talking about there, the video showed Officer Porter
18 closer to the van. Officer Porter indicated that he
19 wasn't close to the van and couldn't see anything. So
20 what is it that you need him to say?

21 MR. SCHATZOW: That he did not -- exactly what
22 he says in his statement. He did not see him seatbelted
23 in that van, and we can show where he was at the time and
24 what his opportunity to observe was and he can -- and
25 he'll say, we assume, if he testifies consistently with

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1 his statement, that he was not -- he did not see him
2 seatbelted.

3 THE COURT: So what you're saying is you believe
4 that the testimony that you're -- you're offering
5 immunity in the case of Nero, Miller and Rice for the
6 purpose of Mr. Porter to come in and state that I never
7 saw them seatbelt him in; is that correct?

8 MR. SCHATZOW: At stop two.

9 THE COURT: At stop two.

10 MR. SCHATZOW: Yes.

11 THE COURT: But then we know that if we go to
12 the next page of his statement, "But again, I didn't
13 watch the entire ordeal." So my question to you is how
14 is that statement going to be admissible and relevant?

15 MR. SCHATZOW: Well, I think it will be
16 admissible and relevant because he says he didn't see him
17 and the -- didn't see him seatbelted, and the video will
18 show what his opportunity to observe was, when the
19 opportunity began, when the opportunity ended. And that
20 will allow us to prove that he was not seatbelted in
21 the --

22 THE COURT: Well, let me stop you there. How
23 does that prove that given that the video doesn't show
24 inside the van, correct?

25 MR. SCHATZOW: No. It doesn't show inside the

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1 van. You're right, Your Honor.

2 THE COURT: Okay.

3 MR. SCHATZOW: But what it shows is Lieutenant
4 Rice stepping out of the van and Mr. Porter stepping back
5 to allow Lieutenant Rice out of the van, and there's no
6 evidence that anybody else ever went into the van. So if
7 he wasn't seatbelted then at stop two, he was not
8 seatbelted at stop two.

9 THE COURT: Well, does the video show the entire
10 time from Mr. Gray being placed into the van and
11 Mr. Gray -- the van door closing?

12 MR. SCHATZOW: I can't say that, Your Honor. If
13 you'll recall, I think there's some times when the video
14 is pointing down at the street. So I'm not going to say
15 that it proves it to a mathematical certainty but --

16 THE COURT: Well, of course. And I don't need
17 you to do that. What I'm trying to figure out, before I
18 make my ruling, is what it is that you want to get
19 because --

20 MR. SCHATZOW: Right. But --
21 agree, the statute is relatively clear stating when the
22 prosecutor determines that the testimony may be necessary
23 to the public interest, the Court shall issue an order
24 requiring the individual give testimony. But I also note
25 that common sense also dictates looking at the Maryland

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1 Rules, Rule 401 which defines relevant evidence,
2 Rule 5-402 which talks about all relevant evidence is
3 admissible, and things that are not relevant are not
4 admissible, and then the more important one, 5-403 makes
5 it clear that although relevant evidence may be --
6 although relevant evidence may be excluded if its
7 probative value is substantially outweighed by the danger
8 of unfair prejudice, confusion of the issues, misleading
9 the jury or by considerations of undue delay. And I'm
10 sure that if I let the Defendants stand up, they're going
11 to talk about their speedy trial issues and other things.

12 So answer that for me now.

13 MR. SCHATZOW: Well, I -- in terms of speedy
14 trial, Your Honor, I --

15 THE COURT: Well, when I say answer that for me
16 now, it really wasn't --

17 MR. SCHATZOW: Oh.

18 THE COURT: -- that part of it. Just saying why
19 should I allow it?

20 MR. SCHATZOW: Because we are making the
21 request. We are making it in good faith. I've explained
22 to you the two bases -- the two separate bases on which
23 we have concluded that this testimony is in the public
24 interest. And I think that these -- these are not sort
25 of frivolous or made up arguments. They're real

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1 arguments, and the statute entrusts the State's
2 Attorney's Office to make the decision of whether it's in
3 the public interest. And I understand Your Honor's
4 desire to make sure that there's not a ruse or some
5 subterfuge going on here. And I assure you there isn't,
6 and I've explained to you why there isn't.

7 But once you're past that, Your Honor, then I
8 think it's separation of powers. It's the intent of the
9 legislature. It's the constitutional law. This is the
10 State's Attorney's decision to make, and once they make
11 it, and they make it in good faith, then we're done.

12 Now you have other issues. We're only talking
13 right now, Your Honor, about the question of granting the
14 motion to compel. I'm not saying that because you
15 immunize him that means you're no longer the judge at
16 trial; you can't make rulings on what's admissible and
17 what's not --

18 THE COURT: If only.

19 MR. SCHATZOW: -- insofar as his testimony is --
20 goes. But what I am saying very strongly, Your Honor,
21 that's premature. Those are issues that you'll decide
22 when he's on the witness stand, and we ask a question,
23 and somebody objects, and then you'll make a ruling. And
24 you will not hear me say that because you immunize him
25 then that means he -- you can't control the evidence

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1 presented to the jury. I'm just saying that it's
2 premature on this particular issue that's before you
3 today right now.

4 THE COURT: And of course, if I grant him -- if
5 I grant immunity in each of those cases, the next step
6 that you've asked this Court to do is to postpone the
7 cases.

8 MR. SCHATZOW: That's correct, Your Honor.

9 THE COURT: And tell me why I would do that.

10 MR. SCHATZOW: Well, for -- I think for a -- two
11 different reasons although they're all -- they're kind of
12 related. First off, I think and would submit to the
13 Court that it's the most practical thing to do for these
14 three reasons. One is if you put off these cases, we
15 ultimately get a decision from the Court of Special
16 Appeals, and they tell us what we're -- what to do, and
17 we're all going to do what they tell us what to do.

18 Then we would have the opportunity, Your
19 Honor -- you would have the opportunity to schedule the
20 retrial of Mr. Porter first. And if you were to do that,
21 Your Honor, that would have at least three impacts. It
22 would eliminate the need for a Kastigar hearing, which
23 could be complex, could be simple, but it could be
24 complex, and it's going to definitely take time no matter
25 what. It will allow the State to avoid the expense and

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1 problems associated with putting together a clean team
2 sometime before Mr. Porter testifies under immunity and
3 those -- that's -- that is clearly in the public interest
4 to save --

5 THE COURT: Well, couldn't you have figured that
6 out when you charged these six officers that you would
7 need that, if you wanted their testimony?

8 MR. SCHATZOW: Well, I don't think we assumed,
9 Your Honor, that the first case would end in a mistrial
10 and --

11 THE COURT: Why wouldn't you assume that that's
12 a possibility?

13 MR. SCHATZOW: We did assume it was a --

14 THE COURT: Mistrial, not guilty, guilty --

15 MR. SCHATZOW: We did assume --

16 THE COURT: -- those are the three options.

17 MR. SCHATZOW: -- we did assume it was a
18 possibility, Your Honor. We did assume that. And Your
19 Honor, I know you don't think so, but we really do pay
20 attention to what you say and you made -- when you were
21 talking before, you made it fairly clear -- I know you
22 weren't prejudging anything. I'm not accusing that. But
23 that it would be necessary for us to have a taint team.
24 And the fact -- a clean -- call it a clean team. You
25 know what I'm talking -- a team that's not exposed to the

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1 immunized testimony.

2 And okay, we heard you, Your Honor. The fact
3 is in federal --

4 THE COURT: Well, it's not me. It's the
5 Court -- the Supreme Court made it clear that if you want
6 to use immunized testimony how it's done. I had nothing
7 to do with that. That goes way back.

8 MR. SCHATZOW: Well, no. But it is true, Your
9 Honor, there's a split in circuits about whether -- in
10 the federal circuits there's a split about whether the
11 mere fact that the prosecutor has access to the immunized
12 testimony is actual derivative use if the prosecutor
13 doesn't go out and get evidence based on that.

14 THE COURT: But of course, you have to prove
15 that.

16 MR. SCHATZOW: Yes. And we'd have to prove that
17 at a Kastigar hearing.

18 THE COURT: Right.

19 MR. SCHATZOW: And you're absolutely right.
20 It's much easier to prove that if you have a clean team,
21 and you don't have tainted prosecutors. So we
22 anticipated -- we didn't anticipate, Your Honor, that we
23 would have such a strong impression that we needed to
24 have a clean team because we can account, in a retrial
25 for Mr. Porter, of all -- for all the evidence because we

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1 already have put the evidence in. And so that's exactly
2 what our thinking was in response to that. So it would
3 avoid that.

4 And then secondly, Your Honor, in terms of
5 virtually every objection Mr. Porter has made, both
6 before you and the Court of Special Appeals, if his case
7 were tried before the others, before he was compelled to
8 testify, virtually every one of those objections goes
9 away.

10 THE COURT: There. I want to do that, don't I?
11 That's my concern to help the State out.

12 MR. SCHATZOW: No. Well, it's not to help the
13 State out, Your Honor. It's to help --

14 THE COURT: I mean, yes, of course it is. It
15 absolutely, positively -- Mr. Schatzow, it absolutely,
16 positively is. There's no other reason for you to say
17 that. I don't care whether you have to have a clean team
18 or a dirty team. I don't care if you get a guilty, a not
19 guilty, a hung jury. I don't care if the Defendants are
20 found guilty or not guilty. That's for the process.

21 But for you to sit here and knowing full well
22 that I said no, I'm not going to try Mr. Porter's case
23 next because these other Defendants have a right to go to
24 trial, and then for you at this later point in time to
25 say oh, by the way, you know what, we never thought about

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1 using Porter; we investigated this case for the time that
2 we did; we looked at these cases; we charged the six
3 Defendants; we never, ever thought that we'd possibly
4 have to use Porter's testimony in every case, sounds
5 strange to the Court.

6 So with all that said, yes, you should have
7 figured this out. Yes, it's your job to do these things.
8 You didn't do it and that's fine. This is where we are.

9 So sort of apologize for the outburst, but by
10 you saying that you didn't know and that it would help
11 you not to have a tainted team because you think that's
12 what I'm requiring, the law requires it. It would help
13 you so that all the concerns that Mr. Porter has would go
14 by the wayside, not my concern. So please continue.

15 MR. SCHATZOW: Yes, Your Honor. I'm not trying
16 to suggest it wasn't in the State's interest. I'm not
17 trying to suggest that at all, Your Honor. I guess what
18 I am trying to suggest is that it's also in the public
19 interest if the Defendants' rights are protected to
20 all -- to have the case go with a minimum expenditure of
21 public resources. That's all I'm trying to suggest, Your
22 Honor. It's certainly in the State's interest, and I
23 don't want you to interpret what I'm saying as not being
24 in the State's interest. Of course, it is in the State's
25 interest, but the State is not just some ordinary party

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1 to the proceedings. We're no more important, we're no
2 more special the Defendants are, but we're not just a
3 private citizen making an argument. And so that's one
4 set of reasons.

5 And the other set of reasons relates to the
6 things that I said before, these two substantive areas
7 where we think it's in the public interest to have the
8 benefit of his testimony. And Your Honor, I hear you
9 loud and clear and --

10 THE COURT: Well, I know you always do,
11 Mr. Schatzow. You're fine.

12 MR. SCHATZOW: What?

13 THE COURT: I said I know you always do.

14 MR. SCHATZOW: So we do think, for the reasons I
15 said before, those two discrete areas, that it makes
16 sense. And you know, all I can do is say this, Judge. I
17 think I've tried to demonstrate it. We're acting in good
18 faith here. Whether someone, including you, thinks that
19 we should have figured all this out earlier, I don't know
20 what we would have -- well, I do know what we would have
21 done differently. We would have told you in the
22 beginning that we wanted Porter in each and every trial.
23 That's what we would have done differently.

24 But we are where we are, and if somebody is
25 going to be blamed for not having the sufficient

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1 foresight, that should be me. But that's where we are,
2 and I urge you to grant these motions. They're being
3 made in good faith. They comply with the statute. They
4 comply with the constitution. And if you have no other
5 questions, Your Honor, I would submit on what I've said
6 in our papers.

7 And I would also like Your Honor to
8 incorporate, as Mr. Murtha did, the arguments we made in
9 the Goodson case as well as our written opposition to the
10 motion to quash filed in the Goodson and White cases.

11 THE COURT: Very well. Well, in these cases,
12 you did not file a -- there's no subpoena in these cases.

13 MR. SCHATZOW: We haven't filed a subpoena, Your
14 Honor, because --

15 THE COURT: Okay. Just wanted to make sure.

16 MR. SCHATZOW: -- quite frankly, because where
17 we are in the scheduling.

18 THE COURT: I understand. All right. I just
19 wanted to make sure that I didn't miss something.

20 MR. SCHATZOW: That's accurate. We have not
21 issued the subpoenas. We assume that that part we will
22 be able to work out with Mr. Murtha.

23 THE COURT: All right. And I do have one more
24 question.

25 MR. SCHATZOW: Sure.

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1 THE COURT: The issue concerning the seatbelt
2 again for Officer Porter, if he testifies the way you
3 want him to, are you not setting him up for perjury?

4 MR. SCHATZOW: I don't see how, Your Honor,
5 because again, this whole -- the perjury --

6 THE COURT: Well, you --

7 MR. SCHATZOW: -- Your Honor, I would just --

8 THE COURT: -- you need him to say --

9 MR. SCHATZOW: -- I'd just like to get him
10 convicted for what I've charged him with --

11 THE COURT: I understand.

12 MR. SCHATZOW: -- before I worry about something
13 else. You know, in terms of the way my understanding,
14 which I think is correct, about the way this works, we
15 cannot use his immunized testimony to prosecute him for
16 perjury that he committed before his immunized testimony
17 if he committed such perjury. So I don't see how we're
18 setting him up for perjury. He has no Fifth Amendment
19 privilege to perjure himself. He's got to tell the
20 truth.

21 THE COURT: Well, but here's the problem that I
22 see. Under this factual scenario that you've presented
23 the Court, not the factual scenario for Goodson and
24 White, but under the scenario that you have here,
25 effectively each Defendant has a right to cross-examine

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1 Mr. Porter, and if he wants to say something different,
2 it kind of impacts their ability to cross. You have the
3 ability to ask questions the way you want, but also
4 there's a right to cross-examine. And you're saying
5 you're granting immunity, but it seems problematic that
6 you get to say all right, we want him to say X, and as
7 long as he says X, everything is fine. But then when
8 he's going to be crossed, he's going to take the Fifth.
9 You're saying well, you know, he's saying something
10 different now. So where are we with that?

11 MR. SCHATZOW: Your Honor, maybe I have a
12 fundamental misunderstanding. I think when -- his
13 compelled testimony is all of his testimony. In other
14 words, if he says a stoplight was red on direct, and he
15 says it's -- and on cross he says it was raining, I think
16 the raining is also the subject of the compelled
17 testimony. In other words, you're not going to let him
18 get on the stand and say just answer the prosecutor's
19 questions, and now you can take the Fifth for the --

20 THE COURT: No. I wouldn't do that.

21 MR. SCHATZOW: No. So my understanding is we --
22 his immunity applies to his compelled testimony. His
23 compelled testimony begins when we start asking him, and
24 it ends when you excuse him from the witness stand. So I
25 don't see -- you know, so in other words, I want to be

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1 clear here, Judge. Yeah. Nobody is asking you and we
2 are not giving and we are not seeking a license for him
3 to get on the stand and commit perjury. We're asking to
4 compel his truthful testimony, and we assume that the
5 testimony will be the same regardless of whether we ask
6 the questions or the Defense asks the questions.

7 THE COURT: The same consistent with this
8 statement, correct?

9 MR. SCHATZOW: Well, yes. That's our basis for
10 believing what he's going to say because he's already
11 said it. Yes.

12 THE COURT: Mr. Murtha?

13 MR. MURTHA: May we just approach very briefly?
14 And it's just a Porter issue so --

15 THE COURT: That's fine.

16 BENCH CONFERENCE

17 (Bench Conference begins - 02:46:16 p.m.)

18 (The parties approach the bench where the following
19 ensues:)

20 THE COURT: Um-hum.

21 MR. MURTHA: Your Honor, because I know the
22 Court instructed us not to append the January 13th, 2015
23 letter to any pleading, but in the January 13th, 2015
24 letter to the Court, the representation that the State
25 made was that they were relying upon the testimony and I

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1 will -- if the Court has a copy of the letter -- .

2 THE COURT: I do.

3 MR. MURTHA: And it's on the second page. And
4 so I read and reread. It's on the second page, first
5 paragraph. And the State makes the representation not
6 that they're relying upon the statement, but they're
7 relying upon his testimony. Which now there's a shifting
8 sand that, you know, adjusts the foundation upon which I
9 stand upon.

10 But I would mark as an exhibit his trial
11 testimony for the purpose of the hearing, in light of the
12 representation that had been made, and just admit it to
13 show that there is literally an absence of any testimony
14 relating to whether or not Officer Porter made an
15 observation about whether Mr. Gray was seatbelted or not
16 seatbelted.

17 THE COURT: Here's the situation that I find us
18 in. You're right. We do have the letter here. Which
19 number is the September letter? I know I have it --

20 MR. MURTHA: September the 15th I --

21 THE COURT: Yeah. No. I'm just saying whether
22 it was in or not before. It's one of the few times I did
23 allow you to write me as opposed to a motion.

24 MR. SCHATZOW: Your Honor, I believe the
25 September 15th letter was attached as an exhibit to --

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1 THE COURT: I think so.

2 MR. SCHATZOW: -- somebody's papers. I can't
3 tell you --

4 THE COURT: That's fine. Yeah, yeah.

5 MR. MURTHA: It was --

6 THE COURT: Okay. That's fine.

7 MR. MURTHA: -- for scheduling. It was actually
8 to all of -- all of the oppositions included the
9 September the 15th letter.

10 THE COURT: Well, here's the thing. All this
11 may be in another court anyway. You effectively read
12 this into the record just -- I'm not bothered by it. I'm
13 just saying you referred to everything in here. That's
14 fine. I'll let it be an exhibit --

15 MR. MURTHA: Okay.

16 THE COURT: -- that you can reference. And then
17 I have no problem with it. That's all. So that's fine.

18 MR. MURTHA: Thank you, Your Honor.

19 THE COURT: Okay.

20 (Bench Conference concluded - 02:48:12 p.m.)

21 (The parties return to the trial tables where the
22 following ensues:)

23 THE COURT: So Mr. Murtha, you're making
24 reference to what now?

25

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1 MR. MURTHA: Your Honor, I would ask -- and I
2 actually have a copy; it's highlighted. It the State
3 does not oppose the highlighted version, I could
4 substitute it. That there be marked as Officer Porter's
5 Exhibit A which is a January the 13th, 2016 letter.

6 THE COURT: It will be Exhibit 1.

7 MR. MURTHA: Exhibit 1, if I may approach. I
8 have stickers.

9 THE COURT: Any objection to the highlighted
10 one, or do you have a clean one over there, Mr. Schatzow?

11 MR. MURTHA: I have --

12 MR. SCHATZOW: Oh. Do they have -- I have a --

13 MR. MURTHA: I have a clean one.

14 THE COURT: Okay.

15 MR. MURTHA: If I may approach, Your Honor.
16 Exhibit 1. I'm sorry. I didn't fill out these stickers.
17 That would be the January the 13th, 2016 letter to the
18 Court from Mr. Schatzow advising the Court of essentially
19 what has just been argued.

20 And I would note that on page 2 of that letter,
21 in the first paragraph in the representation to the
22 Court, the State says that they would be relying upon the
23 testimony of Officer Porter. So in anticipation of
24 today's hearing and searching for why it would be that
25 they would rely upon testimony that literally never

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1 addressed the issue of seatbelting I would -- I have
2 marked and asked that it be admitted as Defendant's
3 Exhibit 2, and that is the trial testimony of Officer
4 Porter. And I would proffer that --

5 THE COURT: Any objection, just for the record?

6 MR. SCHATZOW: For the letter going in? No,
7 Your Honor.

8 THE COURT: And the transcript.

9 MR. SCHATZOW: Oh, and the transcript? No, Your
10 Honor.

11 THE COURT: Okay. So entered.

12 (Defendant Porter's Exhibits 1 and 2 are marked for
13 identification and admitted into evidence.)

14 MR. MURTHA: And that reason that becomes
15 important is because seven days later, we're in a
16 position where the State has said -- after having the
17 benefit of actually reading the responsive pleadings
18 including the responsive pleading of Officer Porter
19 opposing the motion to compel, saying that nowhere within
20 that trial transcript is there actually any testimony
21 that relates to seatbelt or not seatbelting. And I think
22 that's significant because -- and it's not always easy to
23 make accusations of things such as pretext, subterfuge
24 and ruses, but that's what this is.

25 And the reason being is clearly the Court

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1 had -- or excuse me, the State had communicated to the
2 Court previously an interest in trying the cases of
3 Officer Miller, Officer Nero and Lieutenant Rice after
4 the retrial of Officer Porter. The Court was not
5 inclined to do that, and I don't think there was ever a
6 formal postponement. And then after a trial on Officer
7 Porter, and after, not at a time of Officer Goodson's
8 trial or Officer White's trial but only after injunctive
9 relief had been granted by the Court of Special Appeals,
10 does it become important for the State to actually call
11 Officer Porter as a witness about stop two.

12 Now I think in the -- it will be reflected in
13 the cross-examination by Mr. Schatzow and also in the
14 closing arguments -- the State ridiculed Officer Porter
15 because Officer Porter indicated when he got out of his
16 car he couldn't see what was going on, and he was
17 vigorously cross-examined about how close he was and then
18 also asked why he couldn't identify who the people were.
19 So here the State's making a representation to the Court
20 that he's a vital material witness of a fact, one, that
21 is never testified to, and two, where it being subject to
22 cross-examination, the State held him in contempt for not
23 being able to see what was actually going on. In fact,
24 in the videotape that's being referenced by the State, he
25 turns his back, and he actually approaches the crowd

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1 because he engages in crowd control.

2 Now adopting the State's theory of the use of a
3 Defendant as a witness, it would be much easier for the
4 State to look down this trial table and to say you know
5 what, stop two, who could we use? Well, let's see. We
6 have Officer Garrett Miller's first, and what we're going
7 to do is we're going to immunize Officer Nero, and we're
8 going to call him because that's our theory. We want the
9 most important witness that can testify to that. Or
10 maybe we even immunize Lieutenant Rice because he's
11 third.

12 How does Officer Porter, whose back is turned
13 to the van before the doors close, who doesn't know
14 whether or not he was seatbelted, become a material
15 witness about stop two? That -- it's a disingenuous
16 pretext for the purpose of getting a postponement. And
17 it's actually -- it's offensive in the sense that the
18 State stands up here and makes the representations that
19 they do, suggesting that it really isn't for the purpose
20 of getting a postponement.

21 In regard to the fourth stop, there are three
22 officers that have actually been given immunity. Officer
23 Novak -- and Officer Novak has been identified as a State
24 witness. Officer Novak did not testify for the State.
25 He's testified for the Defense. But Officer Novak

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1 testifies very clearly of his involvement in stop two.
2 He's already been granted immunity. He was a participant
3 in the arrest of Mr. Gray at stop two. He had a bird's-
4 eye view of what transpired. They had a sufficient
5 witness who could actually testify.

6 In regard to the fourth stop, there's Officer
7 Gladhill and there's Officer Wood. Those are other
8 officers actually or Officer Gladhill, another officer --

9 THE COURT: And you think you have the authority
10 to tell the State which witnesses to call?

11 MR. MURTHA: I can't but all these arguments are
12 being made for the purpose of arguing that this is a
13 pretextual effort by the State to postpone the cases and
14 subject Officer Porter -- actually, and I've said it in
15 the pleadings, what they want to do is they want to take
16 him hostage for five cases, and then torture him in his
17 own trial, having laid a minefield of suggestions that
18 he's actually perjured himself. And as the State has
19 acknowledged, and as the Court actually inquired in
20 regard to the extent of cross-examination, there are
21 limits. We have no -- we are literally powerless in
22 regard to controlling the nature of the testimony or
23 objecting to the air of questioning when he's called as a
24 witness for the State and subject to cross-examination by
25 the Defense.

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1 So it really -- as a zealous advocate for
2 Officer Porter, it's offensive that now he's going to be
3 drawn into becoming a material witness when never before
4 has he ever been recognized as a material witness.

5 Your Honor, I've put in our papers. In fact,
6 paragraph 13, page 5 of the papers is a comment by Chief
7 Judge Murphy about his observations, how the nature of
8 the immunity that is extended by Courts and Judicial
9 Proceedings 9-123 really isn't sufficient and suggests
10 that the legislature expand it for the purpose of
11 protecting people who are called as witnesses. And
12 that's why, for all the reasons that have previously been
13 stated, that it -- the protections are not adequate under
14 the circumstances of this case.

15 The Court is now powerless. I understand the
16 State says separation of powers. The Court actually --
17 once we check A, B and C, the Court has to grant it. But
18 the Court asked very insightful questions --

19 THE COURT: Thanks.

20 MR. MURTHA: -- specifically -- and I'm always
21 respectful, folks, so I'm not going to use --

22 THE COURT: There we go. There it is.

23 MR. MURTHA: But, well, you asked questions that
24 I would have asked if I had the opportunity. They're
25 questions that -- answered but aren't complete. There's

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1 a case from 2002 that Judge Moylan actually wrote the
2 opinion in. And it's actually Charity v. State, and it's
3 132 Md. App. Reports 598.

4 Now Charity v. State is a case where there was
5 a Maryland State trooper who under the Whren doctrine
6 that was announced by the Supreme Court in regard to a
7 police officer's opportunity to actually make a traffic
8 stop and even if there was a legitimate basis for the
9 traffic stop that allowed them to get to the car.
10 Previously, arguments had been made that the officer's
11 actions were pretextual.

12 Well, Judge Moylan, in this case, chastises the
13 law enforcement efforts to abuse the privilege that had
14 been extended by the Supreme Court in Whren. And Judge
15 Moylan says if there's a lesson to be learned from this
16 case, it is that when the police, and in this case we can
17 substitute prosecutors, are permitted a very broad,
18 persistently controversial investigative prerogative,
19 they would well be off used (sic) when not literally
20 required to do so to exercise their prerogative with
21 restraint and moderation, lest they lose it. In fact, he
22 later on goes to say that should the State or law
23 enforcement continue to push the envelope out, it may
24 lose the goose that has laid the golden egg.

25 And the reason I cite the Charity case, because

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1 it's the only case I could find where the judiciary says
2 to the State you're right. You do have a legitimate
3 basis for coming before the Court and saying that it was
4 valid. But you have pushed the envelope so far out that
5 you're at the point of exploiting the privilege that has
6 been extended to you. And that's what we have here.

7 And I don't think the Court is powerless to
8 actually just buy wholesale -- the State makes the
9 representations, but the State also knows the history of
10 these cases. It knows that in September of 2015, the
11 State identified the lineup of the cases and how
12 important it was for Officer Porter to go first because
13 his perceived Fifth Amendment privilege. But now his
14 Fifth Amendment privilege is disregarded, whether or not
15 he can protect himself and his Sixth Amendment right to a
16 fair trial later on because --

17 THE COURT: Well, the Court of Special Appeals
18 will determine that. I made the ruling as I did in the
19 Goodson and White matters. I'll make a ruling in this
20 case based on what is presented. But as far as his
21 protections, the Court of Special Appeals has made it
22 clear they're interested in it, and they're going to make
23 a decision so --

24 MR. MURTHA: They are. But the Court,
25 understanding all the information, can make a finding,

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1 and that's how new case law is made all the time. The
2 Court can make a finding that based on the history of
3 this case and on the facts presented that it really isn't
4 in the public interest.

5 Looking down the lineup here, there could be
6 several other witnesses who provide much more material
7 testimony, and they could receive the benefit of use and
8 derivative use testimony to give a much clearer
9 observation in --

10 THE COURT: Well, but once again, that's not
11 your job. That's solely within the area of the State's
12 Attorney's Office to make a decision which witnesses they
13 will call in their case. You have nothing to do with
14 that. Please move on.

15 MR. MURTHA: That's true. But in protecting my
16 client --

17 THE COURT: Which you have a right to do,
18 obviously.

19 MR. MURTHA: I assert that because there's no
20 doubt in my mind, and the Court may rule favorably for
21 the State and say Mr. Murtha, nice try, but it just isn't
22 enough to carry the day. But I do believe that it is a
23 pretextual effort by the State to seek a postponement.

24 Now the State is actually assuming a fact that
25 will not have been determined as of today because they

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1 asked for a postponement. There is a presumption that
2 the State is making that Officer Porter, after
3 contemplating the Court's decision, will seek injunctive
4 relief and appeal each of the Court's orders if the Court
5 orders him to compel. He didn't see anything at stop
6 two. He wasn't a participant with Officer Nero and
7 Officer Miller. So we have to assess what we're going to
8 do next.

9 So the State should presume that automatically
10 the Court's order to compel the testimony in each one of
11 these cases automatically should result in postponement.
12 I'm only saying that because, well, one is Mr. Proctor is
13 out of the country right now, and we haven't assessed
14 what Officer Porter would like to do. It very well --
15 the logic would be that there would be injunctive relief
16 sought and an appeal filed with the Court of Special
17 Appeals. That would be the conventional wisdom. And I'm
18 not saying that that's not going to happen, but I think
19 the State has actually put the cart before the horse, so
20 to speak, in asking for a postponement today when a
21 critical decision has not been made that would cause the
22 Court to believe that the cases should be postponed.
23 That is not my argument. That's the argument for the
24 counsel for each of the Defendants.

25 But I would ask the Court to find that the

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1 State's efforts to call Officer Porter are pretextual in
2 nature, they are for the purpose of obtaining a
3 postponement, and thrusting Officer Porter into being not
4 just the first case tried but the second case tried and
5 in the process, trampling upon his ability to ultimately
6 have a fair trial in the future, having been subjected to
7 the torture of being a witness in other cases. So for
8 those reasons, Your Honor, I respectfully request the
9 Court not grant the State's request in the three cases
10 where they've sought an order compelling his testimony as
11 a witness. Thank you, Your Honor.

12 THE COURT: Okay. All right. Counsel for
13 Miller, Nero and Rice, from my perspective, the -- I have
14 read what you filed. The only issue I think would be
15 appropriate -- I mean, the State disagrees you don't have
16 any standing. I disagree with that to some degree. But
17 I will hear you solely on the issue -- want to be heard
18 on the issue of speedy trial, if you want to be heard on
19 that or not.

20 MS. FLYNN: Thank you, Your Honor. Catherine
21 Flynn on behalf of Officer Miller.

22 THE COURT: What's your name again, ma'am?

23 MS. FLYNN: That would be Catherine Flynn, Your
24 Honor.

25 THE COURT: Thank you, ma'am. Go ahead.

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1 MS. FLYNN: Thank you. I understand the State
2 has not actually formally requested a postponement, but
3 essentially I guess that's why I'm here on behalf of
4 Officer Miller.

5 THE COURT: Sort of.

6 MS. FLYNN: All right. So I want to clarify.
7 It's my understanding that the State's position with
8 Officer Porter is that he's a material witness in the
9 prosecution of Officer Goodson and Sergeant White and
10 that the failure to be able to call Officer Porter
11 essentially guts the prosecution of Officer Goodson and
12 Sergeant White. That's my understanding of the State's
13 position as opposed to their position in calling Officer
14 Porter in Officer Miller's case, that they would like to
15 call Officer Porter. They may call Officer Porter. But
16 they have not identified him --

17 THE COURT: It may be necessary to the public
18 interest which is straight from the statute.

19 MS. FLYNN: Yes. But they haven't identified
20 him in the same way that they did in the Goodson and
21 White case as a material witness and without him they --
22 the prosecution would be gutted of Officer Miller.

23 I do want to clarify that at stop two, my
24 client made a statement, and he was asked what he was
25 doing at stop two, and he indicated that he was filling

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1 out the tow tag which is the documentation regarding the
2 arrest of Mr. Gray. He indicated he never went into the
3 wagon and that he was outside of the wagon the entire
4 time.

5 For the sake of argument, I would proffer that
6 we could enter a stipulation about Officer Miller and the
7 seatbelt at stop two. From what I gather, Officer
8 Porter's testimony was that he didn't really see exactly
9 what was going on. And it sounds to me like the State
10 may want to call him to impeach him. But if the only
11 issue is whether or not Officer Miller was involved in
12 seatbelting Mr. Gray at stop two, if asked, I could enter
13 a stipulation to that fact because Officer Miller gave a
14 statement indicating exactly what he was doing at stop
15 two.

16 The issue about stop --

17 THE COURT: Well, the issue that I want to hear
18 from you has to do with postponement.

19 MS. FLYNN: Okay. So the State is saying that
20 they need a postponement because they want to call --
21 they want to try Officer Porter's case --

22 THE COURT: Well, I know why they're asking.

23 MS. FLYNN: -- first.

24 THE COURT: My question for you is are you
25 objecting to a postponement? You're scheduled for --

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1 MS. FLYNN: March 7th.

2 THE COURT: March 7th.

3 MS. FLYNN: I was contacted by the Court last
4 week and given that date, and we are prepared to go
5 forward on March 7th. We are prepared to file all of our
6 pretrial motions as required. What the State I think is
7 failing to --

8 THE COURT: And you're objecting to -- if the
9 Court were to grant the motion to compel, and if the
10 Court were to stay the case and postpone all the cases,
11 you're objecting to that; is that correct?

12 MS. FLYNN: Yes, Your Honor.

13 THE COURT: Thank you. Next?

14 MS. FLYNN: If I could, Your Honor --

15 THE COURT: Could what?

16 MS. FLYNN: The State is basically saying that
17 without --

18 THE COURT: I don't want -- again, your issue --
19 your purpose here is whether you agree or not agree with
20 the postponement request.

21 MS. FLYNN: I understand that, Your Honor. But
22 the State is saying that they need a successful
23 prosecution one way or another for Officer Porter --

24 THE COURT: I don't really care what they have
25 to say about that. And I'm not being funny at all.

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1 MS. FLYNN: Okay.

2 THE COURT: I don't care about that because the
3 issue has to do with whether they had the right to do
4 this and the basis for it. So I've got that.

5 MS. FLYNN: And certainly --

6 THE COURT: Thank you very much, ma'am. Ma'am,
7 thank you so much.

8 Next.

9 MR. ZAYON: Your Honor, thank you. Yes. So
10 obviously on behalf of Officer Nero, we would object to
11 any postponements. I'm reaffirming his right to a speedy
12 trial at this moment, and I would adopt all of the
13 arguments that Mr. Murtha has made as they apply to my
14 client with regard to why we are objecting to Officer
15 Porter even being compelled as a witness in this case.

16 I think I'm set for February 22nd, and there
17 are some scheduling issues with regard to that separate
18 from these issues. But I guess we can discuss that at a
19 later time or at this time, whatever Your Honor --

20 THE COURT: You may want to be ready to talk.

21 MR. ZAYON: I'm ready when the Court's ready.

22 THE COURT: Next.

23 MR. BELSKY: Good afternoon, Your Honor. On
24 behalf of Lieutenant Rice, we are prepared for trial. We
25 would assert our speedy trial rights and will tell this

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1 Court under the guise of speedy trial, my client is
2 actually suspended without pay at this point. He has
3 four children. He has no income coming in relative to
4 his police capacity. He's in hard times right now. He
5 has every interest in getting this case heard at a
6 speedy -- as speedy as possible, and we would assert our
7 speedy trial rights. We're ready to go to trial.

8 THE COURT: Thank you. You can respond.

9 MR. SCHATZOW: Your Honor, just very briefly to
10 clear up the record. When Mr. Murtha was referring to
11 Mr. Novak having a bird's-eye view of the arrest at stop
12 two, I think he meant stop one. Stop two is Baker and
13 Mount. Presbury and Mount is where the arrest took place
14 and where Mr. Novak was involved.

15 When Mr. Murtha said that Officer Gladhill and
16 others were at stop four, stop four was Druid Hill and
17 Dolphin. Officer Gladhill was not present. Officer
18 Porter was the only one present other than Officer
19 Goodson and I --

20 THE COURT: Well, stop four has nothing to do
21 with this, correct, because Miller, Nero and Rice weren't
22 there. That's just involving Goodson.

23 MR. SCHATZOW: Well, except it involves Miller
24 in terms of our second point. We've heard about --
25 people have addressed the seatbelt. Nobody really has

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1 addressed the point about where the injury took place,
2 and that's why stop four is relevant for Miller, Nero and
3 Rice because, as I point out in my letter and
4 according -- the Williams case and the standard jury
5 instruction, it's relevant to the issue of reckless
6 endangerment and it's also -- it's directly relevant,
7 important to the jury because if they didn't seatbelt at
8 stop two, that was the last chance to seatbelt before the
9 injury occurred. That's where --

10 THE COURT: And you're saying the injury
11 occurred when?

12 MR. SCHATZOW: Between 2:00 and 4:00, between
13 Baker and Mount and Dolphin Hill (sic) and Druid Avenue.

14 THE COURT: But you don't know where. It could
15 have been after stop two. It could have been after stop
16 three.

17 MR. SCHATZOW: Possibly.

18 THE COURT: It could have been after -- or by
19 stop four, correct?

20 MR. SCHATZOW: Could have been but yeah, by --
21 we contend it happened by stop four and after stop two.
22 Yes.

23 THE COURT: Okay.

24 MR. SCHATZOW: And the only other thing I wanted
25 to respond to -- well, two other things very briefly,

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1 Your Honor. When Mr. Murtha talks about paragraph 13 of
2 his papers and what Chief Judge Murphy said when he was
3 part of the -- speaking on behalf of the Criminal Law
4 Article Review Committee, it's ironic because he was
5 talking about a transactional immunity statute which he
6 said did not go far enough to provide immunity. It
7 wasn't constitutional because it needed to provide, in
8 the context of the cases he's citing to, Evans and in re
9 Criminal Investigations, because it didn't provide use
10 and derivative use. What Chief Judge Murphy is saying
11 there, and this goes to the substance, Your Honor, and so
12 it completely undermines Mr. Murtha's substantive
13 arguments because he was speaking in favor of use and
14 derivative use immunity, and he was equating Article 22
15 to Section 5. And it's right there in the notes that
16 Mr. Murtha references which are part of the comments to
17 Section 9-204.

18 And, you know, the point I make about stop
19 four, the reckless endangerment actually requires proof
20 that the risky conduct could lead to a significant
21 injury. And we think the proof that it did lead to a
22 significant injury is such proof.

23 With regard to the speedy trial arguments, Your
24 Honor, I would simply point out that these cases are -- I
25 think tomorrow -- I might be off by a day or two, but I

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1 think tomorrow is the eight month anniversary of when the
2 grand jury indictment was returned. And while the State
3 would love to get the cases tried quickly, and we're not
4 asking for some inordinate delay, and I'm sure the Court
5 of Special Appeals will move with what they consider to
6 be promptness and speed, we are not talking, you know,
7 we're not talking about a two-year delay. We're not
8 talking about putting things off for --

9 THE COURT: Well, what happens if after the case
10 comes back and you -- if I were to grant what you asked,
11 you try Porter, and it's the same result?

12 MR. SCHATZOW: Well, you know, Your Honor, I
13 would say that we would have to re-examine it. We
14 recognize that your patience is not unlimited and we
15 recognize that --

16 THE COURT: Certainly it is.

17 MR. SCHATZOW: Well, you've demonstrated it to
18 be unlimited. I'll say that. But I'm now trying to look
19 far into the future. And look, Judge, if the case were
20 to mis-try two cases in a row because of hung juries on
21 all counts, obviously we'd have to take a look -- a very
22 serious look at it. And our ability to go back to the
23 well repeatedly to ask for the same thing, Your Honor, is
24 limited by the practicalities and the fact that we all
25 live in the real world. But where we are right now, in

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

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

14 THE COURT: Thank you.

15 MR. SCHATZOW: Thank you, Your Honor.

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

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

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

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

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

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

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

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1 delay.

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

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

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

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

17 Thank you.

18 MR. SCHATZOW: Thank you, Your Honor.

19 MP. MURTHA: Thank you, Your Honor.

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

22 MR. MURTHA: I'll --

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

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

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1 THE COURT: Even you. Even you. Even you.
2 It's a quick question.
3 BENCH CONFERENCE
4 (Bench Conference begins - 03:18:19 p.m.)
5 (The parties approach the bench where the following
6 ensues:)
7 MR. ZAYON: Should be six.
8 THE COURT: Yeah. I was just checking. Is
9 anyone planning to respond to the motion to intervene?
10 MS. BLEDSOE: I can't hear him.
11 MR. ZAYON: I didn't hear -- the motion?
12 MS. BLEDSOE: I can hear --
13 THE COURT: Is anyone planning to respond to the
14 motion to intervene? I'm just curious.
15 FEMALE SPEAKER: Motion to what?
16 MS. BLEDSOE: For the media.
17 MR. SCHATZOW: Oh, for the media.
18 MALE SPEAKER: Intervening.
19 MS. BLEDSOE: Oh.
20 MALE SPEAKER: No.
21 THE COURT: Okay. I know someone --
22 MALE SPEAKER: Is --
23 THE COURT: -- had said they were so I --
24 before --
25 MR. SCHATZOW: Not at this point.

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1 THE COURT: Okay. That's all I cared about.
2 You may as well stay here. No, we can do it on the
3 record. I just want to -- as far as postpone, I'm not
4 postponing anything unless -- well, I'm not so --

5 MR. ZAYON: Okay.

6 THE COURT: -- step back.

7 MR. ZAYON: Okay.

8 THE COURT: Okay.

9 THE COURT: Okay.

10 (Bench Conference concluded - 03:18:51 p.m.)

11 (The parties return to the trial tables where the
12 following ensues:)

13 THE COURT: Let's see. Excuse me one second.

14 BENCH CONFERENCE

15 (Bench Conference begins - 03:19:05 p.m.)

16 (A woman approaches the bench where the following
17 ensues:)

18 THE COURT: Do I have to do anything?

19 FEMALE VOICE: (Inaudible).

20 THE COURT: I did. That's what I just did. I
21 just don't know -- I was wondering if -- okay.

22 (Bench Conference concluded - 03:19:14 p.m.)

23 (A woman leaves the bench where the following
24 ensues:)

25 THE COURT: All right. Anything else from any

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1 of the parties?

2 MR. SCHATZOW: No, Your Honor.

3 THE COURT: Thank you.

4 MS. FLYNN: Yes, Your Honor.

5 MR. MURTHA: Excuse me.

6 THE COURT: What?

7 MS. FLYNN: Well, I have a trial date, and are
8 we going to schedule a motions --

9 THE COURT: Yeah. We certainly are. Your trial
10 is scheduled, as far as I know, and certainly the next
11 one up is Nero. You're after Nero, and you're after
12 Miller. So as far as this Court is concerned, we're
13 continuing.

14 MR. BELSKY: I hate to do this but can we --

15 THE COURT: I can't hear you.

16 MR. BELSKY: Can we approach for one second?
17 I'm sorry.

18 THE COURT: Okay. Fine.

19 BENCH CONFERENCE

20 (Bench Conference begins - 03:19:52 p.m.)

21 (The parties approach the bench where the following
22 ensues:)

23 MR. BELSKY: I apologize. Right now my trial is
24 scheduled for March 9th. I'm trying to schedule a
25 surgery at this point. Ms. Flynn's client is scheduled

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1 to go March 7th. Am I to assume in scheduling that I'm
2 not going March 9th or --

3 THE COURT: I have no clue at this point.

4 MR. BELSKY: Okay.

5 THE COURT: Right now, I'm -- all I'm more
6 concerned with -- all I'm more concerned with; that's not
7 even grammatically correct. I'm more concerned with
8 Nero's case because that's the next one up.

9 MR. BELSKY: Sure.

10 THE COURT: Now certainly we'll find, after we
11 deal with Nero, where are we with Miller. Is it likely
12 that it will be postponed? I don't know. But I don't
13 know the circumstances that we find ourselves in so --

14 MR. BELSKY: Okay. Well, I can reach out.

15 MR. ZAYON: So let me, if I may with regard to
16 Nero, and I mean, you guys can chime in or not chime in.
17 I have no idea. But my understanding -- and it's fine.
18 I just have to get with my experts and get everything
19 done.

20 THE COURT: Um-hum.

21 MR. ZAYON: But my understanding was always that
22 Nero was going after Miller. And the last time
23 everything was postponed, I wasn't invited to that
24 postponement party.

25 THE COURT: You sure weren't.

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1 MR. ZAYON: But my understanding was that's just
2 because you didn't get to me yet, and that case was going
3 to be postponed.

4 THE COURT: And here's the issue. As I stated
5 from the beginning, I did not expect my ruling to go to
6 the Court of Special Appeals. I can only speak --

7 MR. ZAYON: Well, none of us expected that, I
8 guess. So right but --

9 THE COURT: So we are where we are. We're
10 trying these cases. We're moving forward so --

11 MR. ZAYON: Okay. Because we've been -- are you
12 fine with that? I mean, I guess it doesn't matter if
13 they're fine because we --

14 MS. BLEDSOE: It doesn't matter what we're fine
15 with, clearly.

16 MR. ZAYON: Okay. All right.

17 MR. BELSKY: Why don't we all talk?

18 MS. BLEDSOE: We're not calling the shots on
19 this one.

20 THE COURT: Yeah. So we'll see where we are.
21 So you'll be getting a scheduling -- got to send this out
22 later today.

