

IN THE CIRCUIT COURT FOR BALTIMORE CITY, MARYLAND

STATE OF MARYLAND

vs.

Case Numbers:

CAESAR GOODSON,	115141032
EDWARD NERO,	115141033
GARRETT MILLER,	115141034
BRIAN RICE,	115141035
ALICIA WHITE,	115141036
WILLIAM PORTER,	115141037

DEFENDANTS.

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REPORTER'S OFFICIAL TRANSCRIPT OF PROCEEDINGS

(Excerpt - The Court's Ruling on  
Defendants' Motion for Removal)

Baltimore, Maryland

Thursday, September 10, 2015

BEFORE:

HONORABLE BARRY G. WILLIAMS, Associate Judge

\* Proceedings Digitally Recorded \*

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

APPEARANCES:

For the State:

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JANICE BLEDSOE, ESQUIRE

MATTHEW PILLION, ESQUIRE

JOHN BUTLER, ESQUIRE

For the Defendant Caesar Goodson:

MATTHEW FRALING, III, ESQUIRE

ANDREW GRAHAM, ESQUIRE

For the Defendant Brian Rice:

MICHAEL BELSKY, ESQUIRE

CHAZ BALL, ESQUIRE

For the Defendant Alicia White:

IVAN BATES, ESQUIRE

MARY LLOYD, ESQUIRE

TONY GARCIA, ESQUIRE

For the Defendant Garrett Miller:

CATHERINE FLYNN, ESQUIRE

BRANDON MEAD, ESQUIRE

For the Defendant William Porter:

JOSEPH MURTHA, ESQUIRE

GARY PROCTOR, ESQUIRE

For the Defendant Edward Nero:

MARC ZAYON, ESQUIRE

ALLISON LEVINE, ESQUIRE

T A B L E   O F   C O N T E N T S

P a g e

The Court's Ruling on Defendants'  
Motion for Removal (Denied)

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1 the suggestion that a fair and impartial trial cannot be  
2 had in this jurisdiction is true or that there are  
3 reasonable grounds for the suggestion.

4 I have reviewed all relevant case law,  
5 including, but not limited to, *Skilling v. United States*,  
6 561 U.S. 358 (2010); *Patton v. Yount*, 467 U.S. 1025  
7 (1984); *Evans v. State*, 304 Md. 487 (1985); *Dinkins v.*  
8 *Grimes*, 201 Md. App. 344 (2011); *Hoffman v. Stamper*,  
9 155 Md. App. 487 (2004); and *Simms v. State*, 49 Md. App.  
10 515 (1981).

11 I note that *Skilling* references certain factors  
12 that would assist this court in determining whether there  
13 is a presumption of juror prejudice, including the size  
14 and characteristics of the community in which the crime  
15 occurred; whether press coverage about the defendants  
16 contained a confession or other blatantly prejudicial  
17 information of the type readers or viewers could not  
18 reasonably be expected to shut from wight; and whether  
19 the passage of time has lessened press attention.

20 The main thrust of the defendants' argument,  
21 that there was so much publicity, actually vitiates their  
22 request. This court acknowledges the significant media  
23 attention that this case has received and will continue  
24 to receive.

25 The issue then becomes whether the citizens of

1 Baltimore are capable of listening to the facts as  
2 presented in the courtroom in coming to a decision based  
3 only on those facts and the law presented to them by the  
4 court. To automatically assume that the citizens of our  
5 city cannot provide the defendants with a fair and  
6 impartial trial would be quite a leap.

7 I have been provided with a plethora of media  
8 articles concerning what people believe happened to Mr.  
9 Gray, what they believe should happen to the defendants,  
10 and why this case should or should not be transferred.  
11 The opinions and comments of individuals are not  
12 particularly helpful in assessing the appropriate outcome  
13 for this case, for it is easy to pick out opinions and  
14 use them as the barometer of what all say, but that is  
15 not reality.

