

STATE OF MARYLAND

\*

IN THE

16 JUN 16 P 1:48

Plaintiff

\*

CIRCUIT COURT DIVISION

v.

\*

FOR

CAESAR GOODSON

\*

BALTIMORE CITY

Defendant

\*

Case No. 115141032

\* \* \* \* \*

**OFFICER GOODSON'S MEMORANDUM OF LAW AS TO  
ADMISSIBILITY OF STATEMENTS BY THE STATE'S  
ATTORNEY'S OFFICE AS ADMISSIONS BY A PARTY-OPPONENT**

In *Bellamy v. State*, 403 Md. 308, 326 (2008), the Court of Appeals held that statements made by prosecutors may qualify as admissions of a party-opponent under Md. Rule 5-803, which provides an exception to hearsay rule for statements made by a party-opponent. Although the Court of Appeals declined to adopt a single, definitive test for the admissibility of statements by a prosecutor, it found two approaches compelling, and considered both.

First, the Court applied the balancing test found in *Kenneth S. Broun*, 2 McCormick on Evidence § 259, which turns on the role of the government agent and the stage of the proceedings. *Id.* Under that test, a statement made "at an early, investigative stage of the case" by "an investigative agent of the State who maintains a seemingly neutral and unadversarial posture during the trial process" would not be admissible as a statement of a party-opponent. *Id.* In contrast, the Court of Appeals held that it was "clear" that a prosecutor's "unambiguous assertion that a particular statement was true at the penultimate proceeding in the case" would be admissible as an admission by the State. *Id.*

Second, the Court of Appeals applied the Second Circuit's test regarding inconsistent prosecutorial statements. That test has three elements: "(1) [the existence of] an assertion of fact

[that is] clearly inconsistent with a subsequent assertion at trial; (2) [both of the] assertions of fact [must be] equivalent to testimonial statements;<sup>1</sup> and (3) [the] inference that the party seeking to admit the evidence wants to have the fact finder draw is a fair inference, and there is not an innocent explanation for the inconsistency." *Id.* at 329-30 (citing *United States v. Salerno*, 937 F.2d 797, 811 (2nd Cir. 1991), *rev'd on other grounds*, 505 U.S. 317 (1992) and *United States v. McKeon*, 738 F.2d 26, 33 (2d Cir. 1984)).<sup>2</sup>

Third, a statement by a prosecutor in a prior trial may be admitted as evidence in a subsequent trial of a different defendant involved in the same underlying act. *See U.S. Bakshinian*, 65 F. Supp. 2d 1104, 1108 (S.D. Cal. 2007).

In this case, a number of critical statements made by the State's Attorney's Office in the case of *State v. Nero*, Case No. 114141033, specifically during closing, are admissible against the State under the balancing test set forth in *Bellamy*. Specifically:

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1. [THE COURT] someone. When the individual is placed in the van --

2 Mr. Gray is placed in the van, so you're saying that  
3 custody stays with Mr. Nero until when?

4 MR. SCHATZOW: Until it's transferred, and in  
5 this particular situation, Your Honor, these are -- these  
6 would be the facts about that.

7 THE COURT: Okay.

8 MR. SCHATZOW: [Nero] knew from the first stop that  
9 the wagon driver wasn't going to seatbelt him because he  
10 didn't, and he didn't seatbelt him.

11 THE COURT: Well, wait a minute. Again, your

---

<sup>1</sup> The Court noted that this element concerns statements by a defense lawyer in which the defendant took no part, and therefore, "[n]o such concerns exist regarding the relationship between the State's Attorneys and the government in the instant case." 403 Md. at 330 n.20.

<sup>2</sup> The "clearly inconsistent" standard stated in *Bellamy* is an evidentiary one for determining admissibility. *Id.* It is a different, and lower, standard than the requirement that "inconsistencies were inherent in the State's whole theory of the case or where the varying material facts were irreconcilable" to prove a due process violation. *Sifrit v. State*, 383 Md. 77, 106 (2004).

12 argument that the Defendant knew that the wagon driver  
13 wasn't going to seatbelt him, that's what you're saying?  
14 MR. SCHATZOW: Yes, because of two things, Your  
15 Honor.  
16 THE COURT: Okay.  
17 MR. SCHATZOW: One, in stop one, the Defendant  
18 put Mr. Gray in on the bench --  
19 THE COURT: Right.  
20 MR. SCHATZOW: -- and failed to seatbelt him.  
21 THE COURT: Correct.  
22 MR. SCHATZOW: At a time when Mr. Gray was  
23 noncombative, clear violation of K-14.  
24 THE COURT: Okay.  
25 MR. SCHATZOW: At the second stop --

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1 THE COURT: Well, wait. To get from the first  
2 stop to the second stop, what happened?  
3 MR. SCHATZOW: The driver makes in essence a  
4 U-turn in that Big Berry (phonetic) Court, comes out,  
5 makes a right turn on Presbury, a right turn on Mount,  
6 goes down to Mount and Baker.  
7 THE COURT: Okay. And then we know that the van  
8 is opened, and Mr. Gray is taken out and the -- you're  
9 saying that Mr. Gray is still in the Defendant's custody  
10 after the van drove off?  
11 MR. SCHATZOW: After the van drove off, Mr. Gray  
12 was pulled out. The evidence in this case is --  
13 THE COURT: No, no. Stop. What I'm saying is  
14 from stop one where Mr. Nero put the -- put Mr. Gray in  
15 the van, didn't seatbelt him, clearly that's what's been  
16 presented. But the van drives off, correct?  
17 MR. SCHATZOW: Yes.  
18 THE COURT: Mr. Nero is not driving the van, so  
19 it's --  
20 MR. SCHATZOW: Correct.  
21 THE COURT: -- the van driver. **My question to**  
22 **you is Mr. Gray still in the custody of the Defendant at**  
23 **that point once the van drives off?**  
24 MR. SCHATZOW: Once the van drives off, perhaps  
25 not. But once he's on the ground outside the van at Baker

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1 and Mount, then he is again --

2 THE COURT: At stop two?

3 MR. SCHATZOW: Yes. Then he is again.

4 THE COURT: So you're saying custody is fluid.

5 So the failure of Mr. Nero, in this case, to seatbelt

6 Mr. Gray at stop one you're saying is a criminal

7 violation, correct?

8 MR. SCHATZOW: Yes. That's not what he's charged

9 but it is.

10 THE COURT: Okay. Well, I'm just trying to make

11 sure I understand your argument. The van door is closed.