23 MR. BELSKY: Perhaps --

24 MR. ZAYON: We could save you a stamp, and you
25 can just hand it to us.

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1 THE COURT: No. We'll send it out. We'll get
2 it to you. Okay.

3 MR. BELSKY: Perhaps we all could talk and --

4 THE COURT: You all can do what you want. And I
5 don't mean that in a flippant way. I mean --

6 MS. BLEDSOE: We know what we need to do.

7 THE COURT: Right.

8 MS. BLEDSOE: And we'll do what we need to do.

9 THE COURT: And I'm sure that will happen. I'm
10 sure this is not the last I've heard of this. What a
11 shock.

12 MS. BLEDSOE: I know, Judge.

13 THE COURT: Yeah.

14 MS. BLEDSOE: Is what it is.

15 THE COURT: Absolutely. But this will go out
16 later today saying that the trial in this matter
17 scheduled to begin February 22nd, 2016, barring me
18 hearing anything from anyone who has more power than
19 me -- and candidly speaking, it's only a small group of
20 people who have more power than me on this issue -- if I
21 hear from them, I do what they tell me to do. If I don't
22 hear from them, we move forward.

23 MS. BLEDSOE: Okay.

24 MR. BELSKY: Thank you, Your Honor.

25 MR. ZAYON: Understood. Okay.

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1 MS. BLEDSOE: Thank you, Your Honor.

2 THE COURT: All righty.

3 (Bench Conference concluded - 03:22:06 p.m.)

4 (The parties return to the trial tables where the
5 following ensues:)

6 THE COURT: Thank you everyone. Court's in
7 recess. You all can go. I got to clean up and also got
8 to stand up slowly.

9 (Off the record - 03:22:19 p.m.)

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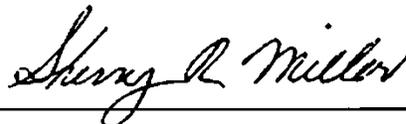
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TRANSCRIBER'S CERTIFICATE

This is to certify that the proceedings in the matter of State of Maryland versus Edward Michael Nero, Case Number 115141033; State of Maryland versus Garrett Edward Miller, Case Number 115141034; State of Maryland versus Brian Rice, Case Number 115141035; and State of Maryland versus Alicia White, Case Number 115141036, heard in Circuit Court for Baltimore City on January 20, 2016, was recorded on digital media with video.

I hereby certify that the proceedings herein contained were transcribed by me or under my direction. That said transcript is a true and accurate record to the best of my ability and constitutes the official transcript thereof.

In witness thereof, I have hereunto subscribed my name on February 8th, 2015.



Sherry R. Miller, President



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CIRCUIT COURT FOR
BALTIMORE CITY

STATE OF MARYLAND

2016 FEB -4 A 11: 28

IN THE
CIRCUIT COURT FOR
BALTIMORE CITY
CASE No. 115141035

v.

*
CRIMINAL DIVISION
*

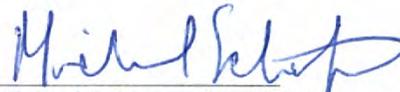
BRIAN RICE

* * * * *

STATE'S NOTICE OF APPEAL

NOW COMES the State of Maryland, by and through Marilyn J. Mosby, the State's Attorney for Baltimore City; Michael Schatzow, Chief Deputy State's Attorney for Baltimore City; Janice L. Bledsoe, Deputy State's Attorney for Baltimore City; and Matthew Pillion, Assistant State's Attorney for Baltimore City; and pursuant to Section 12-301 of the Courts and Judicial Proceedings Article of the Annotated Code of Maryland hereby notes an appeal on behalf of the State from a final judgment of the Circuit Court for Baltimore City entered on January 20, 2016, in the above-captioned case denying the State's Motion to Compel a Witness to Testify Pursuant to Section 9-123 of the Courts and Judicial Proceedings Article.

Respectfully submitted,
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CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of February, 2016, a copy of the State's Notice of

Appeal was mailed and e-mailed to:

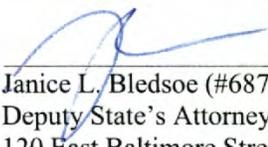
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CIRCUIT COURT FOR
BALTIMORE CITY

2016 FEB -5 A 11:41

STATE OF MARYLAND

v.

BRIAN RICE

CIRCUIT COURT FOR

IN THE
CIRCUIT COURT FOR
BALTIMORE CITY
CASE No. 115141035

* * * * *

STATE'S MOTION TO STAY PROCEEDINGS PENDING APPEAL

Now comes the State of Maryland, by and through Marilyn J. Mosby, the State's Attorney for Baltimore City; Michael Schatzow, Chief Deputy State's Attorney for Baltimore City; Janice L. Bledsoe, Deputy State's Attorney for Baltimore City; and Matthew Pillion, Assistant State's Attorney for Baltimore City; and pursuant to the Court's inherent power requests that this Court issue a stay of the above-captioned proceedings pending resolution of the appeal filed by the State on February 4, 2016, from the final judgment of this Court entered on January 20, 2016, denying the State's Motion to Compel a Witness to Testify Pursuant to Section 9-123 of the Courts and Judicial Proceedings Article ("CJP" hereinafter).

I. Summary of Argument

Despite the Court's good intentions in seeking to avoid delay of the Defendant's trial, the Court's denial of the State's Motion to Compel Officer William Porter's testimony ran contrary to the plain language of CJP § 9-123 and to the Legislature's intent in enacting the immunity statute. It also violated separation of powers principles by appropriating to the Judiciary a discretionary power granted to the Executive Branch. The State is now appealing these errors given their ramifications on the State's ability to prosecute this and other cases here and throughout the State. As outlined below and previously argued, this Court had no authority to engage in judicial review of the State's Attorney's vested exercise of lawful discretion in determining that Officer Porter's testimony may be necessary to the public interest in the State's prosecution of the Defendant for his role in the fatal arrest and custodial transportation of Mr.

Freddie Gray. Instead, this Court had only the power to verify that the State's Motion to Compel complied with the procedural and pleading requirements of Section 9-123. Upon finding such compliance, the Court was required to follow the mandate of the Legislature and issue the immunity order.

Though the Court has disagreed with the State's assessment of the statute's mechanics, the State's arguments about Section 9-123's power distribution are strong. Moreover, the Court acted without any express authority or guidance on this issue from either of Maryland's appellate courts—and in the face of overwhelming precedent from other jurisdictions. If, as the State firmly maintains, this Court was, in fact, wrong in its denial of the State's Motion to Compel, to deny the State any meaningful opportunity for appellate review of that decision would potentially result in a miscarriage of justice in the Defendant's trial. The People of this State deserve that opportunity, and this Court has always demonstrated a commitment to giving both the Defendant and the People a fair trial. That commitment now requires allowing a higher court to review this Court's decision before moving forward in this case. As such, this Court should exercise a discretionary power it unquestionably possesses—the power to stay the proceedings pending the State's appeal.

II. Background

On January 14, 2016, the State filed in the above-captioned case a Motion to Compel a Witness to Testify Pursuant to Section 9-123 of the Courts and Judicial Proceedings Article. The witness in question was Officer William Porter. The State's Motion, submitted and signed by the State's Attorney herself, averred that the State may call Officer Porter to testify against the Defendant and set forth her determinations that Officer Porter's testimony may be necessary to the public interest and that he is likely to refuse to testify on the basis of his privilege against

self-incrimination given his similar refusal to testify in the related cases of *State v. Caesar Goodson* (No. 115141032) and *State v. Alicia White* (No. 115141036).

On January 15, 2016, the Defendant filed an Opposition to the State's Motion to Compel. The Defendant attacked the State's Motion as lacking an explanation of "why Officer Porter is either necessary or material to the trial of Defendant Rice or how it is necessary to serve the public interest." Def. Opp. at 1. The Defendant argued that Officer Porter's testimony is, in fact, *not* necessary to the public interest based on his assessment of the State's reasons for filing the motion and his view of the motion's effect on both his and Officer Porter's constitutional rights. Def. Opp. at 2-3. As such, he urged the Court to deny the motion. Likewise, on January 19, 2016, Officer Porter filed an Opposition to the State's Motion in which he too requested that the Court deny the State's Motion on grounds that the Court should find that compelling his testimony would not be necessary to the public interest and would violate his privilege against self-incrimination. Def. William Porter's Opp. at 8.

On the morning of January 20, 2016, the State filed a Response to the Defendant's Opposition, arguing that Section 9-123 granted neither the underlying defendant nor the witness standing to make such objections to the State's request for a grant of immunity and that under the plain terms of that statute, this Court lacked the discretion to deny a motion to compel immunized testimony when presented with a motion that complied with the statute's procedural requirements. Because the State's Motion to Compel unquestionably did comply with Section 9-123, the State urged this Court to follow the statute's mandates and issue the order to compel Officer Porter's testimony under a grant of use and derivative use immunity.

On the afternoon of January 20, 2016, this Court conducted a hearing on the State's Motion to Compel. At that hearing, the State repeated the arguments presented in its Response.

Nevertheless, the Court considered objections from both Officer Porter and the Defendant and then required the Chief Deputy State's Attorney to explain in open court the reasons that prosecutors believed that Officer Porter's testimony may be necessary to the public interest. Though the State maintained that such a judicial inquiry was improper under Section 9-123 and separation of powers principles, the Chief Deputy explained that the State sought to elicit from Officer Porter testimony regarding two important aspects of the charges against the Defendant. Consequently, the State's Attorney had determined that such testimony may be necessary to the public interest. The Court then made its own determination that granting him immunity would *not* be in the public interest, irrespective of the State's Attorney's contrary determination as properly pled in her Motion to Compel, and the Court denied the Motion. From this denial, the State filed a Notice of Appeal on February 4, 2016.

III. This Court should stay the proceedings pending appellate review of the Court's erroneous denial of the State's Motion to Compel to avoid a miscarriage of justice

A. Denying the State's request for a stay would impermissibly frustrate an appellate court's ability to act

Pending appellate review of this Court's denial of the State's Motion to Compel Officer Porter, the State requests that the Court issue a stay of the proceedings. This Court has the full power to issue such a stay and has granted one in the related case of *State v. Alicia White* (No. 115141036). As the Court of Appeals has described, when such an appeal is taken, "the trial court retains its 'fundamental jurisdiction' over the cause, but its right to exercise such power may be interrupted by . . . a stay granted by an appellate court, or the trial court itself, in those cases where a permitted appeal is taken from an interlocutory or final judgment." *Pulley v. State*, 287 Md. 406, 417 (1980). Though this Court retains "fundamental jurisdiction" over this

proceeding, the Court of Appeals has also held that “the propriety of the exercise of that jurisdiction” is a separate matter. *In re Emileigh F.*, 355 Md. 198, 202 (1999). In that regard, “[a]fter an appeal is filed, a trial court may not act to frustrate the actions of an appellate court,” and “[p]ost-appeal orders which affect the subject matter of the appeal are prohibited.” *Id.* at 202-03; *see also State v. Peterson*, 315 Md. 73, 82, n.3 (1989) (“We think that a trial court ordinarily should not proceed with a hearing [when a writ of certiorari has been issued], thereby mooting an issue before an appellate court.”); *accord Jackson v. State*, 358 Md. 612, 620 (2000) (While “a circuit court is not divested of fundamental jurisdiction to take post-judgment action in a case merely because an appeal is pending from the judgment,” “[w]hat the court may *not* do is to *exercise* that jurisdiction in a manner that affects either the subject matter of the appeal or the appellate proceeding itself—that, in effect, precludes or hampers the appellate court from acting on the matter before it.”) (emphasis in original). Were this Court to order that the Defendant’s trial will not be stayed and that the State must proceed to trial without the testimony of Officer Porter, such an order would unquestionably frustrate the actions of an appellate court, effectively mooting the State’s appeal and preventing any further review of this Court’s denial of the Motion to Compel.

B. Denying the State’s request for a stay would needlessly cause irreparable harm

Moreover, a decision by this Court not to stay the proceedings would cause irreparable harm to the State’s ability to prosecute this case at no commensurate gain to Officer Porter or the Defendant. Indeed, Officer Porter, the appellee in the appeal, will not be affected by a stay. Despite the State’s request to schedule his retrial soon after the December mistrial and before trial of the related cases, Officer Porter’s retrial was set for June 13, 2016, due to the asserted unavailability of his counsel prior to that date. Consequently, the State’s appeal should be

resolved by then. Regarding the Defendant, he will not be a party to this appeal. As such, granting the stay would cause the Defendant to lose only a legally insignificant short amount of time awaiting resolution of the appeal before starting his trial.¹ On the other hand, denying the stay would cost the State a valuable witness in its case. Officer Porter would provide key evidence regarding the Defendant's alleged misconduct and his alleged recklessness. Once the jury has been sworn in the Defendant's trial, however, the State will be foreclosed from seeking any meaningful remedy to this Court's denial of the Motion to Compel. If the Defendant were acquitted after a trial without Officer Porter's testimony, the damage would be done and could not be undone.

A stay would obviate the risk of such a potentially unfair result, a risk made all the more compelling given the public interest that abounds in this matter. At stake here is not only the outcome of one of the most high-profile criminal trials in Maryland history but also the very fiber of our State's constitutional separation of powers. This Court's denial of the Motion to Compel has deprived prosecutors of both a valuable witness in this case and also an indispensable prosecutorial tool that the Legislature provided to them over twenty-five years ago. Whether this Court's ruling is correct or whether the State's view is proper is a question which an appellate court should be permitted to timely answer. The public interest deserves no less, particularly in light of the strong merits of the State's case on appeal.

¹ Even assuming that granting a stay would result in a trial delay of several months, the Defendant was indicted less than nine months ago and so would still come to trial on a date that would barely be sufficient to even trigger a legitimate speedy trial challenge, much less actually deprive the Defendant of that right given the complexity of the issues in this case. See *Glover v. State*, 386 Md. 211, 223 (2002) ("While no specific duration of delay constitutes a *per se* delay of constitutional dimension, we have employed the proposition that a pre-trial delay greater than one year and fourteen days was 'presumptively prejudicial' on several occasions") (internal citations omitted).

C. The State will likely prevail on appeal

The merits of the State's appeal will turn on the question of whether CJP § 9-123 requires a court to order compelled, immunized witness testimony after verifying that the statutory pleading requirements of the prosecutor's motion to compel have been met, or whether the statute instead permits a court to substitute its own discretion and judgment as to whether compelling the witness's testimony may be necessary to the public interest such that the court may deny a prosecutor's motion to compel even if the motion otherwise complies with the pleading requirements of the immunity statute. By its terms, CJP § 9-123 squarely answers this question, vesting the decision about whether to seek immunity for a witness squarely within a prosecutor's discretion and granting a court only the role of confirming that the prosecutor's pleadings are procedurally compliant and then issuing the immunity order as statutorily prescribed. In relevant part, § 9-123 states:

(c) Order requiring testimony. --

(1) If an individual has been, or may be, called to testify or provide other information in a criminal prosecution or a proceeding before a grand jury of the State, *the court in which the proceeding is or may be held shall issue, on the request of the prosecutor made in accordance with subsection (d) of this section, an order requiring the individual to give testimony or provide other information which the individual has refused to give or provide on the basis of the individual's privilege against self-incrimination.*

(2) The order shall have the effect provided under subsection (b) of this section.

(d) Prerequisites for order. -- If a prosecutor seeks to compel an individual to testify or provide other information, the prosecutor shall request, by written motion, the court to issue an order under subsection (c) of this section *when the prosecutor determines that:*

(1) The testimony or other information from the individual may be necessary to the public interest; and

(2) The individual has refused or is likely to refuse to testify or provide other information on the basis of the individual's privilege against self-incrimination.

Cts. & Jud. Proc. Art. § 9-123(c)-(d) (2015) (emphasis added). This language leaves no ambiguity about the prosecutor's and the judge's respective roles—the prosecutor makes the discretionary determination of the public's interest and then requests immunized testimony, while the judge determines only the request's accordancy with the statute and then orders immunized testimony. Nowhere does this language permit the court to inquire into the prosecutor's decision-making, nor does the statute allow the subject of the immunity request or the underlying defendant to object to the manner in which the prosecution has exercised its discretion. The court has no discretion to deny a prosecutor's immunity request properly pled under subsection (d).

The history of § 9-123 confirms that this plain language achieves precisely the result that the legislature intended. As described by the House of Delegates, the immunity statute was intended

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

1989 Md. Laws, Ch. 289 (H.B. 1311) (emphasis added). The phrase “requiring a court” does not equate with “allowing a court”; rather, the Legislature's purpose was to create a mandatory judicial action.

Moreover, a formal Position Paper contained within the legislative history bill file for HB 1311 similarly describes the procedural mechanism of the proposed new immunity statute:

By far the most significant changes provided by the proposed statute are procedural. Immunity would no longer be conferred automatically or accidentally, but rather only through court order. To ensure coordinated, responsible requests for immunity, the decision to seek a court order requires approval by the State's Attorney, Attorney General, or State Prosecutor. The State's Attorney, Attorney General, or State Prosecutor will thereby have central control and ultimate responsibility for the issuance of grants of immunity.

The judicial role under this statute is ministerial. The judge verifies that:

- 1. The State's Attorney, Attorney General, or State Prosecutor has approved the request for an immunity order;*
- 2. The witness has refused or is likely to refuse to testify;*
- 3. The prosecutor has determined that the witness's testimony may be necessary to be the public interest [sic].*

Once the judge concludes these three requirements are met, he issues a court order compelling testimony and immunizing the witness.

The Judge will not himself determine whether the witness's testimony may be necessary to the public interest. To do so would transform the Judge into a prosecutor and require him to make delicate prosecutorial judgments which are inappropriate. Furthermore, a particular immunity grant may be a very small aspect to a large scale investigation, making it impossible for the judge to make any meaningful evaluation of the public interest.

Position Paper on HB 1311, *Witness Immunity*, 8-9, 1989 Reg. Sess. (1989) (emphasis added) (attached as State's Exhibit 1).²

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

SUMMARY OF LEGISLATION: This amended bill provides for the granting of 'use' immunity to witnesses compelled to testify regarding a criminal matter. Specifically, if a witness refuses to testify on a criminal matter, on the grounds of privilege against self-incrimination, the Court may compel the witness to testify or provide information by issuing a court order to that effect. *The court order would only be granted upon the written request of the prosecutor, who has found that the testimony or information of a witness may be necessary to the public interest, and that the testimony or information would not be forthcoming absent the order.*

² The Position Paper bears no author but was contained within the microfilm legislative bill history for HB 1311 on file at the Library of the Department of Legislative Services in Annapolis

Criminal prosecution would be allowed against the witness for the crimes that were testified about; such testimony, however, would not be 'used' against the witness in any criminal case except those involving the failure to comply with the Court's order.

Md. Gen. Assembly Div. of Fiscal Research, *Fiscal Note Revised for H.B. 1311*, 1989 Reg. Sess. (Apr. 4, 1989) (emphasis supplied) (attached as State's Exhibit 2).

These materials make clear that the General Assembly intended CJP § 9-123 to grant to the Executive Branch the sole power to determine whether giving a witness immunity would in fact be in the public interest and to authorize the Judiciary to serve only the ministerial role of supervising the procedure of granting immunity. Consequently, this Court's attempt—however well intentioned—to limit and appropriate to itself the prosecutor's statutorily vested immunity authority violated Maryland's separation of powers principles. *See Md. Decl of Rights, Art. 8* ("the Legislative, Executive, and Judicial powers of Government ought to be forever separate and distinct from each other . . ."). This plain language and legislative history analysis of CJP § 9-123 by itself makes clear that the State will prevail on the merits of its appeal from this Court's denial of the Motion to Compel.

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

§ 6003. Court and grand jury proceedings

(a) In the case of any individual who has been or may be called to testify or provide other information at any proceeding before or ancillary to a court of the United States or a grand jury of the United States, the United States district court for the judicial district in which the proceeding is or may be held *shall issue*, in

accordance with subsection (b) of this section, *upon the request of the United States attorney for such district*, an order requiring such individual to give testimony or provide other information which he refuses to give or provide on the basis of his privilege against self-incrimination, such order to become effective as provided in section 6002 of this title [18 USCS § 6002].

(b) *A United States attorney may, with the approval of the Attorney General, the Deputy Attorney General, the Associate Attorney General or any designated Assistant Attorney General or Deputy Assistant Attorney General, request an order under subsection (a) of this section when in his judgment--*

- (1) the testimony or other information from such individual may be necessary to the public interest; and*
- (2) such individual has refused or is likely to refuse to testify or provide other information on the basis of his privilege against self-incrimination.*

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

At the foundation of these federal precedents lies the Supreme Court's construction of a predecessor immunity statute in *Ullmann v. United States*, 350 U.S. 422 (1956). There the Supreme Court considered the question of whether a witness could properly request a judge to deny an immunity application that otherwise comported with the statutory pleading prerequisites, which at the time required an averment that "in the judgment of a United States Attorney, the testimony of [the] witness . . . is necessary to the public interest" and also required that the United States Attorney obtain "the approval of the Attorney General" before making an application to the court. *Id.* at 423-424. The Government argued "that the court has no discretion to determine whether the public interest would best be served by exchanging immunity from prosecution for testimony [and] that its only function is to order a witness to testify if it determines that the case is within the framework of the statute." *Id.* at 431. The Supreme Court agreed that "[a] fair reading of [the immunity statute] *does not indicate that the*

district judge has any discretion to deny the order on the ground that the public interest does not warrant it"; rather, the court's "duty under [the statute] is *only to ascertain whether the statutory requirements are complied with by [prosecutors]*." *Id.* at 432-34 (emphasis supplied).

After Congress enacted the procedurally similar present-day immunity scheme, the federal Circuit Courts of Appeal have uniformly construed those provisions in accordance with *Ullmann*. For example, *In re Kilgo*, 484 F.2d 1215 (4th Cir 1973), involved an appellant who had been held in contempt after refusing to testify despite being immunized and compelled under the federal immunity statute. He claimed, in part, "that the immunity order, on which the contempt citation rest[ed], [was] invalid [because] neither he nor the court was apprised of the basis of the United States Attorney's conclusion that his testimony was necessary to the public interest" *Id.* at 1217. The Fourth Circuit found no merit in this contention, explaining

No case interpreting the public interest provision of the 1970 Act [enacting the immunity scheme] has been called to our attention. However, cases construing analogous requirements in earlier immunity statutes establish that the district court is not empowered to review the United States Attorney's judgment that the testimony of the witness is necessary to the public interest. The leading case is *Ullmann v. United States*, 350 U.S. 422, 100 L. Ed. 511, 76 S. Ct. 497 (1956), which construed the Immunity Act of 1954 [18 U.S.C. § 3486] dealing with grand jury inquiries involving national security. That Act also limited grants of immunity to witnesses whose testimony, in the judgment of the United States attorney, was necessary to the public interest. The Court, recognizing the potential constitutional question that would arise if the judiciary reviewed the merits of immunity, construed the statute to withhold from the district court 'any discretion to deny the order on the ground that the public interest does not warrant it.' 350 U.S. at 432. It held that the function of the district court was limited to ascertaining whether the application complied with the statutory requirement -- that is, had the United States attorney certified that in his judgment the testimony of the witness was in the public interest. [...] The drafters of the 1970 Act left no doubt that the construction given to the public interest provision in previous immunity acts was to be applied to § 6003, and the legislative history confirms the limited role of the court. Because the Act does not authorize the district court to review the United States attorney's judgment that the testimony of the witness may be necessary to the public interest, no evidence pertaining to this judgment need be offered.

Id. at 1218-19.

Similarly, the Third Circuit described the procedural operation of the federal immunity statutes in *In re Grand Jury Investigation*, 486 F.2d 1013, 1016 (3rd Cir. 1973), saying, “[u]nder the language of [18 U.S.C. § 6003] the judge is required to issue the order when it is properly requested by the United States Attorney,” and “[h]e is given no discretion to deny it.” Likewise, the First Circuit in *In re Lochiatto*, 497 F.2d 803, 805 (1st Cir. 1974), construed § 6003 in accordance with *Ullmann* as using language that “does not indicate that the district judge has any discretion to deny the order on the ground that the public interest does not warrant it.” *Accord In re Maury Santiago*, 533 F.2d 727, 728-29 (1st Cir. 1976) (“The U.S. Attorney filed a letter from a proper official of the Justice Department authorizing him to request immunity for Maury. He stated in open court that Maury’s testimony was, in his opinion, necessary to the public interest. The judgment of the U.S. Attorney is unreviewable in this matter . . . and we see no reason to require that this representation be put in affidavit form.”); *United States v. Levya*, 513 F.2d 774, 776 (5th Cir. 1975) (holding that the witness was not entitled to notice and a hearing before an immunity order is granted and construing that “since the court’s duties in granting the requested order are largely ministerial, when the order is properly requested the judge has no discretion to deny it.”); *Urasaki v. United States District Court*, 504 F.2d 513, 514 (9th Cir. 1974) (“In passing upon an immunity application, the district court is confined to an examination of the application and the documents accompanying it for the purpose only of deciding whether or not the application meets the procedural and substantive requirements of the authorizing statute. [...] Adversary procedure is not a part of the legislative scheme in connection with the district court’s performance of its limited duties in granting or denying the application for immunity.”). Lastly, in *Ryan v. Commissioner*, 568 F.2d 531, 541 (7th Cir. 1977), the Court rejected an appellant’s

claim that an immunity order was invalid because the record “did not contain facts showing that the prosecutor had any basis for making the judgment that the grant of immunity would be in the public interest.” As the Court explained, “[s]ince that judgment is entirely a matter for the executive branch, unreviewable by a court, there is no need for the record to contain any facts supporting the decision of the United States Attorney.” *Id.*

In addition to this guidance from the federal courts, the New Jersey Supreme Court has squarely considered the propriety of the judiciary questioning a prosecutor’s decision that there exists a public need to grant immunity to a witness. In *In re Tusso*, 376 A.2d 895 (N.J. 1977), the appellant was a lawyer who had been subpoenaed to testify before a grand jury considering an indictment. When the lawyer asserted his privilege against self-incrimination, the New Jersey Attorney General petitioned the court to compel his testimony under New Jersey’s similar use and derivative use immunity statute, which provides that upon such a petition “the court shall so order and that person shall comply with the order.” *Id.* at 896. Before the court could rule on that petition, a different state grand jury indicted the lawyer on charges involving the same subject matter as the testimony that the Attorney General sought to compel. *Id.* When the court nevertheless granted the petition and ordered the lawyer to testify, the lawyer appealed to New Jersey’s intermediate Appellate Division, which reversed the trial court’s order as improper. *Id.* “The principal basis for the conclusion of the Appellate Division was that the State did not need the information it was seeking from Tusso” because the “Attorney General conceded at oral argument he had sufficient information for an indictment against D’Anastasio but wanted Tusso’s testimony to assure a conviction.” *Id.* at 896-97. Moreover, though the “Appellate Division conceded that the federal cases uniformly construe the parallel federal immunity statute to withhold any discretionary right in the court to deny an order to testify when the prosecuting

officer has met the prerequisites of the statute . . . the Appellate Division felt the federal cases were not authoritative where the order sought was 'basically unfair, inequitable or totally unnecessary.'" *Id.* at 896.

On subsequent appeal to New Jersey's highest court, the Attorney General challenged the Appellate Division's intrusion into his authority, and the Supreme Court agreed with his position. In reversing the Appellate Division, the Supreme Court explained regarding the state's immunity scheme:

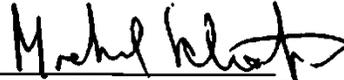
[I]t is clear that the statute cited above delegates the function of determining need in such a situation *to the Attorney General* (or prosecutor, with the approval of the Attorney General), *not the court*, conformably with the duty of that officer to attend to the enforcement of the criminal laws. Upon request by the Attorney General, the statute directs that the court 'shall' order the witness to testify. [. . .]

Id. at 896 (emphasis supplied).

In summation, on the question of the State's likelihood to prevail here on appeal as it bears on the issue of whether to grant a stay of the proceedings, every source of authority—from CJP § 9-123's plain text and legislative history to its federal corollary's extensive appellate construction—demonstrates that this Court erred in replacing the State's Attorney's determination of the public interest with its own and that the State will prevail on appeal accordingly. The clear intent of the Legislature was that the Executive Branch, not the Judiciary, should have the discretion to determine whether a particular witness's testimony may be necessary to the public interest under Maryland's general immunity statute.

Wherefore, the State requests that this Court grant the State's Motion to Stay Proceedings Pending Appeal.

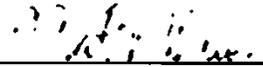
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CERTIFICATE OF SERVICE

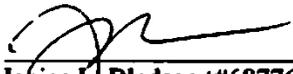
I hereby certify that on this 5th day of February, 2016, a copy of the State's Motion to Stay Proceedings Pending Appeal was mailed and e-mailed to:

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POSITION PAPER
WITNESS IMMUNITY

Final
JG's
offer

I. INTRODUCTION

A. The Problem

There are basically two types of immunity: transactional and use and derivative use immunity (hereinafter "use immunity"). Transactional immunity means that once a witness has been compelled to testify about an incident, he may never be prosecuted for offenses arising out of that transaction even if independent evidence of the offense(s) -- from a source other than the witness -- comes to light. Use immunity, a shorthand term for use and derivative use immunity, means that once a witness has been compelled to testify about an offense, neither that testimony nor any evidence derived from that testimony may be used against the witness. If independent evidence is discovered, or has been preserved, the witness theoretically may still be prosecuted for the offense.

Obviously, in situations in which insider information about criminal activity is necessary in order to prosecute criminal activity, the prosecutor is faced with untenable alternatives when only transactional immunity is available.

For example, assume a scenario in which a narcotics network is functioning effectively with a hierarchy in which the first echelon leader is a prosperous, "white collar" professional who has never been convicted of a crime. That individual, who we can refer to as "Kingpin", provides the capital necessary to purchase the narcotics which is distributed to users. He never has his hand on the narcotics and enters only into cash transactions. Kingpin, however, relies upon a certified public accountant ("A") and an individual who monitors the actual narcotics trafficking network ("B").

Kingpin may never be successfully prosecuted without information from "A" or "B". There may not be enough evidence against "A" or "B" to prosecute them for their role in the

conspiracy.

A resourceful prosecutor, who could be investigating Kingpin for narcotics violations or criminal violations of the income tax code would subpoena "A" or "B" before the grand jury at which time "A" and "B" would invoke their privilege against self-incrimination. Under the present law, the prosecutor would then face the dilemma of having to give "A" or "B" transactional immunity or a total exemption from liability for their misdeeds. "A" or "B", then, could conceivably not be prosecuted for their role in the conspiracy on either the state or federal level. If granted transactional immunity, they also conceivably may not incur civil liability for their involvement. "A" or "B" conceivably may not incur civil tax liability in the form of penalties and "A" conceivably may not face professional discipline in the form of license suspension or revocation by his professional licensing authority. To permit "A" or "B" to walk away from their misdeeds would truly be a miscarriage of justice.

B. The Resolution

The resolution of the dilemma is to provide the prosecutor with use immunity to permit the prosecutor to build a tax prosecution case against Kingpin by immunizing "A" from the use of "A's" testimony against him, or a narcotics case by immunizing "B" from the use of his testimony against him. "A" and "B" could still be prosecuted for their involvement in the conspiracy, could still be forced to pay civil tax penalties and "A" could still be subject to discipline on a professional basis. Certainly, consideration of appropriate sanctions against "A" and "B" should and must include all possibilities given the magnitude of their involvement in the crime.

II. PROPOSED GENERAL IMMUNITY STATUTE

The proposed statute is based substantially on the federal immunity statutes: 18 U.S.C. §§6001-04 (1985). Changes made in the language are primarily those required by the differences

between the organizational structure of law enforcement agencies in the federal and state systems.

The proposed general immunity statute differs substantively from existing Maryland statutes in three ways:

1. It provides for use and derivative use instead of transactional immunity;
2. It is generally available rather than limited to specific crimes;
3. It has built-in procedural safeguards which must be complied with prior to its utilization. Generally, the present statutes operate automatically.

The proposed immunity statute would replace the immunity provisions for specific crimes. Presently, Maryland has separate immunity provisions for the following crimes: Article 27, §23, Bribery of Public Officials;^{1/} Article 27, §24, Bribery of Athletic Participants; Article 27, §39, Conspiracy to Commit Bribery;^{2/} Gambling or Lottery Violations; Article 27, §298, Controlled Dangerous Substances; Article 27, §262, Gambling; Article 27, §371, Lottery Violations; Article 27, §400, Selling Liquor to Minors; Article 27, §540, Sabotage Prevention; Article 33, §26-16, Election Irregularities; Financial Institutions §9-

.....
^{1/}Article III, §50 of the Constitution of Maryland requires the General Assembly to adopt a bribery statute conferring transactional immunity. Article 27, §§23 and 39 are the response to the mandate. Consequently, absent a constitutional amendment, immunity for bribery must continue to be "transactional" as opposed to the more limited "use and derivative use" immunity.

^{2/}Transactional immunity for conspiracy to commit bribery also would not be affected since it has constitutional overtones.

III. BASIS FOR USE IMMUNITY

A. Legal Basis for Use Immunity

In 1892, the Supreme Court held unconstitutional a federal immunity statute which barred the introduction of compelled testimony but permitted it to be used to locate other evidence.^{4/} The Court reasoned -- correctly -- that such derivative use of the tainted evidence rendered the immunity meaningless. But rather than simply stating that the Constitution required derivative use immunity; i.e., immunity from both the introduction of compelled testimony and exploitation of the testimony to find leads, the opinion spoke in broad language which seemed to require transactional immunity. Consequently, Congress enacted a transactional immunity statute which was upheld by the Supreme Court,^{5/} and which became the model for state legislation. In 1970, Congress repealed the transactional immunity statutes and enacted a new use immunity statute, 18 U.S.C. §§6001-04 (1970). When the Supreme Court reviewed the new statute, it held that the transactional immunity language in Counselman which had been relied on for almost one hundred years was dicta. Thus, the Court held that the new statute which bars the use and derivative use of information obtained under a grant of immunity provides the protection required by the Fifth Amendment.^{6/}

Maryland's transactional immunity statutes, like the federal

.....
^{3/} Immunity in the savings and loan situation would remain the same since the duration of the immunity accorded to the investigation of the pending matters would be limited to one more extension of the sunset provisions.

^{4/} Counselman v. Hitchcock, 142 U.S. 547 (1892).

^{5/} Brown v. Walker, 161 U.S. 591 (1896).

^{6/} Kastigar v. United States, 406 U.S. 441 (1972).

immunity statutes repealed in 1970, are based upon an incorrect interpretation of the 1892 decision. It is now clear that use immunity will meet constitutional requirements. Maryland's laws are, therefore, outdated.

B. Practical Bases for Use Immunity

In addition to providing the possibility that a witness given use immunity may be subject to subsequent prosecution for his criminal activity, i.e., the Oliver North prosecution, and would be subject to collateral consequences, use immunity provides for more complete disclosure of evidence than transactional immunity. As Professor G. Robert Blakely stated at the 1974 Seminar of the National Associations of Attorneys General:

With transactional immunity all the witness has to do is mention the transaction; he does not have to fill in the details. So his attorney can tell him to just mention it, and then say, "I don't remember." But with a "use" statute, a smart attorney advises his client to tell all he knows, because the more he tells, the less can be later used against him. So "use" statutes encourage fuller disclosure by witnesses, and that is what they are really all about.

As a result, individuals testifying under a grant of use immunity have greater reason to disclose their involvement.^{7/}

Further, a general immunity statute, instead of the present patchwork quilt of immunity statutes for particular crimes, would likewise be more conducive to full disclosure of evidence by an immunized witness. Often testimony about a drug transaction will encompass other crimes, such as violations of criminal tax statutes. Under the present system, a witness subpoenaed to testify pursuant to the immunity provisions of Article 27, §298

.....

^{7/}Whether transactional or use witness immunity does not preclude prosecution for perjury or making false statements under oath.

(Controlled Dangerous Substances) may not refuse to testify because testimony regarding the controlled dangerous substances transaction would simultaneously implicate him in the commission of other crimes, e.g., tax perjury.^{8/} Yet this circumstance presents the possibility of a trap for the unwary prosecutor inquiring into drug violations and inadvertently granting transactional immunity for some previously unknown criminal activity.

Further, there are no procedural safeguards in the present immunity statutes and consequently their operation is triggered haphazardly, without identification of when a witness begins to receive immunity. The statutes also provide an "automatic immunity bath". Across the nation,^{9/} witnesses subpoenaed before the grand jury must either assert the privilege against self-incrimination or else notify the prosecutor that it is their intention to do so. The prosecutor then asks the court to order testimony and certifies that the immunity conferred thereby is in the public interest. This is the procedure set out in this proposed statute and is the procedure incorporated in the recently adopted savings and loan immunity legislation. In sharp contrast, most present Maryland statutes immunize everyone who answers questions in the grand jury.^{10/} No assertion of the privilege is required, nor is there any requirement of a certification that the immunity is in the public interest. The uncertainty of when the statute is applicable, coupled with the blanket automatic transactional immunity bath, makes Maryland immunity statutes both haphazard and dangerous. Unless a

.....
^{8/} In re: Criminal Investigation No. 1-162, 307 Md. 622 (1987).

^{9/} Witness Immunity, National Association of Attorneys General, August, 1978.

^{10/} State v. Panagoulis, 253 Md. 699 (1969) (Witness who appeared voluntarily before grand jury to make statement and was then asked questions was "compelled" to testify within meaning of bribery immunity statutes).

prosecutor is very conversant in the vagaries of investigative grand jury law, he or she accidentally may immunize potential targets. As a consequence of the risks arising from the broad automatic immunity received by anyone subpoenaed before a grand jury investigating drugs, gambling and election laws, the grand jury frequently becomes unusable as an investigative tool in these areas. The result is that the financial aspects of large drug operations cannot be investigated by Maryland grand juries

Finally, despite the broad brush immunization the present statutes provide, they may ironically deprive potential defendants of the opportunity to provide exculpatory evidence to a grand jury. A prosecutor who might otherwise consent to the appearance of a defendant who want to testify before an investigative grand jury or -- the more common occurrence -- a prosecutor who is willing to call a witness supportive of the defense, may decline to do so because he fears automatic immunization. There are no immunity waiver statutes and the question of whether the automatic immunity can be waived has yet to be resolved by the appellate courts.

IV. PROPOSED STATUTE

The proposed statute substitutes use for transactional immunity^{11/} because of the additional fact-finding utility that use immunity provides. It would automatically bring the Maryland law into accord with the Supreme Court's current view of the breadth of the Fifth Amendment.

The proposed statute is made generally applicable primarily for two reasons. It assures the compellability of the testimony regarding a transaction which may involve a variety of interrelated crimes and thus circumvents any constitutional

.....
^{11/}Transactional immunity for the crime of bribery is retained because of its constitutional underpinning and for the savings and loan investigation because of its limited duration.

problem which may presently exist.^{12/} Secondly, it is now apparent that a grand jury may be an inappropriate forum for the investigation of a variety of crimes, particularly large scale drug operations, money laundering, and tax perjury. The existence of a generally available but limited immunity statute would remedy the dual problems of no immunity for most crimes and too much immunity for drugs, gambling and elections offenses.

By far the most significant changes provided by the proposed statute are procedural. Immunity would no longer be conferred automatically or accidentally, but rather only through court order. To ensure coordinated, responsible requests for immunity, the decision to seek a court order requires approval by the State's Attorney, Attorney General or State Prosecutor. The State's Attorney, the Attorney General or State Prosecutor will thereby have central control and ultimate responsibility for the issuance of grants of immunity.

The judicial role under this statute is ministerial. The judge verifies that:

1. The State's Attorney, the Attorney General, or State Prosecutor has approved the request for an immunity order;
2. The witness has refused or is likely to refuse to testify;
3. The prosecutor has determined that the witness's testimony may be necessary to be the public interest.

Once the judge concludes these three requirements are met, he issues a court order compelling testimony and immunizing the witness.

The Judge will not himself determine whether the witness'

.....
^{12/}cf. In re Criminal Investigation No. 1-162, supra, n 6, (witness must reasonably fear prosecution for one of enumerated offenses).

testimony may be necessary to the public interest. To do so would transform the Judge into a prosecutor and require him to make delicate prosecutorial judgments which are inappropriate. Furthermore, a particular immunity grant may be a very small aspect to a large scale investigation, making it impossible for the judge to make any meaningful evaluation of the public interest.

MARYLAND GENERAL ASSEMBLY
DEPARTMENT OF FISCAL SERVICES
DIVISION OF FISCAL RESEARCH
JOSEPH W. COBLE, DIRECTOR

FISCAL NOTE
REVISED

HB 1311

House Bill 1311 (The Speaker, et al) (Delegate Menes, Chairman, Special
Committee on Drug and Alcohol Abuse)

Judiciary

Referred to Judicial Proceedings

SUMMARY OF LEGISLATION: This amended bill provides for the granting of "use" immunity to witnesses compelled to testify regarding a criminal matter. Specifically, if a witness refuses to testify on a criminal matter, on the grounds of privilege against self-incrimination, the Court may compel the witness to testify or provide information by issuing a court order to that effect. The court order would only be granted upon the written request of the prosecutor, who has found that the testimony or information of a witness may be necessary to the public interest, and that the testimony or information would not be forthcoming absent the order.

Criminal prosecution would be allowed against the witness for the crimes that were testified about; such testimony, however, would not be "used" against the witness in any criminal case, except those involving the failure to comply with the Court's order.

STATE FISCAL IMPACT STATEMENT: No effect.

LOCAL FISCAL IMPACT STATEMENT: No effect.

STATE REVENUES: No effect.

STATE EXPENDITURES: The Administrative Office of the Courts advises that the cost of any additional Court orders necessary under this legislation could be absorbed within existing resources. State expenditures are not affected by this change in procedural requirements for compelling testimony from witnesses claiming self-incrimination privileges.

LOCAL REVENUES: No effect.

LOCAL EXPENDITURES: No effect.

INFORMATION SOURCE: Administrative Office of the Courts, Department of Public Safety and Correctional Services (Division of Correction), Department of Fiscal Services

ESTIMATE BY: Department of Fiscal Services

Fiscal Note History: First Reader - February 20, 1969
Revised - House Third Reader - April 4, 1969

Per: Camille Infussi Bobson
nir

William R. Miles, Supervising Analyst
Division of Fiscal Research

House Bill 1311
Page Two

STATE OF MARYLAND

* IN THE

* CIRCUIT COURT

v.

* FOR

* BALTIMORE CITY

BRIAN RICE

* CASE NO. 115141035

* * * * *

**DEFENDANT'S RESPONSE TO STATE'S MOTION TO STAY PROCEEDINGS
PENDING APPEAL**

NOW COMES Defendant Brian Rice, by undersigned counsel and files this Response to the State's Motion to Stay Proceedings Pending Appeal and for reasons states:

1. Lieutenant Brian Rice is pending Involuntary Manslaughter and related charges. The trial is currently scheduled to begin on April 13, 2016.
2. On January 13, 2016 the State filed a Motion to Compel Testimony of Officer William Porter.
3. On January 15, 2016, the State sent a letter to the Court expressing its intent to request a postponement of the trial date.
4. On January 20, 2016 this Court conducted a hearing on the State's dual requests. The Court denied both requests.
5. On February 4, 2016 the State filed a Notice of Appeal.
6. On February 5, 2016 the State filed a Motion to Stay Proceedings Pending Appeal. This Motion to Stay is yet another transparent subterfuge on the part of the State to obtain a postponement, in order to avoid trying the most legally and factually tenuous cases next.
7. The State does not cite to any Rule that enables the State to seek a stay of the proceeding, an extraordinary request at this stage of the proceedings. The Maryland Rules include

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 ORIGINAL DIVISION

provisions to seek a stay pending an appeal in a civil matter. It is instructive, however, that the Rules governing criminal proceedings are silent on this process. The State is relying on CJP §12-301 which allows an appeal only from a *final judgment*. The statute does not include any direction regarding a stay as this would be unnecessary after a final judgment has been rendered.

8. In addition, the filing of a Notice of Appeal does not divest this Court of jurisdiction to continue the proceedings. See e.g. *Pulley v. State*, 287 Md. 406 (1980). In that this Court does retain jurisdiction, “[w]hether to grant or deny a stay of proceedings in a matter is within the discretion of the trial court, and only will be disturbed if the discretion is abused.” *Vaughn v. Vaughn*, 146 Md. App. 264, 279 (2002).
9. The trial court is best equipped to decide if the trial should be stayed pending the State’s efforts to appeal. The trial court is quite familiar with the facts of this case and all of the issues arising from the litigation. The trial court is uniquely situated to assess the legitimacy of the State’s bald allegation that the ruling at issue is a final judgment.
10. This Court “shall consider the same factors that are relevant to the granting of injunctive relief by a circuit court.” Md. Rule 8-425. The four factors relevant to the issuance of an injunction are “(1) the likelihood that the plaintiff will succeed on the merits; (2) the ‘balance of convenience’ determined by whether greater injury would be done to the defendant by granting the injunction than would result by its refusal; (3) whether the plaintiff will suffer irreparable injury unless the injunction is granted; and (4) the public interest.” *Schade v. Maryland State Board of Elections*, 401 Md. 1, 36 (2007). It is the moving party’s burden to establish these four factors and “failure to prove the existence

of even one of the four factors will preclude the grant of preliminary injunction relief.”

Id.

