

STATE OF MARYLAND

v.

BRIAN RICE

Defendant.

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

2015 SEP 29 PM 3:39

* * * * *

DEFENDANT'S MOTION FOR RECONSIDERATION OF THE DENIAL OF MOTION FOR REMOVAL AND REQUEST FOR HEARING

NOW COMES, Defendant, Brian Rice, by and through his attorneys, Michael Belsky, Esq. and Chaz Ball, Esq and Schlachman, Belsky & Weiner, P.A. and respectfully file this Defendant's Motion for Reconsideration of the Denial of Motion for Removal and in Support thereof State as Follows:

Introduction

This Honorable Court reviewed and considered Defendant's Motion for Removal, the State's Response, and Defendant's Reply to the State's Response before hearing arguments on the motion. After a hearing on the motion, this Honorable Court denied the motion, but left open the possibility of reconsideration at a later time. Since the Court's decision on this motion, the Baltimore Sun published an article recounting alleged statements of the Defendants made during the investigation into the death of Freddie Gray. (Article Attached as Defendant's Exhibit 1). The Baltimore Sun acquired these statements (or summaries thereof) from the State when the State¹ permitted the Baltimore Sun to be embedded during the investigation of the death of Freddie Gray.

¹ The Defendants do not claim that it was the prosecutors involved in this case that permitted the reporter access to the discussion of the Defendants' statements. The Defendants do assert however that since it was the Baltimore City Police Department, which is an entity of the State, that allowed the access to meetings where they discussed only portions of the statements their actions must then be attributable to the State.

This article is especially relevant to removal in this case. Publishing a defendant's statements in the news was a heavily weighed factor favoring removal in the cases cited by Defendant in the original Motion and Memorandum as well as the State's Response. Notably, the State argued throughout its opposition to the original removal motion, that Defendants' statements in the Freddie Gray case had not been publicized. The fact that the Baltimore Sun is now publishing prejudicial information that it gathered when the State permitted reporters to be imbedded in the investigation into the death of Freddie Gray supports removal of this case from Baltimore City.

Argument²

On September 26, 2015, the Baltimore Sun published an article entitled "*Baltimore officer said Freddie Gray asked for help.*" The article then went on to acknowledge that the statements had never been publicly revealed and stated "at least one officer warned that Gray needed medical care but wondered, along with others, whether he was faking injuries or being uncooperative." The article stated that "[s]ome of the statements provide differing accounts of events that day." The article then, in detail, recounted Officer Porter's interaction with Gray, based upon Porter's alleged statement:

Officer William Porter told police investigators that after being summoned to check on Gray on the morning of April 12, he told the van's driver that the city booking facility would not process Gray because he was in medical distress.

"Help me. Help me up," Gray said.

Porter helped Gray up and asked, "Do you need a medic or something? Do you need to go the hospital?"

When Gray responded affirmatively, Porter said he told the van's driver, Officer Caesar Goodson, Jr., that Central Booking wouldn't accept Gray. Porter also told

² Defendant hereby incorporates by reference its original motion and memorandum for removal as well as the reply to the State's response to the motion with all arguments and exhibits as if fully state herein.

investigators he wasn't sure if Gray was in distress, or trying to convince officers to take him to the hospital instead of jail.

Though Gray indicated he wanted medical help, Porter told investigators in his statement that he wasn't sure the detainee was in distress. "Everybody plays the 'I need to go to hospital' thing when they get arrested," Porter said in his statement.

The Baltimore Sun then alleged that some of the officers' statements conflicted with other officers statements. The article provided:

According to White's statement, she could not see Gray's face because his head was turned away from the van's door. She asked Gray, "Sir, what's going on?" He didn't say anything, White told investigators, adding that she assumed he was being uncooperative. In her statement, White recalled Porter saying that Gray's medical problem was "jail-itis" -- a reference to not wanting to be confined. She said none of the officers informed her that Gray had asked for a medic. Porter told investigators that White asked Gray if he needed a medic or wanted to go to the hospital. Gray did not respond to that question. He simply said, "Yeah," when she called his name, according to Porter. Porter told investigators that White directed officers to get medical care for Gray, after Porter told her that Gray appeared to be in distress. Porter said White told him to follow the van to the Western District police station, drop off Allen and follow the van with Gray to a hospital.

This new "information" that was published by the Baltimore Sun is prejudicial for a number of reasons. First, Officer Porter's statement will not be admissible against any of the other defendants in this matter, which was one of the grounds for the denial of the State's Motion for Joinder. Second, the information alleges to recount the statements of the officers but the Baltimore Sun states that it does not have the actual statements of the officers. Additionally, the article's claim that the Defendant's statements conflicted with one another directly attacks the credibility of the officers. Whether the statements published by the Baltimore Sun are true or false, the information has been published to the potential jury pool and the paper has represented the information to be accurate. Whether this Honorable Court rules that the statements are inadmissible in none, one, or all six trials, the prejudicial information has already been published to the potential jurors.