12 The van drives away. Stop two, Mr. Gray is taken out,

13 placed into shackles and flex cuffs, placed back in the

14 van by -- the testimony is by Lieutenant Rice getting in

15 the van, by the Defendant picking up Mr. Gray by his legs,

16 placing him in the van, correct?

17 MR. SCHATZOW: Yes.

18 THE COURT: Okay. And then where is the criminal

19 act there?

20 MR. SCHATZOW: Criminal act there is having

21 custody of him, putting him in the wagon --

22 THE COURT: Okay.

23 MR. SCHATZOW: -- and failure -- failing to put

24 him on the bench and seatbelt him, when the seatbelts were

25 available.

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1 THE COURT: Okay.

2 MR. SCHATZOW: And that's the failure there.

3 THE COURT: And he retained custody of Mr. Gray

4 up until what point?

5 MR. SCHATZOW: Well, he probably -- well, I think

6 it's hard to make the argument that he had custody of

7 Mr. Gray after the van drove off.

8 THE COURT: Okay.

9 MR. SCHATZOW: But he certainly never transferred

10 custody to the wagon driver and --

11 THE COURT: Well, what do you mean by that?

12 MR. SCHATZOW: Well --

13 THE COURT: What's your argument? I don't

14 understand. He never transferred the custody, but the van

15 drives off.

16 MR. SCHATZOW: That's correct, Your Honor.

17 THE COURT: Okay.

18 MR. SCHATZOW: And the point though is this. For

19 all of this testimony about the wagon driver being



20 responsible, there's no -- other than statements of  
21 officers, there's no general order that says that.  
22 There's no case law that says that. There is contrary  
23 evidence that says everybody is responsible. There's a  
24 shared responsibility for this. I mean, this --  
25 THE COURT: So once it went back to everybody, so

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1 everyone at the scene had custody of Mr. Gray?  
2 MR. SCHATZOW: No, no, no. Not everybody. No.  
3 Not people who were doing crowd control but people who  
4 were handling him, yes.  
5 THE COURT: So anyone who touches him?  
6 MR. SCHATZOW: Yeah, had custody then.  
7 THE COURT: Okay.  
8 MR. SCHATZOW: And then when they go to put him  
9 in, Your Honor, if the two people -- remember the evidence  
10 is that Mr. Gray is variously described as gone limp, dead  
11 fish, dead weight.  
12 THE COURT: Um-hum.  
13 MR. SCHATZOW: You know, the classic passive  
14 resistance.  
15 THE COURT: Um-hum.  
16 MR. SCHATZOW: Okay. At the time that the  
17 Defendant puts him into the wagon with Lieutenant Rice --  
18 THE COURT: Right.  
19 MR. SCHATZOW: -- and just leaves him there, he  
20 knows that the wagon driver is not going to be able to  
21 seatbelt him all by himself if the man is going -- if is  
22 passively resistant. And so yes, they have an obligation,  
23 and Defendant Nero is part of those with the obligation,  
24 to get him into a seatbelt, whether that involves saying  
25 to the wagon driver hey, come on, let's get him in, or

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1 whether it involves let's wait a minute. Let's try and  
2 talk to him. All the things that Officer Long testified  
3 that one should do in that situation, and he didn't do any  
4 of those. And that's not --  
5 THE COURT: So you're saying from not a civil  
6 liability standpoint, you're saying from a criminal  
7 standpoint.  
8 MR. SCHATZOW: From a criminal standpoint, Your  
9 Honor, and again, Your Honor, I think the test -- after  
10 you finish parsing all the statute that comes back to

11 objectively reasonable again.  
12 THE COURT: Okay.  
13 MR. SCHATZOW: And this is an issue for you to  
14 decide on objective reasonableness. I submit that in the  
15 misconduct part, the Count III misconduct for the failure  
16 to seatbelt there, I don't think objective reasonableness  
17 is part of it because I think as Hart makes clear, the  
18 police commissioner is entitled to set a higher standard  
19 of conduct for his or her officers than the law does  
20 generally. And the law is what's required for reckless  
21 endangerment, but for misconduct it's simply a violation  
22 of duty.

*See State v. Nero* Closing argument at 106-113, attached hereto as Exhibit 1.

These statements are exceptions to the hearsay rule under *Bellamy* and Md. Rule 5-803. They are admissible as substantive evidence, as impeachment evidence, and for any other purpose allowed by the Maryland Rules of Evidence.

Dated: June 16, 2016

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 16th day of June 2016, a copy of Defendant Caesar Goodson's Memorandum was served via hand delivery upon:

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\_\_\_\_\_  
Amy E. Askew

STATE OF MARYLAND v. OFFICER MICHAEL E. NERO  
May 19, 2016 THE HONORABLE BARRY G. WILLIAMS, Judge

STATE OF MARYLAND,	*	IN THE
	*	
V.	*	CIRCUIT COURT
	*	
OFFICER MICHAEL E. NERO,	*	FOR
	*	
Defendant.	*	BALTIMORE CITY
	*	
	*	Case No. 115141033
	*	

\* \* \* \* \*

TRANSCRIPT OF OFFICIAL PROCEEDINGS  
(CRIMINAL BENCH TRIAL)

--- --

BEFORE: THE HONORABLE BARRY G. WILLIAMS, Judge

--- --

HEARING DATE: May 19, 2016

--- --

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**DEFENDANT'S  
EXHIBIT**

**1**

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1 charges.

2 THE COURT: Thank you very much.

3 MR. ZAYON: Thank you, Your Honor.

4 THE COURT: Mr. Schatzow, do you want a break, or  
5 do you want to go? Up to you.

6 MR. SCHATZOW: Your Honor, let's go.

7 THE COURT: Let's go. Mr. Zayon used 44 minutes.

8 MR. ZAYON: See, I'm perfect. Do I get a minute  
9 in rebuttal?

10 THE COURT: No.

11 (Laughter)

12 REBUTTAL CLOSING ARGUMENT

13 MR. SCHATZOW: Your Honor, first let me -- I'm  
14 sorry, Your Honor.

15 THE COURT: No. Whenever you're ready.

16 MR. SCHATZOW: All right. First, let me just try  
17 to clear up what I think was a misunderstanding in when  
18 Ms. Bledsoe was talking to you, you asked questions  
19 specifically about this -- I believe the question was is  
20 every time there's an arrest without probable cause is  
21 that a crime?

22 THE COURT: I did.

23 MR. SCHATZOW: Okay. And I think in  
24 Ms. Bledsoe's answer, she sort of had in mind the previous  
25 conversation about justification. So I want to make clear

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1 what our position is.

