

STATE OF MARYLAND

Plaintiff

v.

ALICIA WHITE

Defendant

*

*

*

*

*

IN THE

CIRCUIT COURT

FOR

BALTIMORE CITY

Case No. 115141036

CRIMINAL DIVISION

2016 FEB - 1 P 2:30

RECEIVED FOR RECORD
CIRCUIT COURT FOR
BALTIMORE CITY

* * * * *

**DEFENDANT'S RESPONSE TO STATE'S MOTION IN LIMINE REGARDING
THE DEFENDANT'S PROPOSED LAW ENFORCEMENT EXPERTS AND
REQUEST FOR HEARING**

Defendant Sergeant Alicia White, through her counsel, submits this response to the State's Motion in Limine Regarding the Defendant's Proposed Law Enforcement Expert Testimony and Request for Hearing and states in support thereof:

1. The Defendant, in her Initial Disclosures, as well as in the information provided in paragraph two of this motion, has given more than adequate basis for all of the listed law enforcement experts basis of opinion and summary of the opinions in which they are expected to testify in accordance with Maryland Rule 4-263. The State's Motion in Limine Regarding the Defendant's Proposed Law Enforcement Experts is nothing more than a fishing expedition intended to waste the Court's time with unnecessary pleadings and hearings. Any objections the State may have regarding the Defendant's experts would be properly addressed during a voir dire process during the expert's testimony. Any pretrial hearing regarding this matter would be yet another endeavor by the State to further delay the Defendant's trial.

2. The Defendant, in addition to the previously disclosed information provided in the Defendant's Initial Disclosures and pursuant to Maryland Rule 4-263(e)(2)(A) hereby discloses the following regarding the Defendant's listed experts Detective Boyd, Detective Anderson, Detective Teel, Officer Novak, Officer Gladhill and Officer Wood: Each one of these witnesses, if called to testify, in addition to the basis already provided in the Defendant's Initial Disclosures, would base their opinion off of their personal knowledge of the facts of the case at hand and investigation done by the Baltimore City Police Department. Each witness was a member of the Baltimore City Police Department at the time of the incident and was involved in the investigation into the death of Mr. Freddy Gray. The State is aware of each member's role within the investigation as they provided the discovery which delineates each expert's involvement in the case. These experts will testify based off of the personal involvement and experience in the case, their training and experience as members of the Baltimore City Police Department as well as their knowledge of the Baltimore City Police Department's General Orders.
3. The State alleges that "the Defendant's disclosures only vaguely and cryptically identify what, if any, materials these witnesses actually reviewed in formulating their opinion." See States Motion in Limine Regarding Defendant's Proposed Law Enforcement Expert Testimony and Request for Hearing. (**Defendant's Exhibit 1**). The State's argument is both without merit and disingenuous as the Defendant's disclosures clearly outline and articulate the materials reviewed by the experts. See

Defendant's Initial Disclosures.¹ The initial disclosures include a lengthy and detailed list of materials reviewed by the enumerated defense experts which includes but is not limited to the very discovery provided by the State. In fact, the State's insincere motives in filing this pleading can be seen by reading their own expert disclosures which almost verbatim list the same basis for their expert as the Defense uses for theirs.² The State would have it that the "broad and vague description" of the materials reviewed is good enough for their expert opinions but is "nonsensical" when used by the Defendant's expert.

4. The States' final argument in an attempt to prevent the Defendant from providing her own law enforcement experts is once again hypocritical and contrary to the case law they have cited. The State alleges that the Defendant's expert's opinion that the general orders and policies "are intended to provide internal guidance and discipline and not to form the basis of criminal prosecutions" is both irrelevant and contrary to the law. The State would have the Court believe that the purpose of the General Orders makes no consequential fact in this case more or less probable, yet they base the bulk of their case on their belief that a violation of the General Order is evidence

¹ Due to the length of the Defendant's Disclosures they are not contained within this Motion as an exhibit, however a copy should be located within the Court file and can be made available at the request of the Court.

