

CIRCUIT COURT FOR BALTIMORE CITY

2015 NOV 13 A 11:35

STATE OF MARYLAND

v.

WILLIAM PORTER

IN THE
CIRCUIT COURT FOR
BALTIMORE CITY

CASE No. 115141037

* * * * *

STATE'S MOTION TO EXPAND THE COURT'S OCTOBER 14, 2015, ORDER REGARDING EXTRAJUDICIAL STATEMENTS SO THAT ALL PLEADINGS FILED ON OR AFTER NOVEMBER 12, 2015, SHALL BE UNDER SEAL

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 this Court's inherent authority requests that the Court expand its October 14, 2015, Order regarding extrajudicial statements so that all pleadings filed in this case on or after November 12, 2015, shall be under seal until the conclusion of this case. The State submits that such action is necessary because the Defendant has violated the spirit, if not express terms, of this Court's Order by filing a Motion *in Limine* regarding Dr. Carol Allan that contains outright misrepresentations of fact, overtly baseless arguments, and actual trial evidence such that this pleading should have been filed under seal or its factual basis submitted *in camera* and not presented in a publicly filed document, the effect of which could not have been unknown to the Defendant—substantial publicity of the defense theory of the case right on the eve of trial. In further support of this Motion, the State submits the following:

1. On October 14, 2015, this Court issued an Order that the Parties in this case shall not “make or issue any extrajudicial statement, written or oral, concerning this case for dissemination by means of public communication” and that the Parties shall not “avoid or

circumvent [the Order's] effect by actions that indirectly, but deliberately, bring about a violation of this order." The Court's Order applied to the Parties' "employees, representatives, or agents of such attorneys" and applied to "the reposting or republication of any statements made prior" to the Order. The Court permitted that "[i]f any person believes that events have occurred that should result in a modification of this order, such person may seek relief from the court." The Court issued this Order after finding that "[t]here is a substantial likelihood that certain forms of publicity, such as extrajudicial statements by the parties involved in this case to members of the press or media, could impair the rights of the Defendant, the State, and the public to a fair trial by an impartial jury." Significantly, this Court noted the Defendant's own concern for "the disclosure of evidence not in the public record and the effect of such on the voir dire process and his right to a fair trial."

2. On November 12, 2015, the Defendant filed—*without any request to place the pleading under seal*—a Motion *in Limine* to Preclude Testimony of Carol Allan, M.D., and Request for Evidentiary Hearing. The Defendant's Motion initially presents itself as a responsible pleading that respects this Court's directives to avoid intentionally generating pretrial publicity, saying that "[i]n light of the sensitive nature of the information contained in the autopsy report, it will not be attached as an exhibit, but will be made available for the Court's review at a hearing, with a request that the document be filed under seal." Def. Mot. at 1, n. 1. Nevertheless, after just one page of professional restraint, the Defendant then proceeds to selectively quote vast portions of the autopsy report, omitting, of course, the parts that support the report's conclusion that Mr. Gray died as a result of homicide. Indeed, the Defendant misrepresents the contents of the

report, distorting important facts to favor the defense narrative in this case and to create the appearance that the report's conclusions derive from speculation or incorrect deductions.¹ He even claims that Dr. Allan, the report's author, violated forensic pathology standards, with the proffered proof of this outrageous allegation being the Defendant's opinions derived from his own incomplete views of forensic standards, his

¹ Although the State will respond separately to the Defendant's Motion and does not wish to fill pretrial pleadings with prejudicial trial evidence, for purposes of demonstrating the misrepresentation of fact that fills the Defendant's Motion and that supports the relief herein requested, the State will provide this clear example of distortion in which the Defendant's description of the report makes Mr. Gray's death sound like it resulted from his own negligence, as opposed to the negligence of the police officers responsible for transporting him. The Defendant's Motion claims that the autopsy report describes the mechanism of Mr. Gray's injury in part like this:

A 'high energy injury like the one sustained by Mr. Gray was 'less likely to occur' while he was lying on his stomach. Although placed on his stomach at the second stop, he 'would have been able to get to his feet using the bench side and the opposite wall.' Due to the size of the van and because he was not belted with the safety belts that were present in the van, when Mr. Gray decided to get out of the position the police placed him, he 'would have been hunched over' and because of the obstructed view of the roadway, 'would have had trouble anticipating the van's motion.' As a result, he was 'at risk for an unsupported fall during acceleration or deceleration of the van.' Specifically, as to the van's movements, '[a]n unexpected turning motion, acceleration or deceleration of the van would have precipitated him into the side walls, the door **or** the front of the van, **depending on his position**, resulting in the left posterior impact to his head with injury to the spinal cord.'