11. With regard to the first factor, the State cannot win on the merits because the issue they seek to be reviewed is not a final judgment. This Court’s ruling is just one of many pre-trial rulings that have occurred in this case. In its Motion to Stay, the State outlines its underlying complaints about this court’s ruling but utterly fails to articulate the basis for its entitlement to file for an appeal at this stage of the proceedings. Simultaneously with the filing of this pleading, the defense has filed a Motion to Dismiss the Notice of the Appeal with the Court of Special Appeals. *See Exhibit 1*. In addition to the fact that this appeal has been filed without any legal authority, the trial court has already made a factual determination that the State’s Motion to Compel was without merit and should be denied. For all of the reasons already litigated, the trial court’s determination was correct and there is little to no likelihood that the appellate court would disturb this ruling.
12. It is the Defendant’s position that this court’s denial of the State’s Motion to Compel is not a final judgment and therefore the State has no chance to succeed on the merits of its appeal. The inquiry need go no further than here. However, with regard to the second and third factor, the State cannot show that it will suffer greater and irreparable injury if the stay is denied than the defendant will suffer if it is granted. The State claims that Officer Porter is a “valuable witness” in its case and that without him it “would cause irreparable harm to the State’s ability to prosecute this case.” The State has identified no less than 75 witnesses that it intends on calling in its prosecution of Lt. Rice. The first time that the State indicated that it intended on calling Officer Porter was on January 13, 2016.

Certainly, the State's late recognition of Officer Porter's "value" undercuts its contention that the State would be irreparably harmed in its ability to prosecute Lt. Rice for the pending charges. Additionally, this Honorable Court found the value of Officer Porter's testimony questionable at best after hearing the State's proffer of his "needed" testimony at the hearing on the Motion to Compel.

13. On the other hand, granting a stay in this case would delay Lieutenant Rice's trial well beyond acceptable speedy trial dimensions. The State has consistently argued that any speedy trial violations are insignificant, that any delay in Lieutenant Rice's trial would be a "legally insignificant short amount of time awaiting resolution of the appeal." This assertion ignores the real possibility that any ruling by the Court of Special Appeals would then be reviewed by the Court of Appeals. The State is asking that Lieutenant Rice's trial be put back in the original line-up of cases which would arguably result in the case being scheduled in September, 2016, at the earliest.
14. The State suggests that the fact that this is "one of the most high-profile criminal trials in Maryland history" should figure into the public interest factor. The public interest is best served by the process continuing in the ordinary course of criminal litigation. The State has taken an extraordinary step in seeking to appeal in the midst of litigation, a decision that is not supported by the law. The public should be able to trust that each case prosecuted by this State's Attorney will be tried in a speedy and predictable manner, in accordance with the rules and the law.

WHEREFORE, the Defendant respectfully requests that this Honorable Court deny the State's Motion for Stay Pending the Appeal.

Respectfully submitted,


Michael Belsky

Michael Belsky

Chaz Ball

Schlachman, Belsky and Weiner, P.A.

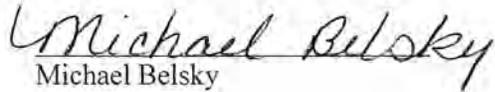
300 East Lombard Street, Suite 1100

Baltimore, Maryland 21202

410-685-2022

CERTIFICATION OF SERVICE

I HEREBY CERTIFY that on the 8th day of February 2016, a copy of the foregoing Motion was hand-delivered to Janice Bledsoe, Deputy State's Attorney for Baltimore City, 120 E. Baltimore Street, 9th Floor, Baltimore, Maryland 21202.


Michael Belsky

Michael Belsky

STATE OF MARYLAND

v.

BRIAN RICE

* IN THE
* CIRCUIT COURT
* FOR
* BALTIMORE CITY
* CASE NO. 115141035

* * * * *

ORDER

HAVING READ AND CONSIDERED the Defendant's Response to the State's Motion to Stay the Proceedings Pending Appeal, it is hereby

ORDERED, that the State's Request for a Stay is **DENIED**.

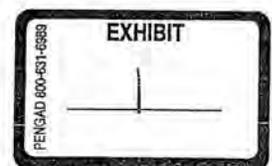
Judge, Circuit Court for Baltimore City

STATE OF MARYLAND	*	IN THE COURT OF
Appellant	*	SPECIAL APPEALS
v.	*	OF MARYLAND
BRIAN RICE	*	SEPTEMBER TERM, 2015
Appellee	*	NO. (115141035)
* * * * *	*	* * * * *

APPELLEE’S MOTION TO DISMISS THE STATE’S NOTICE OF APPEAL

The Appellee, Brian Rice, through his counsel, Michael Belsky and Chaz Ball and Schlachman, Belsky and Weiner, P.A., hereby files this Motion to Dismiss the Notice of Appeal filed by the State, and in support thereof states:

1. On May 1, 2015 Lt. Brian Rice was charged in a Four Count Indictment alleging charges of involuntary manslaughter, second degree assault, misconduct in office and reckless endangerment.
2. The trial was originally scheduled for October 13, 2015. That trial date was postponed at the State’s request to March 9, 2016.
3. On January 13, 2016 the State filed in the Circuit Court for Baltimore City, a Motion to Compel Testimony of Officer William Porter and by letter dated January 15, 2016 the State indicated an intent to request a postponement from the trial judge, the Honorable Barry G. Williams.
4. On January 20, 2016, the Court conducted a hearing to consider the State’s motion. After hearing a proffer of the anticipated testimony and



argument from the State, the trial court denied the State's request for the Motion to Compel and denied the State's request for postponement.

5. In denying both of the State's requests, the Court found the State's sudden need for Officer Porter's testimony and the timing of the request, "questionable" and believed at minimum, a partial purpose of the request was to create grounds for a postponement of Lt. Rice's trial. In addition, the Court found that the testimony would most likely not be admissible pursuant to Maryland Rule 5-403.
6. The appellee is preparing pre-trial motions, pursuant to the court's scheduling order. These motions included evidentiary motions and proposed voir dire.
7. On February 4, 2016, fifteen days after the hearing, the State filed a Notice of Appeal in the above captioned matter. *Exhibit 1*. The State tethered its alleged right to appeal this evidentiary ruling on Courts and Judicial Proceedings Article §12-301 which provides:

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

8. The Appellate Courts of Maryland have unequivocally and consistently found that a ruling on a pre-trial evidentiary motion is clearly not a final judgment under CJP §12-301.
9. On January 27, 2016, in *Seward v. State*, No. 12, 2016 Md. LEXIS 11, (Jan. 27, 2016). the Court of Appeals reiterated the definition of a final judgement as follows:

one that “either determine[s] and conclude[s] the rights of the parties involved or den[ies] a party the means to ‘prosecut[e] or defend[] his or her rights and interests in the subject matter of the proceeding.’ “ Important is whether “any further order is to be issued or whether any further action is to be taken in the case.”

Id. at 171, 31 A.3d at 259 (citations omitted). An interlocutory order, on the other hand, exists when “ ‘there are pending proceedings in which issues on the merits of the case remain to be decided.’ “ *Id.* at 172, 31 A.3d at 260 (citation omitted). **Moreover, the purpose of CJP § 12–301 is to permit appeals only from final judgments “to ‘prevent piecemeal appeals and ... the interruption of ongoing judicial proceedings.’ “** *Id.*, 423 Md. 156, 31 A.3d at 259 (citations omitted)(emphasis added).

10. The trial court’s order was simply one of a multitude of pre-trial evidentiary rulings in this case which is not immediately subject to appeal and is interlocutory in nature, “a final judgment exists when the rights of litigants have been established conclusively at the trial level. The general rule in criminal cases is that no final judgment exists until after conviction and sentence has been determined, or, in other words, when only the execution of the judgment remains.” *Sigma Reproduction Health Center v. State*, 297 Md. 660, 665 (1983).

11. The *Sigma* Court further stated, “[o]rdinarily, therefore, an appeal from a pretrial or trial order will not be heard where there are pending proceedings in which issues on the merits of the case remain to be decided. Such orders are interlocutory, not final, and nonappealable until after entry of a final judgment.” *Id.* At 666.
12. Generally the State’s right to appeal is very limited and is governed by Courts and Judicial Proceedings Article §12-302 which specifies the parameters of the State’s right to appeal a trial court’s evidentiary ruling. This ruling does not fall under any of the parameters that would allow an interlocutory appeal under that section.
13. On February 5, 2016 the State filed a Motion to Stay Proceedings Pending Appeal in the Circuit Court, in an attempt to divest the Circuit Court of its fundamental jurisdiction of this case.
14. As the Court emphasized in *Pulley v. State*, 287 Md. 406 at 418 (1980),
“If fundamental jurisdiction was lost, it would be unnecessary to require stays since the court could not act in any event. Moreover, particularly with regard to what may be termed as appealable interlocutory orders, a policy contrary to that which we announce today could play havoc with the trial of cases in this State. What we said nearly fifty years ago in support of the then policy against allowing piecemeal appeals applies with equal force in preventing abuse with regard to those that are presently permitted:

If, on a question left to the court’s discretion, upon a suggestion for removal, a prisoner (or other party) is permitted to take an immediate appeal, then proceedings in every criminal (or civil) case, great or small, may be stopped and delayed while the (party) prosecutes an appeal on this preliminary matter And this would add just so much to

the resources of those who^o might find vexatious delays advantageous, and would multiply appeals in criminal (and civil) cases, often when (a judgment in the appealing party's favor), in the end, would render them profitless. (Lee v. State, supra, 161 Md. at 434, 157 A. at 724.)

15. The State's right to appeal is a statutory right, and as previously stated is detailed in Courts and Judicial Proceedings §12-302:

Appeals by State in criminal cases

(c)(1) In a criminal case, the State may appeal as provided in this subsection.

(2) The State may appeal from a final judgment granting a motion to dismiss or quashing or dismissing any indictment, information, presentment, or inquisition.

(3) The State may appeal from a final judgment if the State alleges that the trial judge:

(i) Failed to impose the sentence specifically mandated by the Code; or

(ii) Imposed or modified a sentence in violation of the Maryland Rules.

(4)(i) In a case involving a crime of violence as defined in § 14-101 of the Criminal Law Article, and in cases under §§ 5-602 through 5-609 and §§ 5-612 through 5-614 of the Criminal Law Article, the State may appeal from a decision of a trial court that excludes evidence offered by the State or requires the return of property alleged to have been seized in violation of the Constitution of the United States, the Maryland Constitution, or the Maryland Declaration of Rights.

(ii) The appeal shall be made before jeopardy attaches to the defendant. However, in all cases the appeal shall be taken no more than 15 days after the decision has been rendered and shall be diligently prosecuted.

(iii) Before taking the appeal, the State shall certify to the court that the appeal is not taken for purposes of delay and that the evidence excluded or the property required to be returned is substantial proof of a material fact in the proceeding. The appeal shall be heard and the decision rendered within 120 days of the time that the record on appeal is filed in the appellate court. Otherwise, the decision of the trial court shall be final.

(iv) Except in a homicide case, if the State appeals on the basis of this paragraph, and if on final appeal the decision of the trial court is affirmed, the charges against the defendant shall be dismissed in the case from which the appeal was taken. In that case, the State may not prosecute the defendant on those specific charges or on any other related charges arising out of the same incident.

(v) 1. Except as provided in subsubparagraph 2 of this subparagraph, pending the prosecution and determination of an appeal taken under this paragraph or paragraph (2) of this subsection, the defendant shall be released on personal recognizance bail. If the defendant fails to appear as required by the terms of the recognizance bail, the trial court shall subject the defendant to the penalties provided in § 5-211 of the Criminal Procedure Article.

2. A. Pending the prosecution and determination of an appeal taken under this paragraph or paragraph (2) of this subsection, in a case in which the defendant is charged with a crime of violence, as defined in § 14-101 of the Criminal Law Article, the court may release the defendant on any terms and conditions that the court considers appropriate or may order the defendant remanded to custody pending the outcome of the appeal.

B. The determination and enforcement of any terms and conditions of release shall be in accordance with the provisions of Title 5 of the Criminal Procedure Article.

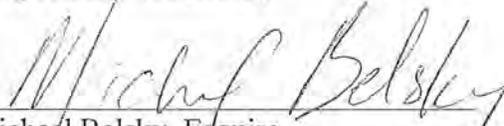
(vi) If the State loses the appeal, the jurisdiction shall pay all the costs related to the appeal, including reasonable attorney's fees incurred by the defendant as a result of the appeal.

16. It is clear that the statutory scheme strictly limits the circumstances under which the State may appeal and affirmatively requires a certification that “the appeal is not taken for purposes of delay.” *Courts and Judicial Proceedings §12-302(c)(3)(iii)*.
17. In this case, the provisions of §12-302(c)(3)(i) do not apply as the crimes charged are neither crimes of violence nor narcotics crimes.
18. The State has no legal recourse available to appeal this non-final judgment, and therefore, the purpose of this appeal is a veiled attempt to obtain a postponement which the State has been unable to obtain despite their continuous efforts.

19. For the foregoing reasons, the Appellee respectfully requests that this Honorable Court Dismiss the State's Notice of Appeal.

WHEREFORE, Appellee Lt. Brian Rice requests that this Honorable Court Dismiss the State's Notice of Appeal.

Respectfully submitted,


Michael Belsky, Esquire
Schlachman, Belsky & Weiner, P.A.
300 East Lombard Street, Ste. 1100
Baltimore, Maryland 21202
410-685-2022

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 8th day of February 2016, a copy of the foregoing Motion was hand-delivered to Janice Bledsoe, Deputy State's Attorney for Baltimore City, 120 E. Baltimore Street, 9th Floor, Baltimore, Maryland 21202 and mailed to Joseph Murtha, Murtha, Psoras, & Lanasa, LLC, 1301 York Road, Suite 200, Lutherville, Maryland 21093.


MICHAEL BELSKY

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CIRCUIT COURT FOR
BALTIMORE CITY

STATE OF MARYLAND

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IN THE
CIRCUIT COURT FOR
BALTIMORE CITY
CASE No. 115141035

v.

JUDICIAL DIVISION

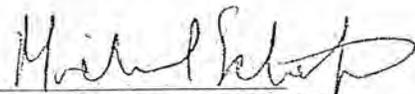
BRIAN RICE

* * * * *

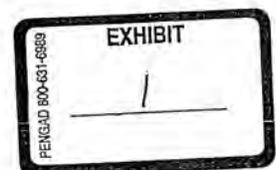
STATE'S NOTICE OF APPEAL

NOW COMES the State of Maryland, by and through Marilyn J. Mosby, the State's Attorney for Baltimore City; Michael Schatzow, Chief Deputy State's Attorney for Baltimore City; Janice L. Bledsoe, Deputy State's Attorney for Baltimore City; and Matthew Pillion, Assistant State's Attorney for Baltimore City; and pursuant to Section 12-301 of the Courts and Judicial Proceedings Article of the Annotated Code of Maryland hereby notes an appeal on behalf of the State from a final judgment of the Circuit Court for Baltimore City entered on January 20, 2016, in the above-captioned case denying the State's Motion to Compel a Witness to Testify Pursuant to Section 9-123 of the Courts and Judicial Proceedings Article.

Respectfully submitted,
Marilyn J. Mosby

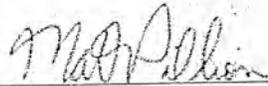


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CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of February, 2016, a copy of the State's Notice of

Appeal was mailed and e-mailed to:

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jmurtha@mpllawyers.com
Attorney for Officer William Porter

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Attorney for Lieutenant Brian Rice

Respectfully submitted,

Marilyn J. Mosby


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jbledsoe@statattorney.org

STATE OF MARYLAND

Appellant

v.

BRIAN RICE

Appellee

* * * * *

* IN THE COURT OF

* SPECIAL APPEALS

* OF MARYLAND

* SEPTEMBER TERM, 2015

* NO. (115141035)

ORDER

Upon consideration of the Appellee’s Motion to Dismiss Appeal, it is this
____ day of _____, 2016 hereby **ORDERED** that the Appellee’s Motion
to Dismiss Appeal is **GRANTED**.

Judge

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CIRCUIT COURT FOR
BALTIMORE CITY

2016 FEB 10 P 2: 14

CRIMINAL DIVISION

STATE OF MARYLAND

* IN THE

* CIRCUIT COURT FOR

v.

* BALTIMORE CITY

BRIAN RICE

* Case No. 115141035

* * * * *

ORDER

On September 15, 2015, the State notified this Court that it intended to try the above-captioned case and related cases in a certain order. The State indicated that the order was preferable because Officer William Porter was a material witness in the cases against Sergeant Alicia White and Officer Caesar Goodson. On December 16, 2015, Officer Porter's trial ended in a mistrial. His retrial is currently scheduled for June 13, 2016.

On January 7, 2016, this Court granted the State's Motion to Compel Officer Porter to testify in the *Goodson* and *White* trials. Officer Porter appealed this Court's decision and the *Goodson* and *White* trials are stayed pending a decision by the Court of Special Appeals.

Shortly after the *Goodson* and *White* trials were stayed, this Court notified all parties that it planned to proceed with the *Nero*, *Miller*, and *Rice* trials, with *Nero*'s scheduled to begin on February 22, 2016. It was only then, four months after the State identified Officer Porter as a material witness in two other trials, and one month after Officer Porter's mistrial, that the State notified this Court, in a January 16, 2016 letter, that Officer Porter may be a material witness in the *Nero*, *Miller*, and *Rice* cases and that it wished to postpone all five cases until after Officer Porter's retrial. One of the reasons

the State requested the Court grant the postponement was so that the State could avoid a *Kastigar* hearing and the need to put together a “clean team.”

On January 20, 2016, this Court heard arguments on the State’s Motion to Compel the testimony of Officer Porter in the *Nero*, *Miller*, and *Rice* trials and denied the State’s motion. This Court found that the State was using Md. Code, Cts. & Jud. Proc. § 9-123 in an attempt to control the schedule and order of the trials and to circumvent this Court’s ruling that postponement in these cases was not appropriate.

This Court agrees that its role is not to impose its opinion upon the State’s determination that a witness’ testimony is in the public interest. This Court believes, however, that rather than become a rubber-stamp for the State’s Attorney, there should be a two-step process in granting immunity under § 9-123 when, and only when, the motives of the requesting party are called into question. The denial of the State’s motion to compel was not based upon an imposition of the Court’s opinion on the State’s determination that a witness’ testimony was in the public interest under § 9-123, but rather based upon the Court finding that the State’s motion was simply an attempt at subterfuge because they did not agree with the Court’s order to continue with the other trials. It is this action of the State that this Court found was not in the public interest.

For these reasons, this Court finds that its denial of the State's motion to compel was appropriate. Therefore, it is this 10th day of February, hereby

ORDERED that the State's Motion to Stay Proceedings Pending trial in the above-captioned case is **DENIED**.

Judge Barry G. Williams

Judge's Signature appears on the original document

BARRY G. WILLIAMS
JUDGE, CIRCUIT COURT FOR
BALTIMORE CITY

Clerk, please mail copies to the following:
Michael Belsky, Attorney for Brian Rice
Janice Bledsoe, Deputy State's Attorney, Office of the State's Attorney for Baltimore City

9:23:37 Monday, February 08, 2016

02/08/16 CRIMINAL COURT OF BALTIMORE CASE INQUIRY 09:23
CASE 115141035 DCM TRACK C DATE 090215 FELONY DRUG INIT
CASE 115141035 STATUS A DATE 052115 PREV ST CODEF YES CHANGE 020516
DEF RICE, BRIAN LT ID A32449 SID 004205239 R: W S: M DOB 101773
ADDRESS 1034 NORTH MOUNT ST BALTIMORE MD 21217
DOA 000000 CMPL 50400000 PHYS LOC CASE LOC BAL 050115
DOF 052115 TRACK NO 15-1001-32388-5 DIST CASE 2B02294448 WAR 00 CJIS RI 1
001 000 A USER MANS1 CODE 1 0910 MANSLAUGHTER DISP
ARREST/CITATION NO 0

PLEA	DATE	VERDICT	DATE		
SENTENCE TYPE	DATE	TIME	BEG	SUSP	
PROBATION TIME		TYPE	COST	FINE	
002 000 A USER ASLT2 CODE 1 1415		ASSAULT-SEC	DEGREE	DISP	
ARREST/CITATION NO 0					

PLEA	DATE	VERDICT	DATE		
SENTENCE TYPE	DATE	TIME	BEG	SUSP	
PROBATION TIME		TYPE	COST	FINE	
003 000 A USER MISC CODE 2 0645		MISCONDUCT IN OFFICE		DISP	
ARREST/CITATION NO 0					

PLEA	DATE	VERDICT	DATE		
SENTENCE TYPE	DATE	TIME	BEG	SUSP	
PROBATION TIME		TYPE	COST	FINE	

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TRUE COPY
TEST

Lavinia G. Alexander
28-16-34

LAVINIA G. ALEXANDER, CLERK



02/08/16 CRIMINAL COURT OF BALTIMORE CASE INQUIRY 09:23
CASE 115J41035 ST A RICE, BRIAN LT A32449 COD Y DCM C 090215
004 000 A USER MISC CODE 2 0645 MISCONDUCT IN OFFICE DISP
ARREST/CITATION NO 0

SENTENCE	TYPE	PLEA	DATE	TIME	VERDICT	DATE	BEG	SUSP
005 000 A USER RECKL CODE 1 1425					RECKLESS ENDANGERMENT		COST	DISP

SENTENCE	TYPE	PLEA	DATE	TIME	VERDICT	DATE	BEG	SUSP
							COST	FINE

EVENT DATE	OPER	PART	TIME	ROOM	REAS	EVENT COMMENT
101415		F31	09:30	528	PMOT	
030916		F31	09:30	528	JT	
CASI 052115	S8T	CASE ADDED THROUGH ON-LINE ON THIS DATE				20150522
COMM 052115	S8T	INDICTMENT FILED				
COMM 052115	S8T	CC#7150400000				
COMM 052115	S8T	FILED ASA - BLEDSOE, JANICE L				, ESQ 68776
MOTF 052715	SCB	MOTION FOR SPEEDY TRIAL				
MOTF 052715	SCB	MOTION TO PRODUCE DOCUMENTS				
MOTF 052715	SCB	REQUEST FOR DISCOVERY				

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9:23:38 Monday, February 08, 2016

02/08/16 CRIMINAL COURT OF BALTIMORE CASE INQUIRY 09:23
CASE 115141035 ST A RICE, BRIAN LT A32449 COD Y DCM C 090215
EVENT DATE OPER PART TIME ROOM REAS / EVENT COMMENT
MOTF 052715 SCB MOTION TO SUPPRESS PURSUANT TO MD 4-252 AND 4-253
MOTF 052715 SCB MOTION FOR GRAND JURY TESTIMONY
MOTF 052715 SCB DEMAND FOR CHEMIST
FILE 052715 SCB FILED ADF - BELSKY, MICHAEL , ESQ 52933
COMM 052715 SCB DEF RICE'S DEMAND FOR BILL OF PARTICULARS FLD
COMM 052715 SCB DEF'S MOTION FOR REMOVAL AND REQUEST FOR A HEARING FLD
COMM 052715 SCB CC: JUDGE PETERS
COMM 052715 SCB DEF'S JOINT MOTION FOR RECUSAL OF BALTIMORE CITY
COMM 052715 SCB STATE'S ATTORNEY'S OFFICE FLD; CC: JUDGE PETERS
COMM 052715 SCB DEF'S MEMORANDUM IN SUPPORT OF MOTION FOR REMOVAL AND
COMM 052715 SCB REQUEST FOR A HEARING FLD; CC: JUDGE PETERS
COMM 052715 SCB DEF'S JOINT MOTION TO DISMISS FOR PROSECUTORIAL MISCONDUCT
COMM 052715 SCB OR IN THE ALTERNATIVE, FOR SANCTIONS FLD
COMM 052715 SCB APPENDIX TO DEF'S MEMORANDUM IN SUPPORT OF MOTION FOR
COMM 052715 SCB REMOVAL AND REQUEST FOR A HEARING FLD; CC: JUDGE PETERS
FILE 052715 SGT FILED ADF - BALL, CHAZ R , ESQ 35445
COMM 052915 CHH CSET ARRG; P08; 07/02/15, CHH
COMM 060215 SCB STATE'S MOTION TO EXTEND TIME REQUIREMENTS TO RESPOND TO
COMM 060215 SCB DEF'S MOTIONS FILED; CC: JUDGE PETERS

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02/08/16 CRIMINAL COURT OF BALTIMORE CASE INQUIRY 09:23
CASE 115141035 ST A RICE, BRIAN LT A32449 COD Y DCM C 090215
EVENT DATE OPER PART TIME ROOM REAS / EVENT COMMENT
COMM 060315 SCB DEF'S JOINT RESPONSE IN OPPOSITION TO STATE'S MOTION
COMM 060315 SCB FOR EXTENSION OF TIME FLD (DISK INCLUDED); CC: JUDGE PETERS
COMM 060415 SCY DATE STAMPED & ORDERED 6/4/15, STATE'S MOTION TO EXTEND TIME
COMM 060415 SCY REQUIREMENTS TO RESPOND TO DEFT'S MOTIONS, & THE DEFT'S JOINT
COMM 060415 SCY RESPONSE IN OPPOSITION TO STATE'S MOTION FOR EXTENSION OF
COMM 060415 SCY TIME, & HAVING FOUND CAUSE AS REQUIRED BY RULE 1-204(A), IT
COMM 060415 SCY IS ORDERED THAT THE STATE SHALL RESPOND TO DEFT'S MOTION FOR
COMM 060415 SCY REMOVAL, JOINT MOTION FOR RECUSAL OF BALTIMORE CITY STATE'S
COMM 060415 SCY ATTY'S OFFICE, & JOINT MOTION TO DISMISS FOR PROSECUTORIAL
COMM 060415 SCY MISCONDUCT OR, IN THE ALTERNATIVE, FOR SANCTIONS BY JUNE 26,
COMM 060415 SCY 2015, & IT IS FURTHER ORDERED THAT THE DEFT MAY FILE THE
COMM 060415 SCY MANDATORY MOTIONS SET FORTH IN RULE 4-252(A) WITHIN 45 DAYS
COMM 060415 SCY AFTER THE EARLIER OF THE APPEARANCE OF COUNSEL OF THE FIRST
COMM 060415 SCY APPEARANCE OF THE DEFT BEFORE THE COURT PURSUANT TO RULE
COMM 060415 SCY 4-213(C). PETERS, J (COPIES SENT BY CHAMBERS)
COMM 060515 CNN DEFENDANT'S PRELIMINARY RESPONSE TO THE STATE'S MOTION FOR
COMM 060515 CNN ISSUANCE BANNING EXTRA JUDICIAL STATEMENTS AND DEFENDANT'S
COMM 060515 CNN RESPONSE TO THE NEWS MEDIA INTERVENORS MOTION TO INTERVENE
COMM 060515 CNN AND OPPOSE THE STATE'S MOTION FOR ISSUANCE OF ORDER BARRING

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9:23:39 Monday, February 08, 2016

02/08/16 CRIMINAL COURT OF BALTIMORE CASE INQUIRY 09:23
CASE 115141035 ST A RICE, BRIAN LT A32449 COD Y DCM C 090215
EVENT DATE OFER PART TIME ROOM REAS / EVENT COMMENT
COMM 060915 CNN EXTRAJUDICIAL STATEMENTS FILED; CC: JUDGE PETERS
COMM 060915 SCB STATE'S RESPONSE TO DEF'S DEMAND FOR BILL OF PARTICULARS FLD
COMM 060915 SCB CC: JUDGE PETERS
COMM 060915 CKW FILED ASA - FILLION, MATTHEW , ESQ 653491
COMM 060915 CMS STATE'S RESPONSE TO DEFENDANT'S BILL OF PARTICULARS
COMM 060915 CMS CC: PETERS J
COMM 060915 CMS STATE'S REQUEST TO SUBSTITUTE THE STATE'S RESPONSE TO
COMM 060915 CMS DEMAND FOR BILL OR PARTICULARS IN PLACE OF STATE'S
COMM 060915 CMS RESPONSE TO DEMAND FOR BILL OF PARTICULARS FILED
COMM 060915 CMS ERRONEOUSLY AT 3:49 P.M. ON JUNE 8, 2015
COMM 060915 CMS STATE'S RESPONSE TO DEFENDANT'S DEMAND FOR BILL OF
COMM 060915 CMS PARTICULARS CC: PETERS J (RECEIVED BY DOORY J ON 6-8-15)
COMM 060915 CMS ORDER OF COURT DATED JUNE 9, 2015, BASED UPON THE
COMM 060915 CMS REQUEST OF THE BALTIMORE CITY STATE'S ATTORNEY'S OFFICE,
COMM 060915 CMS IT IS THIS 9TH DAY OF JUNE 2015, BY THE CIRCUIT COURT
COMM 060915 CMS FOR BALTIMORE CITY, HEREBY; ORDERED THAT THE STATE'S
COMM 060915 CMS RESPONSE TO DEMAND FOR BILL OR PARTICULARS FILED
COMM 060915 CMS JUNE 8, 2015 BE SUBSTITUTED FOR THE STATE'S RESPONSE
COMM 060915 CMS TO DEMAND FOR BILL OF PARTICULARS FILED ERRONEOUSLY AT

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9:23:39 Monday, February 08, 2016

02/08/16 CRIMINAL COURT OF BALTIMORE CASE INQUIRY 09:23
CASE 115141035 ST A RICE, BRIAN LT A32449 COD Y DCM C 090215
EVENT DATE OPER PART TIME ROOM REAS / EVENT COMMENT
COMM 060915 CMS 3:49 P.M. ON JUNE 8, 2015 REQUEST GRANTED. DOORY J
COMM 060915 CMS COPY OF ORDER MAILED TO ADF
COMM 060915 CKW SUPPLEMENT TO DEFS JOINT MOTION FOR RECUSAL OF BALTIMORE
COMM 060915 CKW CITY STATE'S ATTORNEY'S OFFICE FLD; CC: JUDGE PETERS
COMM 061115 SRT STATE'S RESPONSE TO DEFENDANT'S OMNIBUS MOTIONS FILED
MPRO 061515 lgj MOTION FOR PROTECTIVE ORDER ;TICKLE DATE= 20150703
COMM 061515 lgj STATE'S MOTION FOR PROTECTIVE ORDER PURSUANT TO RULE
COMM 061515 lgj 4-263(M), MEMORANDUM IN SUPPORT THEROF, AND REQUEST FOR
COMM 061515 lgj EXPEDITED HEARING
COMM 061715 SCY OFFICE OF THE STATE'S ATTORNEY FOR BALTIMORE CITY'S
COMM 061715 SCY OPPOSITION TO DEFENDANTS' JOINT MOTION FOR RECUSAL
COMM 061715 SCY OF BALTIMORE CITY STATE'S ATTORNEY'S OFFICE
COMM 061715 SCY FILED ASA - SCHATZOW, MICHAEL , ESQ 717876
COMM 062215 CMS ORDER OF COURT DATE STAMPED 6-22-15, THE COURT
COMM 062215 CMS HAVING DETERMINED THAT THE ASSIGNMENT OF THESE CASES TO
COMM 062215 CMS SINGLE JUDGE IS APPROPRIATE, IT IS THIS 19TH DAY OF
COMM 062215 CMS JUNE, 2015, ORDERED THAT THESE CASES ARE ASSIGNED TO
COMM 062215 CMS JUDGE BARRY WILLIAMS FOR ALL FURTHER PROCEEDINGS. COPIES
COMM 062215 CMS OF ALL PAPERS FILED WITH THE CLERK SHOULD BE SIMULTANEOUSLY

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9:23:40 Monday, February 08, 2016

02/08/16 CRIMINAL COURT OF BALTIMORE CASE INQUIRY 09:23
CASE 115141035 ST A RICE, BRIAN LT A32449 COD Y DCM C 090215
EVENT DATE OPER PART TIME ROOM REAS / EVENT COMMENT
COMM 062215 CMS SENT TO JUDGE WILLIAMS' CHAMBERS. W. MICHEL FIERSON J.
COMM 062215 CMS ORDER OF COURT DATE STAMPED 6-22-15, UPON CONSULTATION
COMM 062215 CMS WITH THE PARTIES TO THE ABOVE-CAPTIONED CASES THROUGH
COMM 062215 CMS COUNSEL, IT IS THIS 19TH DAY OF JUNE, 2015, ORDERED THAT
COMM 062215 CMS A MOTIONS HEARING IS SCHEDULED FOR SEPTEMBER 2, 2015, AT
COMM 062215 CMS 9:30 A.M. AND FURTHER ORDERED THAT THE TRIALS IN EACH OF
COMM 062215 CMS THE ABOVE-CAPTIONED CASES ARE SCHEDULED FOR OCTOBER 13,
COMM 062215 CMS 2015, AND FURTHER ORDERED THAT THE ARRAIGNMENTS SCHEDULED
COMM 062215 CMS FOR JULY 2, 2015 SHALL BE CANCELLED UPON THE ENTRY BY
COMM 062215 CMS EACH DEFENDANT OF A PLEA OF NOT GUILTY IN WRITING PURSUANT
COMM 062215 CMS TO RULE 4-242(B) ON OR BEFORE JUNE 26, 2015.
COMM 062215 CMS W. MICHEL FIERSON J.
COMM 062215 CMS COPY OF ORDERS MAILED TO ALL COUNSEL
COMM 062215 CNN PLEA AND REQUEST FOR JURY TRIAL
COMM 062315 CKW SUPPLEMENT TO OFFICE OF THE STATE'S ATTORNEY FOR
COMM 062315 CKW BALTIMORE CITY'S OPPOSITION TO DEFS JOINT MOTION FOR
COMM 062315 CKW RECUSAL OF BALTIMORE CITY STATE'S ATTORNEY'S OFFICE FLD;
COMM 062315 CKW CC: JUDGE WILLIAMS
COMM 062315 CKW OFFICE OF THE STATE'S ATTORNEY FOR BALTIMORE CITY'S

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02/08/16 CRIMINAL COURT OF BALTIMORE CASE INQUIRY 09:23
CASE 115141035 ST A RICE, BRIAN LT A32449 COD Y DCM C 090215
EVENT DATE OPER PART TIME ROOM REAS / EVENT COMMENT
COMM 062315 CKW OPPOSITION TO DEFS JOINT MOTION TO DISMISS FOR
COMM 062315 CKW PROSECUTORIAL MISCONDUCT, OR IN THE ALTERNATIVE, FOR
COMM 062315 CKW SANCTIONS FLD
COMM 062415 SCY DATE STAMPED & ORDERED 6/24/15, THIS COURT IS IN RECEIPT OF
COMM 062415 SCY STATE'S MOTION FOR PROTECTIVE ORDER PURSUANT TO RULE 4-263
COMM 062415 SCY (M) FILED ON JUNE 15, 2015. PURSUANT TO RULE 1-203(C) AND
COMM 062415 SCY 4-252(F), ANY DEFENSE RESPONSE IS DUE ON OR BEFORE JULY 6,
COMM 062415 SCY 2015. THIS COURT NOTES THAT IN THE MOTION THE STATE
COMM 062415 SCY REQUESTED AN EXPEDITED HEARING BUT FAILED TO COMPLY WITH
COMM 062415 SCY RULE 1-204(A), WHICH PERMITS A COURT TO SHORTEN TIME FOR
COMM 062415 SCY A RESPONSE. HAVING FAILED TO SHOW THIS COURT THAT THE
COMM 062415 SCY CONDITION UNDER WHICH A MOTION TO SHORTEN TIME SHOULD BE
COMM 062415 SCY GRANTED, & IS HEREBY ORDERED THAT THE STATE'S REQUEST FOR
COMM 062415 SCY AN EXPEDITED HEARING, OR IN THE ALTERNATIVE, TO SHORTEN
COMM 062415 SCY THE TIME FOR RESPONSE, IS DENIED. WILLIAMS, J (COPIES
COMM 062415 SCY SENT BY CHAMBERS)
COMM 062415 1gj SUPPLEMENT TO OFFICE OF THE STATE'S ATTORNEY FOR BALTIMORE
COMM 062415 1gj CITY'S MOTION FOR PROTECTIVE ORDER
COMM 062415 1gj 036ED ASA - BLEDSOE, JANICE L , ESQ 68776

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02/08/16 CRIMINAL COURT OF BALTIMORE

CASE INQUIRY 09:23

CASE 115141035 ST A RICE, BRIAN LT

A32449 COD Y DCM C 090215

EVENT DATE OPER PART TIME ROOM REAS / EVENT COMMENT

COMM 062515 1DM CASE REMOVED FROM ARRG. DOCKET AS PER J. PETERS JICCR

COMM 062615 CKW STATE'S RESPONSE TO DEFS MOTION FOR REMOVAL FLD

COMM 062615 SCB STATE'S MOTION FOR JOINT TRIAL OF DEFENDANTS FLD

COMM 062615 SCB STATE'S INITIAL DISCLOSURES, NOTICES, AND MOTIONS FLD

COMM 062615 SCB STATE'S INDEX OF INFORMATION PRODUCED IN DISCOVERY FLD

COMM 063015 CZC DEF'S JOINT MOTION IN OPPOSITION TO STATE'S MOTION FOR

COMM 063015 CZC PROTECTIVE ORDER PURSUANT TO RULE 4-263 (M), MEMORANDUM

COMM 063015 CZC IN SUPPORT , AND REQUEST FOR EXPEDITED HEARING FLD.

HCAL 070215 1DM P08;0930;509 ;ARRG; ;POST;OTH;PETERS, CHARLES;8E3

COMM 070215 SCB SET IN ERROP; NO FILE IN COURT

HCAL 070215 1DM P08;0930;509 ;ARRG; ;TSET, ;WILLIAMS, BARRY,8C9

COMM 070615 1qj DEFENDANT'S REPLY TO STATE'S RESPONSE TO DEFENDANTS'

COMM 070615 1qj MOTION FOR REMOVAL AND REQUEST FOR HEARING CC: JUDGE

COMM 070615 1qj WILLIAMS

COMM 070815 CZC DEFENDANT'S JOINT MOTION IN OPPOSITON TO STATE'S MOTION

COMM 070815 CZC FOR PROTECTIVE ORDER PURSUANT TO RULE 4-263(M)

COMM 070815 CZC MEMORANDUM IN SUPPORT, AND REQUEST FOR EXPEDITED HEARING

COMM 070815 CZC WHICH WAS FLD. 6-30-15, HAND DELIVERED TO JUDGE WILLIAMS'

COMM 070815 CZC CHAMBERS.

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9:23:41 Monday, February 08, 2016

02/08/16 CRIMINAL COURT OF BALTIMORE CASE INQUIRY 09:23
CASE 115141035 ST A RICE, BRIAN LT A32449 COD Y DCM C 090215
EVENT DATE OPER PART TIME ROOM REAS / EVENT COMMENT
COMM 070815 CZC STATE'S RESPONSE TO DEFENDANTS' JOINT MOTION IN OPPOSITION
COMM 070815 CZC TO STATE'S MOTION FOR PROTECTIVE ORDER STATE'S RENEWED
COMM 070815 CZC REQUEST FOR HEARING FLD.
COMM 070915 CZC STATE'S RESPONSE TO DEFENDANTS' JOINT MOTION IN OPPOSITION
COMM 070915 CZC TO STATE'S MOTION FOR PROTECTIVE ORDER STATE'S RENEWED
COMM 070915 CZC REQUEST FOR HEARING HAND DELIVERED TO JUDGE WILLIAMS'
COMM 070915 CZC CHAMBERS.
MTAN 070915 1gj MOTION FOR SUBPOENA / TANGIBLE EVID;TICKLE DATE= 20150717
COMM 071315 SCY STATE'S APPENDIX OF EVIDENCE IN SUPPORT OF MOTION FOR
COMM 071315 SCY PROTECTIVE ORDER PURUSANT TO RULE 4-263(M) CC: WILLIAMS, J
COMM 071315 SCY DEFENDANT'S OPPOSITION TO THE STATE'S MOTION FOR JOINT TRIAL
COMM 071315 SCB DEF'S MOTION TO SUPPRESS STATEMENTS PURSUANT TO THE
COMM 071315 SCB L.E.O.B R. & GARRIT V. NEW JERSEY FLD
COMM 071315 SCB DEFS MOTION TO SUPPRESS THE SEARCH AND SEIZURE OF DEFENDANTS
COMM 071315 SCB DEPARTMENTAL CELL PHONES AND REQUEST FOR FRANKS HEARING FLD
MPRO 071615 CNN MOTION FOR PROTECTIVE ORDER ;TICKLE DATE= 20150803
COMM 071615 CNN STATE'S MOTION TO QUASH TRIAL SUBPOENA BASED ON ABUSE OF
COMM 071615 CNN PPROCESS (COPY DELIVERED TO JUDGE WILLIAMS CHAMBERS PER
COMM 071615 CNN PER LAW CLERK)

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02/08/16 CRIMINAL COURT OF BALTIMORE CASE INQUIRY 09:23
CASE 115141035 ST A RICE, BRIAN LT A32449 COD Y DCM C 090215
EVENT DATE OPER PART TIME ROOM REAS / EVENT COMMENT
COMM 071615 CNN STATE'S RESPONSE TO DEFENDANT'S MOTION FOR SUBPOENA FOR
COMM 071615 CNN TANGIBLE EVIDENCE(COPY DELIVERED TO JUDGE WILLIAMS CHAMBERS
COMM 071615 CNN PER LAW CLERK)
COMM 071715 SCB STATE'S SUPPLEMENTAL DISCLOSURE FLD
COMM 071715 SCB ORDER DATED AND DATE STAMPED JULY 17, 2015; THAT THE STATE'S
COMM 071715 SCB MOTION FOR PROTECTIVE ORDER PURSUANT TO RULE 4-263(M) IS
COMM 071715 SCB DENIED; B. WILLIAMS, J
COMM 072115 1gJ STATE'S OPPOSITION TO DEFENDANT'S JOINT MOTION TO SUPPRESS
COMM 072115 1gJ THE SEARCH AND SEIZURE OF DEFENDANT'S DEPARTMENTAL CELL
COMM 072115 1gJ PHONES AND REQUEST FOR FRANKS HEARING
COMM 072315 CKW PEPLY TO STATE'S RESPONSE TO DEFS MOTION FOR SUBPOENA
COMM 072315 CKW FOR TANGIBLE EVIDENCE FLD; COPY DELIVERED TO JUDGE
COMM 072315 CKW WILLIAMS PER LAW CLERK
COMM 072415 1T2 WAITING ON PHONE CALL FR. JUDGE, WILLIAMS SEC. BEFORE
COMM 072415 1T2 SCHEDULING THIS MATTER/NO TRIAL SUMMARY/7-22-15...TJ
COMM 072415 1gJ STATE'S SUPPLEMENTAL DISCLOSURE
COMM 072415 1gJ FILED ASA - BLEDSOE, JANICE L , ESQ 68776
COMM 072715 CPR STATE'S RESPONSE TO DEFENDANTS' JOINTLY FILED MOTION TO
COMM 072715 CPR SUPPRESS STATEMENTS PURSUANT TO THE L.E.O.2.R. AND

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02/08/16 CRIMINAL COURT OF BALTIMORE CASE INQUIRY 09:23
CASE 115141035 ST A RICE, BRIAN LT A32449 COD Y DCM C 090215
EVENT DATE OPER PART TIME ROOM REAS / EVENT COMMENT
COMM 072715 CPR GARRITY V NEW JERSEY
COMM 072915 CPR REPLY TO STATE'S OPPOSITION TO MOTION TO SUPPRESS THE SEARCH
COMM 072915 CPR AND SEIZURE OF DEFENDANTS' DEPARTMENTAL CELL PHONES AND
COMM 072915 CPR REQUEST FOR FRANKS HEARING
MCOM 073015 1g) MOTION TO COMPEL DISCOVERY ;TICKLE DATE= 20150807
COMM 073015 1g) COPIES DELIVERED TO JUDGE WILLIAM'S CHAMBERS OER L.C.
COMM 073115 SFT RESPONSE TO STATE'S MOTION TO QUASH TRIAL SUBPOENA BASED ON
COMM 073115 S81 ABUSE OF PROCESS FILED CC.JUDGE WILLIAMS
COMM 080415 1g) LINE FILED; COFY DELIVERED TO JUDGE WILLIAMS FER ATTORNEY
COMM 080615 SCB STATE'S SUPPLEMENTAL DISCLOSURE FLD
COMM 080615 SCB DEF'S SUPPLEMENTAL MEMORANDUM IN SUPPORT OF JOINT MOTION
COMM 080615 SCB FOR RECUSAL OF THE BALTIMORE CITY STATE'S ATTORNEY'S OFFICE
COMM 080615 SCB COPY DELIVERED TO JUDGE WILLIAMS' CHAMBERS
COMM 080615 SCB STATE'S MOTION TO SANCTION THE DEF'S ATTORNEYS FOR
COMM 080615 SCB UNPROFESSIONAL CONDUCT AND ABUSE OF COMPULSORY PROCESS FLD
COMM 080615 SCB STATE'S MOTION TO STRIKE AS A SANCTION FOR DEF'S VIOLATION
COMM 080615 SCB OF RULE 4-263(1) OR, ALTERNATIVELY, STATE'S RESPONSE TO
COMM 080615 SCB DEF'S JOINTLY FILED MOTION TO COMPEL AND FOR SANCTIONS FLD
COMM 081115 CKW DEFENDANTS WAIVER OF APPEARANCE FLD