² The State, in their Motion, referenced the Defendant's disclosures specifically the text "opinions will be based ... on [their] review of the discovery produced in this case, including any written and recorded statements, other audio and video records, reports, photographs, maps, diagrams, Mr. Gray's presentation at Druil Hill Avenue and Dolphin Street and at North Avenue and Pennsylvania Avenue, and relevant Baltimore Police Department General Orders and Policies, as well as generally accepted policies, procedures, practices, training and custom throughout the United States." Defendant's Disclosures page 12, 26-27. The State in regards to their expert Stanford O'neill Franklin, lists the exact same basis for his opinions as the basis provided by the Defendant. Due to the numerous and lengthy disclosures provided by the State, the entirety are not contained within this Motion as an exhibit, however a copy of the relevant portion regarding the State's Expert Stanford O'neill Franklin is attached as **Defendant's Exhibit Two**.

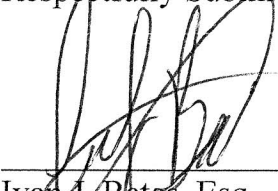
of guilt in this case. The State in their argument to allow the introduction of the General Orders in the co-Defendant's case, *State v. Porter*, noted that the General Orders are relevant to the case as the Court of Appeals has instructed that "where the accused is a police officer, the reasonableness of the conduct must be evaluated not from the perspective of a reasonable civilian but rather from the perspective of a reasonable police officer similarly situated" and that "a violation of a police guideline is not negligence per se, it is however a factor to be considered in determining the reasonableness of police conduct." *State v. Albrecht*, 336 Md. 475, 501 (1994), *Pagotto v. Sate*, 361 Md 528, at 557 (2000). If the Court is inclined to admit the General Orders, over the Defendant's objection, it is extremely relevant for those most familiar with the Baltimore City General Orders, i.e. the Defendant's experts, to be allowed to explain the purpose behind those General Orders so that the jury may better understand what a reasonable officer's conduct would have been. Therefore, the State's argument as to the relevance of the Defendant's law enforcement experts is completely without merit.

The State further alleges that the experts' shared opinion regarding the policies behind the General Orders is contrary to Maryland law. However, the State once more is without merit to their argument and is intentionally misleading the court in regards to what the Defendant's expert would actually testify to. As clearly stated in the Defendant's Disclosures, if called to testify, it is expected that the Defendant's law enforcement experts would opine that the General Orders are intended to provide internal guidance and discipline and not to form the basis of

criminal prosecutions. The disclosure in no way states that the experts would opine as to whether or not the general orders could or would be a factor to consider in determining whether or not an officer has violated Maryland law. In fact, the experts would solely express their opinion of what the General Orders are intended to be used for. The State's attempt to cite case law regarding the use of General Orders as evidence regarding the reasonableness of police conduct has absolutely no significance or bearing on the expert's ability to give opinions as to the intention behind the policies. The Defendant agrees with the State in that whether or not the police conduct was reasonable or not is for the jury's consideration only, and as such evidence regarding the reasons and intentions behind the very policies the State wishes to introduce is highly relevant to the jury understanding whether a violation of those policies would or would not be reasonable. Therefore, the State has not presented sufficient argument to prevent the Defendant's law enforcement experts from testifying as to the opinions cited in the Defendant's Initial Disclosures.

WHEREFORE, the Defendant asks that this Court deny the State's Motion in Limine Regarding the Defendant's Proposed Law Enforcement Experts and Request for Hearing and allow the Defendant's Law Enforcement Experts to testify in their respective fields to the opinions expressed in the Defendant's Initial Disclosures.