2 THE COURT: Okay.

3 MR. SCHATZOW: Not every arrest that occurs  
4 without probable cause is a crime. Our position is that  
5 every arrest that occurs without probable cause and for  
6 which the conduct of the officer is not objectively  
7 reasonable contains all the elements necessary for a  
8 crime. So if the officer -- in other words, if the  
9 officer makes an arrest, has no probable cause, but his  
10 actions are objectively reasonable, that does not make out  
11 the elements of a crime. But if the officer has no  
12 probable cause, makes an arrest, and his actions are not  
13 objectively reasonable, then that does make out a crime.

14 THE COURT: All right.

15 MR. SCHATZOW: And that's what we contend  
16 occurred here, Your Honor. And that's what you are in the  
17 position of deciding, because there is no jury, of whether  
18 the officer's action were objectively reasonable. And I  
19 thought it might be helpful just to briefly articulate  
20 exactly what we contend happened here both factually and  
21 legally because I don't believe that Mr. Zayon's comments  
22 about what our position is are accurate.

23 There was a young black man riding in what we  
24 have stipulated to be a high-crime area, and the police  
25 called out -- the lieutenant called out a foot chase.

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1 Whether that's jacking people up or not is not an issue  
2 you have to decide. But there are a lot more ways of  
3 jacking people up than rolling up to a corner in a police  
4 car and jumping out of it.

5 THE COURT: Agreed.

6 MR. SCHATZOW: Now we do not contest that  
7 Officers Miller and Nero had the right to stop Mr. Gray.  
8 But what we contend, Your Honor, is all of the evidence  
9 from the time they did that stop until the time, as  
10 Mr. Miller says, they went through his pockets, all of  
11 that is reflective of an arrest and not a Terry stop  
12 because everything they did was at the margin, at the  
13 extreme, and it was without justification. And when  
14 Mr. Zayon that the thin blue line that appeared in court  
15 said that everything he did was reasonable, and everything  
16 was reasonable, one, to the extent people actually talked  
17 about what happened, you need to take it with a grain of  
18 salt.

19 But what really happened here is experts came in  
20 and said yes, there are circumstances in Terry where it's  
21 okay to handcuff. There are circumstances where it's okay  
22 to take to the ground. There are circumstances where it's  
23 okay to move. But that doesn't mean there was  
24 justification here.

25 And so here is what we contend the facts show,



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1 Your Honor. The stop which I concede, how did the stop  
2 take place? They said Mr. Gray gave up. Factually, if  
3 you look, Your Honor, and I'm not going to take the time  
4 to play (inaudible), Your Honor. But you see the  
5 evidence. The stop on video, if you look at the State's  
6 Exhibits 41 and 56, this is what they show. They show  
7 Mr. Miller -- excuse me, Officer Miller running on foot  
8 west on Mount Street. It shows -- heading towards that  
9 ramp. It shows Officer Nero, the Defendant, coming south  
10 out of Bruce, crossing Mount Street at the other end of  
11 the ramp. Chronologically, that's what happened. They're  
12 both moving on the ramp at the same time.

13 The next thing that happens is they're on the  
14 ramp. And when they're on the ramp --

15 THE COURT: When you say they, specifically who  
16 are you referring to, just so I know your argument?

17 MR. SCHATZOW: Officer and the Defendant Nero.  
18 And I'm not talking about --

19 THE COURT: You said Officer and the Defendant  
20 Nero? Officer --

21 MR. SCHATZOW: I'm sorry. Officer Miller and the  
22 Defendant Nero.

23 THE COURT: Are on the ramp at the same time?

24 MR. SCHATZOW: They are on the ramp at the same  
25 time with the prisoner because this is what Officer Nero

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1 says in his statement. It's page 8, lines 16 and 17. And  
2 this is not a misstated pronoun. This is the English  
3 language. He says -- well, I'm going to start -- I'll  
4 start on 13. This is Nero speaking the very day that this  
5 happened. "I guess the suspect seen me." He's saying "I  
6 guess" -- "seen me. He then" -- he, referring to the  
7 suspect -- "He then stops. He looked like he kind of like  
8 slipped. I don't know what he did. But either way, he  
9 stopped. Miller and I, we got him in custody." That is  
10 not misstating a pronoun. He says, "Miller and I, we got  
11 him in custody."

12 And there's further evidence that he got him in  
13 custody because later on in Nero's statement, when he's  
14 talking about the fact of the -- when he's describing the  
15 cuffing, he's saying -- he makes the claim, contrary to  
16 Officer Miller who says that Mr. Gray was cooperative, he  
17 makes the claim that Mr. Gray didn't want the handcuffs  
18 put on him and was resisting the handcuffing.

19 And Your Honor, you've heard probably 250 or 500  
20 suppression hearings. You probably heard police officers  
21 testify 1,000 times. So you will decide whether you  
22 believe that Officer Nero the Defendant would have stood  
23 by just watching if somebody was struggling to get into  
24 handcuffs while his partner was trying to put him in them.

25 But you have more than that. On the same video,

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1 Your Honor, that I just said the exhibit -- if you look at  
2 Exhibit 56, and you look at the timestamps on it, you will  
3 see that at the same time that the Defendant and Officer  
4 Miller were on the ramp with Mr. Gray, the lieutenant, the  
5 one who's involved in such important activity nobody can  
6 dare call him, you will see him come south on his bicycle  
7 out of Bruce Court, ride into Mount Street right across  
8 from where they are, turn around and ride out.

9 And what's important about that is not only does  
10 that show that the lieutenant was not so busily engaged  
11 that nobody could possibly talk to him about anything, but  
12 it also shows that Mr. -- the Defendant was actively  
13 involved in cuffing and restraining Mr. Gray because if he  
14 wasn't, if he was acting, as some experts said, as the  
15 cover part of contact and cover, presumably he would have  
16 been looking around the area to make sure everything was  
17 safe, and there wasn't this great theoretical danger we  
18 talk about. He would have seen the lieutenant or heard  
19 the bicycle approach. Didn't happen because he was  
20 actively involved and engaged with Mr. Gray.

21 THE COURT: Well, you're not saying that the  
22 video shows the Defendant looking in the exact direction  
23 where Lieutenant Rice was coming from, are you? You're  
24 just saying that the video shows Lieutenant Rice coming  
25 and going.

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1 MR. SCHATZOW: The video shows Lieutenant Rice  
2 coming and going in proximity, and nothing in anybody's  
3 statement about --

4 THE COURT: How close?

5 MR. SCHATZOW: I think you could say probably, if  
6 the ramp is where I am indicating the railing, Your Honor,  
7 about to where you are.