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02/08/16 CRIMINAL COURT OF BALTIMORE CASE INQUIRY 09-23
CASE 115141035 ST A RICE, BRIAN LT A32449 COD Y DCM C 090215
EVENT DATE OPER PART TIME ROOM REAS / EVENT COMMENT
COMM 081415 CPR STATE'S MOTION TO QUASH HEARING SUBPOENA REQUESTED BY
COMM 081415 CFR CATHERINE FLYNN AND SERVED ON ASSISTANT STATE'S ATTORNEY
COMM 081415 CFR ALBERT PEISINGER
COMM 081415 CPR STATE'S MOTION TO QUASH HEARING SUBPOENA SERVED ON WAYNE
COMM 081415 CPP WILLIAMS
COMM 081415 CPR STATE'S MOTION TO QUASH HEARING SUBPOENA SERVED ON AVON
COMM 081415 CPR MACKEL
COMM 081415 CKW STATE'S MOTION TO QUASH HEARING SUBPOENA REQUESTED BY
COMM 081415 CKW CATHERINE FLYNN AND SERVED ON DEPUTY STATE'S ATTORNEY
COMM 081415 CKW ANTONIO GIOIA
MPRO 081415 CKW MOTION FOR PROTECTIVE ORDER ;TICKLE DATE= 20150901
MPRO 081415 SCB MOTION FOR PROTECTIVE ORDER ;TICKLE DATE= 20150901
MPRO 081415 SCB MOTION FOR PROTECTIVE ORDER ;TICKLE DATE= 20150901
MPRO 081415 SCE MOTION FOR PROTECTIVE ORDER ;TICKLE DATE= 20150901
MPRO 081415 SBT MOTION FOR PROTECTIVE ORDER ;TICKLE DATE= 20150901
COMM 081415 SBT STATE'S MOTION TO QUASH HEARING SUBPOENA REQUESTED BY
COMM 081415 SBT CATHERINE FLYNN & SERVED ON STATE'S ATTORNEY MARILYN
COMM 081415 SBT MOSEY FILED
MPRO 081415 CUN MOTION FOR PROTECTIVE ORDER ;TICKLE DATE= 20150901

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9:23:43 Monday, February 08, 2016

02/08/16 CRIMINAL COURT OF BALTIMORE CASE INQUIRY 09:23
CASE 115141035 ST A RICE, BRIAN LT A32449 COD Y DCM C 090215
EVENT DATE OPER PART TIME ROOM REAS / EVENT COMMENT
COMM 081415 CNN STATE'S MOTION TO QUASH HEARING SUBPOENA REQUESTED BY
COMM 081415 CNN CATHERINE FLYNN AND SERVED ON DR. CAROL ALLEN
MPRO 081415 19J MOTION FOR PROTECTIVE ORDER ;TICKLE DATE= 20150901
COMM 081415 19J STATE'S MOTION TO QUASH HEARING SUBPOENA REQUESTED BY
COMM 081415 19J CATHERINE FLYNN AND SERVED ON ASSISTANT STATE'S ATTORNEY
COMM 081415 19J LISA GOLDBERG
COMM 081415 SCB STATE'S MOTION TO QUASH HEARING SUBPOENA REQUESTED BY
COMM 081415 SCB BY CATHERINE FLYNN AND SERVED ON DEPUTY STATE'S ATTORNEY
COMM 081415 SCB JANICE BLEDSOE FLD
MPRO 081415 SCB MOTION FOR PROTECTIVE ORDER ;TICKLE DATE= 20150901
COMM 081415 SCB STATE'S MOTION TO QUASH HEARING SUBPOENA REQUESTED BY
COMM 081415 SCB CATHERINE FLYNN AND SERVED ON CHIEF DEPUTY STATE'S
COMM 081415 SCB ATTORNEY MICHAEL SCHATZOW FLD
MPRO 081415 SCB MOTION FOR PROTECTIVE ORDER ;TICKLE DATE= 20150901
COMM 081815 SCY DATE STAMPED & ORDERED 8/17/15, STATE'S MOTION TO QUASH
COMM 081815 SCY HEARING SUBPOENA REQUESTED BY CATHERINE FLYNN AND SERVED
COMM 081815 SCY ON DR. CAROL ALLEN. ORDERED THAT THE HEARING SUBPOENA
COMM 081815 SCY SERVED ON DR. CAROL ALLEN FOR THE SEPTEMBER 2, 2015.
COMM 081815 SCY HEARING IS QUASHED. (SEE ORDER) WILLIAMS, J (CC: ALL

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9:23:43 Monday, February 08, 2016

02/08/16 CRIMINAL COURT OF BALTIMORE CASE INQUIRY 09:23
CASE 115141035 ST A RICE, BRIAN LT A32449 COD Y DCM C 090215
EVENT DATE OPER PART TIME ROOM FEAS / EVENT COMMENT
COMM 081915 SCY ATTORNEY OF RECORD)
COMM 081915 SCY DATE STAMPED & ORDERED 8/17/15, STATE'S MOTION TO QUASH
COMM 081915 SCY HEARING SUBPOENA REQUESTED BY CATHERINE FLYNN AND SERVED
COMM 081915 SCY ON ASSISTANT STATE'S ATTORNEY, ALBERT PEISINGER. ORDERED,
COMM 081915 SCY THAT THE HEARING SUBPOENA SERVED ON ALBERT PEISINGER FOR
COMM 081915 SCY THE SEPTEMBER 2, 2015 HEARING IS QUASHED. WILLIAMS, J
COMM 081915 SCY (CC: ALL ATTORNEY'S OF RECORD)
COMM 081915 SCY DATE STAMPED & ORDERED 8/17/15, STATE'S MOTION TO QUASH
COMM 081915 SCY HEARING SUBPOENA REQUESTED BY CATHERINE FLYNN AND SERVED
COMM 081915 SCY ON ASSISTANT STATE'S ATTORNEY LISA GOLDBERG. ORDERED,
COMM 081915 SCY THAT THE HEARING SUBPOENA SERVED ON LISA GOLDBERG FOR THE
COMM 081915 SCY SEPTEMBER 2, 2015 HEARING IS QUASHED. WILLIAMS, J (CC: ALL
COMM 081915 SCY COUNSEL OF RECORD)
COMM 081915 SCY DATE STAMPED & ORDERED 8/17/15, STATE'S MOTION TO QUASH
COMM 081915 SCY HEARING SUBPOENA REQUESTED BY CATHERINE FLYNN AND SERVED
COMM 081915 SCY ON WAYNE WILLIAMS. ORDERED, THAT THE HEARING SUBPOENA
COMM 081915 SCY SERVED ON WAYNE WILLIAMS FOR THE SEPTEMBER 2, 2015 HEARING
COMM 081915 SCY IS QUASHED. WILLIAMS, J (CC: ALL COUNSEL OF RECORD)
COMM 081915 SCY DATE STAMPED & ORDERED 8/17/15, STATE'S MOTION TO QUASH

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9:23.43 Monday, February 08, 2016

02/08/16 CRIMINAL COURT OF BALTIMORE CASE INQUIRY 09:23
CASE 115141035 ST A RTCE, BRIAN LT A32449 COD ? DCM C 090215
EVENT DATE OPER PART TIME ROOM REAS / EVENT COMMENT
COMM 081915 SCY HEARING SUBPOENA REQUESTED BY CATHERINE FLYNN AND SERVED
COMM 081915 SCY ON AVON MACKEL. ORDERED, THAT THE HEARING SUBPOENA SERVED
COMM 081915 SCY ON AVON MACKEL FOR THE SEPTEMBER 2, 2015 HEARING IS QUASHED.
COMM 081915 SCY (CC: ALL COUNSEL OF RECORD)
COMM 081915 SCY DATE STAMPED & ORDERED 8/17/15, STATE'S MOTION TO QUASH
COMM 081915 SCY HEARING SUBPOENA REQUESTED BY CATHERINE FLYNN AND SERVED
COMM 081915 SCY ON CHIEF DEPUTY STATE'S ATTORNEY MICHAEL SCHATZOW. ORDERED,
COMM 081915 SCY THAT THE HEARING SUBFOENA SERVED ON MICHAEL SCHATZOW FOR THE
COMM 081915 SCY SEPTEMBER 2, 2015 HEARING IS QUASHED. WILLIAMS, J (CC: ALL
COMM 081915 SCY COUNSEL OF RECORD)
COMM 081915 SCY DATE STAMPED & ORDERED 8/17/15, STATE'S MOTION TO QUASH
COMM 081915 SCY HEARING SUBFOENA REQUESTED BY CATHERINE FLYNN AND SERVED
COMM 081915 SCY ON STATE'S ATTORNEY MARILYN MOSBY. ORDERED, THAT THE
COMM 081915 SCY HEARING SUBPOENA SERVED ON MARILYN MOSBY FOR THE SEPTEMBER
COMM 081915 SCY 2, 2015 HEARING IS QUASHED. WILLIAMS, J (CC: ALL COUNSEL
COMM 081915 SCY OF RECORD)
COMM 081915 SCY DATE STAMPED & ORDERED 8/17/15, STATE'S MOTION TO QUASH
COMM 081915 SCY HEARING SUBPOENA REQUESTED BY CATHERINE FLYNN AND SERVED
COMM 081915 SCY ON DEPUTY STATE'S ATTORNEY JANICE BLEDSOE. ORDERED, THAT

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02/08/16 CRIMINAL COURT OF BALTIMORE CASE INQUIRY 09:23
CASE 115141035 ST A RICE, BRIAN LT A32449 COD Y DCM C 090215
EVENT DATE OPER PART TIME ROOM REAS / EVENT COMMENT
COMM 081915 SCY THE HEARING SUBPOENA SERVED ON JANICE BLEDSOE FOR THE
COMM 081915 SCY SEPTEMBER 2, 2015 HEARING IS QUASHED. WILLIAMS, J (CC: ALL
COMM 081915 SCY COUNSEL OF RECORD)
COMM 081915 SCY DATE STAMPED & ORDERED 8/17/15, STATE'S MOTION TO QUASH
COMM 081915 SCY HEARING SUBPOENA REQUESTED BY CATHERINE FLYNN AND SERVED
COMM 081915 SCY ON DEPUTY STATE'S ATTORNEY ANTONIO GIOIA. ORDERED, THAT
COMM 081915 SCY THE HEARING SUBPOENA SERVED ON ANTONIO GIOIA FOR THE
COMM 081915 SCY SEPTEMBER 2, 2015 HEARING IS QUASHED. WILLIAMS, J (CC: ALL
COMM 081915 SCY COUNSEL OF RECORD)
COMM 081915 CPR STATE'S SUPPLEMENTAL DISCLOSURE
COMM 082415 SCB STATE'S MOTION TO QUASH HEARING SUBPOENA SERVED ON
COMM 082415 SCB DETECTIVE DAWNYELL TAYLOR FLD
MPRO 082415 SCB MOTION FOR PROTECTIVE ORDER ;TICKLE DATE= 20150911
COMM 082415 SCB STATE'S MOTION TO QUASH HEARING SUBPOENA SERVED ON
COMM 082415 SCB MAJOR SAM COGAN FLD
MPRO 082415 SCB MOTION FOR PROTECTIVE ORDER ;TICKLE DATE= 20150911
COMM 082415 SCB STATE'S MOTION TO QUASH HEARING SUBPOENA SERVED ON THE
COMM 082415 SCB CUSTODIAN OF RECORDS FOR THE OFFICE OF THE CHIEF MEDICAL
COMM 082415 SCB EXAMINER FLD

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CASE 115141035 ST A RICE, BRIAN LT A32449 COD Y DCM C 090215
EVENT DATE OPER PART TIME ROOM REAS / EVENT COMMENT
MPRO 082415 SCB MOTION FOR PROTECTIVE ORDER ;TICKLE DATE= 20150911
MPRO 082415 SCB MOTION FOR PROTECTIVE ORDER ;TICKLE DATE= 20150911
COMM 082415 SCB STATE'S RESPONSE TO DEF'S SUPPLEMENTAL MEMORANDUM IN
COMM 082415 SCB SUPPORT OF JOINT MOTION FOR RECUSAL OF BALTIMORE CITY
COMM 082415 SCB STATE'S ATTORNEY OFFICE FLD
MPRO 082515 CKW MOTION FOR PROTECTIVE ORDER ;TICKLE DATE= 20150912
COMM 082615 CMS ORDER OF COURT DATED AUGUST 26, 2015, SECURITY/MEDIA
COMM 082615 CMS PROTOCOL ORDER FILED. ORDER IS SUBJECT TO MODIFICATION
COMM 082615 CMS BY THE COURT AT ANY TIME. W. MICHEL PIERSON J
COMM 082615 CMS COPIES MAILED TO ALL COUNSEL
COMM 082615 SCB ORDER DATED AUGUST 25, 2015 AND DATE STAMPED AUGUST 26, 2015
COMM 082615 SCB THAT THE SUBPOENA SERVED ON DETECTIVE DAWNYELL TAYLOR FOR
COMM 082615 SCB THE SEPTEMBER 2, 2015 HEARING IS QUASHED; WILLIAMS, J
COMM 082615 CKW DATE STAMPEE AND ORDERED AUGUST 25TH 2015 THAT THE HEARING
COMM 082615 CKW SUBPOENA SERVED ON MAJOR SAM COGAN FOR THE SEPTEMBER 2 2015
COMM 082615 CKW HEARING IS QUASHED
COMM 082615 SCB ORDER DATED AUGUST 25, 2015 AND DATE STAMPED AUGUST 26, 2015
COMM 082615 SCB THAT THE HEARING SUBPOENA SERVED ON THE CUSTODIAN OF RECORDS
COMM 082615 SCB FOR THE OFFICE OF THE CHIEF MEDICAL EXAMINER FOR THE

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02/08/16 CRIMINAL COURT OF BALTIMORE CASE INQUIRY 09:23
CASE 115141035 ST A RICE, BRIAN LT A32449 COD Y DCM C 090215
EVENT DATE OPER PART TIME ROOM REAS / EVENT COMMENT
COMM 082615 SCB SEPTEMBER 2, 2015 HEARING IS QUASHED FLD; WILLIAMS, J
COMM 082615 CKW STATE'S MOTION TO QUASH HEARING SUBPOENA SERVED ON
COMM 082615 CKW COLONEL STANLEY BRANFORD FLD
MPRO 082615 CKW MOTION FOR PROTECTIVE ORDER ;TICKLE DATE= 20150913
COMM 082615 CKW STATE'S MOTION TO QUASH ALL HEARING SUBPOENAS ISSUED BY
COMM 082615 CKW THE DEFENSE FOR THE SEPTEMBER 2, 2015, MOTIONS HEARING FLD
COMM 082715 CPR ORDER DATE STAMPED 8/27/15; ORDERED THIS 26TH DAY OF AUGUST
COMM 082715 CPR 2015 THAT THE HEARING SUBPOENA SERVED ON COLONEL STANLEY
COMM 082715 CPP BRANFORD FOR THE SEPTEMBER 2, 2015 HEARING IS QUASHED
COMM 082715 CPR JUDGE B. WILLIAMS
COMM 082715 CPR COPY MAILED TO STATE'S ATTORNEY(S) AND DEFENSE ATTORNEY(S)
COMM 082715 1g) SECOND REQUEST FOR AN EVIDENTIARY HEARING ON THE
COMM 082715 1g) SUPPLEMENTAL MEMORANDUM IN SUPPORT OF JOINT MOTION FOR
COMM 082715 1g) RECUSAL OF THE BALTIMORE CITY STATE'S ATTORNEY'S OFFICE
COMM 083115 S&T STATE'S RESPONSE TO DEFENDANT'S "SECOND REQUEST FOR AN
COMM 083115 S&T EVIDENTIARY HEARING ON THE SUPPLEMENTAL MEMORANDUM IN
COMM 083115 S&T SUPPORT OF JOINT MOTION FOR RECUSAL OF THE BALTIMORE CITY
COMM 083115 S&T STATE'S ATTORNEY'S OFFICE" FILED BY MICHAEL SCHATZOW
COMM 083115 1T2 CSET PMOT; P31; 09/02/15; 1T2 (PER COMPUTER/ORDER)

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CASE 115141035 ST A RICE, BRIAN LT A32449 COD Y DCM C 090215
EVENT DATE OPER PART TIME ROOM REAS / EVENT COMMENT
COMM 083115 S8T STATE'S SUPPLEMENTAL DISCLOSURE FILED BY JANICE BLEDSOE
COMM 090215 1DM CSET ARR; P08; 07/02/15; 1DM
COMM 090215 1DM CSET JT ; P31; 10/13/15; 1DM
TRAK 090215 1DM ASSIGNED TO TRACK C - 120 DAYS ON 09/02/2015
COMM 090215 1T2 CONSENT WAIVER OF PRESENCE OF DEFT'S "GRANTED" (JUDGE
COMM 090215 1T2 WILLIAMS)
COMM 090215 1T2 JUDICIAL STATEMENTS HEARD AND "DENIED" (JUDGE WILLIAMS)
COMM 090215 1T2 JOINT MOTION FOR SANCTIONS HEARD AND "DENIED" (JUDGE
COMM 090215 1T2 WILLIAMS)
COMM 090215 1T2 DEFT'S REQUEST FOR EVIDENTIARY HEARING HEARD AND
COMM 090215 1T2 "DENIED" (JUDGE WILLIAMS)
COMM 090215 1T2 JOINT MOTION TO RECUSE BALTIMORE CITY ASA AND OFFICE
COMM 090215 1T2 HEARD AND "DENIED" (JUDGE WILLIAMS)
COMM 090215 1T2 STATE WITHDRAWS MOTION FOR JOINT TRIAL OF DEFT., RICE
COMM 090215 1T2 (JUDGE WILLIAMS)
HCAL 090215 SCY P31;0930;528 ;PMOT; ;OTHR; ;WILLIAMS, BARRY;8C9
COMM 090815 1gj DEFENDANT'S SUPPLEMENTAL MEMORANDUM TO DEFENDANT'S MOTION
COMM 090815 1gj FOR REMOVAL
COMM 030915 S8T STATE'S SUPPLEMENTAL DISCLOSURE FILED BY JANICE BLEDSOE

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02/08/16 CRIMINAL COURT OF BALTIMORE CASE INQUIRY 09:23
CASE 115141035 ST A RICE, BRIAN LT A32449 COD ? DCM C 090215
EVENT DATE OPER PART TIME ROOM REAS / EVENT COMMENT
COMM 091015 CFR FILED ASA - MOSBY, MARILYN J , ESQ 589290
HCAL 091015 1 CFR P31;0930;528 ;HEAR;HR;DENI; ;WILLIAMS, BARRY;8C9
COMM 091015 CFR CSET HEAR; P31; 09/10/15; CPR
COMM 091015 CPR DEFENSE MOTION TO TRANSFER VENUE IS HEREBY HEARD & "DENIED"
HCAL 091015 SCB P31;0930;528 ;HEAR; ;OTHR; ;WILLIAMS, BARRY;8C9
COMM 091015 SCB CSET HEAR; P31; 09/10/15; SCB
COMM 091015 SCB DEF'S MOTION FOR SUBPEONA TO TANGIBLE RECORDS OF POLICE DEPT
COMM 091015 SCB TRAINING RECORDS AT THE ACADEMY HEARD AND IS HEREBY DENIED
COMM 091015 SCB WITH LEAVE TO REFILE; DEF'S MOTION FOR SUBPEONA TO
COMM 091015 SCB TANGIBLE RECORDS OF CHIEF MEDICAL EXAMINERS OFFICE
COMM 091015 SCB WITHDRAWN; DEF'S MOTION FOR SUBPEONA TO TANGIBLE RECORDS
COMM 091015 SCB 1037ENTRAL BOOKING FOR FREDDIE GRAY WITHDRAWN; DEF'S MOTION
COMM 091015 SCB FOR SUBPEONA TO TANGIBLE RECORDS FOR JANUARY 1, 2012 TO
COMM 091015 SCB APRIL 2012 OF POLICE ACADEMY TRAINING ON LEGAL ISSUES HEARD
COMM 091015 SCB AND DENIED; DEF'S MOTION FOR SUBPEONA TO TANGIBLE RECORDS
COMM 091015 SCB OF STATE'S ATTY'S OFFICE INVESTIGATION RECORDS FOR
COMM 091015 SCB APRIL 12, 2015 THRU MAY 1, 2015 HEARD AND DENIED
COMM 091115 SCB STATE'S SUPPLEMENTAL DISCLOSURE FLD
COMM 091115 SCB MOTION TO DISMISS FOR FAILURE TO CHARGE A CRIME

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02/08/16 CRIMINAL COURT OF BALTIMORE CASE INQUIRY 09:23
CASE 115141035 ST A RICE, BRIAN LT A32449 CCD Y DCM C 090215
EVENT DATE OPER PART TIME ROOM REAS / EVENT COMMENT
COMM 091615 SCB STATE'S NOTICE OF INTENT TO USE DNA FLD
COMM 091615 SCB STATE'S SUPPLEMENTAL DISCLOSURE FLD
COMM 091815 12j DEFENDANTS' JOINT MOTION FOR RECORDATION OF
COMM 091815 19j SEPTEMBER 24, 2015 SCHEDULING CONFERENCE
COMM 091815 19j MOTION TO PRODUCE RECORDS REGARDING DNA ANALYSIS
COMM 091815 19j STATE'S SUPPLEMENTAL DISCLOSURE OF EXPERT WITNESS
COMM 092215 CKW STATE'S SUPPLEMENTAL DISCLOSURE FLD
COMM 092315 SCY DATE STAMPED & ORDERED 9/22/15, THAT THE DEFT'S REQUEST FOR
COMM 092315 SCY SEPTEMBER 24, 2015 SCHEDULING CONFERENCE TO TAKE PLACE ON
COMM 092315 SCY THE RECORD, IS DENIED. WILLIAMS, J (CC: MICHAEL BELSKY,
COMM 092315 SCY ATTORNEY FOR DEFT, JANICE BLEDSOE, DEPUTY STATE'S ATTORNEY,
COMM 092315 SCY OFFICE OF THE STATE'S ATTORNEY FOR BALTIMORE CITY)
COMM 092315 CPP STATE'S MOTION TO COMPEL DISCOVERY
COMM 092315 CPR STATE'S SUPPLEMENTAL DISCLOSURE
COMM 092315 CNN STATE'S RESPONSE TO DEFENDANT'S MOTION TO PRODUCE RECORDS
COMM 092315 CNN REGARDING DNA ANALYSIS
MCOM 092315 CZC MOTION TO COMPEL DISCOVERY ;TICKLE DATE= 20151001
COMM 092815 1T2 CSET HEAR; P31; 09/29/15; 1T2 (ADD-ON/LAW CLK/JUDGE
COMM 092815 1T2 WILLIAMS CALLING PT. 46 DKT./RM 334 EAST)

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02/08/16 CRIMINAL COURT OF BALTIMORE CASE INQUIRY 09:23
CASE 115141035 ST A RICE, BRIAN LT A32449 COD Y DCM C 090215
EVENT DATE OPER PART TIME ROOM REAS / EVENT COMMENT
COMM 092815 SCY DATE STAMPED 9/28/15, & ORDERED 9/25/15, THAT ALL PROVISIONS
COMM 092815 SCY OF THE SECURITY/MEDIA PROTOCOL ORDER DATED AUGUST 26, 2015
COMM 092815 SCY SHALL APPLY TO THIS HEARING. IN ADDITION, FOR THIS HEARING,
COMM 092815 SCY MEMBERS OF THE MEDIA SHOULD ARRIVE AT THE COURTHOUSE AT 1:00
COMM 092815 SCY P.M. PIERSON, J
COMM 092815 CKW STATE'S RESPONSE TO DEFS MOTION TO DISMISS FOR FAILURE TO
COMM 092815 CKW CHARGE A CRIME FLD
COMM 092915 CYH CSET JT ; P31; 03/09/16; CYH
HCAL 092915 SCB P31;0200;528 ;HEAR; ;POST,CAN;WILLIAMS, BARRY;8C9
COMM 092915 SCB POSTPONED TIL 3/9/2016 PART 31 AT 9:30AM; DEF SERVED
COMM 092915 S8T DEFENDANT'S MOTION FOR RECONSIDERATION OF THE DENIAL OF
COMM 092915 S8T MOTION FOR REMOVAL & REQUEST FOR HEARING FILED
COMM 092915 S8T SUPPLEMENT TO DEFENDANT'S JOINT MOTION TO COMPEL AND FOR
COMM 092915 S8T SANCTIONS FILED
HWNO 092915 S8T POSTPONEMENT FORM FILED; HICKS (MD RULE 4-271) NOT WAIVED
COMM 093015 SCY DATE STAMPED & ORDERED 9/30/15, DEFT'S REQUEST FOR THE
COMM 093015 SCY SUPPRESSION OF THE SEARCH AND SEIZURE OF DEFT'S DEPARTMENTAL
COMM 093015 SCY CELL PHONES AND FOR A FRANKS HEARING IS DENIED. WILLIAMS, J
COMM 093015 SCY (CC: MICHAEL BELSKY, ATTORNEY FOR BRIAN RICE, JANICE BLEDSOE

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02/08/16 CPIMINAL COURT OF BALTIMORE CASE INQUIRY 09:23
CASE 115141035 ST A RICE, BRIAN LT A32449 COD Y DCM C 090215
EVENT DATE OPER PART TIME ROOM REAS / EVENT COMMENT
COMM 093015 SCY DEPUTY STATE'S ATTORNEY, OFFICE OF THE STATE'S ATTORNEY
COMM 093015 SCY FOR BALTO. CITY)
COMM 093015 CNN STATE'S SUPPLEMENTAL DISCLOSURE
COMM 100215 SCY DATE STAMPED & ORDERED 10/2/15, THAT DEFT'S REQUEST FOR
COMM 100215 SCY RECONSIDERATION OF THE DENIAL OF MOTION FOR REMOVAL AND
COMM 100215 SCY DEFT'S REQUEST FOR A HEARING IS DENIED. WILLIAMS, J
COMM 100215 SCY (CC: MICHAEL BELSKY, ATTORNEY FOR BRIAN RICE, JANICE BLEDSOE
COMM 100215 SCY DEPUTY STATE'S ATTORNEY, OFFICE OF THE STATE'S ATTORNEY FOR
COMM 100215 SCY BALTO. CITY)
COMM 100515 SCY DATE STAMPED 10/5/15, & ORDERED 10/2/15, UPON CONSULTATION
COMM 100515 SCY WITH THE PARTIES TO THE ABOVE-CAPTIONED CASE THROUGH COUNSEL
COMM 100515 SCY ORDERED THAT A MOTIONS HEARING IS SCHEDULED FOR OCTOBER 13,
COMM 100515 SCY 2015 AT 9:30 A.M., AND FURTHER ORDERED THAT A MOTION HEARING
COMM 100515 SCY IS SCHEDULED FOR OCTOBER 14, 2015 AT 9:30 A.M. WILLIAMS, J
COMM 100515 SCY (CC: MICHAEL BELSKY, ATTORNEY FOR BRIAN RICE, JANICE BLEDSOE
COMM 100515 SCY DEPUTY STATE'S ATTORNEY, OFFICE OF STATE'S ATTORNEY FOR
COMM 100515 SCY FOR BALTO. CITY)
COMM 100515 SCY DATE STAMPED 10/5/15, & ORDERED 10/2/15, UPON CONSIDERATION
COMM 100515 SCY OF THE MOTION AND RESPONSE IN THIS INSTANCE, & HAVING FOUND

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02/08/16 CRIMINAL COURT OF BALTIMORE CASE INQUIRY 09:23
CASE 115141035 ST A RICE, BRIAN LT A32449 COD Y DCM C 090215
EVENT DATE OPER PART TIME ROOM REAS / EVENT COMMENT
COMM 100515 SCY THE STATE'S RESPONSE IN PARAGRAPHS C, D, E, I, AND P IS
COMM 100515 SCY INSUFFICIENT, IT IS ORDERED THAT THE STATE DISCLOSE THE
COMM 100515 SCY DOCUMENTS REQUESTED BY THE DEFENDANT IN PARAGRAPHS C, D, E,
COMM 100515 SCY I, AND P. (SEE ORDER FOR DETAILS) WILLIAMS, J
COMM 100515 SCY (CC: MICHAEL BELSKY, ATTORNEY FOR BRIAN RICE, JANICE BLEDSOE
COMM 100515 SCY DEPUTY STATE'S ATTORNEY, OFFICE OF STATE'S ATTORNEY FOR
COMM 100515 SCY FOR BALTO. CITY)
COMM 100515 SCB STATE'S SUPPLEMENTAL DISCLOSURE FLD
COMM 100815 VGI CSET PMOT; P31; 10/14/15; VGI (FR ADD ON PER LW CK GI)
COMM 100815 VGI CSET PMOT; P31; 10/13/15; VGI (FR ADD ON PER LW CK GI)
COMM 100815 SCY DATE STAMPED & ORDERED 10/8/15, HEARING UPON PRE-TRIAL
COMM 100815 SCY MOTIONS IN THESE CASES IS SCHEDULED TO OCCUR ON OCTOBER 13,
COMM 100815 SCY AND OCTOBER 14, 2015 AT 9:30 A.M. IT IS ORDERED, THAT ALL
COMM 100815 SCY PROVISIONS OF THE SECURITY/MEDIA PROTOCOL ORDER DATED AUGUST
COMM 100815 SCY 26, 2015 SHALL APPLY TO THIS HEARING. PIERSON, J
COMM 100815 S&T STATE'S SUPPLEMENTAL DISCLOSURE FILED BY JANICE BLEDSOE
COMM 100915 CNN STATE'S RESPONSE TO DEFENDANT'S SUPPLEMENT TO DEFENDANTS'
COMM 100915 CNN JOINT MOTION TO COMPEL AND FOR SANCTIONS
HCAL 101315 CYH P31;0900;528 ;JT ; ;POST;PAV;WILLIAMS, BARRY;8C9

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02/08/16 CRIMINAL COURT OF BALTIMORE CASE INQUIRY 09:23
CASE 115141035 ST A RICE, BRIAN LT A32449 COD 1 DCM C 090215
EVENT DATE OPEP PART TIME ROOM REAS / EVENT COMMENT
COMM 101315 SCY REPLY TO STATE'S RESPONSE TO DEFT'S MOTION TO DISMISS FOR
COMM 101315 SCY FAILURE TO CHARGE A CRIME FLD
HCAL 101315 CKW P31;0930;528 ;PMOT; ;CONT; ;WILLIAMS, BARRY;8C9
COMM 101315 CKW DEFENSE MOTION FOR POSTPONEMENT AT MOTIONS HEARING IS
COMM 101315 CKW HEREBY HEARD AND DENIED; DEFENSE MOTION TO DISMISS
COMM 101315 CKW STATEMENT IS WITHDRAWN; DEFENSE MOTION FOR SEQUESTRATION
COMM 101315 CKW IS HEREBY HEARD AND GRANTED; CONTINUE ON 3/9/16 PT31
COMM 101415 CKW DATE STAMPED AND ORDERED ON 10/14/15 THAT IN CONSIDERATION
COMM 101415 CKW OF DEF'S JOINT MOTION TO COMPEL AND FOR SANCTIONS, THE COURT
COMM 101415 CKW HAVING FOUND THAT THE STATE HAS FAILED TO PRODUCE
COMM 101415 CKW INFORMATION THIS COURT DEEMS EXCULPATORY, IT IS THIS 14TH
COMM 101415 CKW DAY OF OCTOBER 2015 HEREBY ORDERED THAT DEF'S MOTION IS
COMM 101415 CKW GRANTED IN PART AND HEREBY ORDERD THAT THE STATE ON OR
COMM 101415 CKW BEFORE 10/28/15, PROVIDE COUNSEL FOR DEFS WITH COPIES OF ANY
COMM 101415 CKW AND ALL DOCUMENTS PERTAINING TO THE INVESTIGATION AND
COMM 101415 CKW PROSECUTION OF DEFS. ALL OTHER REQUESTS BY THE STATE AND
COMM 101415 CKW THE DEFS FOR SANCTIONS ARE HEREBY DENIED PER
COMM 101415 CKW JUDGE BARRY C. WILLIAMS (SEE ORDER); CC COPIES TO
COMM 101415 CKW MICHAEL BELSKY, ATTY FOR BRIAN RICE AND JANICE BLEDSOE

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02/08/16 CRIMINAL COURT OF BALTIMORE CASE INQUIRY 09:23
CASE 115141035 ST A RICE, BRIAN LT A32449 COD Y DCM C 090215
EVENT DATE OPER PART TIME ROOM REAS / EVENT COMMENT
COMM 101415 CKW DEPUTY STATE'S ATTY, OFFICE OF THE STATE'S ATTY FOR
COMM 101415 CKW BALTIMORE CITY
COMM 101515 SCY DATE STAMPED & ORDERED 10/14/15, ON MAY 14, 2015, THIS COURT
COMM 101515 SCY RECEIVED THE STATE'S MOTION FOR ISSUANCE OF ORDER BARRING
COMM 101515 SCY EXTRAJUDICIAL STATEMENTS. ON SEPTEMBER 29, 2015, THIS COURT
COMM 101515 SCY RECEIVED THE DEFT'S MOTION FOR RECONSIDERATION OF THE DENIAL
COMM 101515 SCY OF MOTION FOR REMOVAL & REQUEST FOR HEARING. THE DEFT'S
COMM 101515 SCY MOTION NOTED HIS CONCERN FOR THE ACCUMULATION OF PRETRIAL
COMM 101515 SCY PUBLIC RECORD, & THE EFFECT OF SUCH ON THE VIOLENT PROCESS
COMM 101515 SCY & HIS RIGHT TO A FAIR TRIAL. ACCORDINGLY, IT IS HEREBY
COMM 101515 SCY ORDERED THAT: 1.) THIS ORDER IS BINDING ON THE DEFT, ALL
COMM 101515 SCY ATTORNEYS FOR THE DEFT & THE STATE, & ON ALL EMPLOYEES,
COMM 101515 SCY REPRESENTATIVES, OR AGENTS OF SUCH ATTORNEYS. IT SHALL
COMM 101515 SCY REMAIN IN FORCE UNTIL THE CONCLUSION OF THIS CASE OR UNTIL
COMM 101515 SCY FURTHER ORDER OF THIS COURT. 2.) NO PERSON COVERED BY THIS
COMM 101515 SCY ORDER SHALL MAKE OR ISSUE ANY EXTRAJUDICIAL STATEMENT,
COMM 101515 SCY WRITTEN OR ORAL, CONCERNING THIS CASE FOR DISSEMINATION BY
COMM 101515 SCY MEANS OF PUBLIC COMMUNICATION. 3.) COUNSEL ARE REMINDED OF

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02/08/16 CRIMINAL COURT OF BALTIMORE CASE INQUIRY 09:23
CASE 115141035 ST A RICE, BRIAN LT A32449 COD Y DCM C 090215
EVENT DATE OPER PART TIME ROOM REAS / EVENT COMMENT
COMM 101515 SCY THEIR ETHICAL DUTIES & OBLIGATIONS AS SET FORTH IN THE
COMM 101515 SCY MD RULES OF PROFESSIONAL CONDUCT, RULE 3.6, TRIAL PUBLICITY.
COMM 101515 SCY 4.) NO PERSON COVERED BY THIS ORDER SHALL AVOID OR
COMM 101515 SCY CIRCUMVENT ITS EFFECT BY ACTIONS THAT INDIRECTLY, BUT
COMM 101515 SCY DELIBERATELY, BRING ABOUT A VIOLATION OF THIS ORDER. 5.)
COMM 101515 SCY IF ANY PERSON BELIEVES THAT EVENTS HAVE OCCURRED THAT SHOULD
COMM 101515 SCY RESULT IN A MODIFICATION OF THIS ORDER, SUCH PERSON MAY SEEK
COMM 101515 SCY RELIEF FROM THE COURT. 6.) THE PROHIBITION ON MAKING EXTRA
COMM 101515 SCY JUDICIAL STATEMENTS APPLIES TO THE REPOSTING OR REPUBLICA-
COMM 101515 SCY TION OF ANY STATEMENTS MADE PRIOR TO THE ENTRY OF THIS ORDER
COMM 101515 SCY THAT WOULD NOW CONSTITUTE A VIOLATION OF THIS ORDER. & 7.)
COMM 101515 SCY NOTHING IN THIS ORDER SHALL BE CONSTRUED TO LIMIT ANY RIGHTS
COMM 101515 SCY OF THE MEDIA OR THE PUBLIC PURSUANT TO THE FIRST AMENDMENT
COMM 101515 SCY OR TO LIMIT PUBLIC ACCESS TO COURT PROCEEDINGS AS ALLOWED
COMM 101515 SCY BY STATUTE, RULE OR COURT ORDER. WILLIAMS, J (CC: MICHAEL
COMM 101515 SCY BELSKY, ATTORNEY FOR BRIAN RICE, JANICE BLEDSOE, DEPUTY
COMM 101515 SCY STATE'S ATTORNEY, OFFICE OF THE STATE'S ATTORNEY FOR BALTO.
COMM 101515 SCY CITY) (SEE ORDER FOR GOOD CAUSE SHOWN);
COMM 102015 SBT MOTION TO DISMISS FOR FAILURE TO CHARGE A CRIME FILED

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PAGE 028

9:23:49 Monday, February 08, 2016

02/08/16 CRIMINAL COURT OF BALTIMORE CASE INQUIRY 09:23
CASE 115141035 ST A RICE, BRIAN LT A32449 CGD Y DCM C 090215
EVENT DATE OPER PART TIME ROOM REAS / EVENT COMMENT
COMM 102115 SCB STATE'S SUPPLEMENTAL DISCLOSURE FLD
COMM 110415 CPR STATE'S RESPONSE TO DEFENDANT'S MOTION TO DISMISS FOR
COMM 110415 CPR FAILURE TO CHARGE A CRIME
COMM 010416 19J STATE'S SUPPLEMENTAL DISCLOSURE OF EXPERT WITNESS
COMM 010516 SCY MOTION TO INTERVENE TO SEEK ACCESS TO COURT RECORDS AND
COMM 010516 SCY PROCEEDINGS AND REQUEST FOR HEARING FLD
COMM 011416 SCY DATE STAMPED & ORDERED 1/13/16, UPON CONSULTATION WITH THE
COMM 011416 SCY PARTIES TO THE ABOVE-CAPTIONED CASE THROUGH COUNSEL, IT IS
COMM 011416 SCY ORDERED THAT A HEARING IS SCHEDULED FOR JANUARY 20, 2016
COMM 011416 SCY AT 2:00 P.M. WILLIAMS, J (CC. MICHAEL BELSKY, ATTY FOR
COMM 011416 SCY BRIAN RICE, JANICE BLEDSOE, DEPUTY STATE'S ATTY, OFFICE OF
COMM 011416 SCY THE STATE'S ATTY FOR BALTO. CITY)
COMM 011416 SBT STATE'S MOTION TO COMPEL A WITNESS TO TESTIFY PURSUANT TO
COMM 011416 SBT SECTION 9-123 OF THE COURTS & JUDICIAL PROCEEDINGS ARTICLE
COMM 011416 SBT FILED BY MARILYN MOSB
COMM 011516 SCY DEFT LT. BRIAN RICE'S OPPOSITION TO THE STATE'S MOTION
COMM 011516 SCY TO COMPEL A WITNESS TO TESTIFY PURSUANT TO SECTION 9-123
COMM 011516 SCY OF THE COURTS AND JUDICIAL PROCEEDINGS ARTICLE FLD
COMM 011516 CPR SECURITY/MEDIA PROTOCOL ORDER

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9:23:49 Monday, February 08, 2016

02/08/16 CRIMINAL COURT OF BALTIMORE CASE INQUIRY 09:23
CASE 115141035 ST A RICE, BRIAN LT A32449 COD ? DCM C 090215
EVENT DATE OPER PART TIME ROOM REAS / EVENT COMMENT
COMM 011916 CNN DEFENDANT WILLIAM PORTER'S OPPOSITION TO THE STATE'S
COMM 011916 CNN MOTION TO COMPEL A WITNESS TO TESTIFY PURSUANT TO SECTION
COMM 011916 CNN 9-123 OF THE COURTS AND JUDICIAL PROCEEDINGS ARTICLE
COMM 012016 CNN STATE'S RESPONSE TO DEFENDANT BRIAN RICE'S OPPOSITION
COMM 012016 CNN TO THE STATE'S MOTION TO COMPEL A WITNESS TO TESTIFY
COMM 012016 CNN PURSUANT TO SECTION 9-123 OF THE COURTS AND JUDICIAL
COMM 012016 CNN PROCEEDINGS ARTICLE
HCAL 012016 1 SCB P31;0930;528 ;HEAR; ;CONT; ;WILLIAMS, BARRY;8C9
COMM 012016 SCB CSET HEAR; P31; 01/20/16; SCB
COMM 012016 SCB STATE'S MOTION TO COMPEL PORTER'S TESTIMONY DURING TRIAL
COMM 012016 SCB IS HEREBY HEARD AND DENIED
COMM 012016 SCB DEF'S MOTION FOR SPEEDY TRIAL RIGHT IS DENIED; CONTINUE ON
COMM 012016 SCB ORIGINAL SCHEDULE
COMM 012816 CPR STATE'S SUPPLEMENTAL DISCLOSURE
COMM 020416 CSU STATE'S NOTICE OF APPEAL FLD. ON DENIAL OF MOTION TO COMPEL
COMM 020416 CSU FLD. PER MICHAEL SCHATZOW, ASA CHECK #1475 IN THE AMOUNT OF
COMM 020416 CSU \$61.00. DUE TO TRANSMIT ON 04-04-16.
COMM 020416 CSU *****ASSIGNED TO LMH*****
COMM 020516 SCB STATE'S MOTION TO STAY PROCEEDINGS PENDING APPEAL FLD

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9:23:50 Monday, February 08, 2016

02/08/16 CRIMINAL COURT OF BALTIMORE
CASE 115141035 ST A RICE, BRIAN LT
CON FULL NAME/PHONE NUMBER
AKA RICE, BRIAN SCOTT

CASE INQUIRY 09:23
A32449 COD Y DCM C 090215
STREET/CITY STATE ZIPCODE V/W

COD GOODSON, CAESAR P OFC	A32384	052215	242 W 29TH ST BALTIMORE MD 21211
COD NERC, EDWARD MICHAEL OFC	A32383	052215	242 W 29TH ST BALTIMORE MD 21211
COD PORTER, WILLIAM G OFFICER	A32386	052215	242 W 29TH STREET BALTIMORE MD 21211
COD WHITE, ALICIA SERGEANT	A32385	052215	242 W 29TH STREET BALTIMORE MD 21211
ADF BALL, CHAZ R 410-685-2020	35445	061915	300 E LOMBARD ST #1100 052715 BALTIMORE MD 21202
ADF BELSKI, MICHAEL 410-685-2022	52933	060115	300 EAST LOMBARD ST STE 1100 052715 BALTIMORE MD 21202
ASA MCSBY, MARILYN J	589290	091015	120 E BALTIMORE ST 091015 BALTIMORE MD 21202
ASA FILLION, MATTHEW	653491	060915	120 E BALTIMORE STREET 060915 BALTIMORE MD 21202
ASA BLEDSOE, JANICE L 443-984-2966	68776	052215	120 E BALTIMORE ST 10TH FL 072415 BALTIMORE MD 21202

IDENT ADD/FILE 052715

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9:23:50 Monday, February 08, 2016

02/08/16 CRIMINAL COURT OF BALTIMORE CASE INQUIRY 09:23
CASE 115141035 ST A RICE, BRIAN LT A32449 COD Y DCM C 090215
CON FULL NAME/PHONE NUMBER IDENT ADD/FILE STREET/CITY STATE ZIPCODE V/W
ASA SCHATZOW, MICHAEL 717876 061815 120 E BALTIMORE ST 10TH FL
061715 BALTIMORE MD 21202
PO TAYLOR, DAWNYELL S G932 052215 DET DIV HOMICIDE SECTION

BAIL TYPE S UPDATED ON 05/22/15 BY S8T 001
AMOUNT 350000 TOTAL 0 PROPERTY VAL 0 MORTGAGE 0
DATE POSTED 050115 BAIL NO 2015-GG-000201 LOC DC GR RENT
DATE FORFEIT JUDGE IDENT
FORFEIT COMMENT
DATE EXTENDED DAYS EXTENDED 000 JUDGE IDENT
DATE JUDGEMENT
DATE CLOSED REASON JUDGE IDENT
BONDSMAN1 RAUB, GARY E IDENT TELEPHONE
ADDRESS 214 EAST LEXINGTON ST CITY BALTIMORE ST MD ZIP 21202
BONDSMAN2
ADDRESS CITY ST ZIP
COMP/PROPERTY *LEXINGTON NATIONAL INS CO IDENT 12

END OF DATA

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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 - Testimony of William Porter)

Baltimore, Maryland

Wednesday, December 9, 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

<u>STATE'S WITNESSES:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>VOIR DIRE</u>
William Porter	4	91	154	175	--

<u>DEFENDANT'S EXHIBITS:</u>	<u>IDENTIFICATION</u>	<u>EVIDENCE</u>
9 (Photograph of Bruce and Presbury Street)	--	23
10 (CCT Image of Mount Street)	37	38
11 (Photograph of Western District)	77	77

<u>STATE'S EXHIBITS:</u>	<u>IDENTIFICATION</u>	<u>EVIDENCE</u>
34-A (Transcript of William Porter's Police Interview on April 17 th , 2015)	104	--
77 (Disc of CCTV footage from North and Pennsylvania)	144	144

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If anyone can't hear, put a hand up.