16 In the pleadings, the defendants note that  
17 there is an allegation that people are trying to get  
18 people in the jury pool who have a goal to convict the  
19 defendants. If this court were to send this case to  
20 another jurisdiction based on that that type of  
21 allegation alone, it could certainly open the floodgates  
22 to people attempting to tamper with the process through  
23 the media.

24 Defendants reference Sheppard v. Maxwell,  
25 384 U.S. 333 (1966), for the premise that the court

1 should grant removal due to publicity. This was a case  
2 where the court held that when there is the reasonable  
3 likelihood that prejudicial news prior to trial will  
4 prevent a fair trial, the judge should continue the case  
5 until the threat abates or transfer it to another county  
6 not so permeated with publicity. I do note that that  
7 incident occurred in the 50s, and the case was from the  
8 70s.

9 How we get news today is vastly different from  
10 the 50s and the 60s. The reality of our world in this  
11 day of immediate media gratification and around the clock  
12 coverage is, where does jurisdiction that is not so,  
13 quote, "permeated with publicity." We have ABC, CBS,  
14 NBC, FOX, CNN, MSNBC, Associated Press, the Afro, The  
15 Baltimore Sun, City Paper, Washington Post, and not to  
16 mention various and sundry radio stations and blogs.  
17 Information is ubiquitous, and every person in our city  
18 and state can choose to subject themselves to constant  
19 access through TV, radio, newspapers, blogs, and the  
20 internet.

21 Certainly, it does not help when the media  
22 seems to print and broadcast every word from every  
23 source, every day, no matter how relevant. But, again,  
24 that is the era in which we live. I will note that the  
25 media reports are not just here in Baltimore, but

1 throughout the state, country, and the world.

2 So in this day and age, what does one do with a  
3 high-profile case? Is it automatically sent to another  
4 jurisdiction? If so, why, if again everyone has the same  
5 access? Is it the possible reaction of the citizens?  
6 And if so, does that mean automatic removal? The most  
7 important thing is to make sure that each defendant gets  
8 a fair and impartial trial.

9 Defendants reference the many comments by  
10 public officials, civic leaders, and clergy concerning  
11 the incident. Both sides speak in absolutes when  
12 assessing the statements in the media. According to the  
13 defense, each statement has created an environment where  
14 they cannot get a fair trial in Baltimore City.  
15 According to the state, basically all statements are fair  
16 game, and the court should turn a deaf ear. The reality  
17 is certainly more nuanced.

18 In assessing this motion and making the  
19 ultimate decision, the court has considered all proffered  
20 statements made by the Mayor, Police Commissioner, other  
21 public officials, civic leaders, and clergy, individually  
22 and collectively, within the scope of the facts and law  
23 as presented by the parties. I note that the initial  
24 motion filed was 84 pages and the appendix over 400  
25 pages.



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What effect do the statements of the city leaders have in this case? Are the citizens of the city swayed by elected leaders? The argument could be that it goes both ways. The citizens are not such a monolithic group that they simply do as they are told by the politicians and other civic leaders. I believe that each citizen of Baltimore has the ability to think on his or her own.

Now, looking at the Skilling case and the factors listed, it is clear to me that there seems to be a legal preference for at least making the effort to impanel a fair and impartial jury in the jurisdiction where the incident occurred.

All parties agree that the population of Baltimore City is slightly over 600,000 as of 2014. The defendants prefer to use the number of 276,000 as the number because allegedly it is the population of people eligible for jury duty. But it seems to this court that the Supreme Court uses as its barometer the total population.

With over 600,000 citizens, Baltimore is a large and diverse community. And if we were to pick juries from this pool, I believe Baltimore's populace meets the criteria established by the Supreme Court for reducing the likelihood of prejudice.

1           Again, while there has been significant media  
2 coverage, as has been noted, the information has been  
3 worldwide.

4           Both sides refer to the public announcement of  
5 the charges by the State's Attorney, which included a  
6 full reading of the statement of probable cause. The  
7 defendants acknowledge that the statement of probable  
8 cause is likely a public document. The reading of a  
9 public document on the steps of the War Memorial Plaza  
10 does not necessarily fall into inappropriate press  
11 coverage.