8 THE COURT: But again, no evidence to show which  
9 way Nero was looking when he was talking to --

10 MR. SCHATZOW: No.

11 THE COURT: Okay.

12 MR. SCHATZOW: No. But my point is, Your Honor,  
13 he clearly was not looking at the lieutenant. He was  
14 looking at the prisoner. He was dealing with the  
15 prisoner. That's why he doesn't see the lieutenant  
16 because there's nobody --

17 THE COURT: Well, wait. Then if you're saying  
18 that, then doesn't that go contrary to the issue of he  
19 could have contacted Rice? I thought you were using for  
20 the argument that Rice came, he was in the area, and  
21 therefore, Nero had the opportunity to speak with him.  
22 But then you just said that he wasn't looking at Rice. He  
23 was looking at Mr. Gray. So how does Rice coming to there  
24 become relevant?

25 MR. SCHATZOW: No. It becomes relevant for two

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1 reasons. A, it shows that he was focused on the defendant  
2 at the ramp and helping in the detention of the  
3 defendant --

4 THE COURT: Okay.

5 MR. SCHATZOW: -- because he was not looking  
6 around, performing cover activities.

7 THE COURT: Okay.

8 MR. SCHATZOW: And secondly, it doesn't show that  
9 he could have talked to the lieutenant right then. What  
10 it does is it negates the argument that the lieutenant was  
11 constantly involved in some matter in which he could not  
12 be interrupted, and that's why they didn't reach out to  
13 call the lieutenant.

14 THE COURT: Well, Mr. Schatzow, I mean, again,  
15 you brought it up, but what you're saying doesn't seem to  
16 follow, that if your argument is that Lieutenant Rice was  
17 available to the officers, and I guess your argument is  
18 that Lieutenant Rice saw Mr. Gray, Mr. Nero and  
19 Mr. Miller?

20 MR. SCHATZOW: Yes.

21 THE COURT: And then saw them and then just  
22 turned around and left?

23 MR. SCHATZOW: Yes.

24 THE COURT: But that doesn't make sense based on  
25 your argument because if that's true, then based on what

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1 you're saying, Lieutenant Rice would have easily just gone  
2 right to where they were. But --

3 MR. SCHATZOW: Could have. Could have and should  
4 have.

5 THE COURT: So could have -- but why?

6 MR. SCHATZOW: And we'll be talking to him a few  
7 weeks from now. But --

8 THE COURT: And I'll probably be involved in it  
9 but anyway --

10 MR. SCHATZOW: So my only point is, my only point  
11 is, Your Honor, when they bring in all these experts and  
12 other officers to say that you can't call a lieutenant  
13 during the foot -- you know, because the lieutenant is  
14 otherwise engaged, and you don't know what he's doing, and  
15 it could be very serious, all I'm saying is there were  
16 plenty of opportunities to reach out to the lieutenant for  
17 more information --

18 THE COURT: But doesn't the KGA show that the  
19 lieutenant was doing -- again, for a short period of time,  
20 doing other things. So riding in this general area  
21 looking for another person, one person's in custody, I  
22 guess I don't understand you bringing it up. I wouldn't  
23 have stopped you but for you bringing up the issue of that  
24 particular video with Lieutenant Rice.

25 MR. SCHATZOW: Well, let me -- while we're on

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1 this point, let me just show you another aspect of that.

2 THE COURT: Sure.

3 MR. SCHATZOW: Can you get the clip up of the  
4 call to the lieutenant?

5 While we're just on this point, Your Honor --

6 THE COURT: Uh-huh.

7 MR. SCHATZOW: -- at 8:40:15, the call goes out,  
8 "We got one." And so just again to this same --

9 (Whereupon a call played into the record - 12:06:14  
10 p.m. - 12:06:15 p.m.)

11 MR. SCHATZOW: -- to the same point that no one  
12 could dare bother the lieutenant while he's on this  
13 mission to ask him why are we holding this guy, at  
14 8:41:09, almost a minute later, 31 to 09; 31 is the  
15 Defendant; 09 is the lieutenant; 39 to 09 we're with him  
16 and doesn't -- but doesn't ask him any questions. Just  
17 this is information. We're with him. Not why are we  
18 holding him? What should we ask him about? Nothing.

19 And this goes, Your Honor, to the heart of the  
20 State's case.

21 THE COURT: The heart of your case is that the  
22 Defendant, when he was on the radio at that point, you say  
23 it was his duty to ask the Lieutenant why we're holding  
24 him, and his failure to ask the lieutenant why he was  
25 holding him means he's committing a crime?

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1 MR. SCHATZOW: It is part of the evidence of  
2 that, Your Honor. It's not all the evidence.

3 THE COURT: Okay.

4 MR. SCHATZOW: The heart of the case is the  
5 failure to do what Terry requires you to do during the  
6 Terry stop.

7 THE COURT: And therefore, his failure to do that  
8 is not a civil issue, it's a criminal issue.

9 MR. SCHATZOW: That it's not objectively  
10 reasonable, Your Honor. You're right. And therefore, a  
11 crime is made out because the Terry stop, which would have  
12 been permissible, was turned into an arrest by a number of  
13 activities that occurred coupled with the failure to do  
14 what Terry requires. The basic principle of Terry that  
15 you know better than I do is the stop is permissible for  
16 the sole purpose of confirming or dispelling the initial  
17 suspicions that led to the stop.

18 THE COURT: But whose initial suspicions are we  
19 talking about?

20 MR. SCHATZOW: In this case, it would have to be  
21 the lieutenant who called out the foot chase.

22 THE COURT: Okay. So by the time the lieutenant  
23 who called out the foot chase interacts with Miller and  
24 Nero, the time frame for that is, you would acknowledge,  
25 fairly limited; is that correct?



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1 MR. SCHATZOW: Yes. It's more than what they  
2 said. It's not a minute and 28 seconds. It's -- he is  
3 actually arrested by even their account, you know, I would  
4 say roughly three minutes --

5 THE COURT: Right.

6 MR. SCHATZOW: -- a little less than three  
7 minutes. And what I would say to that, Your Honor, is --  
8 and I think this is what is --

9 THE COURT: But let me ask you a question. So  
10 when Lieutenant Rice comes on the scene after the  
11 detention that you've acknowledged already, begrudgingly,  
12 but you've acknowledged the initial detention follows  
13 the law -- follows Wardlow, and I don't have to do much  
14 analysis on that. But it's moving Mr. Gray over, getting  
15 him to the area where they -- he's on the ground. And  
16 then when Lieutenant Rice comes to the area, at that  
17 point, are you saying that it's the duty of this officer  
18 and the other officers to ask Lieutenant Rice questions,  
19 and then if they don't ask questions, then that's part of  
20 their crime -- criminal act?