DIRECT EXAMINATION

BY MR. PROCTOR:

Q. Officer Porter, did you know Freddie Gray?

A. Yes, I did know Freddie Gray.

I saw Freddie Gray on a daily routine. Every day, I saw Freddie Gray out. I worked foot -- on our foot patrol in the Gilmor Homes up at North and Carey and Pennsy and North. He was a regular fixture up there.

And if he wasn't dirty, he'd come over and talk to me.

Q. What do you mean?

A. Dirty means, you know, that you have drugs, you have, like, a pack of drugs on you.

If he wasn't, he'd come over and talk to me. And I'd talk with Brandon Ross and to Davonte Roary. I talked to all the guys up there.

Q. Did you have a problem with him?

A. Not at all, no.

Q. So then when he said he needed a medic, why didn't you call for one?

A. Well, I didn't call for a medic because after talking to Freddie Gray, Mr. Gray, he was unable to give me any reason for -- for any kind of medical emergency. Just talking with him, I didn't see anything externally,

1 any cuts or wounds or anything.

2 And the medic usually takes a while to come --
3 come to a scene. Where we were Mr. -- the transport
4 would have transported Mr. Gray to the hospital in 10
5 minutes. It usually takes a little bit longer for them
6 to get to us, and for them to assess the scene, and take
7 him to a hospital.

8 Q. And why didn't you seatbelt him at Druid Hill
9 and Dolphin?

10 A. Just prior training and experience, as everyone
11 has said, that wagon back there is pretty tight. You
12 know, it becomes a -- when I'm walking in, my gun side --
13 I'm right handed, so my gun side is on the right. So
14 going into the wagon, my gun is always presented to the
15 prisoners who are sitting along the wall. So it always
16 presents a problem getting into the wagon.

17 It's just -- throughout all of my training,
18 I've seatbelted people inside my vehicle, but I -- my
19 personal cruiser, but never the wagon.

20 Q. At Druid Hill and Dolphin, did Mr. Gray tell
21 you he couldn't breathe?

22 A. Absolutely not.

23 Q. So why does Detective Teel's report say
24 differently?

25 A. Detective Teel's report. She called me on my

1 way down to Virginia. I was on my way -- I answered the
2 phone just because I knew it was a Baltimore City number.
3 She asked me, you know, could I explain to her what
4 happened.

5 And assuming that she had known -- that she had
6 investigated the case, that she had known that I had been
7 all of the stops from one to -- well, with the exception
8 of one, but one to six I had been at all the stops from
9 the beginning. So I started from the beginning, which
10 was Presbury and Mount, in which Mr. Gray had been hurt,
11 saying he couldn't breathe, and that he needed an asthma
12 inhaler.

13 Q. Okay. Now let's start at the beginning.

14 Where did you grow up, sir?

15 A. I grew up in Baltimore City, West Baltimore
16 more specifically. Within the -- in the Western
17 District, various areas. Carey and Edmondson Avenue is
18 where I lived. I lived on Braddish, 1800 block of
19 Braddish. The 1700 block of Ashburton. I lived on --
20 then on Riggs. So a lot of areas in the Western.

21 Q. And other than being a police officer, have you
22 had any other jobs?

23 A. Yes, I have.

24 Q. And what are those?

25 A. Other than being a police officer, I worked at

1 Towson Commons Movie Theater when it was still there. I
2 also worked at a computer company with one of my mentors.

3 Q. What high school did you graduate from?

4 A. I graduated from National Academy Foundation.

5 Q. And what did you do after that?

6 A. After that I -- I went to Villa Julie
7 University -- started Villa Julie College, which is now
8 known as Stevenson University. I attended there for two
9 to three years.

10 Q. And when did you start coming into regular
11 contact with police officers?

12 A. Very young. Being young, my mom didn't have a
13 -- or my family didn't have much money. So she couldn't
14 pay for summer camp; she needed to work during the day.
15 So I joined the Police Athletic League. At the Police
16 Athletic League, I came into regular contact with --
17 contacts -- I'm sorry -- with officers every day.

18 Q. Okay. And how would you describe that contact?

19 A. It was always positive. You know, it was like
20 a camp setting, so I -- you know, we came in. They gave
21 us a little breakfast. We'd do activities throughout the
22 day. They'd give us lunch.

23 If you had gone to the PAL Center during school
24 time, they'd -- they'd help you with school -- I mean
25 with your homework.

1 Every Friday, they would take us out to various
2 places in Baltimore City, like the Baltimore Aquarium,
3 the zoo, things like that.

4 Q. Did you ever think about joining the military?

5 A. I did think about joining the military,
6 specifically the Air Force. My dad and my grandfather
7 were both in the Air Force. Unfortunately, I'm color
8 blind, so I was unable to do the Air Force.

9 Q. What does your mom do for a living?

10 A. My mom is a nurse.

11 Q. So when did you decide to join the police
12 force?

13 A. I decided to join the police force just from
14 the experiences I had with the Police Athletic League.
15 And about 2010 is when I decided. And even then, we were
16 -- the society was having a negative image of police.
17 There were certain police cases that were coming up, and
18 people were having just a negative interpretation of
19 police.

20 And so I decided that I would become a police
21 officer, and give someone -- give -- give the people a
22 different view to police.

23 Q. And what kind of a cop would you describe
24 yourself as?

25 A. I was always fair. I -- I had little things

1 that would annoy me, such as, like, littering. Littering
2 would annoy me because you should be proud of where you
3 come from, so you shouldn't litter.

4 I mean, like, Gilmore Homes in the Western
5 District is filthy. It's filled with, like, trash all
6 over the place. There's some people that walk out just,
7 you know, whatever they eat and whatever they're
8 drinking, they'll just drop on the ground. So, you know,
9 I would get on them, and say, you know, you should be
10 proud of where you come from.

11 I always tell the guys up at Pennsy and North
12 that -- you know, Pennsy and North was like a pivotal
13 place where black people, in like the 1950s, Cab Calloway
14 would go there, and Lena Horn would go there. And -- and
15 it's become the heroin capital of the East Coast up at
16 Pennsy and North.

17 Q. Did you write tickets for minor infractions?

18 A. I wrote tickets for, like I said, littering.

19 And sometimes I would have write tickets for
20 loitering. It's just a problem, loitering. A lot of --
21 you know, we have 300 plus murders here in the City. A
22 lot of those guys are just sitting outside loitering,
23 whether it be a corner store or a liquor store.

24 Q. So what do you remember about your training at
25 the academy, sir?

1 A. Training at the academy, my academy was
2 extended. It was for 11 months. Typically, it's six
3 months -- during my training at the academy,
4 unfortunately I had a -- a trainee that was shot by an
5 instructor. But other than that, I learned.

6 Q. When the trainee was shot, did the people
7 teaching you change?

8 A. Oh yeah. They -- they basically moved
9 everybody out, and just did a reform of the -- of the
10 police -- of the training academy.

11 Q. What kind of things did you learn at the
12 academy?

13 A. At the academy, we learned law, ACT, which is
14 arrest control tactics; defensive tactics; you know, just
15 the basics on how to become a police officer.

16 Q. What kind of medical training did you receive?

17 A. I'm sorry. Just what, I think her name is,
18 Officer Carson-Johnson. Just that EMAT (phonetic) class,
19 just a three-day period, eight hours. That's basically
20 was my medical class, what we sat through there.

21 Q. What about seatbelting?

22 A. We were always told to seatbelt, but it -- I
23 had never been given any demonstration or anything about
24 seatbelting.

25 Q. Okay. So did you receive a copy of the General

1 Orders at the police academy?

2 A. I wasn't -- I have never ever had a physical
3 copy of the entire General Order. I know that I signed
4 for a piece of paper. But coming from the civilian side,
5 when -- when someone says we're going to hand you
6 something called the General Orders, I had no idea what
7 that was. So, yes, I did sign for it.

8 But during the academy, I was given a flash
9 drive, and I was -- I'm sorry -- the General Orders were
10 put on that flash drive.

11 Q. After the police academy, what's the next thing
12 that happens?

13 A. After the police academy, you do field
14 training. It's supposed to be 10 weeks. Unfortunately,
15 our class had done six weeks of field training. You just
16 go under a field training officer, who's trained to train
17 officers.

18 Q. And during your field training, was anyone
19 arrested?

20 A. Yes. Yes. Lots of arrests.

21 Q. And with your -- what do you call the person
22 responsible for supervising you?

23 A. He's called an FTO or Field Training Officer.

24 Q. Okay. So people were arrested during your six
25 weeks of field training; is that correct?

1 A. Yes, sir.

2 Q. Were they put in a wagon?

3 A. They were put in a wagon, yes.

4 Q. Were they seat belted?

5 A. They were not seat belted.

6 Q. How many arrests have you been present at?

7 A. I have an approximate number, probably 110
8 arrests for two years, but I've probably been a part of
9 200 arrests.

10 Q. And of those 200 arrests, how many left in a
11 wagon?

12 A. Probably around 150.

13 Q. And of those 150, how many were seat belted?

14 A. None.

15 Q. What is your understanding of, when a detainee
16 gets in the wagon, whose responsibility are they?

17 A. I think any officer would tell you it's the
18 responsibility of the -- the wagon driver to get the
19 prisoner from Point A to Point B, whatever that Point B
20 may be.

21 Q. So you've heard testimony about a PocketCop.
22 What is a Pocketcop?

23 A. A PocketCop is actually an application that,
24 you know, the police department and various police
25 departments have. It's placed on the departmental phone

1 so that civilians can't access that PocketCop app, and
2 it's distributed throughout the police department.

3 Q. Did you have one?

4 A. I did not have PocketCop

5 Q. So if you wanted to check your email, how would
6 you do it, sir?

7 A. I would need to go in early or stay late, and
8 get on one of those antiquated computers that we talked
9 about earlier.

10 Q. Your shifts, how many hours are they?

11 A. Well, it just recently turned into -- well,
12 when I was there, it had recently turned into 10-hour
13 shifts.

14 Q. And of those 10 hours, what are you expected to
15 be doing?

16 A. I need to be patrolling, actively engaging the
17 public.

18 Q. So of your 10 hours, how much time did you
19 physically spend at the District?

20 A. Just roll call, which I think it's 27 minutes
21 or something like that. And then we would go on the
22 street. We're expected not to come into District unless
23 you need to come into the District. And you're out to
24 stay out and patrol.

25 The Western District is a pretty -- pretty

1 violent place. You know, I had plenty to do.

2 Q. So tell me what the average day in the life of
3 a Western District patrol officer, like yourself.

4 A. I can tell you about my first day of field
5 training. First day of field training, we get a call to
6 Club International. At Club International, we were just
7 doing some crowd control. I'm with my field training
8 officer, the crowd was moving. And I hear about seven
9 gun shots rang out.

10 I then pull my service weapon, and I go into
11 the direction of the gun -- the gun fire. There, I meet
12 up with my field training officer. We located a number
13 one -- I'm sorry, a black male who had been shot. I'm
14 not -- an unknown amount of times.

15 I could actually see the -- a suspect running
16 down the street. And my field training officer advised
17 me not to run after him, but to give his -- his -- what
18 he looked like, his appearance, and call it out on the
19 radio.

20 Then we called for an ambulance to -- the
21 gentleman on the ground. He was taken away. And we then
22 did the area canvass. From there, we cleared out from
23 the scene, you know, did regular patrol.

24 But at the end of that night, about six o'clock
25 in the morning, I received a call of alarm of fire. From

1 there, I witnessed a fire at a church that had been
2 started by -- it was an electrical fire. But, you know,
3 that's a pretty exciting first day at work.

4 Q. And what's a typical day look like?

5 A. A typical day looks like that. It depends on
6 what shift you're on. Baker -- I'm sorry, baker shift,
7 which is their earliest shift, tends to be a little bit
8 slower.

9 But Charlie shift is you're going from
10 beginning. You can go to domestic calls, to a missing
11 person's report, to shoplifting, you know.

12 Q. Okay. Now, talk a little bit about a
13 PocketCop. If you wanted to check your email, sir, how
14 would you do that?

15 A. Like I said before, I'd -- I'd either go in
16 early or stay late and get on one of the antiquated
17 computers. And there were only two available. So there
18 would be other people on the computers, and I'd just have
19 to wait and check those emails.

20 Q. And if, for your shift, something was
21 important, how would you learn about it?

22 A. It's typically read out at roll call. There
23 would be -- during roll call, they tell us about the
24 areas that we need more police presence in. They tell us
25 about BOLOs, be on the look out for persons and wanted

1 persons. And it's typically read out during roll call.

2 And whenever they have policy changes, they're
3 read out during roll call.

4 Q. Did you ever receive anything critically
5 important by email?

6 A. We did, yes.

7 Q. What kind of things?

8 A. Like I said, the wanted persons, the BOLOs.
9 They sent out emails every day for -- for anything. I
10 mean, but your email could also contain something about,
11 you know, a retirement dinner from someone at the
12 Southern District.

13 Q. So in the month of April, do you know how many
14 emails you received?

15 A. It's approximately 1300 emails, over 1300.

16 Q. And did you ever send emails from Baltimore
17 City Police Department?

18 A. No. I didn't really send emails, no.

19 Q. So -- and April 9th. April 9th, the day that
20 Lieutenant Quick sent out that email; are you familiar
21 with that?

22 A. I am familiar with that, yes.

23 Q. How many emails did you get that day?

24 A. 44 emails that day.

25 Q. If you were present at an arrest, and drugs

1 were recovered, what would you do with them?

2 A. If I were the arresting officer, I would have
3 to, you know, place them in my pocket until I get to the
4 District where I could package them.

5 Q. You were provided with evidence bags?

6 A. They're located at the District. But, no, on
7 the street, I'm not provided with evidence bags, no.

8 Q. So in your day-to-day responsibilities, right,
9 how much of that, what you do every day, did you learn at
10 the academy?

11 A. Probably about 20 percent.

12 Q. So where did the other 80 percent come from?

13 A. On the street training and experiences.

14 Q. By whom?

15 A. Senior officers and field training officers.

16 Q. Now, what's use of force?

17 A. Use of force is -- is -- you know, if I were to
18 use my baton to hit -- strike someone, that's a use of
19 force. If I were to use a taser, that's a use of force.
20 If I were to deploy mace, that's a use of force.

21 Q. Did you ever have any findings that you used
22 force?

23 A. No. No findings that I used force.

24 Q. So --

25 A. I was -- I was always able to --

1 THE COURT: You need a question.

2 THE WITNESS: I'm sorry.

3 BY MR. PROCTOR:

4 Q. So how could you de-escalate the situation
5 without using force?

6 A. I was always able to use my rapport to kind of
7 talk the guy into cuffs, and not have to strike him or
8 anything.

9 Q. Other than at the range, did you ever fire your
10 gun?

11 A. No, sir.

12 Q. What's officer safety?

13 A. Officer safety is just, you know, as I said,
14 officer safety, you -- you want to make sure your
15 officers are safety and yourself is safety -- I mean,
16 your safety. That's basically it.

17 Q. And how important was that to you as a police
18 officer?

19 A. It was paramount. You know, as a police
20 officer -- I became a police officer to protect life and
21 property. And before property, comes life. So it was
22 pivotal. It was paramount.

23 Q. You weren't trained on officer safety at the
24 academy?

25 A. I can't say that there's specific training, but

1 it's just ingrained to protect life. Your life, the
2 public's life, and also your fellow officer's life.

3 Q. How did every roll call end?

4 A. They would typically say make sure you, you
5 know, back each other up.

6 Q. Okay. Now, let's talk about April 12th. April
7 12th's a Sunday; right?

8 A. It is, yes.

9 Q. So what's the first thing you do every Sunday
10 morning?

11 A. On Sunday, we have inspections. So that's a
12 gun inspections. You get inspected as far as your
13 uniform and your appearance. You also have vehicle
14 inspections every Sunday.

15 Q. Okay. So did you do a vehicle inspection that
16 morning?

17 A. I did do a vehicle inspection that morning.

18 Q. What, if anything, significant happened during
19 your vehicle inspection?

20 A. While -- while waiting to wash my car,
21 Lieutenant Rice comes over the air and says that he's in
22 a foot pursuit.

23 Q. Okay. Now, let's step back a little. You're
24 title as a police officer is what?

25 A. Police officer.

1 Q. Who's your direct supervisor?

2 A. My direct supervisor would be a sergeant.

3 Q. And on that morning who's the sergeant?

4 A. Sergeant Alicia White.

5 Q. And who's her supervisor?

6 A. Her supervisor is Lieutenant Rice.

7 Q. And so when you say Lieutenant Rice called a

8 foot pursuit, that's your boss' boss?

9 A. In a way, yes.

10 Q. And the -- explain, in case it's not clear, is

11 Baltimore broken into separate divisions?

12 A. Yes. We have nine different districts.

13 Q. Southeast, Northwest, that sort of thing?

14 A. Yes, sir.

15 Q. And you're in the Western; right?

16 A. I'm in the Western.

17 Q. On that Sunday morning who's in charge of

18 Western District?

19 A. Lieutenant Rice is the shift leader. He's the

20 shift commander. He's the commander for the District

21 that morning.

22 Q. Okay. So Lieutenant Rice calls out a foot

23 pursuit; right?

24 A. Yes, sir.

25 Q. Does he use any codes?

1 A. I can't say for certain. But, you know, the
2 typical code would be, you know, 10-16.

3 Q. Let's talk about that a little, sir.

4 Q. What's a 10-16?

5 A. A 10-16 is urgent backup.

6 Q. Are you free to disregard that?

7 A. There are very rare occasions. You know, if
8 I'm protecting life, then yes, I'm free to. But if I'm
9 just washing my car, then no I'm not free to disobey a
10 10-16.

11 Q. So he says 10-16, what do you do?

12 A. I immediately run out to my vehicle and respond
13 to the areas in which he called out.

14 Q. And where is that area?

15 A. He may have said Gilmor Homes or -- or, you
16 know, Mount Street and Westwood because I responded over
17 to Westwood and Bruce Street.

18 Q. Okay. And when you get there, what do you do?

19 A. When I get there, I exit my vehicle. I walk
20 southbound on Bruce Street where I can -- where I locate
21 Lieutenant Rice.

22 MR. PROCTOR: May I just retrieve one of these?

23 Thank you.

24 Judge, I'm not sure if the jury can see. Could
25 Officer Porter get off the stand, and just have him point

1 to the map?

2 BY MR. PROCTOR:

3 Q. Officer Porter.

4 Now, I'm the wrong person to be saying this
5 sir, but you have to keep your voice up.

6 Okay. Can you see on this map where you parked
7 your vehicle?

8 A. My vehicle was in Bruce and --

9 THE COURT: The witness needs to move to the
10 right of it so all the jurors can see.

11 THE WITNESS: I'm sorry.

12 My vehicle --

13 THE COURT: No, no. Let --

14 MR. PROCTOR: How's that?

15 THE WITNESS: My vehicle would have been here.

16 BY MR. PROCTOR:

17 Q. Okay. And what direction did you walk in?

18 A. Southbound. In this direction, down.

19 Q. And who did you see as you walked that way?

20 A. Lieutenant Rice was (indiscernible at
21 11:11:30 a.m.)

22 Q. And as best as you can point out on Defendant's
23 Exhibit 1, where was Lieutenant Rice?

24 A. Let's see.

25 THE COURT: You need to move out the way of the

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THE WITNESS: I'm sorry.

It may be covered up. Somewhere in here.

BY MR. PROCTOR:

Q. Okay. You can take the witness stand again.

So when you see Lieutenant Rice, do you have a discussion with him?

A. Yes.

Q. And based on that, what do you do?

A. From there, I began searching for a second suspect that he said was in this area, general area.

Q. Okay. I'm showing you what's about to be marked --

MR. MURTHA: 9. 9; is that correct?

MR. PROCTOR: As a defendant's exhibit.

THE CLERK: Number 9.

MR. PROCTOR: 9.

(Defendant's Exhibit Number 9
was received in evidence.)

THE COURT: Is it for ID or for entry?

MR. PROCTOR: It's for entry.

THE COURT: Any objection?

MR. SCHATZOW: No objection.

BY MR. PROCTOR:

Q. I'm showing you what's been marked as

1 Defendant's Exhibit 9, and ask you if you recognize that?

2 A. Yes. That looks familiar.

3 Q. What is it?

4 A. That's going to be Bruce Street, and that is
5 Presbury.

6 Q. Okay. And does that fairly and accurately
7 depict the area where you were looking for the second
8 suspect, part of it?

9 A. I -- yes. I would have been behind these
10 houses here.

11 Q. Okay. And you're pointing to the top right
12 corner of the screen, to the right of where the person on
13 the bicycle is?

14 A. Yes.

15 MR. PROCTOR: I'd ask that be published to the
16 jury.

17 THE COURT: Very well. It's entered and
18 published.

19 (Brief pause.)

20 THE COURT: Excuse me one moment.

21 (Brief pause.)

22 THE COURT: You can retrieve it.

23 MR. PROCTOR: Thank you, sir.

24 BY MR. PROCTOR:

25 Q. So, Officer Porter, as you're searching for the

1 second suspect, do you hear anything?

2 A. Yes, sir. While searching for the second
3 suspect, I can hear a gentleman, I didn't know at the
4 time, but I know now, to be Mr. Gray. He was just
5 yelling inaudible stuff. At some point in time, he said
6 I can't breathe, I need an asthma inhaler. He also said
7 something about his legs. I could hear -- I was just a
8 block over, and I could hear what he was yelling.

9 Q. So you can hear it, but can you see it?

10 A. I cannot see it, no. I'm behind houses.

11 Q. So approximately how long do you spend
12 searching for a second suspect?

13 A. I don't have a good -- it was -- it wasn't --
14 it was a short time. It wasn't very long.

15 Lieutenant Rice walks back over -- walks back
16 to me and, you know, tells me to 10-6, don't continue
17 that search any longer.

18 Q. Okay. So again --

19 THE COURT: Excuse me one second. I need
20 Defense 9. I need it over here with the exhibits
21 until --

22 MR. PROCTOR: Absolutely, sir.

23 THE CLERK: Thank you.

24 THE COURT: Thank you.

25 BY MR. PROCTOR:

1 Q. What's a 10-6, sir?

2 A. A 10-6 just means to stand by.

3 Q. It means -- okay.

4 So after Lieutenant Rice says 10-6, where do
5 you go?

6 A. From there I just do some -- some crowd control
7 over -- I'm on Mount Street and Presbury. Just standing
8 at that corner, there was some -- some citizens there
9 just expressing that they didn't like the way Mr. Gray
10 was arrested.

11 Q. At stop one, the -- with all -- you've been
12 present for testimony; right?

13 A. Yes.

14 Q. And you've heard people describe the six stops;
15 right?

16 A. Yes.

17 Q. And what we're talking about at the moment is
18 Stop 1; is that true?

19 A. Yes. That is the moment -- that's what we're
20 talking about at the moment, yes.

21 Q. Do you ever see the wagon at Stop 1?

22 A. The wagon just may be pulling away, but no I
23 don't see the wagon.

24 Q. Do you ever see it with the doors open?

25 A. No. No.

1 Q. Did you ever see anyone inside it?

2 A. No. I never saw anyone get inside it.

3 Q. Did you ever see anyone getting lifted up into
4 it?

5 A. No.

6 Q. So you're talking about crowd control in Gilmor
7 Homes?

8 A. Yes.

9 Q. In your experience, how many of the arrests
10 you've been present at happened at Gilmor Homes?

11 A. A large number happened in Gilmor Homes.
12 Gilmor Homes -- yes, a lot.

13 Q. So in your experience, when someone gets
14 arrested at Gilmor Homes, what happens?

15 A. When someone gets arrested in Gilmor Homes --
16 it's a housing project. Typically, people tend to come
17 out and start -- a crowd starts to gather, and they --
18 they just start to yell things at us.

19 Q. So why did you feel it necessary to do crowd
20 control?

21 A. Just because I -- I -- during my shifts, I
22 frequently walk foot in Gilmor Homes, and I'm a familiar
23 face, and I know people by first names, and I talk to
24 them a lot. So, you know, I can typically get people to
25 calm down in -- in the Gilmor Homes.

1 Q. Did you see the -- the video that was shown, I
2 think it was Mr. Moore recorded. Did you see that video?

3 A. I saw that video in court, yes.

4 Q. And there were people screaming and hollering?

5 A. There are, yes.

6 Q. Is that a frequent occurrence?

7 A. Absolutely, in Gilmor Homes, yes.

8 Q. So after the -- how long do you spend, roughly,
9 doing crowd control?

10 A. Not long at all. Lieutenant Rice instructed
11 everybody to clear out and get out of Gilmor Homes pretty
12 -- pretty quickly.

13 Q. So what did you do?

14 A. I then walked back to my vehicle and controlled
15 -- I mean, continued my regular patrol duties.

16 Q. Okay. Roughly, do you recall what direction
17 you drove in?

18 A. From Westwood, I probably went northbound on
19 Fulton and then went eastbound on North Avenue.

20 Q. And what's the next thing of any significance
21 that happens?

22 A. I -- I hear someone call for the wagon to go to
23 Mount and Baker so that it could place shackles on, I
24 know now to be Mr. Gray, and fill out the Central Booking
25 Bin Number thing.

1 Q. Is that commonly called the toe tag?

2 A. It is commonly called the toe tag, yes.

3 Q. Tell the jury what a toe tag is.

4 A. A toe tag is just, you know, we place --
5 there's identification numbers when you take people into
6 Central Booking. We call it the Bin Number. You just
7 write down the Bin Number from the bracelet that we place
8 on the prisoner.

9 And you just write on a piece of paper and the
10 wagon driver or the transport driver hands it over to the
11 people over at Central Booking. And that's how you --
12 that's the receipt for the prisoner.

13 Q. Okay. So you hear someone say they're going to
14 toe tag him.

15 A. Yes.

16 Q. Does anyone request for assistance?

17 A. After -- after they -- after the wagon -- I
18 guess after the wagon heads back there, there's another
19 call on the radio, just for one more unit I think they
20 said, and I respond. I had just been up the street. I
21 was going to Mount and Baker.

22 Q. Was there a code given?

23 A. I'm -- I'm not certain. I don't recall.

24 Q. So why'd you go?

25 A. Just that's what I do. That's my sector. I

1 work in Sector 4. And that's my responsibility.

2 Q. And, by the way, we talked about the hierarchy,
3 okay. And your shift is Baker shift?

4 A. At that time it would have been Baker shift,
5 yes.

6 Q. How many people are supposed to be working on a
7 Baker shift?

8 A. 17 officers.

9 Q. How many were there that day?

10 A. It may have been 10 to 11 officers there.

11 Q. How many sergeants are you supposed to have in
12 a shift?

13 A. Three sergeants, or it should be four sergeants
14 for every sector, but three to four sergeants.

15 Q. How many on a shift?

16 A. On a shift? Like I said, three to four
17 sergeants, depending on how many sectors there are in the
18 District.

19 Q. How many were there that day?

20 A. Just one.

21 Q. How many wagons are you supposed to have on a
22 shift?

23 A. There's supposed to be two wagons for my
24 District.

25 Q. And how many were working that day?

1 A. Just one.

2 Q. So now let's talk about Stop 2; okay? Because
3 I think everybody in here knows what Stop 2 is.

4 You said you headed over there. When you go
5 there, what's going on?

6 A. I stopped my car about 20 feet back. I could
7 hear the crowd. I could hear people yelling at the
8 officers at the wagon. They were saying, you know, don't
9 -- you beat him, why'd you beat him, why'd you tase him.
10 And there some expletive language.

11 I then walked up to the back of the wagon.
12 They were pulling -- at that time, I didn't know who it
13 was, you know, because it was officers standing in front
14 of whoever the suspect was.

15 And they were -- as they pull him into the
16 wagon, I turned around and I go to the crowd because
17 there's three officers and one suspect. So there's no
18 need for me to be over there. And I go to the crowd.

19 Q. So who pulled him into the wagon?

20 A. Well, I know now to be Lieutenant Rice.

21 Q. Did you know at the time?

22 A. Not at the time, I didn't know. I speculated
23 between either Lieutenant Rice or Officer Nero.

24 Q. Okay. And did you see Mr. Gray get lifted up
25 into the wagon?

1 A. I think he began to go before I turned around.

2 Q. I'm sorry. Can you repeat that?

3 A. I'm not certain. He may have been -- well, he
4 may have been just getting into the wagon. I think I
5 said something about his feet were kicking, and the other
6 two officers grabbed his feet, and placed him in the
7 wagon.

8 Q. So then within a few seconds, I think I heard
9 you say that you turned away from the wagon; right?

10 A. Yes. I turned around to the wagon to -- just
11 to do more crowd control. We want to make sure someone
12 doesn't come up to the back of the wagon and, you know,
13 do something, honestly.

14 Q. Why didn't you assist them in lifting Mr. Gray
15 into the wagon?

16 A. Why did I or why didn't I?

17 Q. Why did you not?

18 A. I did not because there were enough officers
19 there. There was three officers and one detainee.
20 There's only --

21 Q. Who was handcuffed?

22 A. Who was handcuffed. There was no need for me
23 to go over there.

24 Q. Okay. So I think I heard you say you did crowd
25 control?

1 A. Yeah. I began walking over to the crowd.

2 Q. What does that entail?

3 A. Just trying to get them to calm down. And --
4 and if I can, get them to leave the scene. Just --

5 Q. And is that the conversation you had with
6 Brandon Ross (phonetic)?

7 A. That's -- that's when Brandon Ross asked me to
8 come over to him.

9 Q. Now, Brandon Ross has testified; right?

10 A. Yes.

11 Q. Tell the jury what you know about Brandon Ross.

12 A. I've -- I've -- Brandon Ross and Freddie Gray
13 hung out a lot. I've seen -- like I said, Sector 4,
14 which is the area we're talking about generally, is the
15 sector I'm in. And I'm usually walking foot there. I'm
16 usually talking with Brandon Ross or Freddie Gray or
17 various people in Gilmor Homes.

18 So I've seen him a bunch. I've never actually
19 arrested him, but I've been there while he's been
20 arrested also.

21 Q. Okay. Have you ever arrested Freddie Gray?

22 A. I never arrested Freddie Gray, no.

23 Q. So you have this -- tell the jury about your
24 conversation, as you recall it, with Brandon Ross.

25 Q. Well, being the type -- being the officer that

1 I am, I built a rapport with Brandon Ross and the other
2 guys in the neighborhood. So Brandon asked me to come
3 over. And he was just explaining to me that he -- he's
4 upset with the officers tasing Mr. Gray and beating Mr.
5 Gray. And I'm just explaining to him I had never -- I
6 didn't see anybody tase him or beat him or anything.

7 And he asked for a supervisor. I -- I point
8 out my supervisor on the scene, and let him know that
9 Lieutenant Rice is the highest guy in the District, and
10 he would need to talk to Lieutenant Rice. He said that
11 wasn't good enough.

12 I then instructed him to call 911. He didn't
13 think that was a good enough fix. So he said, you know,
14 we got it on video. And I told him, you know, if you've
15 got it all on video then, you know, go to the media with
16 it and get it broadcasted.

17 Q. And he did; right?

18 A. I guess so.

19 Q. You mentioned the taser.

20 A. Yes.

21 Q. Did you have one?

22 A. I was not issued a taser. No, I didn't have a
23 taser.

24 Q. Did you see the wagon doors close?

25 A. No. I didn't see the wagon doors close. I was

1 talking to Brandon Ross.

2 Q. Do you know what position Mr. Gray was put in
3 inside the wagon?

4 A. I saw him being pushed -- put into the wagon.
5 But no, I didn't -- I don't know what position he ended
6 up in.

7 Q. And do you know if he was seat belted when he
8 put in the wagon?

9 A. I -- no. I'd be making assumptions about it if
10 I were to say that.

11 Q. And by the way, you've both put people in a
12 wagon yourself, and assisted other officers doing it;
13 right?

14 A. Typically, when you arrest people, they
15 don't -- they don't want to be arrested. And they tend
16 to fight back sometimes -- or just sort of actively
17 resist. Not fighting, not throwing strikes at the
18 officers, but actively resisting and refusing to get into
19 the wagon.

20 So yes, I've had instances where I've -- you
21 know, I was hit with a wagon door. Or they kick the
22 door, and the door hit me.

23 Q. So --

24 A. And I've seen that happen to officers, too.

25 Q. Have you seen other officers get injured

1 loading people into a wagon?

2 A. Not injured to the point where they needed to
3 get medical attention, but, you know -- you know, maybe a
4 jammed finger or, you know, little cuts, little bruises.

5 Q. So after talking to Brandon Ross, what did you
6 do?

7 A. Oh. After talking to Brandon Ross and -- he
8 then walks off. Then I walk back over to the wagon
9 because I can hear the -- I can hear kicking -- or what I
10 think to be kicking. I can hear there's bumps, and I can
11 see the wagon shaking side to side, not back and forth
12 but side to side.

13 Q. Put your hand up as if it's the wagon. Show me
14 how it was shaking.

15 A. It was going side to side.

16 Q. You're familiar with Freddie Gray; you've
17 arrested Freddie Gray. Ballpark, what was he like?

18 A. I haven't -- I haven't arrested him.

19 Q. I'm sorry. You're right.

20 Being in contact with him on a daily basis,
21 what does he weigh, roughly?

22 A. Probably 130, 150 pounds, something around
23 there.

24 Q. And the wagon is shaking; is that correct?

25 A. Yes. The wagon was shaking.

1 Q. And can -- is there any loud voices happening?

2 A. There's yelling. It's inaudible. He's not
3 saying any specific or distinct.

4 Q. Now, let me show you what's been marked --

5 MR. PROCTOR: Let me show Mr. Schatzow first.

6 (Brief pause.)

7 BY MR. PROCTOR:

8 Q. What's been marked as Defendant's Exhibit 10
9 and ask if you recognize that?

10 (Defendant's Exhibit Number 10
11 was marked for identification.)

12 THE WITNESS: Yes. It's CCT footage from --
13 that appears to be Mount Street.

14 Q. And what does it depict?

15 A. In the -- in the picture, I can see Brandon
16 Ross. I also see myself. And there's another officer
17 there. And it looks like there's somebody behind us.

18 MR. PROCTOR: Judge, I'd move Defendant's
19 Exhibit 10 into evidence.

20 MR. SCHATZOW: No objection, Your Honor.

21 THE COURT: So entered.

22 (Defendant's Exhibit Number 10
23 was received in evidence.)

24 MR. PROCTOR: May I just publish it again?

25 THE COURT: You may.

1 MR. PROCTOR: While the jury is looking at
2 that, if I can just reload?
3 THE COURT: Absolutely.
4 (Brief pause.)
5 THE COURT: Actually, Counsel, approach while
6 they're looking at that.
7 MR. PROCTOR: Yes, sir.
8 (Counsel approached the bench, and the
9 following ensued:)
10 THE COURT: (Inaudible at 11:30:00 a.m.)
11 MR. PROCTOR: I'm doing all right. I'd rather
12 keep going, but it's up to you. If you want to take a
13 break, I'll take one.
14 THE COURT: (Inaudible at 11:30:06 a.m.)
15 MS. BLEDSOE: A break?
16 MR. PROCTOR: Well, if it will make your life
17 easier, I won't stand in the way of that.
18 THE COURT: Literally, five minutes. As soon
19 as they finish, we'll break.
20 (Counsel returned to the trial table, and the
21 following ensued:)
22 (Brief pause.)
23 THE COURT: All right. Ladies and gentlemen,
24 we're going to take about -- not about, we're going to
25 take a five-minute break.

1 Please do not discuss this testimony, even
2 among yourselves.

3 Leave your notepads on the chair.

4 All rise for the jury.

5 (Brief pause.)

6 (Whereupon, the jury was excused from the
7 courtroom at 11:31 a.m.)

8 THE COURT: Thank you. Everyone may be seated.
9 Counsel, approach.

10 (Counsel approached the bench, and the
11 following ensued:)

12 THE COURT: I only need one. I don't need
13 both. I just need one. That's all I need.

14 It's usually a five-minute break (inaudible at
15 11:32:04 a.m.) And then we'll just go until lunch. And
16 lunch (Inaudible at 11:32:08 a.m.) break then.

17 I assume you have a bit more of the officer?

18 MR. PROCTOR: 25-30 minutes probably.

19 THE COURT: So we may be able to begin with
20 cross, but maybe not. We'll see.

21 (Counsel returned to the trial table, and the
22 following ensued:)

23 THE CLERK: All rise.

24 (Whereupon, a recess was taken at 11:32 a.m.,
25 and the matter resumed at 11:42 a.m.)

1 THE COURT: Thank you. Everyone may be seated.

2 You may remind the witness.

3 THE CLERK: You may be seated. Just reminding
4 you you're still under oath. State your name for the
5 record.

6 THE WITNESS: William Porter.

7 THE COURT: You may proceed.

8 MR. PROCTOR: Thank you.

9 BY MR. PROCTOR:

10 Q. Officer Porter, when we left off, we just
11 admitted Defendant's Exhibit 10 into evidence.

12 Is that a captured image of the discussion with
13 Brandon Ross that you've already testified about?

14 A. Yes, sir. It is.

15 Q. And what's Brandon Ross doing? Do you remember
16 that moment in time?

17 A. Vaguely.

18 Q. What's Brandon Ross doing?

19 A. He -- he was -- he was very upset. He was
20 yelling. He was very emotional.

21 Q. And where are your hands, sir?

22 A. Just down by my side, and in -- in -- we call
23 it the interview stance, just down by your side.

24 Q. Now, what dose the interview stance -- what
25 does that mean?

1 A. You know, just when you're -- I'm trying to
2 show Brandon Ross that I'm not being aggressive with him.
3 I'm just keeping my hands by my side, and just having a
4 conversation with him with hopes that he'll then calm
5 down and have a conversation with me.

6 Q. And he did; right?

7 A. Well, not really. He kind of just walked away.

8 Q. Okay. So you testified right before the break
9 about the wagon shaking; is that correct?

10 A. Yes. Yes.

11 Q. While the wagon was shaking, what were you
12 doing?

13 A. I was then talking to Officer Miller. Officer
14 Miller was filling out the toe tag. But he was having
15 difficulty because the wagon -- he was filling it out on
16 the side of the wagon. He was having difficulty because
17 the wagon was shaking back -- side to side.

18 Q. So I understand and the jury understands,
19 you're saying he was writing on the side of the wagon
20 like this?

21 A. That's correct.

22 Q. But because the wagon was shaking, his hand
23 wasn't steady?

24 A. That is correct.

25 Q. And during that conversation -- who is Officer

1 Miller?

2 A. Officer Miller is just a guy that I work with.
3 We were in the academy together. And, unfortunately,
4 he's also a part of the Freddie Gray case.

5 Q. Okay. So at that point, did you learn
6 anything?

7 A. At that point in time, I asked who -- who this
8 prisoner was because it was causing such a -- you know, a
9 ruckus in the Gilmore Homes and in the (indiscernible at
10 11:44:31 a.m.)

11 Q. And who was the prisoner?

12 A. The prisoner was Mr. Freddie Gray.

13 Q. And --

14 THE COURT: Counsel, approach.

15 (Counsel approached the bench, and the
16 following ensued:)

17 THE COURT: I just got a note from Juror Number
18 8 saying I'm having a difficult time consistently hearing
19 defense counsel.

20 MR. PROCTOR: I'm doing what I can, Judge.

21 THE COURT: I'm sure you are. Your voice does
22 come in and out.

23 MR. MURTHA: Should you stand closer?

24 MR. PROCTOR: I'll stand closer to the jury.

25 As long as Officer -- if Officer Porter can't

1 hear me, he won't be able to answer the question.

2 MR. SCHATZOW: Can you order him not to breathe
3 in my direction, Your Honor?

4 THE COURT: I understand that. That's fine.

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

7 BY MR. PROCTOR:

8 Q. Officer Porter, if you can't hear me, let me
9 know; okay?

10 A. I will.

11 MR. PROCTOR: And, Judge, if the jury can't
12 see, can you let me know?

13 THE COURT: Well, maybe -- it's a difficult
14 position. This is the way the courtroom is set up.

15 If you can't see something, just signal, raise
16 your hand, and I'll be looking for any of you.

17 Backup some anyway. That's forward. Backup
18 and stop.

19 MR. PROCTOR: I'll try over here.

20 THE COURT: That's fine.

21 BY MR. PROCTOR:

22 Q. Officer Porter, you said that you learned from
23 Officer Miller that it was Freddie Gray; right?

24 A. Yes. Yes.

25 Q. What did the name Freddie Gray mean to you?

1 A. Well, I've known Freddie Gray from the
2 neighborhood. I've seen him a bunch of times. But what
3 I said to Officer Miller was that he had done the same
4 thing or similar to the same thing about two weeks
5 earlier where he was arrested in Gilmor Homes, at Mount
6 and Baker again. But this time he was attempting to kick
7 out the windows of an SUV.

8 After being arrested, Sergeant Stevens asked
9 for backup because Gilmor Homes began to empty out again.
10 And I responded there.

11 Q. And what did you see Mr. Gray do?

12 A. I saw him attempt to kick out the windows. And
13 that's when we opened up the door -- or I didn't open the
14 door, but one of the officers opened the door, and you
15 know, tried to calm him down.

16 Q. Had you -- I think you already testified that
17 you, yourself, had never arrested Freddie Gray.

18 A. I have never arrested Freddie Gray, no.

19 Q. Had you seen him be taken in police custody on
20 prior occasions?

21 A. Yes.

22 Q. And typically, what would happen?

23 A. He would --

24 MR. SCHATZOW: Objection, Your Honor.

25 THE COURT: Sustained.

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BY MR. PROCTOR:

Q. On these prior occasions you've seen him taken into custody, what, if anything, did you see?

A. He would use --

MR. SCHATZOW: Objection, Your Honor.

THE COURT: Overruled. As to what he saw, he can testify.

THE WITNESS: He would usually act out and yell and feign some type of injury.

BY MR. PROCTOR:

Q. Okay. Let's take this one on one.

He would usually act out how?

A. Just yelling and -- and sometimes he -- he would, you know, actively resist not -- not attempt to hurt any officers, but actively, you know, pull away whenever you had him in custody.

Q. Okay. Yell?

A. Yes, he would yell.

Q. And let's go back to Stop 1 for just a second.

When you were searching in the back of this -- in the back of those yards; you remember that?

A. Yes.

Q. You now know from the video where the wagon is; right?

A. Yes.

1 Q. So from where you were searching to where the
2 wagon was, how far is that?

3 A. It's not far at all. I would have been
4 essentially in the backyard of the houses where the video
5 was filmed.

6 Q. Okay. So ballpark?

7 A. I don't know. I don't know.

8 Q. Okay. But you could hear him yelling from
9 however far away it was?

10 A. Yes. I could hear him.

11 MR. SCHATZOW: Objection, Your Honor. This is

12 --

13 THE COURT: Sustained. Sustained.

14 Again, do not lead.

15 BY MR. PROCTOR:

16 Q. Could you hear -- you could hear someone
17 yelling?

18 A. I could hear someone yelling, yes.

19 Q. Now, back to Stop 2, over how long that you saw
20 it was the wagon shaking?

21 A. Probably around five to eight minutes.

22 Q. Okay. And then what happens?

23 A. Well, then the wagon pulls away, and I continue
24 to have conversation with Officer Miller and Officer
25 Nero.

1 Q. Okay. And ballpark, how long was that
2 conversation?

3 A. It's not long at all. Probably another four
4 minutes or so. And then I get back in my car and
5 continue patrol duties.

6 Q. Okay. So where do you go?

7 A. I -- I'm just driving around Sector 4.

8 Q. Okay. And what's the next thing that happens,
9 if anything?

10 A. The next thing that happens is Officer Goodson
11 asks for a 10-11, for someone to meet him over on Druid
12 Hill and Dolphin.

13 Q. What's a 10-11?

14 A. A 10-11 just to meet -- just means to meet
15 someone.

16 Q. Okay. And who responded?

17 A. I answered up. And I didn't know where Dolphin
18 was. But from working in the Western District, I knew
19 where Druid Hill was. So I just took Druid Hill down to
20 Dolphin.

21 Q. Okay. Stop -- we're calling it Stop 5; right?

22 A. Yes.

23 Q. Which is where?

24 MR. MURTHA: Four.

25 MR. PROCTOR: Four?

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BY MR. PROCTOR:

Q. I'm sorry, Stop 4. We're calling it Stop 4,
which is where?

A. Stop 4 is --

Q. Druid Hill and Dolphin?

A. I thought that was -- the other stop at --
Goodson stopped at by himself.

Q. That's three.

A. That's three?

MR. PROCTOR: Pretty sure. Let me step over
here.

It's over here. Thank you.

If I may show it to the witness?

THE COURT: You may.

BY MR. PROCTOR:

Q. So let me just hold that right here.

Keep your voice in the microphone.

THE COURT: Well, why don't you do the same?
There's a microphone there.

MR. PROCTOR: Yes.

BY MR. PROCTOR:

Q. So you just testified you left Stop 2; is that
correct?

A. That was correct.

Q. And you go back to your patrol duties?

1 A. Yes, sir.

2 Q. And you hear a call over the radio for a wagon
3 check?

4 A. Yes, sir.

5 Q. And where was that?

6 A. That was a Druid Hill and Dolphin.

7 Q. Do you see that on this map?

8 A. There.

9 Q. And that's Stop 4; isn't it, sir?

10 A. That is labeled as Stop 4, yes.

11 Q. Okay. Is Stop 4 in the Western District?

12 A. It is not in the Western District, no.

13 Q. So in your entire police career what District
14 was that spent in?

15 A. From the academy, I went over to the Western
16 District where I walked foot. I'm sorry. Field
17 training. From field training, I went to the Western
18 District where I walked foot. And from foot, I became a
19 patrol officer in the Western District, all in the
20 Western District.