12           We noted that our Mayor stated that she was  
13 sickened and heartbroken by the incident. Our former  
14 Police Commissioner spoke about the about the  
15 investigation, which was done by the police department,  
16 and determined certain things had occurred during and  
17 after the arrest of Mr. Gray. And, of course, the recent  
18 announcement of the civil settlement reached with the  
19 Gray family. And as I have noted, the media coverage is  
20 local, statewide, national, and international.

21           Now, another factor is whether the passage of  
22 time has lessened press attention. Due to the worldwide  
23 coverage, I am not sure that anything but trials will  
24 lessen the press attention in this state. So is there  
25 really a need to remove this case at this time?

1           Now, there are a series of Supreme Court cases  
2 that talk about presumptive prejudice. They seems to  
3 indicate that voir dire is the appropriate way to delve  
4 into the issue of prejudice. Once again, without this  
5 presumption, it would be -- there would be the issue of  
6 transferring this case simply because there is a request.

7           So the question is, can there be effective voir  
8 dire here in Baltimore City?

9           I note that in late April, Baltimore's  
10 businesses, communities, and citizens were subjected to  
11 the ravages of rioting by the actions of a select few,  
12 but ultimately it reverberated throughout the state.  
13 Indeed, it may be that some people whose property was  
14 affected during the period of unrest reside in other  
15 areas besides Baltimore City.

16           I will note that protest is an acceptable and  
17 sometimes commendable reaction to events. Rioting is  
18 not. Many people in Baltimore, the state, country, and  
19 the world were inundated by media reports of the  
20 incidents.

21           This court acknowledges that there were calls  
22 from all areas for peace, for order, and for justice. In  
23 the media, there was intense focus on the curfew that was  
24 imposed on the city. While of some concern, I have found  
25 that the citizens of Baltimore understand the importance

1 of jury service in a civilized society and their role in  
2 that process.

3 Without making inquiry of one single potential  
4 juror, defendants want this court to make a judicial  
5 finding that we cannot find 72 citizens who can listen to  
6 the evidence and make their decision solely on that  
7 evidence and no other factors.

8 We cannot assume that when a citizen of  
9 Baltimore, after being placed under oath, tells a judge  
10 that he or she can be fair, listen to the evidence, and  
11 make a decision solely on the evidence, that that  
12 individual is dishonoring their oath by lying. That is  
13 effectively what the defendants want this court to  
14 assume, and assume it before even asking questions.

15 Prejudice may ultimately be found to exist once  
16 voir dire is conducted. But to presume prejudice,  
17 without making any effort to determine whether a fair and  
18 impartial jury can be impaneled, is not fair to the  
19 defendants and flies in the face of a fair trial, which  
20 also includes the right to be tried in the jurisdiction  
21 where the incident is alleged to have occurred.

22 This court is not legally permitted to assume  
23 or presume before voir dire that jurors will deliberately  
24 disregard their oath. Neither shall this court presume,  
25 that as a general proposition, Baltimore's citizens lack

1 the intellect and integrity to reveal known biases.

2 The concern that if jurors do not find the  
3 defendants guilty that there will be repercussions is  
4 something that can be explored in voir dire. The concern  
5 that some may not want to serve for fear that their  
6 verdict may have some undesired social consequence is a  
7 concern this court routinely confronts.

8 At the beginning of voir dire, it is not  
9 unusual for potential jurors to express an unwillingness  
10 to serve. But once the process is complete, they  
11 willingly sit and serve without incident with a clear  
12 understanding of their obligation to make decisions based  
13 solely on the facts and law presented at the time of  
14 trial.

15 The fact that the city settled the civil matter  
16 under a civil standard of law does not affect the  
17 criminal standard and does not ease the burden on the  
18 state to prove beyond a reasonable doubt the guilt of  
19 each defendant. Equally plausible is the suggestion that  
20 Baltimore's citizens may be angry because the money paid  
21 comes out of their taxes.