21 MR. SCHATZOW: No. By that time, he was already  
22 arrested by anybody's calculation. So --

23 THE COURT: Okay.

24 MR. SCHATZOW: -- my point though is -- and I  
25 don't agree, Your Honor, that the initial -- I guess maybe

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1 we're parsing words, and I don't want to parse words with  
2 you.

3 THE COURT: It's okay.

4 MR. SCHATZOW: The initial stop was fine.

5 THE COURT: Right.

6 MR. SCHATZOW: The initial cuffing we contend was  
7 not. The initial putting him on the ground was not --

8 THE COURT: That's why I said detention. I  
9 didn't say the cuffing but that's fine.

10 MR. SCHATZOW: But okay. So we're talking about  
11 the same thing.

12 THE COURT: Sure.

13 MR. SCHATZOW: Okay. Very good. Our point is  
14 this. Under Terry, you can take up to 20 minutes as long  
15 as you're doing -- as long as you're diligently pursuing  
16 what Terry says you're supposed to do.

17 THE COURT: My question to you is once Lieutenant  
18 Rice gets on the scene, my question is what is the duty of  
19 this Defendant?

20 MR. SCHATZOW: Well, this Defendant's duty, once  
21 Lieutenant Rice gets on the scene, is to ask him what are  
22 we doing with this fellow? Why are we holding him? But  
23 by the time Lieutenant Rice gets on the scene, Mr. Gray is  
24 already in the wagon. In this particular case, the duty  
25 of the Defendant was to reach out to the lieutenant and/or

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1 to ask questions of Mr. Gray as soon as they had him in  
2 custody, and they did neither.

3 THE COURT: You know, everyone's arguing about  
4 the duty of someone to ask Mr. Gray questions. But first  
5 off, there are Fifth Amendment issues involved in that,  
6 but no one seems to want to acknowledge that. But if he  
7 asked questions of Mr. Gray without any information from  
8 Lieutenant Rice, how is that relevant?

9 MR. SCHATZOW: Well, it probably doesn't help and  
10 that's --

11 THE COURT: Then why does he need to do it?

12 MR. SCHATZOW: Because there are basic questions  
13 he's going to ask any -- either way because --

14 THE COURT: But why though? I mean, seriously,  
15 why -- I don't understand the argument that it is up to  
16 anyone to ask particular questions in this situation of  
17 Mr. Gray at that moment of detention because you've  
18 already acknowledged that the reasonable articulable  
19 suspicion comes from Lieutenant Rice, correct?

20 MR. SCHATZOW: Right.

21 THE COURT: Okay.

22 MR. SCHATZOW: And the ideal way to do this, the  
23 ideal way to do this would be okay, LT, we've got him.  
24 What were you chasing him for?

25 THE COURT: Right, right. Forget -- put that to

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1 the side for a second.

2 MR. SCHATZOW: So that's the ideal. But in terms  
3 of --

4 THE COURT: I'm talking to Mr. Gray. I just want  
5 to get that issue cleared up.

6 MR. SCHATZOW: Yeah. But in terms of Mr. Gray,  
7 you could still ask Mr. Gray what's your name? What's  
8 your ID? Why were you running?

9 THE COURT: Why?

10 MR. SCHATZOW: What are you doing in this  
11 neighborhood? That's what you do in a Terry stop.

12 THE COURT: But again, according to what you're  
13 saying, it's based on the reasonable articulable suspicion  
14 of Lieutenant Rice. Why would this officer or any officer  
15 under the circumstances ask questions of this individual  
16 at that moment? Not later, but at that moment.

17 MR. SCHATZOW: If they're not going to ask the  
18 lieutenant, they have to talk to him. Otherwise, they're  
19 not doing anything that Terry allows them to do. They're  
20 simply holding him. They've converted a stop into an  
21 arrest because they are not doing what Terry says to do.

22 THE COURT: Okay.

23 MR. SCHATZOW: And then you are required now, as  
24 the finder of fact, to look at each of these  
25 circumstances, the putting -- keep him on the ground,

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1 cuffing him, moving him, putting him back down on his  
2 stomach, sitting him up, going into his pockets. There  
3 was no pat down here. There's absolutely no evidence that  
4 there was a pat down and there's no -- and despite what  
5 everyone -- all the experts said about what you can do,  
6 yeah, you can pat somebody down if you suspect they're  
7 armed and dangerous. There's no evidence here that  
8 Mr. Gray was suspected -- that anybody had a reasonable  
9 basis to think he was armed and dangerous.

10 And in terms of the flight, I -- you know, he  
11 had just stopped running. He had given up. They had him  
12 in a place where they had an officer on either side of him  
13 and railings on the other side of him. Where was he  
14 going? And what is truly incredible is when Mr. Zayon  
15 says well, the fact that he was running was a good  
16 indication that he was going to run again, yet Captain  
17 Reynolds and the former Chief Longo, the fact that a  
18 prisoner is not combative at all doesn't mean that he  
19 can't be combative the next second. I mean, what --  
20 somebody's got to use logic, Judge, and we're counting on  
21 you here to -- and so --

22 THE COURT: I will.

23 MR. SCHATZOW: -- the whole case -- the whole --  
24 the beginning part of the case is simply a question of  
25 whether the conduct is objectively reasonable. And that's

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1 for you to decide just like if there were a jury here, the  
2 jury would decide it. And that's that part of the case.

3 And one of the -- one of the real problems here  
4 is that when the experts testify, when the other police  
5 officers testify for the Defendant, and they talk about  
6 what one can do, that's not -- the issue here isn't what  
7 are the outer limits of a police officer's authority. The  
8 question is is what Officer Nero, the Defendant on trial,  
9 is what he did objectively reasonable or isn't. That's on  
10 the assault part and the misconduct for the arrest without  
11 probable cause, that's the case.

12 And certainly the mischaracterization of Neill  
13 Franklin's testimony, Your Honor, he of course said that  
14 he thought it was unreasonable. We asked him. We gave  
15 him hypotheticals that described the situation. He said  
16 you should have -- they should have called the lieutenant.  
17 He said they shouldn't have handcuffed him, and they  
18 shouldn't have put him on the ground. He did say in  
19 response to questions yes, it's okay to cuff sometimes on  
20 Terry. Yes, it's okay to take to the ground on Terry.  
21 But that's the -- that illustrates the point I'm making.  
22 Just because you can do it sometimes doesn't mean the  
23 Defendant could do it now.