21 Q. So when you hear Druid Hill and Dolphin, do you
22 know exactly where that is?

23 A. No. But I know where Druid Hill is.

24 Q. So then what do you do?

25 A. At that point in time I was on North Avenue. I

1 just take North Avenue over to Druid Hill Avenue. And
2 from Druid Hill Avenue, there's a one-way street, so I go
3 southbound on Druid Hill until I reach Dolphin.

4 Q. Okay. And when you get to Dolphin, what, if
5 anything, do you see?

6 A. When I get to Dolphin, I stop just before the
7 intersection. And across the intersection, I could see
8 the transport wagon pulled over into a parking spot.

9 Q. Okay. So said you stopped. What did you do
10 next?

11 A. From there, I exited my vehicle. Officer
12 Goodson also exited his vehicle and began to walk to the
13 back. By the time I crossed the intersection, he was --
14 just said to me, you know, help me check this prisoner --
15 check the prisoner.

16 Q. Okay. And what happens next?

17 A. The doors are opened, and I see Mr. Freddie
18 Gray laying chest down or stomach down. His head is to
19 the -- towards the cabin of the vehicle, and his feet are
20 to the rear of the door. I then say to him, what's up,
21 and he says, help.

22 From saying help, I say how can I help you;
23 what's wrong with you. And then he says, can you help me
24 up. I think I help him up. Or -- or we're just
25 kneeling, and I'm talking to him.

1 Q. Hang on one second.

2 So I just want to make sure I understand. He's
3 lying on his chest?

4 A. On his chest, yes.

5 Q. And what's his head facing?

6 A. I can't remember what side his head may have
7 been facing to, but --

8 Q. It was on one side?

9 A. It was on one side or the other, yes.

10 Q. So his chin was not touching the floor of the
11 wagon?

12 A. No.

13 Q. One cheek or the other was?

14 A. One cheek or the other was.

15 Q. Okay. And when you have this conversation with
16 Mr. Gray, where is Officer Goodson?

17 A. He was just to the rear of the wagon, just
18 standing outside the doors.

19 Q. Could you estimate how far?

20 A. I don't have a specific length. But, you know,
21 if I were to reach back, I couldn't touch Officer
22 Goodson.

23 Q. You could not?

24 A. Could not touch Officer Goodson, no.

25 Q. So he was a few feet away?

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A. Yes.

MR. PROCTOR: Judge, can Officer Porter come off the stand? And can I use Mr. Murtha?

THE COURT: If you want to sit this way?

BY MR. PROCTOR:

Q. Officer Porter, could you come off the stand?

MR. PROCTOR: Mr. Murtha?

And one more thing, Judge.

BY MR. PROCTOR:

Q. Officer Porter, could you put Mr. Murtha in the position Mr. Gray was when you opened the wagon?

MR. PROCTOR: And, Judge, is it -- could you tell the second row of the jury that they can stand up?

THE COURT: Very well.

THE WITNESS: All right. This would have the position --

BY MR. PROCTOR:

Q. Keep your voice up, sorry. I know --

A. This would have been the position that Mr. Gray was sitting in -- or laying in.

THE COURT: When I said everybody, I meant everyone in the jury. Everyone else, sit down, please.

BY MR. PROCTOR:

Q. Okay. And pretend this chair's the bench. Put the bench in relation to where Mr. Gray was.

1 A. Obviously --

2 Q. You can hold this.

3 A. It was expanded -- it was expanded, but it was

4 --

5 Q. How far?

6 A. It would have been, you know, just that far.

7 Q. Okay. And so -- so the record is clear, the

8 rear of the wagon is where, sir?

9 A. Where you're standing.

10 Q. Okay. So where were you standing?

11 A. I would have been standing where you're --

12 where you're standing.

13 Q. Okay. Let's trade places then.

14 So the wagon, you had gotten into it?

15 A. Yes.

16 Q. So then just show the jury, and if you could

17 because we're trying to make record here, kind of talk us

18 through it as you do it, what you did?

19 A. All right. Well, at this point in time, he

20 would -- he asked for help. So the wagon is kind of

21 tight. So --

22 Q. Is Mr. Murtha's head where Mr. Gray's head was,

23 or should he turn?

24 A. I don't remember which side his head was turned

25 to, but he wasn't face down.

1 Q. Okay.

2 A. All right. And I would have gone on the side,
3 and reached under his arms and tried to brace myself.
4 You know, try to get him this way. That's the way we
5 were. I was just standing behind him this way, and I was
6 talking to him. He was looking at me this way.

7 Q. Okay. And then did there come a time you
8 helped him on the bench?

9 A. Yeah, eventually. Then we, you know, we kind
10 of slid back and he assisted me in sliding back, and he
11 would have been on bench side.

12 Q. Okay. Thank you. If you can you go back to
13 the stand. I just wanted to walk through that.

14 MR. PROCTOR: Judge, would you like to mark Mr.
15 Murtha and take him into evidence, there'd be no
16 objection.

17 THE COURT: That'd be fine.

18 (Laughter.)

19 BY MR. PROCTOR:

20 Q. So let's walk through it one at a time.

21 THE COURT: Hold on a sec. Hold on, hold on.
22 Okay.

23 BY MR. PROCTOR:

24 Q. So you put your arm under his left armpit?

25 A. Yes. My -- my right arm to -- under his left

1 armpit.

2 Q. And I should have asked this a moment ago. Did
3 you have a gun on that day?

4 A. Yes. Absolutely.

5 Q. And if you could stand up and just show the
6 jury where on your body your gun is placed.

7 A. It was just on the side here.

8 Q. Okay. So on your right hip?

9 A. On my right hip, yes.

10 Q. Okay. Thank you. Have a seat, please.

11 So Mr. Gray's hands, were they cuffed?

12 A. They were cuffed. They were in a -- flex
13 cuffs, but yes, they were cuffed.

14 Q. In the rear?

15 A. In the rear.

16 Q. So as you're helping Mr. Gray up, how close
17 were his hands to your gun?

18 A. They're very close.

19 Q. So let me ask you this. I just said as you're
20 helping him up. Did you lift him and pick him up and put
21 him on the bench? How did that work?

22 A. That would be -- that would be physically
23 impossible to pick up a 150 pound man. I weight 220
24 pounds. To physically pick him up and put him someplace.
25 There's no way I would able to do that.

1 Q. Okay. So --

2 A. He obviously -- he assisted me in helping
3 himself kneel. And he obviously assisted me in sitting
4 on the bench.

5 Q. You've heard testimony at this trial of what --
6 whether he was stuck; do you remember that?

7 A. I do.

8 Q. Based on your observations, was he?

9 A. I -- I -- I'd be assuming if I were to say
10 that. I have no idea if he were stuck. He just asked me
11 to help him up on the bench, and I helped him on the
12 bench.

13 Q. Okay. So you put him on the bench, what
14 position is he in?

15 A. I assisted him to the bench, and he's just --
16 with his hands behind his back, and he's just leaning
17 against the -- I'm sorry. Just sitting regularly, that
18 you would sit on a bench with handcuffs on.

19 Q. And it's hard to see you on that witness stand.
20 Could you just come down for one more minute?

21 Could you sit in this chair the way Mr. Gray
22 was sitting on the bench?

23 A. Just sitting like this. And he's leaning
24 against the back of the wall, the east wall.

25 Q. Okay. So -- go back to the witness stand,

1 please, sir.

2 Is he supporting his own head?

3 A. Yes, he is supporting his own head.

4 Q. So do you have any further conversation with
5 him?

6 A. There -- we talked about the -- you know, I
7 asked him just how we're going to get to jail today
8 because we've already had to stop multiple times. He was
9 acting out. And I'm just like how are we going to get
10 you to jail today, man, you know, it's taking way too
11 long. And I was like what do you need, like, go to the
12 hospital, you need a medic or something. Because
13 typically people feign injury or, you know, they just
14 don't want to go to jail. They --

15 Q. Let's talk about that a little. Are you
16 familiar with the term jailitis?

17 A. I'm familiar with jailitis, yes.

18 Q. What is it?

19 A. Just feigning injury with hopes that, you know
20 -- we're understaffed, so if -- if it's just a petty
21 crime, we call -- like loitering or something like that,
22 the officer will write you a citation or find other means
23 in -- to not taking you to jail.

24 Q. Tell the jury about the first arrest you ever
25 made.

1 A. The first arrest I ever made was a gentlemen by
2 the name Tyrone Johnson (phonetic). It was in Gilmor
3 Homes, 1400 Mount More Court (phonetic), one of the
4 courts in there. I'm sorry, one of the homes there.

5 And we had someone watching the CCTV, which we
6 had footage from. Someone was watching the camera, and
7 they see -- see Mr. Johnson smoking marijuana.

8 Me and Officer Miller attempt to stop Mr.
9 Johnson. Mr. Johnson then attempts to flee into a house.
10 Fresh pursuit, we go after him.

11 After he's in the house, he begins to resist.
12 He puts his hand down by his dip, and he won't move his
13 hands.

14 And then we're all -- we're just sliding across
15 the floor. By the time we get to a television stand, he
16 then throws his hands up like this, and we were able to
17 cuff him up. And I bring him outside, and I'm talking
18 with him. We're trying to find the marijuana he was
19 smoking.

20 Officer Miller went into -- or stayed in the
21 house and searched under the TV stand. There, we located
22 CDS. Once Officer Miller came outside and said we have
23 your CDS, then Tyrone Johnson said, oh, I'm having a
24 seizure, and he kind of just shakes and falls to the
25 ground.

1 Q. Okay. And what did you do?

2 A. We called for a medic. We transported him to
3 the hospital. The doctor said he can't be for certain,
4 but they definitely don't think that he had a seizure,
5 especially if he was able to tell me that he was having a
6 seizure.

7 Q. And you said you called for a medic.

8 A. Yes.

9 Q. Why did you call for a medic?

10 A. Well, there was a -- he was shaking on the
11 ground. There was an exigent circumstance.

12 Q. And you and I know what exigent means, but --

13 A. This is an emergency -- just it is apparent it
14 is emergent. That's what exigency means.

15 Q. So when Mr. Gray called for a medic, what would
16 it have taken for you to get on the radio right there?

17 A. I think what you -- what you mean is for me to
18 call for a medic for Mr. Gray.

19 Just talking to him, he never made, like, a
20 complaint of injury or pain or anything. And I'm asking
21 him questions, and he's not unresponsive. He's just not
22 responding to the -- to certain questions I'm asking.

23 And when I asked him if he wanted to go to the hospital,
24 he said, yes, I want to go to the hospital.

25 So having just given me -- in order for me to

1 call a medic or call an ambo, I need age, sex, I need to
2 tell them my location, and I need a complaint of injury.
3 If there's no complaint of injury, I have nothing to tell
4 the medics when they respond to the scene. So --

5 Q. So when you helped Mr. Gray up to the bench --

6 A. Yes.

7 Q. Did he appear to be in any pain?

8 A. No, he did not appear to be in any pain. No.

9 He just, to me, he looked tired. "Lethargic" is the word
10 I used. He just looks tired.

11 Q. What's an adrenaline dump?

12 A. An adrenaline dump is, you know -- I've had an
13 adrenaline dump chasing a guy for like eight blocks. And
14 once I get to him, it's just he and I, and he wanted to
15 fight with me, so I ended up taking him to the ground.
16 And I'm just holding him on the ground until more
17 officers show up. And then they cuff him up, and then
18 I'm just tired.

19 And, you know, I had run for eight -- eight --
20 eight blocks. And then I had to wrestle with this guy
21 for, I don't know, 45 seconds until the other officers
22 showed up. I was just tired, and I just, you know, felt
23 like I was going to throw up or something like that.

24 Q. So when you said in your statement that Mr.
25 Gray was having an adrenaline dump, what did you mean by

1 that, sir?

2 A. It appeared to me that he was, you know -- just
3 based on my training and experience, it seemed to me that
4 he was having an adrenaline dump because he was -- it
5 takes some kind of force to make that wagon go side to
6 side, as opposed to back and back, where you're using the
7 shocks. Side to side is a little different. He had been
8 doing it for a while.

9 Q. Okay. Was he making eye contact?

10 A. He was making eye contact, yes.

11 Q. When he was answering your questions, was he
12 answering them in a normal tone of voice?

13 A. Just a normal tone of voice, yes.

14 Q. Have you ever had a detainee refuse to talk to
15 you?

16 A. Absolutely. People -- you know, people
17 exercise their Miranda Rights all the time.

18 Q. And you and I know what that is, but let's talk
19 about a few terms that have just come up.

20 You said he had something in his dip. What's a
21 dip?

22 A. A dip is just, you know, a front area of your
23 pants.

24 Q. Okay. What's CDS?

25 A. CDS is controlled dangerous substance. It can

1 be drugs. It can be other things.

2 Q. What are Miranda Rights?

3 A. Miranda Rights are just your right to remain
4 silent. You know, just ask for a lawyer to be present.

5 Q. Okay. And have you had detainees exercise
6 those rights?

7 A. Absolutely. I have detainees not talk to me
8 all the time. They -- I mean, there's a culture here in
9 Baltimore called no snitching. You know, people don't
10 say anything to police all the time.

11 Q. So when Mr. Gray ceases to answer -- he didn't
12 say much; is that fair -- did you testify to that
13 already?

14 A. Yes. He didn't say much.

15 Q. So he's not saying much. What are you
16 thinking?

17 A. I didn't think anything about it. I mean, it
18 happens quite often. Whenever someone's arrested, they
19 don't want to talk to police.

20 Q. Did you have any belief that he was under
21 any -- that he was injured beyond tired?

22 A. No, sir.

23 Q. Now, you were here when Detective Teel
24 testified; is that correct?

25 A. Yes, I was present.

1 Q. And she said, did she not, that at Stop 4, you
2 reported Mr. Gray said he couldn't breathe.

3 A. She wrote at Druid Hill and Baker that that's
4 what I said.

5 Q. Do Druid Hill and Baker ever intersect?

6 A. They do not.

7 Q. So at Stop 4, did Mr. Gray discuss anything
8 about his ability to breathe?

9 A. No, he did not.

10 Q. Did you hear him express that he couldn't
11 breathe?

12 A. No. He was able to have -- to speak words. He
13 had a regular tone of voice when he was talking to me.

14 Q. At any point on April 12th, did you hear him say
15 he couldn't breathe?

16 A. Yes.

17 Q. Where was that?

18 A. At the first stop he said he needed an asthma
19 inhaler.

20 Q. And what did you tell Detective Teel?

21 A. That's what I told her from the first stop.

22 Like I said earlier, when she called, I assumed
23 that she already the information that I had been at the
24 majority of the stops. So once she had told me to tell
25 me -- when she said tell me what happened, I started from

1 the beginning.

2 Q. And describe that conversation.

3 A. I -- I can't really remember what that
4 conversation was.

5 Q. So you know it started at Stop 1.

6 A. She just called and said in reference to April
7 12th, you know, what was my involvement. I explained to
8 her I was -- I was there. And she said tell me what
9 happened.

10 Q. Okay. And let's talk a little bit about Mr.
11 Gray said he needed a medic; right?

12 A. I offered it to him, and he said, yes. He
13 accepted.

14 Q. So after he said that, what did you do?

15 A. After then, then I -- I get out of the wagon.
16 And I'm talking with Officer Goodson, and I said that
17 guy's asking to go to the hospital.

18 So there's no way he's going to pass medical
19 down at Central Booking because the more he says he wants
20 to go to the hospital, they're going to reject him.

21 Q. Well, let's talk about that for a minute. Have
22 you transported prisoners to Central Booking?

23 A. I have, yes.

24 Q. And what's the process?

25 A. Like you hand them the toe tag, the prisoner

1 goes in, then there's a -- there's a nurse on the inside.
2 She asks them various questions, and maybe take his blood
3 pressure. If their answers to the questions are correct,
4 then he's able to serve or be accepted into Central
5 Booking. If not, then he is medically rejected.

6 Q. Okay. And if someone is medically rejected,
7 what do you have to do?

8 A. We have to take them to the hospital, and they
9 have to get a medical clearance from a doctor.

10 Q. Can a medic provide a medical clearance?

11 A. They cannot, no. It needs to be a doctor.

12 Q. So let's say you arrest me, and I say my elbow
13 hurts, but I look fine, maybe I'm even waving my hands.
14 In your experience, is Central Booking going to take you?

15 A. If you say those same things that you just said
16 to me right now, and you say that to the nurse, no, they
17 will not accept you.

18 Q. So if I say my elbow hurts, but I look fine,
19 what would you do?

20 A. Just transport you to the hospital.

21 Q. And why would you do that, sir?

22 A. Just -- we don't have enough officers out on
23 the street as it is, just efficiency. We need to be
24 efficient. So it would be a waste of time to have you go
25 down to Central Booking and get rejected. And have

1 another wagon have to go down and pick you up, and then
2 take you to a hospital.

3 Q. Have there been occasions when you've called
4 for a medic to the scene?

5 A. Yes.

6 Q. Why would you do that?

7 A. Just -- they -- they gave me a complaint of an
8 injury.

9 Q. So in your mind, what's the difference between
10 calling a medic and taking someone straight to the
11 hospital?

12 A. A medic is like when you call for an ambulance
13 or if you have a medical emergency, and it needs to be
14 taken care of right then and -- like someone has been
15 shot, someone has been stabbed, there's -- things of that
16 sort.

17 Q. Okay. And a sore elbow, what do you do in that
18 situation?

19 A. A sore elbow, I could transport you to the -- I
20 could just transport you to the hospital via wagon.

21 Q. Okay. When Mr. Gray is in the back of the
22 wagon -- you with me?

23 A. I'm with you, yes.

24 Q. -- who is primarily responsible for him?

25 A. It is -- primary -- it is the wagon driver's

1 job to get the prisoner or detainee from Point A to Point
2 B, or whomever is transporting that -- that detainee.

3 Q. So at Druid Hill and Dolphin, who's primarily
4 responsible for Mr. Gray's safety?

5 A. Officer Goodson never transferred custody to
6 me. He is still under the custody of Officer Goodson.

7 Q. So Mr. Gray says he needs a medic; right?

8 A. He -- he says yes to my question, which is do
9 you need a medic, do you need to go to the hospital. He
10 says yes. So --

11 Q. What do you say to Officer Goodson after he
12 answers that question?

13 A. I suggest to Officer Goodson to take him to Bon
14 Secours or to a hospital.

15 Q. Can you order Officer Goodson to do anything?

16 A. I cannot order Officer Goodson to do anything,
17 no.

18 Q. Why not?

19 A. He is my equal.

20 Q. How many years experience does he have?

21 A. I believe he has 17.

22 Q. And in April of this year, how many years of
23 experience did you have?

24 A. Three years. I'm sorry, I had two years. Two
25 years and a half --

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Q. Okay.

A. -- as of April.

Q. So as you're having this conversation with Officer Goodson, put in your own words what you suggested to Officer Goodson.

A. My -- just tell him that --

MR. SCHATZOW: Objection, Your Honor.

THE COURT: Sustained.

BY MR. PROCTOR:

Q. What did you tell Officer Goodson?

MR. SCHATZOW: Same objection, Your Honor.

THE COURT: Sustained. Asked and answered.

Next question.

MR. PROCTOR: Okay.

BY MR. PROCTOR:

Q. So after having this conversation with Officer Goodson, does anything come across the radio?

A. Lieutenant Rice asked for a 10-16 up at -- he may have said North and Carey. In that general area of Pennsylvania and North, North and Carey, he asked for a 10-16.

Q. And what's a 10-16?

A. A 10-16 is urgent backup.

Q. Okay. And Lieutenant Rice, is he your boss?

A. He -- he is my superior, yes.

1 Q. So when he says 10-16, what's your obligation
2 as a police officer?

3 A. I need to respond to that 10-16.

4 Q. So once you hear "urgent backup," what do you
5 do, sir?

6 A. I then, you know, walk briskly back to my
7 vehicle, which is across the intersection. I get in, and
8 I radio that I'm going to head up to that scene.

9 Q. Okay. And as you walk to your vehicle, where's
10 your back in relation to the back of the wagon?

11 A. My back is to the back of the wagon.

12 Q. So as you're walking to your vehicle, can you
13 see the wagon?

14 A. I can not see behind me, no.

15 Q. When you get in your vehicle, do you look back
16 at the wagon at that point?

17 A. When I sit down in the vehicle, the -- the
18 wagon is right in front of me, yes.

19 Q. And what's going on?

20 A. I believe Officer Goodson may be closing the
21 door or -- or he's getting into the wagon. I can't
22 recall at this moment.

23 Q. After you walked away to get back to your
24 vehicle, do you ever see inside the vehicle again -- the
25 wagon again?

1 A. Up at North Avenue is when I seen the wagon
2 again.

3 Q. We'll get there in a second.

4 But at Druid Hill and Dolphin, do you ever see
5 inside the wagon again?

6 A. No.

7 Q. Do you know that Mr. Gray was seat belted at
8 Druid Hill and Dolphin?

9 A. I'd be -- I'd make assumptions if I said yes or
10 no.

11 Q. So once you get into your car, where do you go?

12 A. I respond back up to North Avenue and Carey or
13 Pennsylvania.

14 Q. Tell the jury about that.

15 A. When I respond up there, there's -- I see Donta
16 Allan. There's Nero, Miller and Lieutenant Rice. I can
17 see them pulling bags of marijuana out of Donta Allan's
18 pockets, and he's cuffed.

19 Q. And what do you do?

20 A. Just shortly after the wagon shows up, I then
21 go back and just -- just to confirm with Mr. Gray, do you
22 still want to go to the hospital, and he says yes.

23 Q. Why do you ask him that?

24 A. Just because sometimes, if it takes long
25 enough, people will say they don't want to go to the

1 hospital anymore. They'd rather just go to Central
2 Booking and get it over with.

3 Q. Could you explain that?

4 A. That -- just -- that's -- that's it. Whenever
5 -- sometimes people feign injury just to go to the
6 hospital, but then you realize it's going to take way too
7 long. Sometimes at the hospital they reject any kind of
8 treatment, and just say it's taking way too long, and I'd
9 rather go to Central Booking.

10 Q. So why did you ask Mr. Gray if he still wanted
11 to go to the hospital on North Avenue?

12 A. Just to see if he would, you know, if he had --
13 if he had changed his mind. That's all.

14 Q. And again, maybe I could -- well, Mr. Murtha --
15 MR. PROCTOR: Mr. Murtha, can I borrow you for
16 a second?

17 Would you come off the stand, please?

18 BY MR. PROCTOR:

19 Q. When you got (inaudible at 12:16:32 p.m.), sir,
20 what position is Mr. Gray in?

21 A. Well, his hands are behind his back. He's
22 kneeling on this --

23 THE COURT: Keep your voice up.

24 THE WITNESS: I'm sorry.

25 His hands are behind his back. He's kneeling

1 on his feet. And very close to the wagon, kind of like
2 in this position.

3 BY MR. PROCTOR:

4 Q. Bench?

5 A. I'm sorry. The bench, yeah, just kind of in
6 this position.

7 Q. Now, where is the wall of the wagon?

8 A. The wall would have been where this -- this --
9 the back of the chair is.

10 Q. Is Mr. Gray's head touching the wall?

11 A. No.

12 Q. Is his shoulder touching the wall?

13 A. No, it's isn't.

14 Q. Thank you. You can go back to the stand.

15 Is his head facing towards the doors or towards
16 the cabin?

17 A. Towards the cabin is where his head is hitting.

18 Q. So how much of his face can you see?

19 A. Not much. Just about the side, whenever I
20 walked the side. When I'm standing on the side, I can
21 see just the side of his face.

22 Q. And the totality of your conversation with Mr.
23 Gray, what was that?

24 A. Just, hey -- I said, Freddie Gray -- hey,
25 Freddie, you just want to go back -- hey, Freddie, still

1 want to go to the hospital? And he says yes.

2 Q. And then what do you do?

3 A. Then Sergeant White was on the scene. I then
4 go to her, and let her know that Freddie Gray still says
5 he wants to go to the hospital. And that one of the
6 arresting officers should go with him to the hospital, do
7 the hospital detail.

8 Q. Okay. And totality of your -- did you ever get
9 in the wagon at North Avenue?

10 A. No, I do not.

11 Q. The totality of your conversation with Mr.
12 Gray, how long does that last?

13 A. Seconds.

14 Q. So after your conversation with Sergeant White,
15 what do you do?

16 A. From there, I believe she goes and may check on
17 Freddie Gray.

18 I -- there I'm just talking to Nero and Miller,
19 again, let them know that Freddie Gray says he wants to
20 go to the hospital and that --

21 Q. And let's talk about that for a minute, sir.
22 If you arrest me, and I say I don't feel well, whose job
23 is it to take me to the hospital?

24 A. A wagon would transport you to the hospital.
25 And --

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Q. A wagon --

THE COURT: Well, let him answer the question.

MR. PROCTOR: I'm sorry, Judge.

THE COURT: Don't interrupt him.

BY MR. PROCTOR:

Q. Continue.

A. A wagon would transport you to the hospital.

And when you get to the hospital, that wagon driver will

wait until the arresting officer gets to the hospital.

And then he would pass custody to you, and you would take

that detainee into the hospital.

Q. So what I think I'm hearing you say is you, as
the arresting officer --

THE COURT: Sustained.

Ask a question. I don't need you to restate
whatever he said. Just ask him a direct question.

BY MR. PROCTOR:

Q. So at the hospital, that person is in the
arresting officer's custody?

A. It --

THE COURT: Sustained.

Ask a question.

BY MR. PROCTOR:

Q. Whose custody is the arrestee in at the
hospital?

1 A. He's returned back to the arresting officer's
2 custody.

3 Q. Now, had you been at the hospital with
4 arrestees?

5 A. I have, yes.

6 Q. What's the range of how long you can be there?

7 A. According to General Order, it says two hours.
8 But I've been there for the entirety of their stay, which
9 can be an hour to 10 hours.

10 Q. Do police officers -- do you call it the
11 hospital detail?

12 A. It's called the hospital detail, yes.

13 Q. Do police officers like that detail?

14 A. It's not the most fun, no.

15 Q. Why not?

16 A. The radio doesn't work in the hospital.
17 Cellular devices don't work in the hospital. You just
18 have to stand by while somebody gets medical treatment.
19 Hospitals tend to go really slow, so it's a really long,
20 monotonous day.

21 Q. So when you're talking to the bike cops; right?

22 A. Yes. The bike cops.

23 Q. What are you saying to them?

24 A. I'm just telling them that -- or I'm suggesting
25 that one of them do the hospital detail because they

1 arrested Freddie Gray.

2 Q. After this conversation, what happens next?

3 A. You know, I say again to -- or Sergeant White
4 comes over, and she says I have to do the hospital detail
5 because she can't split up the bike officers. There
6 needs to be two of them. So that if you are attempting
7 to detain someone, you have to -- someone has to watch
8 the bikes so the bikes don't disappear.

9 Q. Are bicycles getting stolen in the Western a
10 common thing?

11 A. Yes.

12 Q. So after your conversation with Sergeant White,
13 what do you do?

14 A. She tells me I need to follow the wagon -- or I
15 need to follow the wagon to the station. And from the
16 station, we'll go to the Bon Secours.

17 Q. So after that conversation, where do you go
18 next?

19 A. I go to Western District.

20 Q. Okay. And when you leave North Avenue, is the
21 wagon still there?

22 A. No. It had already left before I had gone.

23 Q. Could you estimate how many minutes after the
24 wagon you left?

25 A. Not -- it's a very short time, two to five

1 minutes or so.

2 Q. How long was the drive to the Western from
3 North Avenue take?

4 A. Four minutes.

5 Q. And let me show you what I'd like to mark as
6 Defendant's Exhibit 12 --

7 THE CLERK: Eleven.

8 MR. PROCTOR: Eleven.

9 Let me show it to Mr. Schatzow first.

10 (Defendant's Exhibit Number 11
11 was marked for identification.)

12 BY MR. PROCTOR:

13 Q. And ask you if you recognize that, sir.

14 A. Yes, that's the Western District.

15 Q. Okay. And does it fairly and accurately depict
16 it?

17 A. Yes.

18 MR. PROCTOR: Move Exhibit 11 into evidence.

19 THE COURT: Any objection?

20 MR. SCHATZOW: No, Your Honor.

21 THE COURT: So entered.

22 (Defendant's Exhibit Number 11
23 was received in evidence.)

24 BY MR. PROCTOR:

25 Q. Can you see on this picture where you parked

1 your vehicle?

2 A. Yes. I actually parked my vehicle where that
3 police car --

4 Q. Come down off the stand for just one second,
5 sir.

6 And if you could, let's scoot over this way,
7 can you see -- point on Defendant's Exhibit 11 where you
8 parked your vehicle, if you see it.

9 A. My vehicle would have been where this police
10 car is.

11 Q. Keep your voice up.

12 A. My vehicle would have been where this police
13 vehicle is, just along the parking lot.

14 Q. So on the right side of the picture, next to
15 the "No Entry" sign?

16 A. Yes.

17 Q. Can you see on this picture where the wagon
18 was?

19 A. No. The wagons would be in between this side
20 and this side. And it would go in between that building.

21 Q. Okay. Can you return to the stand, please?

22 When you get to the wagon, sir, what do you do?

23 A. From the wagon, I believe I just -- they may be
24 pulling Donta Allan out of one side, and I'm opening up
25 the other.

1 Q. Okay. So how far is it from where you parked
2 to where the wagon is, ballpark?

3 A. 50 feet.

4 Q. So you walk over these 50 feet, and the second
5 arrestee is already getting out?

6 A. I believe he's getting out. I'm -- I'm not
7 certain on that.

8 Q. Okay. And you're opening up the other side?

9 A. Yes.

10 Q. Why are you doing that?

11 A. Just to -- I want to put Freddie Gray into --
12 I'm sorry, Mr. Gray into the holding cell until we were
13 ready to go to Bon Secours.

14 Q. Why not just leave him in the wagon?

15 A. Someone's got to have, you know, custody of
16 that prisoner. You can't just leave them in the wagon.

17 Q. Okay. So when you open the door to -- what
18 side of the wagon, if you remember, was it?

19 A. He's on -- he's on the right side.

20 Q. When you open the door, is -- there are two
21 sets of doors in the wagon; right?

22 A. Yes. There's an exterior, and there's an
23 interior door.

24 Q. When you get to the Western, are both sides of
25 the right closed?

1 A. No. No, no, no. The -- the -- the -- both
2 exterior doors are open.

3 Q. Okay. So when you -- do you open the interior
4 door?

5 A. I believe I opened up the interior door.

6 Q. What do you see?

7 A. I see Mr. -- Mr. Gray there. I'm calling -- I
8 call his name. He doesn't answer me.

9 MR. PROCTOR: And for the third and final time,
10 could I borrow Mr. Murtha to show what position Mr. Gray
11 was in?

12 BY MR. PROCTOR:

13 Q. Could you put Mr. Murtha -- if I'm standing at
14 the rear of the wagon, and the jury is the cabin, could
15 you put Mr. Murtha in position?

16 A. His hands would have been behind his back. He
17 --

18 Q. Keep your voice up, please.

19 A. I'm sorry.

20 His hands would have been down. And from my
21 recollection, it would be a more exaggerated -- it would
22 be way more exaggerated than he was up at North Avenue.

23 Q. So at this point, is his shoulder against the
24 side?

25 A. I can't -- I can't remember that.

1 Q. Is his head against the side?

2 A. Is -- his head wasn't in the same position it
3 was at North Avenue.

4 Q. Okay.

5 MR. PROCTOR: Thank you, Mr. Murtha.

6 BY MR. PROCTOR:

7 Q. Go back to the stand, please.

8 So when you opened the door, and you see Mr.
9 Gray in that position, is there anyone else around?

10 A. I think Nero is -- I'm sorry, Novack is coming
11 out.

12 Q. Now, I don't know if we've talked about him.
13 Who is Novak?

14 A. Novak is just another officer in the Western.

15 Q. Okay. And you say he's coming out. Where is
16 he coming out from?

17 A. It would have been the holding cells. The
18 processing -- where we process people.

19 Q. Okay. And when you see Mr. Gray in the
20 position you just described, what do you do?

21 A. I called out to him. And at this time, he
22 doesn't -- typically, he would answer me. But he didn't
23 answer me this time. And I call him, and he doesn't
24 answer.

25 So now I climb in, and I pull him back, and

1 there's -- there's a mucus on his mouth.

2 Q. Let's talk about that for a second. At Stop 4,
3 was there any mucus in his mouth?

4 A. At Druid Hill and Dolphin? No.

5 Q. Yes.

6 A. No. No mucus on his mouth, no.

7 Q. Did you see any blood, any bumps, any bruises,
8 anything?

9 A. No. I didn't see any of that, no.

10 Q. At Stop 5, did you see anything?

11 A. His head was facing away from me, but no, I
12 didn't.

13 Q. Okay. But at the Western, you saw this mucus?

14 A. Yeah. There was some kind of -- there was
15 clear mucus around nose and mouth.

16 Q. So when you saw that, what did you do?

17 A. I think on my testimony I said, oh shit, and I
18 tried to pull Freddie Gray out. And now he's just
19 leaning on me. And we're standing at the -- he's not all
20 the way out, he's just -- his upper half is outside of
21 the wagon and I'm holding him. Trying to hold his back
22 straight, trying to clear his airway.

23 Novak tries to do a sternum rub. We don't get
24 any response.

25 Q. Let's talk about that for a second. Let me

1 stop there. What's a sternum rub?

2 A. A sternum rub is just something I've seen EMTs
3 do whenever we have a non-responsive person. They do a
4 sternum rub. If they're, like, in an overdose or
5 sleeping or something like that, they'll get an immediate
6 reaction.

7 Q. Okay. So what I've seen you do is with your
8 knuckles rubbing straight across the chest.

9 A. Yep.

10 Q. And so your testimony is Officer Novak did one
11 of those?

12 A. Yes. He did a sternum rub, yes.

13 Q. And did Mr. Gray react?

14 A. No. He did not react, no.

15 Q. So based on that, what happened next?

16 A. From there, I believe Novak then radioed for a
17 medic to respond to the District.

18 After that he began to hold Mr. Gray's head.

19 Q. Okay. So you're standing behind him?

20 A. I'm standing behind him, trying to hold his
21 back straight so he can have a clear airway.

22 Q. And what's Officer Novak doing, if you know?

23 A. Officer Novak is just on the side of me, and
24 he's holding his head trying to support his head.

25 Q. Who taught you to do it that way?

1 A. That was -- that was something that we learned
2 at the academy from our LEMAT (phonetic) class.

3 Q. Okay. Tell the jury what did you learn at the
4 academy in regard to how to hold a non-responsive person.

5 A. I believe they called it the lifesaving
6 position. You would hold the victim's back straight, and
7 try to hold his head straight, so he can have a clear
8 airway and be able to breathe.

9 Q. So after Officer Novak calls for a medic, what
10 happens next?

11 A. We wait for the medic to show up.

12 Q. How long did the medic take?

13 A. It felt like an eternity. I don't know.

14 Q. And by the way, at -- let's go back to Stop 4
15 for a minute, okay?

16 A. Druid Hill and Dolphin?

17 Q. Yeah.

18 Ballpark -- you've called a medic many times?

19 A. Yes.

20 Q. Ballpark, how long do they take?

21 A. They -- it depends on -- all right. So when I
22 radio it goes to my dispatch. From my dispatch, it has
23 to go to fire dispatch. From fire dispatch, they have to
24 send it down to the ground units. They then respond.
25 And it -- it -- not all the time is it the closest

1 firehouse, it's who answers up. And so it can -- can
2 vary as to how long it takes.

3 Q. Okay. Have you had one take 15 minutes or
4 more?

5 A. Oh, absolutely.

6 Q. And from Druid Hill to Dolphin on a Sunday
7 morning, how long would it take Officer Goodson --

8 A. Sunday morning, no traffic --

9 MR. SCHATZOW: Excuse me, Your Honor.

10 THE COURT: Sustained.

11 BY MR. PROCTOR:

12 Q. To get -- what -- to Druid Hill and Dolphin,
13 what's the nearest hospital?

14 A. I'm -- I'm not familiar with that part of the
15 City. I couldn't tell you. I don't know.

16 Q. Okay. Bon Secours. How far to get to --

17 A. To get to Bon Secours, it would probably take
18 them around 10 minutes.

19 Q. I'm sorry. I lost my train of thought.

20 So you -- where we left off is you said it felt
21 like the medic took an eternity; right?

22 A. That's what it felt like, yes.

23 Q. When the medic arrives, what happens next?

24 A. She -- she then places her hand on his chest.
25 She says she can't -- she can't -- he's not breathing,

1 something like that.

2 Q. Did you see the medic testify here today?

3 A. I did -- well, yesterday. Yes.

4 Q. And when she came and walked past the wagon,
5 did you see her?

6 A. No. I didn't see her, no.

7 Q. Where are your eyes while awaiting for the
8 medic to arrive?

9 A. I was looking down at Freddie Gray.

10 Q. So when she locates the prisoner, what happens?

11 A. She puts her hand on his chest, and says he's
12 not breathing. And then we then pull him out of the
13 wagon, the entire -- the whole way. And they put -- put
14 the collar on, put him on a backboard, and they put the
15 respirator in his mouth, started to give him air. And
16 then put him into the ambulance.

17 Q. And where do you go?

18 A. I'm standing by because I was instructed to do
19 the hospital detail. So I have to stand by with Freddie
20 Gray.

21 Q. So when he goes to the hospital, where do you
22 go?

23 A. I followed behind Medic 43 to Shock Trauma.

24 Q. And how long do you stay at Shock Trauma?

25 A. It had been a while. Ballpark, six or seven

1 o'clock. And then I had to go and submit Mr. Gray's
2 goods.

3 Q. And where did you submit his clothes and
4 property?

5 A. I submitted his property at ECU.

6 Q. You have seen, have you not, the statement of
7 Officer Novak?

8 A. I have not, no.

9 Q. Are you aware that Officer Novak recalls Mr.
10 Gray being in a different position?

11 A. I did.

12 MR. SCHATZOW: Objection, Your Honor.

13 THE COURT: Sustained. Strike the question.

14 BY MR. PROCTOR:

15 Q. Are you certain that Mr. Gray was in the
16 position that you just described at the Western?

17 A. I can't be a hundred percent certain. It was a
18 very traumatic thing for me also, just being the officer
19 there, and knowing him in the neighborhood, seeing him
20 every day, and calling his name, and not getting a
21 response, then having to do the hospital detail, and
22 seeing everything they had done to him. I can't be
23 certain.

24 Q. The first phone call you had from Detective
25 Teel on April 15th, did you answer her questions?

1 A. Yes. I answered some questions.

2 Q. Did you arrange to meet with her to come in?

3 A. She arranged with me to come in, yes.

4 Q. Did there come a time when you changed the time

5 of that meeting?

6 A. She changed the time.

7 Q. Did you agree?

8 A. I agreed, yes.

9 MR. PROCTOR: Can I have a second please,

10 Judge?

11 (Brief pause.)

12 MR. PROCTOR: Can we approach, please?

13 (Counsel approached the bench, and the

14 following ensued:)

15 MR. PROCTOR: I think I'm just about done. But

16 rather than make the jury wait while I look through my 42

17 pages of notes, can we just break for lunch? And after

18 lunch, I might have a couple of questions?

19 THE COURT: (Inaudible at 12:35:08 p.m.)

20 MR. SCHATZOW: Yes, Your Honor.

21 THE COURT: (Inaudible at 12:35:15 p.m.)

22 MR. PROCTOR: It's 12:35.

23 THE COURT: We will break.

24 MS. BLEDSOE: We can do that, yes.

25 MR. PROCTOR: Thank you.

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THE COURT: (Inaudible at 12:35:19 p.m.)

MR. PROCTOR: Thank you.

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

THE COURT: Ladies and gentlemen, we're going to take our lunch break.

Please do not discuss your testimony even among yourselves.

Please leave your notepads on the chair.

Court will resume at 1:45.

All rise for the jury.

(Whereupon, the jury was excused from the courtroom at 12:36 p.m.)

THE COURT: Thank you. Everyone may be seated.

Again, we'll resume at 1:45.

MR. PROCTOR: Thank you, sir.

(Whereupon, a luncheon recess was taken at 12:36 p.m.)

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

(Excerpt resumed at 1:59:27 p.m. with the testimony of William Porter.)

THE COURT: You may remind the witness.

THE CLERK: Just reminding you you're still under oath.

State your name for the record.

THE WITNESS: William Porter.

THE COURT: You may proceed, Counsel.

MR. PROCTOR: Thank you.

DIRECT EXAMINATION (Resumed)

Q. Officer Porter, just a few questions.

I forgot to ask you earlier, at Stop 4, when you helped Mr. Gray onto the bench, you remember that?

A. I do remember that.

Q. Why didn't you seat belt him?

A. Well, in the academy and then through my experience and training as an officer, even the most docile detainee presents a risk. Any time I am in an altercation with any kind of detainee, there's a gun involved, so there's always an ever present officer safety issue.

Q. Okay. And it's -- are you sorry Freddie Gray's dead?

A. Absolutely. Freddie Gray and I weren't

1 friends, but we had a mutual respect for each other, and
2 we built a rapport, you know. He -- I had a job, and he
3 understood that. And he did things, and I understood
4 that. And --

5 MR. SCHATZOW: Objection, Your Honor, to what
6 Mr. Gray understood.

7 THE COURT: Sustained to anything Mr. Gray
8 understood.

9 THE WITNESS: I had a job --

10 THE COURT: No, no. Question.

11 BY MR. PROCTOR:

12 Q. Explain your relationship with him.

13 A. I had a job to do, and he did things. And
14 we -- I built a rapport. And we weren't friends, but we
15 definitely had respect -- or I had respect for Mr. Gray.

16 And absolutely am sorry to see -- any kind of
17 loss of life, I'm sorry to see that.

18 Q. Do you like being a police officer?

19 A. Absolutely.

20 Q. Would you do anything to jeopardize that?

21 A. Never.

22 MR. PROCTOR: That's all I have, Judge.

23 THE COURT: You may cross.

24 CROSS-EXAMINATION

25 BY MR. SCHATZOW:

1 Q. Did you just say that you didn't seatbelt Mr.
2 Gray because even though he was docile, he was still a
3 risk?

4 A. I didn't say Mr. Gray specifically, but
5 prisoners -- I mean, there's a reason why the -- the
6 deputies walk with two people or the prisoner through the
7 courthouse, and he's shackled and restrained. They --
8 there's an ever present risk.

9 Q. Excuse me. Mr. Goodson, did you understand --

10 A. My name is Porter.

11 Q. Excuse me. Mr. Porter, did you understand my
12 question to be about the sheriffs in the courthouse?

13 A. Just giving --

14 MR. PROCTOR: Objection.

15 THE COURT: Overruled.

16 THE WITNESS: Giving you just -- using my
17 training and experience.

18 BY MR. SCHATZOW:

19 Q. But the question that your lawyer asked you was
20 at Stop 4, why didn't you seatbelt Mr. Gray. And didn't
21 you say that even though he was docile, you were still
22 concerned about some risk?

23 A. Yes, I did.

24 Q. Now, the vans, the police transport wagons, are
25 equipped with seatbelts; aren't they?

1 A. They are.

2 Q. And you have said that Mr. Gray was docile, and
3 you previously said he was not combative, and that he was
4 calm at Stop 4; correct?

5 A. That is correct.

6 Q. If you weren't going to seatbelt Mr. Gray at
7 Stop 4, I guess that means you would never seatbelt
8 anyone?

9 A. I'm not typically a wagon driver. I -- the
10 primary responsibility for the wagon driver is to make
11 sure the safety of a detainee from Point A to Point B.

12 Q. Again, Officer Porter, I'm talking about you.
13 My question is about you. You testified that you didn't
14 seatbelt him even though he was docile because you were
15 concerned of a risk.

16 And my question to you is does that mean that
17 you would never seatbelt anyone in a wagon?

18 A. No. That isn't -- that isn't -- that's not
19 what that means, no.

20 Q. But you never have?

21 A. I haven't before. I'm not typically a wagon
22 driver.

23 Q. But --

24 A. But, no, I haven't before, no.

25 Q. So you haven't. Okay.

1 And you didn't -- Officer Goodson was standing
2 outside the wagon; correct?

3 A. He was behind the wagon, yes.

4 Q. You didn't hand him your gun when you first
5 went into the wagon; did you?

6 A. That's ridiculous. I would never hand anyone
7 my gun.

8 Q. A fellow officer. If you were concerned about
9 somebody taking your gun, you wouldn't hand it to a
10 fellow officer; is that you're saying -- what you're
11 saying?

12 A. I wouldn't hand my gun to anyone is what I'm
13 saying.

14 Q. Okay. All right. That's fine.

15 Now, you said you worked at a computer company.
16 What did you do for a computer company?

17 A. I -- there I built computers, and I reimaged
18 them. That's what -- reimaged.

19 Q. Okay. And on April 12th -- well, let's take
20 the period between April 9th of 2015 and April 12th of
21 2015, did you have a home computer?