Respectfully Submitted,



Ivan J. Bates, Esq.
Tony N. Garcia, Esq.
Mary M. Lloyd, Esq.
Bates & Garcia, LLC
201 N. Charles Street, Suite 1900
Baltimore, Maryland 21201
Phone: (410) 814-4600
Fax: (410) 814-4604

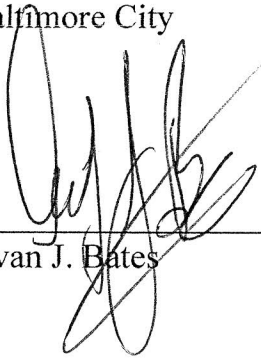
Counsel for Sergeant Alicia White

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of February 2016, a copy of the foregoing

Response to State's Motion was sent by first class mail, postage prepaid to:

Michael Schatzow, Chief Deputy State's Attorney
Office of the State's Attorney for Baltimore City
120 East Baltimore Street
Baltimore, Maryland 21202



Ivan J. Bates

2016 JAN 15 P 4:07

STATE OF MARYLAND

v.

ALICIA WHITE

IN THE
CIRCUIT COURT FOR
BALTIMORE CITY

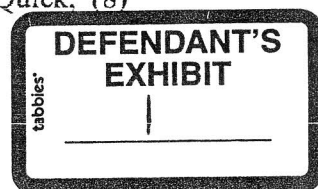
CASE No. 115141036
(Filed under seal)

* * * * *

**STATE'S MOTION *IN LIMINE* REGARDING THE DEFENDANT'S PROPOSED LAW
ENFORCEMENT EXPERT TESTIMONY AND REQUEST FOR HEARING**

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 Rule 4-252, Rule 4-263, Rule 5-702, and Rule 5-705 respectfully moves this Court *in limine* to issue a pretrial order regarding the Defendant's proposed law enforcement expert testimony (1) to require the disclosure of the facts or data underlying the Defendant's expert witnesses' opinions before those experts are permitted to testify to those opinions; (2) to preclude the Defendant from calling any expert witness about whom the Defendant has not provided a disclosure complying with Rule 4-263; and (3) to bar expert witnesses from testifying to opinions that are contrary to Maryland law or that are not appropriately helpful to the jury, particularly opinions that police departmental policies may not form the basis of a criminal prosecution and are not intended for such use. In support of this Motion, the State submits the following:

1. The Defendant has recently disclosed that she intends to call a number of law enforcement expert witnesses to testify as part of her defense. Specifically, she has identified as such witnesses the following persons: (1) Detective William Boyd, (2) Detective Charles Anderson, (3) Detective Syreeta Teel, (4) Officer Zachary Novak, (5) Officer Mark Gladhill, (6) Officer Matthew Wood, (7) Lieutenant Robert Quick, (8)



Captain Justin Reynolds, (9) Colonel Stanley Branford, (10) Detective Dawnyell Taylor, (11) Sergeant Tashawna Gaines, (12) Timothy Longo, (13) Colonel Garnell Green, (14) Colonel Edward Jackson, and (15) John Ryan. Regarding witnesses (1)-(6), the Defendant has not provided a specific disclosure about their opinions or the bases for their opinions other than to say that any law enforcement expert "may be called upon to testify that the actions of Sergeant White were reasonable and/or in accordance with accepted police practices" and "may be called upon to testify that [police general orders, guidelines, and procedures] are intended to provide internal guidance and discipline and not to form the basis of criminal prosecutions." *Id.* at 10-11.

For the remaining law enforcement experts, the Defendant has disclosed more specific opinions but has provided only vague descriptions of the bases for those opinions. Lieutenant Quick's and Captain Reynolds's opinions are said to be based on their "review of the records produced during discovery, any written and recorded statements, reports, photographs, maps, diagrams, and other documents relevant to the actions of the officers," *id.* at 15-16, with no description of which specific materials they reviewed or how and by whom items were deemed "relevant." The Defendant states that Colonel Branford's, Detective Taylor's, Sergeant Gaines's, and Colonel Green's opinions are based varyingly upon their "review of the entire investigation file in the matter of the death of Freddie Gray," "Mr. Gray's presentation at Druid Hill Avenue and Dolphin Street and at North Avenue and Pennsylvania Avenue," and "his review of . . . all relevant documents and materials considered in the course of the investigation." *Id.* at 18-23. At no point does the Defendant clarify what she means by "the entire

investigation file,” which person’s account of Mr. Gray’s “presentation” was considered, or who decided what made an item “relevant” and worth being “considered.”