24 Very, very briefly on some of the other points  
25 that were made here, Your Honor. The Hart case. There

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1 are three important aspects of Hart. One, the Court said  
2 that you can consider General Orders. And I think we're  
3 past that. They're relevant. Two, they said the General  
4 Order is the police commissioner's determination of what  
5 reasonable conduct is. And three, no doubt to the  
6 disappointment of Longo and Reynolds, they said that the  
7 particular General Order in that case was not  
8 discretionary.

9 Now maybe Captain Reynolds and maybe former  
10 Chief Longo think that every BPD order is discretionary.  
11 But the Maryland Court of Appeals doesn't.

12 Now on the seatbelt thing.

13 THE COURT: What do you mean by that?

14 MR. SCHATZOW: What I mean is what they --  
15 these -- the testimony in this case is that no matter  
16 what --

17 THE COURT: No. You said the Maryland Court of  
18 Appeals doesn't think it's discretionary. What do you  
19 mean by that?

20 MR. SCHATZOW: What I mean is in that particular  
21 case, they specifically held that that particular General  
22 Order did not -- was not discretionary for the officer to  
23 follow or not follow, that he had to follow it.

24 THE COURT: Oh. Okay.

25 MR. SCHATZOW: And that's my only point.

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1 THE COURT: Okay.

2 MR. SCHATZOW: Not every order is discretionary.

3 THE COURT: That's fine.

4 MR. SCHATZOW: And when the police commissioner  
5 in something like when we -- now we're going to talk about  
6 seatbelting -- when the police commissioner gives -- when  
7 the existing order K-14 gives discretion, it tells how to  
8 use that discretion. You have discretion not to seatbelt  
9 if it would place yourself in danger. You don't have  
10 discretion not to seatbelt because a defendant has been a  
11 pain in the neck. You don't have discretion not to  
12 seatbelt because you've decided to shackle his legs, and  
13 handcuff him and leave him on the floor. You only had  
14 discretion under K-14 if your evaluation, your reasonable  
15 evaluation would be it would place you in danger.

16 And then the police commissioner decided, as he  
17 is entitled to do, that was too much discretion. And so  
18 he took that away in 1114. But even if you rely on K-14,  
19 Your Honor, even if you want to say that -- excuse me. I  
20 don't mean you want to say. You're not going to say  
21 anything.

22 THE COURT: You meant it. You did. It's okay.

23 MR. SCHATZOW: All right. Guilty.

24 THE COURT: It's all right.

25 MR. SCHATZOW: Even if you ultimately determine



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1 that the Defendant is not going to be held responsible for  
2 complying with 1114 because of the circumstances under  
3 which it was sent to him and the timing and the rest of  
4 all that, K-14 provides plenty of basis, Your Honor, to  
5 show a number. K-14 was something that he signed for.  
6 K-14 was in existence well before 2015. K-14 advised him  
7 of the danger. K-14 specifically says that the seat/  
8 restraint belt is placed securely around the waist or  
9 upper body of the arrestee to prevent the arrestee from  
10 moving -- excuse me, from maneuvering out of the restraint  
11 and possibly causing injury to them or others.

12 And Your Honor, talking about whether a police  
13 officer is conscious that there is a risk to traveling in  
14 a vehicle without a seatbelt, it's hard to take that as a  
15 serious argument in this day and age that --

16 THE COURT: You as Ms. Bledsoe need to be careful  
17 of that argument, Mr. Schatzow, because again you --

18 MR. SCHATZOW: I'm not talking about that.

19 THE COURT: Well, but you are. And see, therein  
20 lies the problem. You want this Court to focus on that in  
21 this day and age it's dangerous to do that. I'm going to  
22 seriously focus on every piece of evidence that was  
23 presented. But you can't bring into the idea to my  
24 decision making process that which wasn't allowed.

25 MR. SCHATZOW: No. But let's talk about what was

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1 allowed, Your Honor.

2 THE COURT: Sure. Absolutely.

3 MR. SCHATZOW: Okay. Seatbelts himself in his  
4 police car.

5 THE COURT: Um-hum.

6 MR. SCHATZOW: Seatbelts a prisoner in his police  
7 car.

8 THE COURT: Um-hum.

9 MR. SCHATZOW: Seatbelts a witness in his seat  
10 car (sic).

11 THE COURT: Um-hum.

12 MR. SCHATZOW: Seatbelts everybody who's in his  
13 car. How could he possibly think that there was a danger  
14 in his car, but there wouldn't be a danger in the back of  
15 a patrol wagon? That doesn't -- that just doesn't  
16 compute, Your Honor. And you don't need to be a 20-year  
17 veteran of the force to figure that out.

18 So he had consciousness. He knew and he knew  
19 that this whole question of seatbelting, particularly in a  
20 transport vehicle, was important to the police department.

21 THE COURT: Well, how did he know that? What are  
22 you -- again, your argument. You're saying seatbelting in  
23 a vehicle, seatbelting himself, and he knew that  
24 seatbelting an individual in a transport wagon was an  
25 important issue to the Baltimore City Police Department.

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1 What are you basing that? Are you basing that on the  
2 audit?

3 MR. SCHATZOW: I'm basing it on a number of  
4 things.

5 THE COURT: Okay.

6 MR. SCHATZOW: First on the fact that K-14, what  
7 I just read.

8 THE COURT: Right.

9 MR. SCHATZOW: Secondly, remember on the -- I'm  
10 sorry, Your Honor. I didn't mean to say it like that, but  
11 on the audit --

12 THE COURT: No, you can.

13 MR. SCHATZOW: -- I think it was Exhibit 41. No,  
14 no. I'm sorry, Exhibit 4. Before the audit was done,  
15 recall that an email went out to the entire police  
16 department.

17 THE COURT: To 3,000 people.

18 MR. SCHATZOW: Saying we are going to do an audit  
19 for seatbelting and --

20 THE COURT: For transport vans.

21 MR. SCHATZOW: Yes. And so if you are a  
22 reasonable police officer --

23 THE COURT: Who doesn't drive a transport van.

24 MR. SCHATZOW: That's right. But you know --

25 THE COURT: Who is not in a transport van.

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1 MR. SCHATZOW: Excuse me?