22 A. I do have a home computer, yes.

23 Q. Did you have one then?

24 A. Yes, I did then. Yes.

25 Q. Okay. Did you have a cell phone?

1 A. I -- I had a cell phone, yes.

2 Q. Okay. Now, you don't like hospital details;
3 right? They're long and boring.

4 A. No, I don't like hospital details. No.

5 Q. But when you testified you said that the
6 General Order provides that when you're on a hospital
7 detail, you only have to be there for two hours; is that
8 correct?

9 A. There's something in it about that. It also
10 says -- states that there need to be two officers, and
11 some other things.

12 Q. Right. And so let's take a look at Exhibit 11,
13 in evidence, which is 11-14 on page 8, "One of the
14 directives is do not guard detainees for more than two
15 consecutive hours. When the hospital detail nears or
16 exceeds two hours, notify your supervisor and request a
17 replacement member"; is that correct?

18 A. That is correct.

19 Q. Okay. So you're familiar with what 11-14
20 provides.

21 A. No, sir. I'm not familiar. That was probably
22 adopted from the previous General Order.

23 Q. Here's Exhibit 8, take as much time as you
24 want, tell me where the two hour limitation is in there.

25 A. I don't know. I can't find it in here.

1 Q. It's not in there; is it?

2 A. It isn't, no.

3 Q. Now, you deny that you told Detective Teel that
4 Mr. Gray, at the fourth stop, said I can't breathe.

5 A. Yes, that is true.

6 Q. If he had said I can't breathe, and you heard
7 him say I can't breathe, would you agree that that would
8 be a reason to get medical attention?

9 A. I do agree, yes.

10 Q. You know Detective Teel from when she was at
11 the Western District; correct?

12 A. I do, yes.

13 Q. When she saw you at Shock Trauma on April 12th,
14 2015, she gave you a hug; didn't she?

15 A. Perhaps. I'm not certain.

16 Q. And when she saw you, when you came down to
17 Police Headquarters to give the statement that was video
18 and audio recorded, she gave you a hug then, too; didn't
19 she, before the statement?

20 A. I can't say if she did.

21 Q. You heard her testify she did.

22 A. I heard her testify, yes.

23 Q. You don't deny that she did?

24 A. I'm sorry?

25 Q. You don't deny that she did?

1 A. That she did what?

2 Q. Gave you a hug.

3 A. I can't confirm nor deny.

4 Q. She -- you guys were friendly; weren't you?

5 A. I'm friendly with my fellow officer, yes, I am.

6 Q. Well, with Officer Teel.

7 A. With the general public, I tend to be friendly
8 with the general public.

9 Q. When Officer Teel called you, on or about April
10 15th, she called you specifically to talk to you about
11 Druid Hill and Dolphin Street, what we've been calling
12 Stop 4; didn't she?

13 A. That's not true. She asked me about the
14 incident.

15 Q. She called you because she had seen the KGA
16 that said 43 was responding to Officer Goodson's request
17 for assistance to check out the prisoner; isn't that
18 right?

19 A. I can't confirm it nor deny it. I don't know
20 that answer. I don't know why she called me. She could
21 -- she could tell you that.

22 MR. SCHATZOW: Could I have Exhibit 31-D,
23 please?

24 BY MR. SCHATZOW:

25 Q. You heard her testify about her reason.

1 A. I heard her testify. But, you know --

2 Q. Okay. Didn't you confirm to her that you were
3 the unit that responded to the call for assistance that
4 came from Unit 7B91?

5 A. I'm sorry. Repeat the question.

6 Q. Didn't you confirm to her that you were the
7 unit on April 12th who responded to the call to assist
8 Unit 7B91?

9 A. That is true, yes.

10 Q. And 7B91 was Goodson as the van driver;
11 correct, Officer Goodson?

12 A. Officer Goodson was the wagon operator that
13 day, yes.

14 Q. And 7B91 is an identification number; correct?

15 A. That is true, yes.

16 Q. And you told her that when you arrived, Officer
17 Goodson got out and responded to the rear of the wagon;
18 correct?

19 A. I -- that's one of the things I told her, yes.

20 Q. Okay. And responded to the rear of the wagon
21 for people who aren't police officers, simply means he
22 got out and walked to the back of the wagon; is that
23 right?

24 A. That is true.

25 Q. Okay. And you told her that as the doors

1 opened, you observed Mr. Gray lying on his stomach, head
2 facing the front of wagon, with his feet towards the
3 doors, saying help; is that what you told her?

4 A. I did tell her that, yes.

5 Q. And then you further advised that you asked Mr.
6 Gray what he needed, at which time he said he couldn't
7 breathe.

8 A. No. That's not true, no.

9 Q. She got that wrong?

10 A. She got that wrong, yes. She --

11 Q. And, Officer Porter, you -- you then told her
12 that you asked Mr. Gray if he needed a medic, and Mr.
13 Gray said -- stated yeah.

14 A. This is -- that's like -- a condensed version
15 of our conversation. It doesn't go in chronological
16 order, but it's a condensed version of what we spoke on
17 the phone.

18 Q. Thank you, Officer. If you could please just
19 listen to my question.

20 Did you tell her that you then asked Mr. Gray
21 again -- excuse me. That you asked Mr. Gray if he needed
22 a medic, and Mr. Gray stated yeah?

23 A. That's a part of this conversation, yes.

24 Q. And that you then asked -- you then asked Mr.
25 Gray again if he needed a medic, and you asked Mr. Gray

1 to get up; is that what you told her?

2 A. I -- I don't believe I told her that, no. It
3 wasn't phrased that way.

4 Q. How was it phrased?

5 A. I asked him -- like I testified to earlier,
6 what do you need, and when he asked me -- he said can you
7 help me up. I helped him up. And afterwards, I asked
8 him how are we getting to the hospital today? Do we need
9 -- do you need a medic or do you need a hospital? He
10 responded yes.

11 Q. So he stated I can't get up; didn't he?

12 A. No. He said can you help me up, is what he
13 said.

14 Q. Uh-huh. I see.

15 And --

16 MR. MURTHA: Objection.

17 THE COURT: Sustained.

18 MR. SCHATZOW: Oh, to the comment? I'm sorry,
19 Your Honor.

20 THE COURT: Yes. Please let's not have any
21 comments. Just ask questions from both sides.

22 MR. SCHATZOW: I apologize, Your Honor.

23 THE COURT: Apology accepted.

24 BY MR. SCHATZOW:

25 Q. So let me -- excuse me.

1 MR. SCHATZOW: Strike that, Your Honor.

2 BY MR. SCHATZOW:

3 Q. Both at Stop 4 and at Stop 5, Mr. Gray never
4 asked you for a medic; did he?

5 A. No, he did not. I -- I asked him if he wanted
6 --

7 Q. I'm sorry.

8 A. I'm sorry.
9 I asked him -- offered one to him.

10 Q. Right. And at Stop 4 and Stop 5, Mr. Gray
11 never asked you to take him to the hospital; correct?

12 A. No, he didn't. No.

13 Q. You are the one who introduced the term medic
14 to the conversation you were having with Mr. Gray;
15 correct?

16 A. That is true, yes.

17 Q. And you are the one who introduced the term
18 hospital to the conversation you were having with Mr.
19 Gray; correct?

20 A. That is true, yes.

21 Q. Okay. Now, what you've been telling us here
22 today is that you didn't tell Detective Teel that Mr.
23 Gray said I can't breathe at Stop 4, but that she got
24 confused because you told her you heard him saying I
25 can't breathe at Stop 1; isn't that right?

1 A. When she asked me to begin about my -- when she
2 said can you tell me what happened, I started from the
3 beginning.

4 Q. Well, when you sat for the video and recorded
5 interview on April 17th, 2005, Detective Teel and
6 Detective Anderson were there; correct?

7 A. That is true, yes.

8 Q. And you went down there voluntarily; correct?

9 A. I -- well, she asked me to come in.

10 Q. She asked you to come, but she didn't force you
11 to come in; did she?

12 A. No, she didn't. No.

13 Q. She didn't threaten you with anything if you
14 didn't come in?

15 A. She didn't, no.

16 Q. She didn't promise you anything if you would
17 come in?

18 A. No, sir.

19 Q. She asked you to come in?

20 A. Yes.

21 Q. And during that interview, she and Detective
22 Anderson asked you questions about all -- everything that
23 happened that day insofar as you and Mr. Gray were
24 concerned; is that right?

25 A. Yes, that's true. Yes.

1 Q. And you never told them that you heard Mr. Gray
2 say I can't breathe when you were at Stop 1; correct?

3 A. That's correct. I did not tell them that, no.

4 Q. You didn't tell that.

5 What you told them, at least three times, was
6 that all you could hear was yelling and screaming;
7 correct? Isn't that what you told them?

8 A. I'm not certain. Could you produce that for
9 me?

10 Q. Sure. We could. Let's start with page 6.

11 You want to listen to it?

12 A. No. I don't need to listen to it, no.

13 MR. SCHATZOW: Your Honor, this is the
14 transcript that we used simply as an aid to listening. I
15 can use that, or I can play it, Your Honor, whichever you
16 prefer.

17 THE COURT: It's your witness. He said he
18 didn't need to hear but, but that's -- you're crossing.

19 MR. SCHATZOW: Thank you.

20 THE COURT: Just identify it for the record.

21 MR. SCHATZOW: Yes, Your Honor.

22 This is a transcript of -- it's entitled "In
23 the Matter of Freddie Gray Investigation, William Porter,
24 April 17th, 2015." It's a transcript prepared of the
25 audio and video interview that took place that day.

1 THE COURT: Hasn't it already been marked?
2 MR. SCHATZOW: I don't think it was actually
3 marked, Your Honor.
4 MR. MURTHA: It was used as a demonstrative
5 exhibit.
6 MR. SCHATZOW: It was used as a demonstrative
7 exhibit for the jury during the playing of it.
8 THE COURT: All right. It will be marked as
9 State's 34-A for identification only.
10 (State's Exhibit Number 34-A
11 was marked for identification.)
12 MR. SCHATZOW: Thank you.
13 THE CLERK: You're welcome.
14 BY MR. SCHATZOW:
15 Q. Now, I'm directing your attention to Page 6,
16 and I'm specifically -- this is line 12. And it's
17 talking about the time that you testified that you were
18 on Westwood and Bruce, and you were looking for someone
19 else.
20 A. All right.
21 Q. And don't you say he was just yelling and
22 screaming?
23 A. That is on the paper, yes.
24 Q. Okay. Isn't that what you told them, or do you
25 want to hear it?

1 MR. MURTHA: Objection.

2 THE COURT: Sustained.

3 BY MR. SCHATZOW:

4 Q. Are you questioning whether this is --

5 A. No. I'm not questioning it. That's -- that's
6 on the -- yes.

7 Q. Okay. And then on -- on Page 12, lines 1 and
8 2, you said, "The entire time I could hear that there was
9 someone one street over just yelling"; is that what you
10 said?

11 A. You can yell, "I can't breathe." That's --

12 Q. Did you --

13 A. You can yell that. But --

14 Q. -- say --

15 A. No. I didn't elaborate, no. They didn't ask
16 me to elaborate. But you can yell, "I can't breathe."

17 Q. One can yell, "I can't breathe." But did you
18 ever tell anybody until you came to this court today that
19 Detective Teel was wrong, and you had heard Mr. Gray
20 yelling, "I can't breathe," when you were at Stop 1?

21 A. Had I told anyone before today? Yes, I have.

22 Yes.

23 Q. Well, I don't mean about your -- I don't mean
24 your attorneys. I -- had you gone -- these officers, at
25 the end of this interview --

1 MR. MURTHA: Objection.

2 THE COURT: Sustained.

3 BY MR. SCHATZOW:

4 Q. Okay. At the end of this interview --

5 THE COURT: Sustained.

6 Get to a question.

7 MR. SCHATZOW: Yes, Your Honor.

8 BY MR. SCHATZOW:

9 Q. You were asked this day, at the end of the
10 interview, whether there was anything you cared to add
11 which may aid in the investigation or clarify anything
12 I've asked of you, or clarifying anything you said;
13 weren't you?

14 A. I was asked that, yes.

15 Q. And you said, "No, sir"; didn't you?

16 A. I think I might have said something about
17 seatbelting afterwards.

18 Q. Well, here's where it is, sir, if you'll direct
19 your attention to Page 79, at the bottom of the page,
20 going up to Page 80, which is --

21 A. If I could -- could I manipulate this?

22 Q. Could you what?

23 A. Manipulate this. Can I --

24 Q. No. I'm just -- I'm asking you about this --
25 this section, sir.

1 A. But on my statement --

2 Q. This page where you said -- did you -- what the
3 transcript reflects is that Detective Anderson said, "All
4 right. I just want to clarify anything you -- else you
5 care to add at this time, which may aid in this
6 investigation or clarify anything I've asked of you or
7 clarify anything you said"; isn't that what he asked you?

8 A. He did ask me that. And that's the second time
9 he asked me that.

10 Q. Right. And you said, "No, sir"; correct?

11 A. Yes. The second time, yes.

12 Q. The second time.

13 And this was at the end of the interview.

14 There's no more interview after that.

15 A. After that part, no, there's no more interview
16 from there.

17 Q. Okay. And then on Page 15 -- at Page 15, you
18 say, starting on line 18 through line 23, "Because the --
19 I guess they had called for more units because the crowd
20 was -- was -- I was more concerned with the crowd than I
21 was with whomever they were arresting. I could hear that
22 he was yelling or whatever. But I -- I was trying to
23 keep the crowd back from getting to those officers"; is
24 that what you said, sir?

25 A. I did say that, yes.

1 Q. When you arrived at Stop 2 you told -- well,
2 strike that question.

3 When you met with Detectives Teel and Anderson,
4 you told them that when you arrived at Stop 2, you parked
5 about 20 feet away from the van. Stop 2 being the stop
6 at Baker and Mount Street; is that right?

7 A. Yes, that is true.

8 Q. Okay. And you told them that you got about
9 halfway to the van when Mr. Gray was put into the van;
10 correct?

11 A. Perhaps. Yes.

12 Q. And you told them that you couldn't -- you
13 weren't close enough to see whether Mr. Gray had leg
14 irons on; correct?

15 A. That is correct.

16 Q. And you told them that you couldn't identify
17 the officers who were putting him into the van; correct?

18 A. That is -- that is not correct, no.

19 Q. Okay. I'm going to direct your attention --
20 I'm sorry --

21 MR. MURTHA: What page is that, sir?

22 MR. SCHATZOW: I think if we -- it depends on
23 how much -- we'll start on 33.

24 MR. MURTHA: Okay.

25 BY MR. SCHATZOW:

1 Q. Detective Anderson says, "So what side was this
2 officer standing on, the right side of Mr. Gray or the
3 left side? I mean, if -- if the wagon was facing south;
4 right?"

5 And you say, "South, right."

6 A. True.

7 Q. I'm reading accurately; correct?

8 A. That is accurate. Yes, sir.

9 Q. Okay. And so Detective Anderson says, "So is
10 he -- was he on the, like, the west side of Mr. Gray or
11 the east side."

12 And then Mr. Anderson interrupts you and says,
13 "You understand what I'm saying?"

14 And you say, "I don't -- I don't recall. I
15 don't know, man."

16 So Anderson -- you then say, "So he's standing
17 behind him, is what I thought." And him is Mr. Gray
18 there; right? The officer is standing behind him who is
19 putting him in the car; correct? That's what you're
20 talking about?

21 A. No.

22 Q. No?

23 A. In the wagon is what I'm talking about.

24 Q. Putting him in the wagon.

25 A. Yes.

1 Q. Yes.

2 Okay. At Stop 2.

3 A. I -- I believe this is at Stop 2. I don't know
4 where we're -- where in reference we're talking about.

5 Q. And he said -- well, here's where -- "So you
6 know west would be facing towards, like, the Fulton side;
7 right?"

8 A. That's what it says.

9 Q. So --

10 A. No. I didn't say that. Detective Anderson
11 said that.

12 Q. Right. But that helps you orient yourself.

13 He then goes on, you say "Right," and he says,
14 "And East would be toward, like, I guess toward, what,
15 Mount Street?"

16 So doesn't that orient you that we're talking
17 about Stop 2 now?

18 A. That's -- yes.

19 Q. Okay. And he says -- you say, "He was behind
20 him."

21 And Detective Anderson says, "Okay. So he was
22 -- he was more like on -- on this side of him, or I
23 guess, but if he's facing this way, I guess he'd be on
24 his right side. Was he on the right side of Mr. Gray?"

25 And you say, "He was -- he was on neither left

1 nor right. He was behind him. He was directly behind
2 him, grabbing him from behind."

3 And Detective Anderson says, "Oh, directly
4 behind him."

5 And then he asks you where his feet were
6 positioned, and you tell him that.

7 And then you say -- well, he asked you where
8 the feet were positioned, and you say, "All right. So --
9 so picture people were at the wagon." This is you
10 talking.

11 A. That's me.

12 Q. "All right. So you need to get this prisoner,
13 who is facing southbound, and the wagon here facing
14 southbound at the wagon. The officer is behind him. He
15 grabs him from behind. The door is already open. He's
16 pushing him and pulling him into the wagon. He pushes
17 him into the wagon. He tries to, like, kick his feet out
18 or whatever. Then the officer goes on the other side of
19 him and pulls him into the wagon is what I saw."

20 Detective Anderson, "So the officer got into
21 the wagon and pulls him in."

22 And you say, "Right."

23 That's accurate so far?

24 A. That is accurate so far.

25 Q. Okay. And Detective Anderson says, "So someone

1 climbed up in the wagon and pulls him in."

2 And you say, "After he had tried to pull him
3 in, he got him halfway in through the doors, and he's,
4 like, kicking his feet -- his feet. And the officer goes
5 around him, and then pulls him into the wagon."

6 And Detective Anderson says, "So the officer
7 did it by himself?"

8 And you say, "Right."

9 And Detective Anderson says, "You saw all of
10 that, and you don't know which officer it was?"

11 And you say, "I don't know. I was back out
12 far, man."

13 Isn't that right?

14 A. That's what it says. Yes, that's what it
15 reads.

16 Q. Okay. And that's what you -- and it reads that
17 way because that's what you actually said; isn't it?

18 A. Well, you're leaving out parts. But sure, yes.
19 And then it goes on to say that it's a bicycle officer
20 who has the -- who happens to be slender, so it's either
21 Nero or Lieutenant Rice. But, yes, you're leaving out
22 things.

23 Q. Well, I'm not leaving anything out in what we
24 just read.

25 A. In what we just read, no. No.

1 Q. And you didn't identify the officer because you
2 told them I was too far back, man.

3 A. It was -- I said it was a white, slender
4 officer, Nero or Lieutenant Rice, is what I said.

5 MR. SCHATZOW: Excuse me one second, Your
6 Honor.

7 BY MR. SCHATZOW:

8 Q. When he said -- when Detective Anderson said
9 you saw all that and you don't know which officer it was,
10 your response was, "I don't know. I was back out far" --

11 MR. MURTHA: Objection.

12 THE COURT: Sustained. Sustained.

13 Ask another question.

14 MR. SCHATZOW: Okay.

15 THE COURT: That hasn't already been answered.

16 BY MR. SCHATZOW:

17 Q. But the fact of the matter is you wasn't -- you
18 weren't back out far; were you?

19 A. I -- I don't -- I wasn't back out far?

20 Q. From the wagon?

21 A. I walked up to the wagon.

22 Q. You were right up at the back of the wagon;
23 weren't you?

24 A. I walked up to the wagon.

25 Q. Right. Even though you told the officers when

1 they interviewed you you were only halfway back.

2 A. I'm sorry. It was -- it was about a week ago
3 when I had done that testimony.

4 Q. It was --

5 A. It was a week later.

6 Q. It was -- it was five days later.

7 A. Oh, I'm sorry.

8 Q. It was on Friday; right? Correct?

9 A. I can't remember. Perhaps.

10 Q. It was April 17th; wasn't it?

11 A. All right. Yes.

12 Q. And that's five days after April 12th; can you
13 agree with that?

14 A. Yes. That is five days after April 12th, yes.

15 MR. SCHATZOW: In fact, if we could see which
16 exhibit number is it, the cell phone video, 25, Your
17 Honor?

18 THE COURT: Okay.

19 (Brief pause.)

20 (Whereupon, a portion of Exhibit 25, the cell
21 phone video, was played in open court, but is
22 untranscribed herein.)

23 BY MR. SCHATZOW:

24 Q. Stop right there. That's you getting out of
25 the car; isn't it, sir?

1 A. That is me getting out of the car. Yes, sir.

2 Q. Okay.

3 MR. SCHATZOW: Would you continue to roll it?

4 (Whereupon, a portion of Exhibit 25, the cell
5 phone video, was played in open court, but is
6 untranscribed herein.)

7 MR. SCHATZOW: Stop it.

8 BY MR. SCHATZOW:

9 Q. And then, sir, in the -- in the dark blue
10 uniform, back to the camera, something coming out of his
11 back pocket, that's you, sir?

12 A. That is me, yes.

13 Q. Okay. And you're right on back of the camera
14 camera.

15 MR. SCHATZOW: If you could keep rolling,
16 please.

17 (Whereupon, a portion of Exhibit 25, the cell
18 phone video, was played in open court, but is
19 untranscribed herein.)

20 BY MR. SCHATZOW:

21 Q. You were right there, and you didn't see
22 Lieutenant Rice come out of the wagon?

23 A. At that that point in time, I didn't know it
24 was Lieutenant Rice. I just knew it was a white, slender
25 officer.

1 Q. Didn't you have -- but Lieutenant Rice is a
2 shift commander there.

3 A. He is a shift commander, yes.

4 Q. There were only -- I don't know what Mr.
5 Proctor said, 11 people working that day; right?

6 A. That is true, yes.

7 Q. You'd been there for two years.

8 A. Yes.

9 Q. Right. But you couldn't identify -- you didn't
10 identify him to the --

11 A. I didn't identify him. I said it was one of
12 the bike officers that was present at that arrest.

13 Q. One of the bike officers.

14 Sir, were you -- you had talked about, in your
15 testimony in response to a question, you said something
16 about the don't snitch culture in Baltimore; do you
17 remember being asked about that?

18 A. There was a -- not -- don't -- stop snitching
19 is what it's called. Yeah.

20 Q. Stop snitching. Right.

21 Is that a culture in the Baltimore Police
22 Department?

23 A. Absolutely not. I'm actually offended that you
24 would say something like that.

25 Q. Well, sir, did you not tell the officers who

1 were investigating this truth the truth about where you
2 were standing and what you saw because you didn't want to
3 involve other officers?

4 A. No, that's not true. I -- I identified the
5 officers. I said they were -- I said everyone's name. I
6 gave all the officer's names. Lieutenant Rice, Nero,
7 Miller. I said every officer that was there.

8 Q. You didn't say the officer who was coming out
9 of the wagon --

10 A. I -- I --

11 Q. -- right while you were standing at the back of
12 wagon; did you?

13 A. I didn't know who it was. I'd be assuming if I
14 -- if I said who -- which one it was. I didn't know.

15 Q. And would it be fair to say that, at the time,
16 you were as close to that officer as I am to you now?

17 A. Possibly.

18 Q. When -- after Mr. Gray went into the wagon, at
19 Stop 2, there came a time when you had a conversation
20 with Brandon Ross; correct?

21 A. That is true. I -- yes.

22 Q. You say that you told Brandon Ross to call 911?

23 A. I said to him to call 911 for a supervisor
24 complaint, yes.

25 Q. Did you -- you listened to the cell phone video

1 that was played here in court; correct?

2 A. I -- I did listen to it, yes.

3 Q. And you've listened to it before then; haven't
4 you? Before today in court and before we played it?

5 A. No. I hadn't seen this video before we got to
6 court, no.

7 Q. Okay. You didn't hear anything on that video
8 about telling Brandon Ross to call 911; did you?

9 A. You can't really hear any other voices other
10 than Brandon Ross because he's yelling, but I'm having a
11 conversation with him, much like I'm having with you.

12 Q. You didn't hear on the cell phone Brandon Ross
13 -- you -- you didn't hear yourself telling Brandon Ross
14 to call 911 on the cell phone video; did you?

15 A. You don't hear much on the -- on the recording
16 because it's in Brandon Ross' pocket, and he's yelling.
17 And I'm having a conversation like I'm having with you
18 right now.

19 Q. Sir, my question is what you heard. You didn't
20 hear on the cell phone video Brandon Ross -- excuse me,
21 you telling Brandon Ross to call 911.

22 A. You didn't hear much, other than Brandon Ross
23 yelling, because he was yelling. The pocket was in his
24 phone.

25 THE COURT: Sir, answer the question that was

1 posed to you, please.

2 THE WITNESS: No.

3 BY MR. SCHATZOW:

4 Q. And, in fact, when Brandon Ross -- when you
5 told Brandon Ross the supervisor here is Lieutenant Rice,
6 and Brandon Ross says, in effect, he's the guy who was --
7 who's here who's involved; I need somebody else. What
8 you told him to do was go to the media; right?

9 A. That's what I instructed him to do, yes.

10 Q. You didn't tell him to call Internal Affairs,
11 did you, at the police department?

12 A. No, I didn't tell him that. No.

13 Q. No.

14 And your telling him to go to the media was
15 like telling him to go fly a kite; wasn't it?

16 MR. MURTHA: Objection.

17 MR. SCHATZOW: You just wanted to get rid of
18 him.

19 THE COURT: Overruled.

20 Did you?

21 THE WITNESS: No. That is not -- I didn't want
22 to just get rid of him. No.

23 BY MR. SCHATZOW:

24 Q. You thought you were being helpful to him?

25 A. Yes. Absolutely.

1 Q. He wanted -- he wanted somebody from the police
2 department to intervene in this situation. And what you
3 told him to do was go talk to the media; right?

4 A. No. I instructed him who my superior was, and
5 I gave him that information.

6 Q. Right. And then you told him go talk the
7 media. You know what to do. Not go to the police
8 department and seek help from the way the situation is
9 being handled, but go to the media; that's what you told
10 him?

11 A. After I instructed him to talk to my
12 supervisor, yes.

13 Q. When you arrive at Druid Hill and Dolphin
14 Street, what we've been referring to as Stop 4, you were
15 aware that Officer Goodson had made a radio call for
16 someone to come because he -- I need to check out this
17 prisoner; isn't that what he said?

18 A. Those are the words he said, yes.

19 Q. And when you arrived there, didn't you ask Mr.
20 Goodson why do you need my help to check out this
21 prisoner?

22 A. I did not, no.

23 Q. You didn't ask him anything about why he was
24 seeking assistance from another unit; did you?

25 A. When I walked up he said, hey, help me check on

1 this prisoner, is what he said.

2 Q. My question, sir, is you didn't ask him any
3 questions about why --

4 A. No, I didn't. I didn't ask him any questions.
5 No.

6 Q. And when you were interviewed -- let me strike
7 that.

8 When you did the demonstration with your two
9 lawyers today about how you got Mr. Gray off the floor of
10 the van at Stop 4 and onto the bench, you said that you
11 were just assisting Mr. Gray because he was using his own
12 muscles to get up; is that right?

13 A. Those are the words I said, yes.

14 Q. Okay. But, in fact, when you were interviewed
15 by Detectives Teel and Anderson on April 17th, you never
16 say that Mr. Gray helped in any way to get from the floor
17 to the bench; did you?

18 A. No. I didn't elaborate on how I got him from
19 the floor to the bench. I thought it was obvious.

20 Q. In -- in fact -- but you thought it was obvious
21 to Detectives Teel and Anderson without explaining it to
22 them?

23 A. Yes.

24 Q. Okay. In fact, didn't you repeatedly tell
25 them, "I put him on the bench"?

1 A. Those are my words, yes. But it would be
2 physically impossible for me to place someone onto a
3 bench in that tight of a space.

4 Q. You -- you told them you put him on the bench,
5 you placed him on the bench; correct? He was on the
6 bench.

7 A. He was on the bench; that is correct, yes.

8 Q. And you told them that you put him there?

9 A. I assisted him there, yes.

10 Q. But you never told them that Mr. Gray played
11 any role in getting himself from the floor to the bench;
12 did you?

13 A. I apologize. They didn't ask me that question,
14 no.

15 Q. And -- well, they ask you whether you put him
16 on the bench. And when you said yes, or when you said,
17 "I put him on the bench," you never said, "I put him on
18 the bench, but it was really with his assistance. He
19 was, you know, actively involved in getting on the
20 bench." You never said anything about that in words or
21 substance; did you?

22 A. That didn't come into question until today, no.

23 Q. The question, "Did you put him on the bench,"
24 would not have generated that response from you because
25 that's what you were asked; wasn't it?

1 A. No. That would not generate that response, no.

2 Q. You would have had to have been specifically
3 asked, "To what extent did Mr. Gray use his own muscle
4 power to get on the bench?"

5 A. That didn't come into question until today,
6 sir.

7 Q. Please listen to my question. Let's -- let's
8 get the exact question.

9 If we could go to -- in fact, why don't we just
10 --

11 MR. SCHATZOW: Your Honor, with the Court's
12 permission, I think it's easier to just play the audio
13 portions. I think -- do we have the video --

14 THE COURT: It's your witness.

15 MR. SCHATZOW: -- (Inaudible at 2:37:58 p.m.)?

16 THE COURT: What's the -- there's no question.
17 So I don't understand what you mean.

18 MR. SCHATZOW: I'm about to ask the question,
19 Your Honor. I apologize.

20 BY MR. SCHATZOW:

21 Q. Weren't -- weren't -- didn't you describe what
22 you did?

23 MR. MURTHA: Who -- can I get a page, please?

24 MR. SCHATZOW: Sure. 42, line 5.

25 BY MR. SCHATZOW:

1 Q. Page 42, line 5. The question that Detective
2 Teel asks is, "Okay. And what did you -- take me from
3 that point, what happened?" We're at Dolphin and Druid
4 Hill.

5 And you start talking about what happened.
6 You're giving your own narrative about it. And you say,
7 "And he doesn't say anything. And he's like, help me,
8 help me up. So I was, like, what -- what's the deal. So
9 I pulled him up"; isn't that what you said?

10 A. If I could -- if I could go along with you if
11 you don't mind. I'm sorry. I can't see what you're
12 reading. I apologize, sir.

13 Q. Well -- you haven't -- you haven't studied this
14 statement --

15 MR. MURTHA: Objection.

16 MR. SCHATZOW: -- when --

17 THE COURT: Sustained. Strike the question.
18 Ask a question.

19 BY MR. SCHATZOW:

20 Q. Sir, weren't you -- weren't you asked by
21 Detective Teel to --

22 MR. MURTHA: Line and page?

23 MR. SCHATZOW: -- from --

24 THE COURT: Line and page.

25 MR. SCHATZOW: Page 41.

1 BY MR. SCHATZOW:

2 Q. She said -- you say that, on 41, line 12, "I
3 think I may have been, like, right at the intersection of
4 Dolphin and Druid Hill"; correct?

5 A. That is what it says, yes.

6 Q. And Detective Teel says, "Were you behind the"
7 -- and you say, "I was behind, yes"; is that what --
8 what's said?

9 A. That's what it says, yes, sir.

10 Q. Okay. And then Detective Teel says, "Okay.
11 And what did you -- take me from that point, what
12 happened"; isn't that her question?

13 A. That is what happens, yes.

14 Q. And then you proceed to tell her what happened;
15 correct?

16 A. That's -- yes.

17 Q. And part of what you tell her when it comes to
18 putting Mr. Gray on the bench, you say, "So I pull him
19 up"; correct?

20 A. If you skip everything else I've said, and go
21 there, then yes, that's what it's says.

22 Q. Well, is there -- is there anywhere where you
23 told them that Mr. Gray played any role in getting on the
24 bench?

25 A. That didn't come into question until today,

1 sir, no.

2 Q. Well, she asked you what happened; didn't she?

3 A. She did ask me what happened, yes.

4 Q. When you were asked today by your lawyers what
5 happened, you told them that you were merely assisting
6 Mr. Gray, that he was using his own power to get to the
7 bench.

8 A. Because that came --

9 Q. Correct?

10 A. -- into the question, yes.

11 Q. No. They just -- they asked you what happened,
12 and she asked you what happened, and you gave two
13 different answers; didn't you?

14 A. No. I didn't give -- I further explained my
15 answer from here.

16 Q. But you didn't have that explanation anywhere
17 in this statement; correct?

18 A. When I made that statement, I was making it as
19 a witness. I didn't know I was a suspect in the case.

20 Q. Was that a reason to provide less information?

21 A. I didn't know I needed to defend myself in that
22 statement, no.

23 Q. Because I -- did you think that you had an
24 obligation to tell them the truth?

25 A. Absolutely. I told them the truth.

1 Q. Did you think you had an obligation to tell
2 them the complete truth?

3 A. Absolutely.

4 Q. So why didn't you tell them about Mr. Gray
5 helping you up -- Mr. Gray helping himself up, as you
6 helped him up?

7 A. Why didn't I tell them that he was assisting?
8 I thought it was obvious.

9 Q. Now, you had -- at Stop 4, you had the
10 opportunity to put that seatbelt around Mr. Gray; didn't
11 you?

12 A. That is true.

13 Q. And you didn't do it; correct?

14 A. I did not, no.

15 Q. And you didn't call a medic?

16 A. No, I didn't.

17 Q. And your testimony is that you got this call
18 for an urgent backup, and that's when you got out of the
19 van?

20 A. No. That's not -- no.

21 Q. You were already out of the van?

22 A. I was already out of the van, yes.

23 Q. All right. And the call for urgent -- it
24 wasn't an urgent backup. It was a call for 10-16. It's
25 just a backup; isn't it?

1 A. There was some urgency.

2 Q. Single 13 is an emergency --

3 MR. MURTHA: Objection.

4 THE COURT: Sustained.

5 MR. SCHATZOW: I'm asking a question.

6 BY MR. SCHATZOW:

7 Q. Isn't single 13 the emergency call?

8 MR. MURTHA: Objection.

9 THE COURT: Overruled.

10 THE WITNESS: That is officer down, send

11 assistance.

12 BY MR. SCHATZOW:

13 Q. Right. And 10-16 is -- is I need a backup.

14 And it could be an emergency, or it could not be an

15 emergency; right?

16 A. Would you like for me to explain to you the 10

17 codes, and how they go?

18 Q. I would like --

19 THE COURT: No. Probably what he wants you to

20 do is answer the question that he poses, and not ask him

21 a question.

22 THE WITNESS: All right.

23 Can you repeat your question?

24 BY MR. SCHATZOW:

25 Q. Yes. A 10-16 is the way one calls for backup,

1 whether it's an emergency or non-emergency; isn't it?

2 A. The way I understand it, in my training and
3 experience, 10-16 is urgent backup.

4 Q. Okay. Let's talk about your training a little
5 bit.

6 Do you remember the part of your medical
7 training that Officer Carson-Johnson testified about
8 teaching you involving calling a medic when someone
9 requests a medic?

10 A. I recall her testimony, yes.

11 Q. No. Do you recall that part of your training?

12 A. Hmm. It's not vivid, but I got that training.

13 Q. When you say it's not vivid, do you recall some
14 part of it?

15 A. Some parts of it, of the LEMAT (phonetic)
16 class, yes.

17 Q. No. I don't mean parts of the -- I mean part
18 of you call a medic when somebody requests a medic.

19 A. No. I think what she said -- I'm sorry. No,
20 no. I --

21 Q. You don't recall it?

22 A. She said you've got to be a detective, I think
23 the words that she used. You've got to be a detective
24 and use your discretion is what she said when she
25 testified.

1 Q. You also heard her say, didn't you, that when
2 somebody requests a medic, you get them a medic, and then
3 you ask them questions so you can get information to give
4 to the medic?

5 A. I did hear her say that, yes.

6 Q. Okay. Do you remember that from your training?

7 A. I -- I remember that here, not necessarily in
8 my training, no. No.

9 Q. But you do remember parts of your medical
10 training; don't you?

11 A. I do, yes.

12 Q. Just not that part?

13 A. Just not that part, no.

14 Q. And also in your training, you were trained to
15 put a seatbelt on anybody you transport unless it would
16 be a safety issue. Dangerous for you; correct?

17 A. I -- I never -- until Agent Bilheimer
18 (phonetic) got up here, I -- I never heard that. We had
19 no wagon training. There was no such things as a wag --
20 we didn't have a wagon training.

21 Q. Well, he was teaching you vehicle procedures;
22 wasn't he?

23 A. Yeah. He was teaching you vehicle procedures;
24 wasn't he?

25 A. Yeah. He was -- he was the EVOC (phonetic)

1 teacher; that is true, yes.

2 Q. Right. So you don't recall him teaching what
3 he said he taught about seatbelts; is that right?

4 A. No. I don't. I'm sorry, I don't. No.

5 Q. But it is what's right in that K-14 order,
6 which you say you received on flash drive?

7 A. I received the General Orders on a flash drive,
8 yes.

9 Q. Right. And during the 11 months you were in
10 the academy, did you ever look on the flash drive at any
11 of the Orders?

12 A. Just the specific ones that they asked us to.
13 There's a lot of General Orders.

14 Q. Well, this one involves persons in custody.
15 Did you think it was important to look at the one called
16 Persons in Custody?

17 A. I looked at the specific General Orders that
18 they asked us to do for -- as far as our curricular in
19 the -- in the academy.

20 Q. My question is did you think it was important
21 to look at an Order called Persons in Custody?

22 A. There's no way -- I don't know what the General
23 Orders are called until -- until they -- I think I don't
24 -- there's no guide that says Persons in Custody. It
25 says General Order, whatever the number is, and then they

1 tell us to look it up.

2 Q. So if you -- you didn't look at the General
3 Orders?

4 A. I looked at the General Orders specifically for
5 the classes in the academy.

6 Q. And let me show you what's in evidence as
7 Exhibit 5, which is a receipt. Is that your signature on
8 the bottom of the receipt?

9 A. That's my signature at the bottom, yes.

10 Q. And you signed for acknowledging receiving the
11 General Orders; correct, among other things?

12 A. I did sign there, yes.

13 Q. My question, did you sign it acknowledging
14 receipt of the General Orders, among other things?

15 A. Yes. Yes. I said yes.

16 Q. Okay. When you were interviewed by Detectives
17 Teel and Anderson on April 17th of this year, you never
18 said anything about concern about your gun being a reason
19 why you didn't seatbelt Mr. Gray; did you?

20 A. That is true.

21 Q. When you were at Stop 5 -- well, excuse me.
22 Before we get to Stop 5, you were at -- let's go back to
23 Stop 4.

24 You're outside the wagon, and you say you had a
25 conversation with an Officer Goodson about the prisoner

1 and going to the hospital; correct?

2 A. Yes, sir.

3 Q. Okay. And then you say you got called away by
4 the call for backup; is that right?

5 A. Everyone got the call for backup.

6 Q. Okay. There was a call for backup. But, in
7 fact, someone responded to that call before you did;
8 didn't they?

9 A. Yes.

10 Q. And there was a call for a wagon; wasn't there?

11 A. There was. Immediately after the backup, there
12 was a call for a wagon.

13 Q. Right. And then Officer Goodson responded to
14 the call for the wagon before you responded; didn't he?

15 A. Yes.

16 Q. And, in fact, then Lieutenant Rice, who was the
17 one who was making the call, indicated that he didn't
18 need any more back up, and then there was a subsequent
19 call where he asked for somebody to do crowd control at
20 North and Carey; correct?

21 A. I can't say for certain.

22 Q. Okay.

23 MR. SCHATZOW: If we could have the -- that
24 portion of the KGA played. Do we have Exhibit 30? It's
25 Exhibit 30. Can we have transcript --

1 Your Honor, the transcript of this will be on
2 the screen. It's Exhibit 30.

3 BY MR. SCHATZOW:

4 Q. If you'd take a look at this, sir. Can you see
5 it from where you are?

6 A. Kind of.

7 MR. SCHATZOW: Your Honor, may he get closer if
8 he needs to?

9 THE COURT: He may.

10 BY MR. SCHATZOW:

11 Q. Now, at 9:06 and 57 seconds, where it says,
12 "09", that's Lieutenant Rice; correct?

13 A. I'm sorry.

14 Q. First line. Top line.

15 A. Yes. Yes.

16 Q. Okay. And he says 10-16, that's the backup
17 call; correct?

18 A. That is correct.

19 Q. 1600 North is the address; correct?

20 A. That is the address he gave, yes.

21 Q. Okay. Then on the next line, four seconds
22 later, that's the dispatcher; correct? Saying 1600 North
23 need a 10-16; correct?

24 A. That is correct.

25 Q. And the next thing that happens, five seconds

1 after that, is 22, I'm in route; correct?

2 A. That is correct.

3 Q. And that is the officer who is Number 22 that
4 day? That's -- he's identifying himself, and he's saying
5 he's on route; correct?

6 A. That is 7 Baker 22.

7 MR. SCHATZOW: We're going to play it in just a
8 minute. Well, actually, why don't you -- why don't you
9 play it, so we can --

10 BY MR. SCHATZOW:

11 Q. And then there's a 10-4 from the dispatcher;
12 correct?

13 A. Yes.

14 Q. Okay.

15 MR. SCHATZOW: Why don't you go ahead and play
16 that for him.

17 (Whereupon, the call was played in open court,
18 but remains untranscribed herein.)

19 MR. SCHATZOW: Stop there.

20 BY MR. SCHATZOW:

21 Q. Okay. Then the next thing that happens is
22 about two seconds after the dispatcher says -- yes, two
23 seconds after the dispatcher says 10-4, the request is
24 for a wagon; correct?

25 A. Umm --

1 Q. If you look at the time?
2 A. Yeah, yeah. I see it. Yes, I see it. Sorry.
3 Yes.
4 Q. 9:07:09. You got it?
5 A. I got it, yes.
6 Q. Okay. And there's a request for a wagon;
7 right?
8 A. Yes. It says, "And a wagon and a wagon."
9 Q. And a wagon and a wagon.
10 And then, just about a second after that,
11 there's a call for 91; correct?
12 A. Yes.
13 Q. And seven seconds after that, because there's
14 no response, there's a call Baker 91; correct?
15 A. Yes.
16 Q. Okay. And Baker 91 is Officer Goodson;
17 correct?
18 A. He is.
19 Q. And then about two seconds after that, you hear
20 someone say, "Hang on, I'm going to have to turn around
21 and come back up there, 1600 North"; you see that?
22 A. Yes.
23 Q. Okay. We'll play that for a moment -- in a
24 minute --
25 MR. SCHATZOW: Well, why don't we run it, play

1 it through, and you can tell me whether that's Officer
2 Goodson.

3 (Whereupon, the call was played in open court,
4 but remains untranscribed herein.)

5 BY MR. SCHATZOW:

6 Q. Okay. Then -- and then you hear the dispatcher
7 say that 1600 North --

8 MR. SCHATZOW: Why don't you -- Joe, play it
9 all the way through for us.

10 (Whereupon, the call was played in open court,
11 but remains untranscribed herein.)

12 BY MR. SCHATZOW:

13 Q. So, sir, what happened was --

14 A. Can I take a seat?

15 Q. Yes, please.

16 Lieutenant Rice, who is 09, says we have things
17 contained, but we have a crowd forming, and we need North
18 and Carey covered; correct?

19 A. He does say that, yes.

20 Q. And you're the one who responds to that when
21 the dispatcher says, okay, I need a unit at North and
22 Carey, you identify yourself by saying 43; correct?

23 A. Yes.

24 Q. Because that is who you were that day, that was
25 your number; correct?

1 A. That is true.

2 Q. Okay. And you say I'm coming behind 91 up
3 there; right?

4 A. Yes.

5 Q. And 91 is the wagon, Officer Goodson; correct?

6 A. That is true, yes.

7 Q. All right. And you are coming behind him;
8 correct?

9 A. I -- at the time when I said that, I was behind
10 where the wagon was, yes.

11 Q. Right. And at no time did you call Officer
12 Goodson, or when you were talking -- well, let me ask you
13 this. Did you hear all of this conversation while you
14 were talking with Officer Goodson behind the wagon?

15 A. I think as a soon as -- I can't really recall,
16 but I'm going -- as soon as it came out 10-16, I would
17 have been heading back to my vehicle at that time. And
18 those seven seconds would have been getting in my car.

19 Q. At any time, did you radio dispatch or Officer
20 Goodson, wait a minute, you can't go respond to this,
21 you've got a prisoner you've got to take to the hospital?

22 A. I can't do that. I -- I can't do that.

23 Q. What do you mean you can't do that? Your radio
24 worked; didn't it?

25 A. There's -- there's a hierarchy. I can't tell

1 Officer Goodson what to do. And -- and -- I can't tell
2 Officer Goodson what to do.

3 Q. Okay. Now, my question is did you ever make an
4 effort to use your radio to contact Officer Goodson and
5 say you're supposed to take this guy to the hospital?

6 A. No, I didn't. No. There never came a time I
7 did that.

8 Q. All right. And did you -- there are other --
9 there were no other wagons in the Western that day?

10 A. There were no other wagons in the Western that
11 day.

12 Q. But there are other wagons in the City; aren't
13 there?

14 A. That is true, yes. There are other wagons.

15 Q. And if a wagon is out of service because it's
16 taking someone to the hospital or because it got a flat
17 tire, then the dispatcher can get another wagon from
18 another district; can't they?

19 A. I don't make that decision.

20 Q. Sir, I'm not asking you whether you made the
21 decision. I'm asking you if a dispatcher can ask for a
22 wagon from another district.

23 A. Yes. Yes. A dispatcher can -- has the power
24 to do that, yes.

25 Q. Okay. So did you really have a conversation

1 with Officer Goodson about taking Mr. Gray to the
2 hospital?