Similarly, Mr. Longo’s and Mr. Ryan’s “opinions will be based . . . on [their] review of the discovery produced in this case, including any written and recorded statements, other audio and video recordings, reports, photographs, maps, diagrams, Mr. Gray’s presentation at Druid Hill Avenue and Dolphin Street and at North Avenue and Pennsylvania Avenue, and relevant Baltimore Police Department General Orders and Policies, as well as generally accepted policies, procedures, practices, training, and custom throughout the United States.” *Id.* at 12, 26-27. The State can only guess at what Mr. Longo and Mr. Ryan actually reviewed given this broad and vague description. Likewise, Colonel Jackson’s opinions are based on “his review of discovery produced in this case, including written and recorded statements, while [*sic*] in police custody during all police transport vehicle stops, including those at Druid Hill Avenue and Dolphin Street, [*sic*] and at North Avenue and Pennsylvania Avenue and [*sic*] relevant Baltimore City Police Department General Orders and Policies, as well as generally accepted policies, procedures, practices, training; customs [*sic*] throughout the United States.” *Id.* at 25. Given that this disclosure borders on nonsensical, the State has no concrete understanding of what “discovery” this witness reviewed, which BPD orders and policies he deemed “relevant,” or even the subject matter of the nationwide policies, procedures, *etc.* he deemed to be “generally accepted.”

2. Rule 4-263(e)(2)(A) requires the Defendant to disclose to the State as to each expert she intends to call “the substance of the findings and the opinions to which the expert is expected to testify” and to provide “a summary of the grounds for each opinion.”

Because of this required advanced notice, Rule 5-705 generally allows expert witnesses to offer their opinions to the jury “without first testifying to the underlying facts or data.” As Professor McClain explains, however, “[i]f the opposing party, having been aided by discovery, believes that an expert’s opinion lacks a sufficient basis, counsel may ask the court to exercise its discretion under Rule 5-705 . . . to require the expert to testify to the basis of the opinion first, before stating the opinion or inference.” Lynn McLain, *Maryland Rules of Evidence*, 173 (3d ed. 2007). “If the court finds that the requirements of Rule 5-702 and 5-703 are not met, it will not permit the opinion testimony.” *Id.*

3. In that regard, Rule 5-702 only permits expert testimony to be admitted to “assist the trier of fact to understand the evidence or to determine a fact in issue,” with the Court being required to consider before allowing such testimony “whether the witness is qualified as an expert by knowledge, skill, experience, training, or education,” “the appropriateness of the expert testimony on the particular subject” and “whether a sufficient factual basis exists to support the expert testimony.” “As a general rule, expert witnesses may not give opinions on questions of law except for those concerning the law of another jurisdiction.” *Franch v. Ankney*, 341 Md. 350, 361 (1996).

4. In this case, because the Defendant has not provided a proffer of *any* factual basis, much less a sufficient one, for her proposed expert witnesses Detective Boyd, Detective Anderson, Detective Teel, Officer Novak, Officer Gladhill, or Officer Wood, the Court should preclude their expert testimony for the Defendant’s failure to comply with the disclosure requirements under Rule 4-263.¹ Regarding the remaining law enforcement

¹ The State would likewise object to these witnesses providing lay opinion that backdoors expert opinion about whether or not Sergeant White’s actions were reasonable. For example, in the trial of *State v. William Porter*,

experts, the Defendant's disclosures only vaguely and cryptically identify what, if any, materials these witnesses actually reviewed in formulating their opinions. Without knowing what these expert witnesses reviewed, neither the State nor the Court can properly evaluate the appropriateness or validity of their opinions.² As such, this Court should exercise its discretion by requiring these witnesses under Rule 5-705 to explain the full bases for their opinions before they are permitted to share potentially inadmissible testimony with the jury.