2 THE COURT: Who is not in a transport van.

3 MR. SCHATZOW: Well, he's not --

4 THE COURT: Because he didn't drive so he's not  
5 in it.

6 MR. SCHATZOW: He doesn't drive a transport van,  
7 but he arrests people, and he puts them in transport --  
8 that's what he'd do --

9 THE COURT: And the auditors at the --

10 MR. SCHATZOW: But I'm not talking about the  
11 audit, Your Honor. I'm talking about --

12 THE COURT: Yeah. I thought you were.

13 MR. SCHATZOW: No. I'm talking about the advice  
14 that the audit is coming.

15 THE COURT: Okay.

16 MR. SCHATZOW: So there is an advice sent out --

17 THE COURT: Right.

18 MR. SCHATZOW: -- in February of 2014.

19 THE COURT: Right.

20 MR. SCHATZOW: We are going to conduct this  
21 audit, and attached to the email is a copy of the police  
22 commissioner memorandum --

23 THE COURT: Um-hum.

24 MR. SCHATZOW: -- talking about the need to  
25 seatbelt everyone in all police vehicles. And my only

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1 point here is that in terms of consciousness of the risk  
2 of what happened, here he is once again being placed on  
3 notice that the police department considers it's important  
4 to seatbelt people. So in terms of consciousness of risk,  
5 he knows that this is an important issue. And this is an  
6 email that he got not three days before this incident but  
7 14 --

8 THE COURT: That was sent out.

9 MR. SCHATZOW: -- 14 months.

10 THE COURT: And email that was sent out.

11 MR. SCHATZOW: An email that was sent out to his  
12 email address, Your Honor.

13 THE COURT: Um-hum. Agreed.

14 MR. SCHATZOW: And yes, we can't prove that he  
15 read it. We can't prove he opened it. But we can  
16 strongly suggest that the evidence shows that that's what  
17 a reasonable police officer would do.

18 The duty to seatbelt comes not just from the  
19 General Order, Your Honor, the duty to seatbelt comes from  
20 the constitutional requirement to keep people safe, a  
21 requirement that -- the Maryland recognized in the Canabee  
22 (phonetic) case. When you have custody of someone, you  
23 have a duty to keep them safe. And again, I think --

24 THE COURT: Well, let me ask you this. You say  
25 he has a duty to keep him safe when he has custody of

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1 someone. When the individual is placed in the van --  
2 Mr. Gray is placed in the van, so you're saying that  
3 custody stays with Mr. Nero until when?

4 MR. SCHATZOW: Until it's transferred, and in  
5 this particular situation, Your Honor, these are -- these  
6 would be the facts about that.

7 THE COURT: Okay.

8 MR. SCHATZOW: He knew from the first stop that  
9 the wagon driver wasn't going to seatbelt him because he  
10 didn't, and he didn't seatbelt him.

11 THE COURT: Well, wait a minute. Again, your  
12 argument that the Defendant knew that the wagon driver  
13 wasn't going to seatbelt him, that's what you're saying?

14 MR. SCHATZOW: Yes, because of two things, Your  
15 Honor.

16 THE COURT: Okay.

17 MR. SCHATZOW: One, in stop one, the Defendant  
18 put Mr. Gray in on the bench --

19 THE COURT: Right.

20 MR. SCHATZOW: -- and failed to seatbelt him.

21 THE COURT: Correct.

22 MR. SCHATZOW: At a time when Mr. Gray was  
23 noncombative, clear violation of K-14.

24 THE COURT: Okay.

25 MR. SCHATZOW: At the second stop --

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1 THE COURT: Well, wait. To get from the first  
2 stop to the second stop, what happened?

3 MR. SCHATZOW: The driver makes in essence a  
4 U-turn in that Big Berry (phonetic) Court, comes out,  
5 makes a right turn on Presbury, a right turn on Mount,  
6 goes down to Mount and Baker.

7 THE COURT: Okay. And then we know that the van  
8 is opened, and Mr. Gray is taken out and the -- you're  
9 saying that Mr. Gray is still in the Defendant's custody  
10 after the van drove off?

11 MR. SCHATZOW: After the van drove off, Mr. Gray  
12 was pulled out. The evidence in this case is --

13 THE COURT: No, no. Stop. What I'm saying is  
14 from stop one where Mr. Nero put the -- put Mr. Gray in  
15 the van, didn't seatbelt him, clearly that's what's been  
16 presented. But the van drives off, correct?

17 MR. SCHATZOW: Yes.

18 THE COURT: Mr. Nero is not driving the van, so  
19 it's --

20 MR. SCHATZOW: Correct.

21 THE COURT: -- the van driver. My question to  
22 you is Mr. Gray still in the custody of the Defendant at  
23 that point once the van drives off?

24 MR. SCHATZOW: Once the van drives off, perhaps  
25 not. But once he's on the ground outside the van at Baker

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1 and Mount, then he is again --

2 THE COURT: At stop two?

3 MR. SCHATZOW: Yes. Then he is again.

4 THE COURT: So you're saying custody is fluid.

5 So the failure of Mr. Nero, in this case, to seatbelt

6 Mr. Gray at stop one you're saying is a criminal

7 violation, correct?

8 MR. SCHATZOW: Yes. That's not what he's charged  
9 but it is.

10 THE COURT: Okay. Well, I'm just trying to make  
11 sure I understand your argument. The van door is closed.  
12 The van drives away. Stop two, Mr. Gray is taken out,  
13 placed into shackles and flex cuffs, placed back in the  
14 van by -- the testimony is by Lieutenant Rice getting in  
15 the van, by the Defendant picking up Mr. Gray by his legs,  
16 placing him in the van, correct?

17 MR. SCHATZOW: Yes.

18 THE COURT: Okay. And then where is the criminal  
19 act there?

20 MR. SCHATZOW: Criminal act there is having  
21 custody of him, putting him in the wagon --

22 THE COURT: Okay.

23 MR. SCHATZOW: -- and failure -- failing to put  
24 him on the bench and seatbelt him, when the seatbelts were  
25 available.



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1 THE COURT: Okay.

2 MR. SCHATZOW: And that's the failure there.

3 THE COURT: And he retained custody of Mr. Gray  
4 up until what point?

5 MR. SCHATZOW: Well, he probably -- well, I think  
6 it's hard to make the argument that he had custody of  
7 Mr. Gray after the van drove off.

8 THE COURT: Okay.

9 MR. SCHATZOW: But he certainly never transferred  
10 custody to the wagon driver and --

11 THE COURT: Well, what do you mean by that?

12 MR. SCHATZOW: Well --

13 THE COURT: What's your argument? I don't  
14 understand. He never transferred the custody, but the van  
15 drives off.