Def. Mot. at 5-6 (emphasis in Def. Mot. but not in autopsy report). The actual portion of the autopsy report that the Defendant described reads like this:

The type of fracture/dislocation documented in imaging studies on admission is a high energy injury most often caused by abrupt deceleration of a rotated head on a hyperflexed neck, such as seen in shallow water diving incidents. While it cannot be excluded that this type of injury could occur while lying on the floor and sliding back and forth with the movement of the van, the likelihood of sufficient acceleration/deceleration to generate the energy needed is less likely in this position. Further, the most significant impact to the head and the impact consistent with the neck injury is on the left lower back area of the head, is not consistent with injury in this prone position. Although Mr. Gray was placed belly down on the floor of the van at the 2nd stop, he would have been able to get to his feet using the bench side and the opposite wall. As the clearance between the interior floor and roof was approximately 4 feet (Mr. Gray measured 5'9" in length), he would have been hunched over with his neck in a flexed position if he had risen off the floor. Mr. Gray was restrained with his wrists behind his back and at the ankles, was not belted with the safety belts that were present in the van, and due to an obstructed view of the roadway would have had trouble anticipating the van's motion; therefore, he was at risk for an unsupported fall during acceleration or deceleration of the van. An unexpected turning motion, acceleration or deceleration of the van would have precipitated him into the side walls, the door or the front of the van depending on his position, resulting in the left posterior impact to his head with injury to the spinal cord in his flexed neck.

unspecified “information and belief,” and his unexplained “investigation.” Def. Mot. at 12-13. He goes on to attach to his Motion evidentiary exhibits that he attempts to use to corroborate his allegations, but one of the exhibits is a republished transcript of defense counsel Mr. Murtha’s own law partner examining Dr. Allan without context during his attempt to voir dire her credentials in a judicial proceeding in Carroll County.

3. The Defendant’s Motion plainly constitutes an indirect but deliberate attempt to bring about a violation of the Court’s October 14 Order because it both flagrantly and needlessly places trial evidence into a public pretrial pleading. Despite the Defendant’s expressed concern about prejudicial evidence and statements being made public before the trial, the Defendant did not hesitate to selectively place his own evidence and arguments into the public record—the Motion essentially reads like a closing argument about the weight the jury should give to Dr. Allan’s testimony. Although the Court’s Order covered only “extrajudicial statements,” the Court could not have intended that the Parties be permitted to make improper and incendiary statements in pleadings just to avoid the label of “extrajudicial.” The unsealed Motion did not need to provide the level of factual and argumentative detail that the Defendant employed. For example, the State filed a Motion *in Limine* regarding expert witnesses on the same day as the Defendant’s Motion, but the State expressly indicated that it would provide details at a closed hearing or *in camera* but not in an unsealed pleading given the level of publicity attending this case. A prohibition on “extrajudicial statements” that might create prejudicial publicity should include superfluous and inflammatory public pretrial statements even if technically made in a judicial setting.

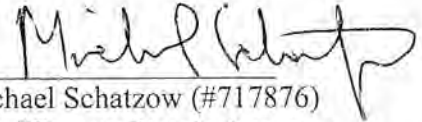
4. Further, the State notes that the Certificate of Service on the Defendant's Motion originally indicated that the Motion was to be served on October 30, but the Defendant scratched out that date and inserted November 12. Given the current 7-10 day delay between the filing date of pleadings and the date on which the Clerk's Office makes the pleadings available to the media on the Court's website, the Defendant's delay in filing his Motion would ensure that the Motion was made public in the week just before jury selection. In light of the level of media attention that each new pleading has attracted, the Defendant's delay would also guarantee substantial media coverage of his favored facts and arguments just as potential jurors are preparing to come for voir dire.

5. The State does not offer this Motion as a response to the Defendant's Motion, but the State will now have no choice but to file a Response by November 17 with a similar level of detail in order to make a complete record refuting the Defendant's baseless claims and protecting against any future appellate attack on Dr. Allan's testimony being properly admitted under Rule 5-702. Should the Court decline to place these pleadings under seal, the media will undoubtedly use the State's response to the Defendant's Motion as further fodder that will cause potentially prejudicial publicity to peak at the worst possible time for preventing media contamination of the jury pool. Given the Defendant's willingness to circumvent this Court's Order, the State avers that at this late hour in the proceedings, only total public silence from the Parties will achieve the Court's fairness goals.

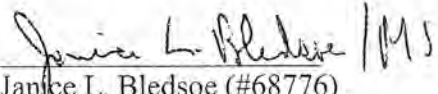
Wherefore, the State asks that this Court expand its October 14, 2015, Order regarding extrajudicial statements so that all pleadings filed in this case on or after November 12, 2015, including the Defendant's Motion *in Limine* regarding Dr. Allen, as well as the State's present Motion, shall be under seal until the conclusion of this case.

Respectfully submitted,

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CERTIFICATE OF SERVICE

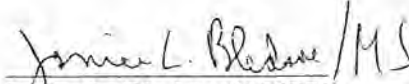
I hereby certify that on this 13th day of November, 2015, a copy of the State's Motion to Expand the Court's October 14, 2015, Order Regarding Extrajudicial Statements so that All Pleadings Filed on or After November 12, 2015, Shall be Under Seal was mailed and e-mailed to:

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