Lastly, all of the Defendant's experts' shared opinion that police general orders and policies "are intended to provide internal guidance and discipline and not to form the basis of criminal prosecutions" is an opinion that at once is irrelevant and that also runs contrary to the limitations on expert testimony by offering an opinion—and an incorrect one, at that—about a question of Maryland law. Indeed, it makes no consequential fact in this case either more or less probable that the authors of police general orders and policies thought such materials could not form the basis of criminal prosecutions. The Maryland Court of Appeals has already squarely disagreed with such an opinion. See *State v. Albrecht*, 336 Md. 475, 502-03 (1994) (evaluating the reasonableness of a police officer's actions using the standards set forth in the Departmental Directives of the Montgomery County Police Department's Field Operations Manual); accord *Mayor of*

police officers were called as lay witnesses and were permitted to testify that they believe themselves to be "reasonable" and that they always do the same thing that the defendant there did. A witness's subjective opinion about his own reasonableness is not remotely relevant toward the legally proper question of whether the witness is objectively reasonable. Allowing a witness to self-identify as "reasonable" and then align his actions with that of the Defendant would merely permit the jury to be prejudiced by irrelevant, misleading testimony by someone without the qualifications to opine about the objective reasonableness of the Defendant's actions.

² The State, of course, has previously heard testimony from Mr. Longo and Captain Reynolds during the *Porter* trial, but that testimony concerned their assessment of Officer Porter's actions and related to general matters that Officer Porter's attorneys raised. This prior testimony does little to supplement Defendant White's deficient disclosure about these witnesses' opinions about the reasonableness of *her* actions or about the matters that *her* attorneys may raise at trial.

Baltimore v. Hart, 395 Md. 394, 416-18 (2006) (quoting *Pagotto v. State*, 361 Md. at 557 (Bell, C.J., dissenting)) (“a violation of a police guideline is not negligence *per se*, it is, however, a factor to be considered in determining the reasonableness of police conduct”). As such, allowing this testimony about the permissible use of general orders would constitute a defense expert offering an opinion about a point of Maryland law—a matter committed solely to this Court’s expertise. The Court should not permit defense experts to supplant and contradict its role as the arbiter and source of settled Maryland law for the jury’s consideration.

Wherefore, the State asks that this Court grant a hearing on this Motion and issue a pretrial order granting the relief herein requested regarding the Defendant’s law enforcement expert witnesses.

Respectfully submitted,

Marilyn J. Mosby


Michael Schatzow (#717876)
Chief Deputy State’s Attorney
120 East Baltimore Street
The SunTrust Bank Building
Baltimore, Maryland 21202
(443) 984-6011 (telephone)
(443) 984-6256 (facsimile)
mschatzow@stattdoctor.org



Janice L. Bledsoe (#68776)
Deputy State's Attorney
120 East Baltimore Street
The SunTrust Bank Building
Baltimore, Maryland 21202
(443) 984-6012 (telephone)
(443) 984-6256 (facsimile)
jbledsoe@stattorney.org



Matthew Pillion (#653491)
Assistant State's Attorney
120 East Baltimore Street
The SunTrust Bank Building
Baltimore, Maryland 21202
(443) 984-6045 (telephone)
(443) 984-6252 (facsimile)
mpillion@stattorney.org


CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of January, 2016, a copy of the State's Motion in Limine Regarding the Defendant's Proposed Law Enforcement Expert Testimony and Request for Hearing was mailed and e-mailed to:

Ivan Bates, Tony Garcia, & Mary Lloyd
201 N. Charles Street, Suite 1900
Baltimore, Maryland 21201
(410) 814-4600
ivan@batesgarcia.com
Attorneys for Sergeant Alicia White

Respectfully submitted,

Marilyn J. Mosby



Janice L. Bledsoe (#68776)
Deputy State's Attorney
120 East Baltimore Street
The SunTrust Bank Building
Baltimore, Maryland 21202
(443) 984-6012 (telephone)
(443) 984-6256 (facsimile)
jbledsoe@stattorney.org

STATE OF MARYLAND

v.