3 A. I think I already answered that. And the
4 answer to that is yes, I did have a conversation.

5 Q. But you went to this scene, North and Carey,
6 behind the wagon, knowing full well that the wagon was
7 not going to the hospital; correct?

8 A. I -- no. That's not true.

9 Q. You did know the wagon was not going to the
10 hospital?

11 A. I got to the scene before the wagon got to the
12 scene.

13 Q. Right. But you left behind the wagon; didn't
14 you?

15 A. I was behind the wagon when I left, yes.

16 Q. Right. And you weren't -- you said I'm coming
17 behind 91 up there; correct?

18 A. Be -- be -- yes. That's what I said, yes.

19 Q. And you said it because you were behind 91;
20 correct?

21 A. My car was parked behind 91, yes.

22 Q. Well, you said, "I'm coming behind 91." You
23 didn't say, "I'm parked behind 91"; did you?

24 A. No. No. I didn't say that, no.

25 Q. And you knew that 91 had just said that he was

1 going to the scene; correct?

2 A. Yes. That's what it says, yes.

3 Q. And at Stop 5, you say that Sergeant White
4 ordered you to follow the wagon to the station house;
5 right?

6 A. She --

7 Q. Western District.

8 A. She said -- she ordered me to do the hospital
9 detail, yes.

10 Q. Didn't she also order you to follow the wagon?

11 A. I'm sorry? She ordered me to do the hospital
12 detail.

13 Q. Right. Didn't she order you to follow the
14 wagon to the District?

15 A. Not that I can recall, no. It would have been
16 to do the hospital detail, and I would have gone behind
17 the wagon. But she didn't order me to do that. She
18 ordered me to do the hospital detail.

19 Q. You couldn't -- you couldn't very well do the
20 hospital detail if you weren't with the wagon; could you?
21 The wagon would -- would -- could get to wherever the
22 wagon was going to go, and you wouldn't be there.

23 A. I'm sorry. Repeat your question.

24 Q. Didn't Sergeant White tell you that you have to
25 take over the hospital detail, and just to follow the

1 wagon down to the station?

2 A. She did tell me to do the hospital detail. She
3 -- there -- she never said anything about the wagon.

4 Q. When you met with Detectives Teel and Anderson
5 on April 17th, 2015 --

6 MR. SCHATZOW: At page 47, lines 2 through 7,
7 Counsel.

8 Thank you.

9 BY MR. SCHATZOW:

10 Q. Weren't you asked the following question, and
11 didn't you give the following answer?

12 A. I'm sorry --

13 Q. Detective --

14 A. -- hold on. What -- where was it?

15 Q. 47, lines 2 through 7.

16 Detective Teel: "After she finished to talking
17 to Mr. Gray what happened?"

18 Officer Porter: "Uh. Well, she told me that I
19 would have to take over the hospital detail, and just to
20 follow the wagon down to the station."

21 Is that what you said?

22 A. That's what it says, yes.

23 Q. But you didn't do that; did you?

24 A. Yes, I did do that.

25 Q. Your own testimony this morning was that you

1 waited two to five minutes --

2 A. I --

3 Q. -- before you went down to the station;
4 correct?

5 A. That is correct, yes.

6 Q. And -- and when you went down to the station,
7 you didn't go down Mount Street; you went down
8 Pennsylvania Avenue; didn't you?

9 A. No. No.

10 Q. Okay.

11 MR. SCHATZOW: You've got that?

12 BY MR. SCHATZOW:

13 Q. Your car number -- I think I already asked you
14 this. Just to be clear, your car number that you were
15 driving that day is 9239; isn't it?

16 A. Mmm.

17 Q. I've handed you Exhibit 5, the run sheet.

18 A. Yes. It says 9239. That's what it says, yes.

19 Q. And on the top of Baltimore Police cars, the
20 number of the car appears, but only the last three
21 digits; correct?

22 A. Yeah. That's true, yes.

23 MR. SCHATZOW: What's our next exhibit number?

24 THE CLERK: 77.

25 MR. SCHATZOW: Your Honor, at this time,

1 pursuant to stipulation, I offer a CCTV disc, which is
2 Exhibit --

3 I'm sorry?

4 THE CLERK: 77.

5 MR. SCHATZOW: -- 77.

6 (State's Exhibit Number 77
7 was marked for identification.)

8 THE COURT: And specifically what?

9 MR. SCHATZOW: This is a -- this is a scene --
10 this -- CCTV of the wagon and the police cars, the wagon
11 leaving the scene at North and Pennsylvania. And --

12 THE COURT: Okay.

13 MR. SCHATZOW: -- showing the delay -- the
14 timing and the direction of Officer Porter's car, Your
15 Honor.

16 THE COURT: Okay.

17 Any objection?

18 MR. MURTHA: I believe it's stipulated to, Your
19 Honor. No, Your Honor.

20 THE COURT: I hear it, right, a stipulation.
21 That's fine. Okay.

22 No objection. So entered.

23 (State's Exhibit Number 77
24 was received in evidence.)

25 MR. SCHATZOW: Okay.

1 (Whereupon, the CCTV video was played in open
2 court.)

3 MR. SCHATZOW: Stop it right there.

4 BY MR. SCHATZOW:

5 Q. This is the wagon leaving the scene that we've
6 called Stop Number 5; isn't it, Officer Porter?

7 A. Yes. That is, yes.

8 Q. Okay. And your car was the first car in front
9 of the wagon; wasn't it?

10 A. I -- I can't -- I don't know. I can't
11 remember.

12 Q. Okay. We'll have a shot in a moment that will
13 let you see the numbers.

14 MR. SCHATZOW: Go ahead, please.

15 (Whereupon, the CCTV video was played in open
16 court.)

17 MR. SCHATZOW: Stop it there for just one
18 second.

19 BY MR. SCHATZOW:

20 Q. Sir, what -- what is this -- this street here,
21 that we're looking down?

22 A. That's North Avenue.

23 Q. Okay.

24 MR. SCHATZOW: Go ahead.

25 (Whereupon, the CCTV video was played in open

1 court.)

2 BY MR. SCHATZOW:

3 Q. Excuse me, sir. That's your car, or one of
4 those cars is -- one of those cars --

5 A. One of those cars are mine. Yes, that's true.

6 Q. -- is yours. And that's on North Avenue,
7 facing eastbound; correct?

8 A. That would be westbound.

9 Q. Westbound. I'm sorry. Westbound. Fine.

10 (Whereupon, the CCTV video was played in open
11 court.)

12 MR. SCHATZOW: Stop it there for a second.

13 BY MR. SCHATZOW:

14 Q. Officer, you see that the officer for the first
15 car is now getting into his car?

16 A. I can see that, yes.

17 Q. Okay.

18 MR. SCHATZOW: You can keep rolling.

19 (Whereupon, the CCTV video was played in open
20 court.)

21 BY MR. SCHATZOW:

22 Q. Sir, isn't this your car, 239 -- get up as
23 close as you need to to see it -- turning down
24 Pennsylvania Avenue?

25 A. I see nine -- I see 239, yes.

1 Q. Turning down Pennsylvania?

2 A. Yes. He turned onto Pennsylvania; yeah.

3 Q. And that's you. 239 is your car; right?

4 A. Can I see that again?

5 Q. The run sheet? Sure.

6 A. Yes. Can I see the run sheet?

7 Q. It's State's Exhibit 29.

8 A. It says 9239, yep.

9 Q. When you got to the Western District, you

10 opened up the door for Mr. Allan?

11 A. No.

12 Q. You opened up the door for Mr. Gray?

13 A. Yes.

14 Q. Okay. And when you opened the door at the

15 Western District, which we've been referring to as Stop

16 6, you saw Mr. Gray in the same position that you had

17 seen him at Stop 5; correct?

18 A. As I explained earlier, it was -- it was more

19 exaggerated.

20 Q. When you were interviewed by Detectives Teel

21 and Anderson on April 17th of 2015, you did not indicate

22 that it was more exaggerated. You simply said, "He was

23 in the same position"; didn't you?

24 A. Yes. I -- I elaborated today.

25 Q. But you didn't elaborate to them on April 17th?

1 A. I did not, no.

2 Q. All you told them was that he was in the same
3 position.

4 And so what your testimony today is is
5 different than the information you gave to Detectives
6 Teel and Anderson; correct?

7 A. Not correct, no. I just elaborated today.

8 Q. Well, isn't that different? Didn't you add
9 something to what you told them?

10 A. I just expounded upon what I said.

11 Q. Well, but all you had told them was the same
12 position. Isn't same position different than same
13 position but more -- more exaggerated?

14 Q. I think you just said exactly what I've been
15 saying. The same position, but more exaggerated.

16 Q. Could you --

17 A. You just said that.

18 Q. Sir, answer the question. What -- is what --
19 when Detective Anderson, on April 17th, asked you, "What
20 did you see," didn't you say the same was he was -- he
21 was --

22 MR. MURTHA: Excuse me.

23 MR. SCHATZOW: -- still sitting there leaning
24 against --

25 MR. MURTHA: Excuse me.

1 MR. SCHATZOW: I'm just going to play it, Your
2 Honor, if you don't mind. I think that will be easier.

3 THE COURT: Well, no.

4 MR. SCHATZOW: Can you get that queued up?

5 THE COURT: Is there an objection?

6 MR. MURTHA: I'm just -- when he starts
7 reading, I would ask that --

8 MR. SCHATZOW: I'm sorry.

9 MR. MURTHA: That's all I'm asking for.

10 MR. SCHATZOW: 62, 11 -- well, let's go back to
11 line 8.

12 MR. MURTHA: Okay. Thank you.

13 MR. SCHATZOW: Start at 62 on line 8.

14 And, Your Honor, in order to demonstrate what
15 he said, if we could play the video of that portion
16 alone.

17 You've got it? 62, page 8.

18 MR. MURTHA: Line 8.

19 MR. SCHATZOW: I'm sorry. Page 62, line 8.

20 Your Honor, we'll go back to the old tape now.

21 BY MR. SCHATZOW:

22 Q. 62, line 8. Detective Anderson says, "So when
23 you opened the door for Mr. Gray, Officer Porter" --

24 You say, "Yeah."

25 Detective Anderson says, "What did you see?"

1 And you say, "The same was -- he was -- he was
2 still sitting there leaning against the bench."

3 Isn't that what you say?

4 A. That is -- that's what I said, yes.

5 Q. Okay.

6 MR. SCHATZOW: Your Honor, if I could have a
7 Court's indulgence for a moment?

8 THE COURT: You may.

9 (Brief pause.)

10 MR. SCHATZOW: I'm sorry, Your Honor. I'm
11 apparently looking at 6 when I should have been looking
12 at 9.

13 And I think, Your Honor, I'm ready to conclude
14 now, if I can.

15 THE COURT: Okay.

16 BY MR. SCHATZOW:

17 Q. Officer Porter, this is State's Exhibit 9. I
18 want to show you what's marked as State's Exhibit 9 on
19 page that's numbered P0677.

20 A. Uh-huh.

21 Q. There's some typed information there, and then
22 there's handwriting; do you see that?

23 A. Yes.

24 Q. Is that your handwriting?

25 A. That is my handwriting, yes.

1 Q. And that's something you wrote when you were in
2 the training academy; correct?

3 A. That is something I wrote in the training
4 academy.

5 Q. And what you wrote when you were in the
6 training academy was, "We do not transport injured
7 people. We rendered aid -- we render aid per our
8 training, and contact the medic. We cannot render aid
9 while driving. There are civil liabilities. We risk
10 bodily fluid exposure."

11 Is that what you wrote?

12 A. That is an answer that I wrote that question,
13 yes.

14 Q. And also, when you were in the academy, you
15 said that you only looked at the General Orders that were
16 referenced in the materials that you had; correct?

17 A. That is what I said.

18 Q. And, in fact, in State's Exhibit 7, which is
19 the course materials for the vehicle procedure course you
20 took that was taught by Officer Bilheimer (phonetic) --

21 THE COURT: Identify for the record.

22 MR. SCHATZOW: Yeah. I'm sorry, Your Honor.
23 Exhibit 7, State's Exhibit 7 in evidence.

24 BY MR. SCHATZOW:

25 Q. On page marked 0013013, there's a reference

1 to -- there's an X next to reference documents. And on
2 the next page, under the reference materials, there's a
3 specific reference to K14; isn't there?

4 A. Yes.

5 Q. Now, finally, you said that what was ingrained
6 in you as a police officer was to protect life; isn't
7 that right?

8 A. That is true. That is ingrained in every
9 police officer.

10 Q. But at Stop 4 and Stop 5 on April 12th, 2015,
11 you did not protect Freddie Gray's life; did you?

12 A. Mister -- I'm sorry? Repeat that question.

13 Q. At Stops 4 and Stops 5 on April 12th, 2015, you
14 did not protect Freddie Gray's life; did you?

15 A. Untrue.

16 MR. SCHATZOW: That's all I have, Your Honor.

17 THE COURT: Ladies and gentlemen, we'll take
18 our afternoon break.

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

21 Please leave your notepads on the chair.

22 We'll take about 10-minute break.

23 All rise for the jury.

24 (Whereupon, the jury was excused from the
25 courtroom at 3:17 p.m.)

1 THE COURT: Everyone may be seated.
2 Take a 10 minute recess.
3 Counsel, approach for one -- don't -- don't
4 worry about it.
5 Actually, I just need -- let's do one of each.
6 Let's do one of each.
7 (Counsel approached the bench, and the
8 following ensued:)
9 THE COURT: Does he have any voice left?
10 MR. MURTHA: He does.
11 THE COURT: Okay. All right. Just checking to
12 see if he had a voice.
13 MR. MURTHA: Yes, Your Honor.
14 THE COURT: You don't know how long he's going
15 to be?
16 MR. MURTHA: I don't think it's going to be
17 really long. We're sending for our next witness.
18 THE COURT: Okay.
19 MR. MURTHA: Just to have him around.
20 THE COURT: Good enough. Okay.
21 MR. MURTHA: Thank you.
22 THE COURT: Thank you.
23 (Counsel returned to the trial table, and the
24 following ensued:)
25 (Whereupon, a brief recess was taken at 3:18

1 p.m., and the matter resumed at 3:42 p.m.)

2 (At 3:42 p.m., a bench conference was held, but
3 remains untranscribed herein, and the testimony resumed
4 as follows at 3:46 p.m.)

5 THE COURT: You may remind the witness.

6 THE CLERK: Just reminding you you're still
7 under oath.

8 State your name for the record.

9 THE WITNESS: William Porter.

10 THE COURT: You may proceed with redirect.

11 REDIRECT EXAMINATION

12 BY MR. PROCTOR:

13 Q. Officer Porter, let's finish -- let's start
14 where Mr. Schatzow finished. His last question to you
15 was at Stops 4 and 5, you failed to protect Mr. Gray's
16 life, and you said that was untrue.

17 A. That is untrue.

18 Q. Why is it untrue?

19 A. It's untrue because Freddie Gray wasn't injured
20 at Stop 4 or 5. It's just that simple.

21 Q. And if he had been, what would you have done?

22 A. Had he been injured, I would have called for a
23 medic.

24 Q. Now, right before that, Mr. Schatzow showed you
25 a State exhibit, I think it was 9; do you remember that,

1 sir?

2 A. Yes.

3 Q. And this answer you wrote?

4 A. Yes.

5 Q. Was that test an open book test?

6 A. It was an open book test, yes.

7 Q. So when you wrote, "We don't transport injured
8 people," where did you get that information from?

9 A. Probably the EVOC manual. I don't recall.

10 Q. You just copied it?

11 A. Yes.

12 Q. Right before that, he asked you about the
13 position at the Western District; do you remember those
14 questions?

15 A. I do.

16 Q. And on --

17 MR. PROCTOR: Counsel, page 62.

18 BY MR. PROCTOR:

19 Q. And he pointed out you said Mr. Gray was in the
20 same position; do you see that?

21 A. Yes, I see that.

22 THE COURT: Well, what is the page and line, so
23 the State has --

24 MR. PROCTOR: Page 62, line 8.

25 BY MR. PROCTOR:

1 Q. Do you see that, sir?

2 A. I do see that, yes.

3 Q. What did you say right after that?

4 A. "I pulled him back, kind of. He went limp.
5 Like completely limp."

6 Q. So if Mr. Schatzow had read on a little
7 further, you would have described how he was different;
8 right?

9 A. Yes, sir.

10 MR. SCHATZOW: Objection, Your Honor.

11 THE COURT: Overruled.

12 BY MR. PROCTOR:

13 Q. Do you remember the questions about why didn't
14 you use your radio to tell Goodson to go to the hospital?

15 A. I do remember those questions.

16 Q. What's the answer?

17 A. I can't tell Goodson to do anything. I'm not
18 Goodson's supervisor.

19 Q. And at those points, at Stop 4 and Stop 5, did
20 you see any emergent need?

21 A. No. I didn't see any need for the medic for
22 Mr. Gray.

23 Q. Did you tell the wagon to go anywhere that day?

24 A. No. I suggested for Officer Goodson to just go
25 to the hospital so he doesn't waste time, you know.

1 We're about efficiency.

2 Q. Now, Mr. Schatzow talked about following the
3 wagon to the Western; do you remember those questions?

4 A. I do.

5 Q. What is your understanding -- when you were
6 told to follow what did you think it meant?

7 A. Just to meet the Western -- I'm sorry, meet the
8 wagon at the station.

9 Q. Does it mean to keep eyes on the wagon at all
10 times?

11 A. No.

12 MR. SCHATZOW: Objection.

13 THE COURT: Sustained. Leading. Strike the
14 question and the answer.

15 BY MR. PROCTOR:

16 Q. What did you believe your obligation was with
17 regard to following the wagon?

18 A. Well, up on North Avenue, I continued to talk
19 to the sergeant, and she was directing me to do things.
20 And then after I'd gone to the District, I was to follow
21 that wagon to -- to a hospital, Bon Secours,
22 specifically.

23 Q. Okay.

24 MR. SCHATZOW: I move to strike as non-
25 responsive, Your Honor.

1 THE COURT: Overruled.

2 BY MR. PROCTOR:

3 Q. So when you were asked questions about coming
4 behind 91; do you remember those questions?

5 A. I do, yes.

6 Q. Describe your journey between Stop 5 and Stop
7 6.

8 A. Well, when I say I'm going behind 91 is because
9 91 answered up right before me. So I was right behind
10 him, and physically I was right behind where the wagon
11 was when I had answered that question.

12 Q. Okay. And who gets to North Avenue first?

13 A. I get to North Avenue first.

14 Q. And how did you get there before the wagon?

15 A. I don't remember the direct route that I took,
16 but -- I -- I drove faster than the wagon did to get
17 there.

18 Q. Do you remember the question Mr. Schatzow asked
19 you about you didn't say you were concerned about your
20 gun; do you remember those questions?

21 A. Somewhat, yes.

22 Q. Is there ever a time when you're not concerned
23 about your gun?

24 A. No. Basically, any time I'm talking to any
25 citizen, any police officer, or anytime, there's always a

1 gun involved because I bring the gun there. So I'm
2 always concerned about my gun on my hip.

3 Q. Now, Mr. Schatzow showed you Exhibit 5; do you
4 remember that? Let me show it to you.

5 A. I do remember that, yes.

6 Q. And what is it?

7 A. It just says -- I don't know. It says the
8 below listed benefits of Interior General Orders and
9 Police Commissioner's memorandums pertaining to sworn
10 police personnel of this agency has been -- have been
11 provided to," and I wrote my name.

12 Q. Okay. What's the date on that, sir?

13 A. July 23, 2012.

14 Q. What date did you start at the academy?

15 A. I don't remember specifically, but it was in --
16 it was either in late August or early September.

17 Q. Of which year?

18 A. Of 2012.

19 Q. So you signed that document before you even
20 entered the academy?

21 A. A few months before I entered the -- the
22 academy.

23 Q. You said, when Mr. Schatzow asked you a
24 question about stop snitching, that you were offended by
25 that; do you remember?

1 A. Absolutely. Absolutely was offended by that.
2 Some prosecution --

3 THE COURT: No question.

4 BY MR. PROCTOR:

5 Q. Why were you offended by that?

6 A. I was offended by that because the prosecution
7 works directly with police officers. So why would he --
8 why would he ever say that the police officers lie?
9 That's a contradictory on himself.

10 Q. Have you ever covered up for another police
11 officer?

12 A. Absolutely not. I would never do that.

13 Q. You remember saying to Mr. Schatzow that you
14 were -- may I explain 10 codes? Why don't you explain
15 them now. What's a 10 code?

16 A. A 10 code is just a short version -- we just --
17 just so -- for efficiency we use 10 codes to -- just so
18 we can communicate with others efficiently.

19 Q. When did you first become aware that anyone was
20 saying that Mr. Gray's neck was broken by Stop 4?

21 A. I'm sorry?

22 Q. You're aware that Dr. Allan believes by Stop 4
23 that Mr. Gray's neck was broken?

24 A. Yes.

25 Q. My question is when did you first become aware

1 of that?

2 A. During this court trial.

3 Q. So when you were questioned back on April 17th,
4 were you aware that it was believed that Mr. Gray's neck
5 would have been broken at Stop 4?

6 A. No. I -- we didn't -- we didn't know where his
7 neck had been broken.

8 Q. So when you're being asked questions by
9 Detective Teel and others, and Mr. Schatzow asked you --
10 do you remember the questions about is this the first
11 time you ever said he used his legs?

12 A. Yes, I do remember those questions.

13 Q. Were you aware that it might be significant at
14 that point whether he used his legs or not?

15 A. I was not aware that that would have made any
16 significance.

17 Q. Mr. Schatzow said you never said that you
18 helped him onto the bench; do you remember those
19 questions?

20 A. I do remember that, yes.

21 Q. Did you ever say you lifted and carried him?

22 A. I never said that either.

23 Q. Do you remember the questions about you told
24 Brandon Ross to go to the media?

25 A. I do remember that, yes.

1 Q. What did Brandon Ross say to you to make you
2 say that?

3 A. He just said he's got it on tape. He's got it
4 on camera. He recorded the entire thing.

5 Q. So why did you tell him to go to the media?

6 A. Because he had a -- he said he had a recording
7 of what happened there.

8 Q. Remember Mr. Schatzow asked you if Lieutenant
9 Rice was as close from me to you, and he stood about here
10 in terms of those questions?

11 A. I do remember, yes.

12 Q. Mr. Schatzow have a bicycle helmet on when he
13 asked you that?

14 A. He did not, no.

15 Q. Did he have two similar people standing next to
16 you when he asked you that?

17 A. He was standing alone.

18 Q. At Stop 2, what was your primary focus on, sir?

19 A. Just crowd control. I could hear the crowd. I
20 mean, from the video, you can hear Brandon Ross yelling
21 pretty loudly and saying obscenities. And so my focus
22 was on the crowd more so than the detainee.

23 Q. Why were you not concerned about the detainee?

24 A. There were -- he was -- there were three
25 officers, and there was one detainee.

1 Q. When and how did you learn that it was
2 Lieutenant Rice lifting him in?

3 A. I believe Detective Anderson told me on --
4 on -- in my -- during the interview.

5 Q. When was the first time you learned -- wait a
6 second. I'm showing you what's been marked for
7 identification as State's Exhibit 31. Did you see that,
8 sir?

9 A. Yes.

10 Q. And you've seen that before; right?

11 A. I have, yes.

12 Q. And that report says that Mr. Gray -- well, the
13 State believes that report says that Mr. Gray told you he
14 couldn't breathe at Stop 4; is that correct?

15 A. That is correct.

16 Q. When was the first time you learned that
17 Detective Teel attributed to you that the can't breathe
18 was at Stop 4?

19 A. During motion hearing.

20 Q. So when you're being asked questions on a April
21 15th, do you have any knowledge of what Detective Teel
22 believed your conversation concerned a few days earlier?

23 A. I'm sorry. Can you re --

24 MR. SCHATZOW: Objection, Your Honor.

25 THE COURT: Overruled.

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BY MR. PROCTOR:

Q. When you're talking to Detective Teel on video

--

A. Mmm-hmm.

Q. -- do you know the contents of that report?

A. No, I do not. No.

Q. Do you know that she wrote down that you said Mr. Gray couldn't breathe at Stop 4?

A. No, I didn't know that. No.

Q. Did you know there was any discrepancy to clear up?

A. No, I did not know there was any discrepancy to clear up. No.

Q. And let's talk a little bit more about that report. Where does Detective Teel say that conversation occurred?

A. It says Dolphin and Baker Street.

Q. And again, do Dolphin and Baker Street ever meet?

A. They do not.

Q. How does Detective Teel spell Mr. Gray's last name?

A. From the report here in front of me it says G-r-e-y.

Q. So she got the location wrong; right?

1 A. Yes. That's what's on the paper, yes.

2 Q. And she got Mr. Gray's last name wrong?

3 MR. SCHATZOW: Objection, Your Honor.

4 THE COURT: Sustained. Strike the question.

5 BY MR. PROCTOR:

6 Q. In the course of preparing this case, you've
7 met with Mr. Murtha and I; have you not?

8 A. I have, yes.

9 Q. And one of the things, State's Exhibit 11, we
10 asked you to look at and discuss with us, Policy 1114;
11 isn't it?

12 A. Yes. This is Policy 1114.

13 Q. So when you talked about two hours at the
14 hospital; do you remember those questions?

15 A. Yes, I do remember those questions.

16 Q. Did you read that while preparing for
17 testifying?

18 MR. SCHATZOW: Objection, Your Honor.

19 THE COURT: Overruled.

20 THE WITNESS: Yes, I did, yes.

21 BY MR. PROCTOR:

22 Q. On April 12th --

23 THE COURT: Actually, sustained, as to form.

24 MR. PROCTOR: Okay.

25 THE COURT: I switch people around sometimes.

1 BY MR. PROCTOR:

2 Q. Let me see if I can -- were you aware --

3 THE COURT: Mr. Proctor, hold on one second.

4 MR. PROCTOR: Sorry, Judge.

5 THE COURT: Counsel, approach, while my
6 sheriffs do what they need to do. I just need a moment
7 with Counsel.

8 (Counsel approached the bench, and the
9 following ensued:)

10 MR. SCHATZOW: Oh geez. Don't let it be the
11 blind man. Please, Lord Jesus, don't let it be the blind
12 man. Don't let it be the blind man.

13 MR. MURTHA: It is.

14 MS. BLEDSOE: Who is it?

15 MR. SCHATZOW: Please don't let it be the blind
16 man. Please, Father, don't let it be the blind man.

17 MS. BLEDSOE: Who is it? It is. It is. It
18 is.

19 MR. SCHATZOW: Oh, geez. Oh, geez. Really?
20 Seriously?

21 MS. BLEDSOE: Yes. It is.

22 THE COURT: Well, pray that I did not scream.
23 I didn't scream.

24 MS. BLEDSOE: Don't scream.

25 THE COURT: I'm not. I'm not. I'm not. I'm

1 not. But, really, of all people, seriously? It had to
2 be the blind man. This is like, oh Lord, help me. Now I
3 look like the scrooge, the ogre, the wrong person.

4 MS. BLEDSOE: It's okay.

5 THE COURT: Did they walk him out?

6 MR. PROCTOR: He's almost there, 10 steps from
7 the door.

8 THE COURT: Don't look. Don't look. Don't
9 look. Don't look. Don't look.

10 MS. BLEDSOE: Are we all good?

11 THE COURT: See. Now I look all bad and
12 everything, oh, Jesus.

13 MS. BLEDSOE: Take a deep breath.

14 THE COURT: Go get out, and bring him back in.
15 And they're going to stay up here with me. They got --
16 if I've got to go through this, they've got to go
17 through. Hook it up. Thanks.

18 MR. PROCTOR: Just put him next door.

19 THE COURT: See? See?

20 MS. BLEDSOE: Nice.

21 THE COURT: See? Right, right. See?

22 THE COURT: See.

23 MS. BLEDSOE: That's really nice.

24 MR. PROCTOR: Motion to reconsider.

25 THE COURT: See? I know. Motion to

1 reconsider; right.

2 MS. BLEDSOE: Kicked him out of the courtroom.
3 Keep the evidence away.

4 THE COURT: I know. I know. I know. But,
5 notice, you've got to give me credit. Because what I was
6 about to do is just scream and say, I told -- but I
7 didn't.

8 MS. BLEDSOE: I know. That was good. There
9 was something there.

10 THE COURT: There was something. There was
11 something that said just bring it down a little bit. I
12 have you all as my shields.

13 MS. BLEDSOE: That counting works.

14 THE COURT: It does.

15 MS. BLEDSOE: It does.

16 THE COURT: It really does.

17 Are you almost done?

18 MR. PROCTOR: I have about two questions left.

19 THE COURT: Okay.

20 MR. SCHATZOW: I have about four.

21 THE COURT: That's fine.

22 And then what do you have after? Do you have a
23 witness in the hallway?

24 MR. MURTHA: Yes, right outside.

25 THE COURT: Okay.

1 MR. SCHATZOW: Is Novak next?

2 MR. MURTHA: Yes.

3 MR. SCHATZOW: It's still Novak next.

4 THE COURT: Is he back in yet? Okay.

5 MS. BLEDSOE: I'm not going to look. So --

6 THE COURT: No, you're not. He's at the edge,
7 so that's his job.

8 MS. BLEDSOE: Right. Nice.

9 THE COURT: Well, thank you. And you want to
10 make me feel any worse? Okay. So now that we're up here
11 and we're waiting for him, here's a quick story.

12 I'm young on the bench. I don't really care
13 about people standing up or sitting down when I come out,
14 but my sheriff is a stickler. No. When you come out,
15 they have to stand up. Blah, blah, blah.

16 Okay. So, fine, so finally I get used to it.
17 I come out. Everyone is standing. Everyone except one
18 person. Me, the man who doesn't care. Sir, stand up. I
19 see the sheriff going like this.

20 (Laughter.)

21 THE COURT: And I'm, like, he is blind and
22 deaf. Oh, Lord, now what else is going on.

23 MR. PROCTOR: Someone else is talking out loud,
24 Judge.

25 MS. BLEDSOE: Well, at least he wasn't

1 paralyzed.

2 MR. PROCTOR: Judge, do you want to consider
3 sending the jury out. Someone else is mouthing off. I
4 can hear them over the husher.

5 THE COURT: Yeah, it will be all right. Well,
6 we've got one coming in. We're taking one out, so it's a
7 one for one. It's a one for one.

8 MR. MURTHA: I'm less sympathetic to that guy
9 being escorted out.

10 THE COURT: Right. Oh, so you want to go
11 there? You want to put the cane on me? Okay, fine,
12 thanks. Because I wanted to take a break now, but I want
13 to like --

14 MR. PROCTOR: If he hits you with that cane,
15 Judge, we'll prosecute him.

16 THE COURT: Well, I know him well, actually. I
17 see him all the time. (Inaudible at 4:02:45 p.m.)
18 resolve that issue.

19 THE COURT: I guess he's sitting right here.
20 Do I need to take a break? Cause here's the thing. They
21 don't know whose side that person is on, so it doesn't
22 matter.

23 THE COURT: Well, I know well, actually. I see
24 him all the time. That resolves that issue.

25 MR. MURTHA: Maybe we should take a break

1 because it looks like he's --

2 MS. BLEDSOE: Yeah, let's take a break.

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

5 THE COURT: Ladies and gentlemen, we're going
6 to take a break.

7 Put your notepads --

8 Go that way now.

9 THE CLERK: All rise.

10 (Whereupon, the jury was excused from the
11 courtroom at 4:03 p.m.)

12 MR. SCHATZOW: We don't need to --

13 THE COURT: No. I need you all for second.

14 MR. SCHATZOW: Oh, you do?

15 THE COURT: Yes. Because there's no reason for
16 you all to be involved in that.

17 Once he's out, everyone remain in the courtroom
18 until the sheriff tells you can leave the courtroom for
19 the moment.

20 (Counsel approached the bench, and the
21 following ensued:)

22 THE COURT: (Inaudible at 4:04:12 p.m.) hadn't
23 caused the issue. I would have had time for that. Hang
24 on one second.

25 Darlene, go tell them that I'm not letting

1 anyone out until the sheriff will let people out. Tell
2 the sheriffs that I'm not letting anyone out until the
3 sheriff allows it. Go tell them that.

4 MR. SCHATZOW: Judge, this case has moved.

5 THE COURT: Oh, no, it has. No, no. I'm just
6 saying --

7 I'm going to leave -- I'm leaving the white
8 noise on so don't leave. Someone has to share my pain.
9 It may as well be you all.

10 (Laughter.)

11 THE COURT: Well, because see, if the white
12 noise is on, then we're talking about something, and it
13 gives a reason for them to stay. If I leave, then they
14 want to run out.

15 MS. BLEDSOE: I understand. I understand.

16 THE COURT: I think it was -- just so that you
17 know, I think he was saying something, I'm family, but
18 anyone, you know, that's North Carolina. I got that.
19 That's what I'm saying. But I think that's what he was
20 saying.

21 MS. BLEDSOE: Because I immediately identified
22 the family and --

23 THE COURT: Right.

24 MS. BLEDSOE: -- I was like it's not.

25 THE COURT: Yeah.

1 MS. BLEDSOE: Okay?

2 THE COURT: Yeah. I understand.

3 MS. BLEDSOE: I don't know --

4 THE COURT: All right. So who's next, just out
5 of curiosity?

6 MR. PROCTOR: Another police officer.

7 THE COURT: Another police officer.

8 MR. MURTHA: I think -- I think in assessing
9 it, we probably are going to carry over to Friday.

10 THE COURT: Okay. That's fine.

11 MR. PROCTOR: We'll be done Friday. Definitely
12 Friday.

13 MR. MURTHA: We'll definitely be done Friday.

14 THE COURT: Okay. Then we can tell our jury
15 instructions on Friday. I'm actually going over some of
16 them now. Not now. But I'd like to go over them now,
17 but I have to actually listen to you all, so.

18 (Brief pause.)

19 THE COURT: Okay. So can they leave the
20 courtroom now?

21 THE SHERIFF: Yes. They can.

22 THE COURT: Five minute recess, ladies and
23 gentlemen. You may leave the courtroom if you so desire.

24 (Whereupon, a brief recess was taken at 4:06
25 p.m., and the matter resumed at 4:17 p.m.)

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THE COURT: All right. Thank you.

Everyone may be seated.

You may remind the witness.

THE CLERK: You may be seated.

Just reminding you you're still under oath.

State your name for the record.

THE WITNESS: William Porter.

THE COURT: You may proceed.

DIRECT EXAMINATION (Continued)

BY MR. PROCTOR:

Q. Officer Porter, do you remember the questions Mr. Schatzow asked you about working at the computer company?

A. Yes.

Q. Back on April 12th, did you know whether or not you were able to check your BPD emails remotely?

A. No, I did not know that. No.

MR. PROCTOR: That's all I have.

THE COURT: Recross based on redirect?

MR. SCHATZOW: Yes, Your Honor.

Your Honor, based on the redirect, we would offer into evidence Exhibit 31, which was read to the jury -- was read from during his redirect examination.

THE COURT: Any objection.

MR. PROCTOR: Object. Still object.

1 MR. MURTHA: Can I just see?

2 THE COURT: Yes.

3 Objection sustained.

4 MR. MURTHA: Thank you.

5 REXCROSS-EXAMINATION

6 BY MR. SCHATZOW:

7 Q. You were furnished the flash drive before you
8 went to the academy?

9 A. I'm sorry?

10 Q. You were furnished the flash drive before you
11 went to the academy?

12 A. No, sir. No, sir.

13 Q. Didn't -- didn't you just say that you had
14 signed the receipt for it two months before you entered
15 the academy?

16 A. No. I signed the receipt for various things,
17 including the General Orders. But I hadn't received that
18 until I was in the academy.

19 Q. Are you saying you signed the receipt before
20 you got to the academy, but you got the materials when
21 you got to the academy; is that your testimony?

22 A. That is what I'm saying, yes.

23 Q. Okay. When you were asked questions about
24 whether you were concerned about Mr. Gray at Baker and
25 Mount; you remember your lawyer asking those questions?

1 A. I don't remember him asking me about Baker and
2 Mount specifically.

3 Q. You don't remember him asking you about why you
4 weren't concerned because it having something to do with
5 other officers being present?

6 A. Oh, yes. Yes, I remember that.

7 Q. Well, when you walked up to the back of the
8 wagon at Baker and Mount, and you saw Mr. Gray with his
9 hands cuffed behind his back and his legs shackled, being
10 put into the van, on the floor of the van, did you say to
11 any of the other officers there, isn't there a better way
12 to transport him than like an animal on the ground?

13 MR. MURTHA: Objection.

14 THE COURT: Sustained. Strike the question as
15 inappropriate.

16 BY MR. SCHATZOW:

17 Q. When you were interviewed by Detectives Teel
18 and Anderson on April 17th of 2015, you were aware that
19 Mr. Gray had suffered a broken neck; weren't you?

20 A. I was aware, yes.

21 Q. And then, finally, you were asked some
22 questions about whether -- what -- about what you had
23 told the officers on April 17th about whether Mr. Gray
24 was in the same position at Stop 5 -- in Stop 6 as he was
25 in Stop 5. And I think you were asked about the upper

1 part of page 62. I'm going to ask you about the bottom
2 of it.

3 You're the one who opened the door on the side
4 that Mr. Gray was on at -- at the Western District;
5 right?

6 A. That is true, yes.

7 Q. Okay.

8 MR. PROCTOR: I would object.

9 MR. SCHATZOW: And --

10 THE COURT: Overruled.

11 BY MR. SCHATZOW:

12 Q. Your lawyer pointed you to some language here
13 on page 62, at about line 12. But at line 24, isn't it a
14 fact that Detective Anderson said to you, "Okay. But
15 when you opened the wagon, he was still in that same
16 position?"

17 And your answer was, "Yeah. He was still";
18 right? That's what you told him.

19 A. And that he -- he interjects me --

20 Q. And then he said, "Did you call his name?"

21 And you say, "Yeah."

22 But there's nothing else here about the
23 position. You said he was still in the same position;
24 correct?

25 A. But he, as you read right here, it says he

1 interjected me. That's what that says.

2 Q. Yeah. Did you say, "Yeah"?

3 A. I said yes, but I was interjected. Like you
4 just cut me off, he cut me off also.

5 (Laughter.)

6 A. That's what happened, sir.

7 Q. He -- he --

8 THE COURT: Quiet, ladies and gentlemen.

9 MR. SCHATZOW: Never mind, Your Honor. That's
10 all I have for Officer --

11 THE COURT: Next witness.

12 MR. PROCTOR: Very limited area, a couple
13 questions.

14 THE COURT: Oh no.

15 MR. PROCTOR: That's all I have.

16 THE COURT: It works for both sides.

17 You may step down.

18 (End of Excerpt - Testimony of William Porter
19 concluded at 4:22 p.m.)

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REPORTER'S CERTIFICATE

I, Patricia A. Trikeriotis, 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 178 constitute the official transcript of an excerpt 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 4th day of January, 2016.

Patricia Trikeriotis

Patricia A. Trikeriotis
Chief Court Reporter

CAESAR GOODSON,

Appellant,

v.

STATE OF MARYLAND,

Appellee.

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

* * * * *

ORDER

WHEREAS, on January 6, 2016, the Circuit Court for Baltimore City issued an order granting the “State’s Motion to Compel a Witness to Testify Pursuant to Section 9-123 of the Courts and Judicial Proceedings Article” (the “Motion to Compel”) in *State of Maryland v. Caesar Goodson*, Case No. 115141032; and

WHEREAS, on January 7, 2016, Appellant William Porter¹, the witness subject to the circuit court’s order, noted an interlocutory appeal from the circuit court’s order granting of that motion; and

WHEREAS, following the noting of the appeal, appellant, on the same day, filed in this Court a “Motion for Injunction Pending Appeal” (the “Motion for Injunction”); and

WHEREAS, on January 8, 2016, this Court issued an order temporarily staying the circuit court’s granting the State’s Motion to Compel pending a decision by this Court on Appellant’s Motion for Injunction; and

¹ Pursuant to Maryland Rule 8-111, William Porter is designated as appellant in this appeal.

WHEREAS the State has now responded to the Motion for Injunction and appellant, in turn, has filed a reply to the State's response to the Motion for Injunction; and

WHEREAS the trial in *State of Maryland v. Caesar Goodson*, Case No. 115141032 is scheduled to commence today, Monday, January 11, 2016 at 9:30 a.m.; and

WHEREAS it is presumably in the interests of all parties that appellant's interlocutory appeal of the circuit court's order granting the State's motion to compel the testimony of William Porter be decided before the commencement of trial; and

WHEREAS if any party to the proceedings in the circuit court or to this interlocutory appeal disagrees with this order, they may file a motion, for this Court's consideration, to lift the stay.

NOW, THEREFORE, IT IS this 11th day of January 2016, by the Court of Special Appeals,

ORDERED that the trial in *State of Maryland v. Caesar Goodson*, Case No. 115141032, now pending in the Circuit Court for Baltimore City, be and hereby is stayed pending a resolution of the above-captioned interlocutory appeal or further order of this Court.

FOR A PANEL OF THE COURT

(CHIEF JUDGE'S SIGNATURE
APPEARS ON ORIGINAL ORDER)

PETER B. KRAUSER, CHIEF JUDGE

FILED FOR RECORD
CIRCUIT COURT FOR
BALTIMORE CITY

STATE OF MARYLAND

* IN THE

* CIRCUIT COURT FOR

2016 JAN -7 A 11: 21

v.

* BALTIMORE CITY

CLERK DIVISION

ALICIA WHITE

* Case No. 115141036

* * * * *

ORDER

On January 6, 2016, during a pre-trial motions hearing for *State v. Caesar Goodson*, Case No. 115141032, the State presented this Court with its written Motion to Compel a Witness to Testify Pursuant to Section 9-123 of the Courts and Judicial Proceedings Article in order to compel Officer William Porter to testify as a State's witness during the *Goodson* case. During this hearing, counsel for the Defendant incorporated their arguments from their Motion to Quash Trial Subpoena of Officer William Porter. Counsel for the Defendant and the State incorporated their arguments for application to the above-captioned case. After the hearing, the State presented this Court with its written Motion to Compel a Witness to Testify Pursuant to Section 9-123 of the Courts and Judicial Proceedings Article, in order to compel Officer William Porter to testify in the above-captioned case.

Based on the motions, arguments, and testimony presented during the hearing, this Court finds that the State plans to call Officer William Porter, D.O.B. 6/29/1989, as a witness to testify in the above-captioned case but that Officer Porter is likely to refuse to testify on the basis of his privilege against self-incrimination. This Court further finds that the State's Motion to Compel Officer Porter's testimony complies with the requirements of Section 9-123 of the Courts and Judicial Proceedings Article. For these reasons, it is this 7th day of January, 2016, by the Circuit Court for Baltimore City, hereby

ORDERED that the State's Motion to Compel a Witness to Testify Pursuant to Section 9-123 of the Courts and Judicial Proceedings Article is **GRANTED**, and further

ORDERED that Officer William Porter, D.O.B. 6/26/1989, shall testify as a witness for the State in the above-captioned case and may not refuse to comply with this Order on the basis of his privilege against self-incrimination, and further

ORDERED that no testimony of Officer William Porter, D.O.B. 6/26/1989, compelled pursuant to this Order, and no information directly or indirectly derived from the testimony of Officer Porter compelled pursuant to this Order, may be used against Officer Porter in any criminal case, except in a prosecution for perjury, obstruction of justice, or otherwise failing to comply with this Order.

Judge Barry G. Williams
Judge's Signature appears on the
original document

BARRY G. WILLIAMS
JUDGE, CIRCUIT COURT FOR
BALTIMORE CITY

Clerk, please mail copies to the following:

Joseph Murtha, Attorney for William Porter

Janice Bledsoe, Deputy State's Attorney, Office of the State's Attorney for Baltimore City

5 JAN 21 A 10: 52

CRIMINAL DIVISION

STATE OF MARYLAND

* IN THE

* CIRCUIT COURT FOR

* BALTIMORE CITY

v.

ALICIA WHITE

* Case No. 115141036

* * * * *

ORDER

On January 7, 2016, this Court granted the State’s Motion to Compel a Witness to Testify Pursuant to Section 9-123 of the Courts and Judicial Proceedings Article. By this Court’s order, Officer William Porter, D.O.B. 6/26/1989 is ordered to testify as a witness for the State in the above-captioned case and may not refuse to comply with this Court’s order on the basis of his privilege against self-incrimination. This Court further ordered that no testimony of Officer William Porter, compelled pursuant to the Court’s order, and no information directly or indirectly derived from the testimony of Officer Porter compelled pursuant to the Court’s order, may be used against Officer Porter in any criminal case, except in a prosecution for perjury, obstruction of justice, or otherwise failing to comply with this Order.

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

Having reviewed the Defendant’s motion, and in light of the Court of Special Appeals order of January 11, 2016, granting a stay in *Goodson v. State*, Case No. 115141032, pending the interlocutory appeal, and noting that the legal issues involved in the two cases are the

same, this Court finds that it is appropriate to grant a stay in the above-captioned matter.

Therefore, it is this 20th day of January, 2016, hereby

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

Judge Barry G. Williams

Judge's Signature appears on the
original document

BARRY G. WILLIAMS
JUDGE, CIRCUIT COURT FOR
BALTIMORE CITY

Clerk, please mail copies to the following:

Ivan Bates, Attorney for Alicia White

Joseph Murtha, Attorney for William Porter

Janice Bledsoe, Deputy State's Attorney, Office of the State's Attorney for Baltimore City