

STATE OF MARYLAND

Plaintiff

v.

CAESAR GOODSON

Defendant

\* IN THE

\* CIRCUIT COURT

\* FOR

\* BALTIMORE CITY

\* Case No. 115141032

2015 DEC 29 P 3:57  
CIRCUIT COURT FOR BALTIMORE CITY

\* \* \* \* \*

**DEFENDANT'S MOTION TO STRIKE THE STATE'S  
EXPERT STANFORD O'NEILL FRANKLIN  
AND REQUEST FOR HEARING**

Defendant Caesar Goodson ("Defendant" or "Officer Goodson"), through his counsel, and pursuant to Maryland Rules 4-252(d) and 4-263(d), moves to strike the State's untimely designation of proffered expert Stanford O'Neill Franklin ("Mr. Franklin") and for reasons states:

1. On December 23, 2015, just two weeks before Officer Goodson's trial is scheduled to begin, the State designated Mr. Franklin as an expert in "policing practices and procedures." *See Exhibit 1.* Mr. Franklin is designated to testify regarding certain areas not previously disclosed to be discussed by any witness designated by the State including, "generally accepted policies, procedures, practices, training and custom throughout the United States" and "retaliatory prisoner transportation practices." *Id.*

2. The State's disclosure of expert witnesses was due on or before June 26, 2015. The State has offered no reason for its untimely disclosure.

3. When determining the type of sanction appropriate for a party's untimely disclosure, a court may consider the following: 1) the reasons why the disclosure was not

made; 2) the existence and amount of any prejudice to the opposing party; 3) the feasibility of curing any prejudice with a continuance; and 4) any other relevant circumstances. *See Raynor v. State*, 201 Md. App. 209, 227-28 (2011).

4. The December 23<sup>rd</sup> disclosure was the first notice provided to Officer Goodson by the State of its intention to call Mr. Franklin, as well as the areas in which he would be testifying. The untimely disclosure of Mr. Franklin introducing new areas of testimony prejudices Officer Goodson's right to prepare his defense. By way of example, Mr. Franklin is expected to opine on "retaliatory prisoner transportation practices," a phrase not defined anywhere in his disclosure. This purported practice has not been previously identified as an area of testimony by any of the State's witnesses. The charges against Officer Goodson have been pending since May 2015.<sup>1</sup> With this disclosure, the State has injected a new legal theory or area of testimony at the proverbial eleventh hour and this can only be characterized as unfair surprise.

5. In its disclosure, the State did not identify a reason for the untimely disclosure. It is highly unlikely that Mr. Franklin was just made known to the State, as Mr. Franklin has been anything but circumspect with his opinions and thoughts on the police's handling of the arrest of Mr. Gray and the events that followed. By way of example, attached as **Exhibit 2** to this motion is a list of some of Mr. Franklin's media appearances since April 2015. As the list demonstrates, Mr. Franklin has been offering his opinion to the public since shortly after the death of Mr. Gray.

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<sup>1</sup> It has been represented to counsel for Officer Goodson that the State first contacted Mr. Franklin the week of December 20, 2015.

6. Mr. Franklin's public commentary continued through the course of Officer Porter's trial and thereafter. *Id.* Even after he was disclosed as an expert for the State, it appears that Mr. Franklin was unable to refrain from making comments to the media. As recently as December 27, 2015, Mr. Franklin was attributed as saying the following:

Retired police major Neil Franklin said, "in my mind and also in the prosecutor's mind, that is the most important case". "But it is a bit of a kick in the chest". Porter had been charged with involuntary manslaughter, second-degree assault, reckless endangerment and misconduct in office. "I feel it sends a bad message and gives the police hope that they will get away with brutality".

See **Exhibit 3** (<http://waltonian.com/2015/12/no-retrial-date-set-yet-in-first-freddie-gray-case/>).<sup>2</sup>

7. Mr. Franklin's comments run afoul of this Court's October 14, 2015 Order prohibiting any party (or its agents) from making any extrajudicial statements. The fact that majority of his comments occurred before he was supposedly retained is of no consequence. Mr. Franklin has been purposefully tainting the jury pool since Mr. Gray's untimely death and continues now that he is an agent of the State. This unquestionably prejudices Officer Goodson's right to a fair trial.

8. Even if the Court were to find that Officer Goodson has not been prejudiced by the late disclosure of Mr. Franklin and the introduction of a new area of testimony at this late date, this Court should preclude his testimony in the trial against Officer Goodson as a sanction for his failure to comply with the October 14, 2015 Order.

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<sup>2</sup> It is also believed that Mr. Franklin called into a local radio broadcast on the morning of December 29, 2015 again expressing his views on the trials surrounding Mr. Gray's death. A copy of that broadcast will be requested.