ALICIA WHITE

* * * * *

*
*
*
*
*

IN THE
CIRCUIT COURT FOR
BALTIMORE CITY
CASE No. 115141036
(Filed under seal)

ORDER

Having considered the State's Motion to Seal the State's Motion in Limine Regarding the Defendant's Proposed Law Enforcement Expert Testimony and Request for Hearing and any response thereto, it is this ____ day of _____, 2016, by the Circuit Court for Baltimore City

ORDERED that the State's Motion to Seal the State's Motion in Limine Regarding the Defendant's Proposed Law Enforcement Expert Testimony and Request for Hearing be and hereby is **GRANTED**; it is further

ORDERED that the Clerk of the Court shall place under seal the State's Motion in Limine Regarding the Defendant's Proposed Law Enforcement Expert Testimony and Request for Hearing; it is further

ORDERED that the Clerk of the Court shall place under seal the State's Motion to Seal the State's Motion in Limine Regarding the Defendant's Proposed Law Enforcement Expert Testimony and Request for Hearing; and it is further

ORDERED that the Clerk of the Court shall place this Order under seal.

Judge
Circuit Court for Baltimore City

Stanford O'Neill Franklin has been the Executive Director of Law Enforcement Against Prohibition (L.E.A.P.) since 2010. Prior to taking that position, Mr. Franklin has served in various command and supervisory roles for law enforcement agencies within the State of Maryland. A copy of Mr. Franklin's curriculum vitae is attached as Exhibit I.

Mr. Franklin's opinions will be based on his education, training, and experience, as well as on his review of discovery produced in this case, including written and recorded statements, other audio and video recordings, reports, photographs, maps, diagrams, Mr. Gray's presentation while in police custody during all police transport vehicle stops, including those at Druid Hill Avenue and Dolphin Street, and at North Avenue and Pennsylvania Avenue and relevant Baltimore City Police Department General Orders and Policies, as well as generally accepted policies, procedures, practices, training; and custom throughout the United States. If called to testify, Mr. Franklin is expected to testify regarding police training, policies, general orders, practices, customs, safety, transportation, retaliatory prisoner transportation practices, and law enforcement generally. Mr. Franklin is expected to testify that the actions of Officer Goodson were unreasonable and inconsistent with the actions of a reasonable officer with similar training and experience. Mr. Franklin is expected to testify that Officer Goodson's actions in denying the request for medical attention and/or treatment by Mr. Gray were unreasonable and inconsistent with Officer Goodson's duties, training and experience, as well as with the general orders, directives, procedures and policies in place at the time of Mr. Gray's arrest. In particular, Mr. Franklin is expected to testify regarding an officer's training in evaluating an arrestee's need for medical care, whether requested or not. Mr. Franklin is further expected to testify as to the relationship between an arrestee's request or need for medical care, and police booking procedures.

Mr. Franklin is further expected to testify that Mr. Goodson acted unreasonably and inconsistent with his training as well as with the general orders, directives, procedures and policies in place at the time, relative to the transportation of Mr. Gray. Mr. Franklin is expected to testify that Officer Goodson's actions relative to the use of a seat belt were unreasonable, under the totality of the facts and circumstances of this case. Mr. Franklin is expected to testify that directives from the Baltimore City Police Commissioner are to be followed, and are not discretionary, particularly those that concern the safety of those in custody.

Moreover, Mr. Franklin is expected to opine that if a directive provides for an officer to utilize discretion, that discretion will be specified and that an officer must conduct himself in accordance with all directives promulgated by the Police Department under which one is employed.