22 All interesting arguments but, again, mere  
23 theses and theories do not carry the day. Rather, these  
24 arguments demonstrate the value of voir dire questions  
25 and are not necessarily a basis for allowing the case to

1 be removed before an effort is made to inquire of the  
2 proposed jurors.

3 I have reviewed the Dinkins case. And while  
4 there are similarities, I note that the court  
5 acknowledged the discretion trial courts have to review  
6 the facts and make an assessment.

7 Of import is the city-unique argument,  
8 especially when it comes to the statements of the  
9 political and community leaders. As I have noted, the  
10 citizens of Baltimore are not monolithic. They think for  
11 themselves and have shown that opinions of clergy,  
12 politicians, and local leaders, which often loom large  
13 and loud in this city, sometimes mean very little.

14 We can question jurors not just on whether they  
15 have formed an opinion on guilt or innocence, but also  
16 whether or not they are swayed by the words of  
17 politicians and clergy who have opined on issues. Also,  
18 we would be -- we would inquire as to whether they  
19 believe, before they hear the facts, that they have a  
20 duty as a citizen to vote a particular way out of fear,  
21 concern, or duty.

22 In our judicial system, we have rules that are  
23 set in place to make sure that all sides have the  
24 opportunity for a fair trial. Using those rules and  
25 proper voir dire, potential jurors can typically be

1 questioned in a manner that will lead to impaneling a  
2 jury that can review the evidence presented and make a  
3 decision based solely on the evidence and the law.

4 But, again, the only way to get to that issue  
5 is to inquire of those potential jurors and not to assume  
6 that they cannot be fair. Otherwise, and again, there  
7 would be no need for the court to exercise discretion and  
8 removal would be mandatory.

9 I have reviewed *Lozano v. State*, 584 So. 2d 10  
10 (Fla. 1991), and note that it is not controlling  
11 authority because it is a Florida case. Also, I do not  
12 find it persuasive in that the case is distinguishable  
13 because the court, unlike here, did not provide the  
14 parties an opportunity to argue removal in court.

15 Defendants have suggested and stated that,  
16 based on issues surrounding this case and all that has  
17 been presented and argued, they cannot get a fair and  
18 impartial trial in Baltimore. The court finds that the  
19 defendants have not met their constitutional burden at  
20 this stage to show that the suggestion is true or that  
21 there are reasonable grounds to believe that the  
22 suggestion is true.

23 Furthermore, the court does not find that due  
24 to media attention, comments of politicians, or for any  
25 other reason that there exists a presumption of

1 prejudice.

2 Having reviewed the written pleadings with  
3 their attendant exhibits, reviewed the relevant law, and  
4 listened to the arguments presented, I do not find that  
5 the constitution, statutes, and case law require the  
6 change of venue requested by the defendants' request for  
7 removal is denied.

8 Now, obviously, implicit in my ruling is the  
9 understanding that the results of voir dire may  
10 necessitate reconsideration of this ruling. I will  
11 entertain any appropriate motion, if necessary, to  
12 reconsider my ruling if, during the voir dire process,  
13 defendants can meet the legal threshold for a transfer of  
14 venue.

15 This Court will stand in recess until 2  
16 o'clock.

17 Counsel, please do not leave. Speak to my  
18 staff before you leave.

19 THE CLERK: All rise. This court is in recess  
20 until 2 o'clock.

21 (Whereupon, a luncheon recess was taken at  
22 11:05 a.m.)  
23  
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REPORTER'S CERTIFICATE

I, Patricia A. Trikeriotis, an Official Court Reporter of the Circuit Court for Baltimore City, do hereby certify that the proceedings in the matter of State of Maryland vs. Caesar Goodson, et al., Case Numbers 115141032 through 37, on September 10, 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 16 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 10th day of September, 2015.

*Patricia Trikeriotis*

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Patricia A. Trikeriotis,  
Chief Court Reporter  
Circuit Court for Baltimore City