16 MR. SCHATZOW: That's correct, Your Honor.

17 THE COURT: Okay.

18 MR. SCHATZOW: And the point though is this. For  
19 all of this testimony about the wagon driver being  
20 responsible, there's no -- other than statements of  
21 officers, there's no general order that says that.  
22 There's no case law that says that. There is contrary  
23 evidence that says everybody is responsible. There's a  
24 shared responsibility for this. I mean, this --

25 THE COURT: So once it went back to everybody, so

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1 everyone at the scene had custody of Mr. Gray?

2 MR. SCHATZOW: No, no, no. Not everybody. No.  
3 Not people who were doing crowd control but people who  
4 were handling him, yes.

5 THE COURT: So anyone who touches him?

6 MR. SCHATZOW: Yeah, had custody then.

7 THE COURT: Okay.

8 MR. SCHATZOW: And then when they go to put him  
9 in, Your Honor, if the two people -- remember the evidence  
10 is that Mr. Gray is variously described as gone limp, dead  
11 fish, dead weight.

12 THE COURT: Um-hum.

13 MR. SCHATZOW: You know, the classic passive  
14 resistance.

15 THE COURT: Um-hum.

16 MR. SCHATZOW: Okay. At the time that the  
17 Defendant puts him into the wagon with Lieutenant Rice --

18 THE COURT: Right.

19 MR. SCHATZOW: -- and just leaves him there, he  
20 knows that the wagon driver is not going to be able to  
21 seatbelt him all by himself if the man is going -- if is  
22 passively resistant. And so yes, they have an obligation,  
23 and Defendant Nero is part of those with the obligation,  
24 to get him into a seatbelt, whether that involves saying  
25 to the wagon driver hey, come on, let's get him in, or

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1 whether it involves let's wait a minute. Let's try and  
2 talk to him. All the things that Officer Long testified  
3 that one should do in that situation, and he didn't do any  
4 of those. And that's not --

5 THE COURT: So you're saying from not a civil  
6 liability standpoint, you're saying from a criminal  
7 standpoint.

8 MR. SCHATZOW: From a criminal standpoint, Your  
9 Honor, and again, Your Honor, I think the test -- after  
10 you finish parsing all the statute that comes back to  
11 objectively reasonable again.

12 THE COURT: Okay.

13 MR. SCHATZOW: And this is an issue for you to  
14 decide on objective reasonableness. I submit that in the  
15 misconduct part, the Count III misconduct for the failure  
16 to seatbelt there, I don't think objective reasonableness  
17 is part of it because I think as Hart makes clear, the  
18 police commissioner is entitled to set a higher standard  
19 of conduct for his or her officers than the law does  
20 generally. And the law is what's required for reckless  
21 endangerment, but for misconduct it's simply a violation  
22 of duty. And the duty gets established by the police  
23 commissioner --

24 THE COURT: Or corruptly failing to do something.  
25 Not simply violation --

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1 MR. SCHATZOW: That's right but --

2 THE COURT: -- but corruptly failing.

3 MR. SCHATZOW: Right. But corruptly, Your  
4 Honor --

5 THE COURT: Is a difficult term. I understand.

6 MR. SCHATZOW: -- does not really involve evil  
7 motive or evil intent because --

8 THE COURT: I agree.

9 MR. SCHATZOW: -- the Riley case just said that.  
10 And so what it really is, I mean, some of the cases  
11 frankly don't seem to have much intent at all. Some of  
12 the cases just say you had -- you know, there's that case  
13 that Maryland relies on of a court clerk -- I hope this  
14 isn't hitting home -- too close to home for anyone. But a  
15 court clerk was involved in fraudulently issuing checks.  
16 And the town commissioners were held liable under  
17 Maryland's misconduct statute because they didn't do the  
18 supervisory job that they were required to do. And that's  
19 a much more extreme situation than we have here. And what  
20 we have here is an officer --

21 THE COURT: Well, you said they -- that case had  
22 to do with the supervisors' failure to supervise, correct?

23 MR. SCHATZOW: That's right. That's what they  
24 were --

25 THE COURT: Isn't this the exact opposite

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1 situation here?

2 MR. SCHATZOW: No, because the fact that it was  
3 the lieutenant in the wagon, there's no evidence that the  
4 lieutenant gave an order don't seatbelt anybody. There's  
5 no evidence that the lieutenant said to the Defendant  
6 don't talk about seatbelting to me. All Defendant Nero  
7 had to say was hey, LT, shouldn't we buckle him up? He  
8 didn't have to get in his face. He didn't have to provoke  
9 a fight --

10 THE COURT: And so you're saying the failure to  
11 say that to the lieutenant who was in the van is a  
12 criminal act?

13 MR. SCHATZOW: No. I'm saying the failure to do  
14 it. I'm saying that the response to the argument that we  
15 heard, that it would somehow create some disciplinary  
16 problem, is just silly.

17 THE COURT: Okay. Okay.

18 MR. SCHATZOW: And so, Your Honor, I think what  
19 we have here are sort of -- as the way we've charged it  
20 and the way I think the Court's been analyzing that sort  
21 of two different situations. One is did the stop turn  
22 into an arrest? And the other question is were the  
23 actions objectively reasonable? Then we have was it  
24 reckless endangerment to put him into a van, leaving him  
25 on the floor, hands cuffed behind his back, legs shackled

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1 together? And we know the harm. We know what happened in  
2 this case, Your Honor.

3 And the question is is that -- is -- are these  
4 causative elements of what ultimately happened, are -- do  
5 these constitute crimes? And that's the situation for you  
6 to deal with, and you're going to deal with on the basis  
7 of whether the conduct for at least three of the counts --  
8 I still don't think it applies to the misconduct seatbelt  
9 count -- whether the officer's actions are objectively  
10 reasonable. And we strongly submit that they were not and  
11 that the officers had no -- this officer, Defendant Nero,  
12 did not engage in objectively reasonable conduct. And for  
13 those reasons, Your Honor, we ask you to find him guilty  
14 on all four counts.

15 THE COURT: Thank you very much. All right.  
16 First off, I'd like to note that I've been accused of not  
17 allowing people to argue. I gave everyone all the time  
18 that they wanted, did I not?

19 MR. SCHATZOW: Your Honor, I -- if you had  
20 inferred from any of my body language, I apologize as --  
21 based on the results.

22 THE COURT: I gave everyone all the time they  
23 wanted except -- well, except for her but she didn't need  
24 it.

25 All right. The Court will stand in recess until

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1 Monday morning.

2 Excuse me one second. I need you actually.

3 BENCH CONFERENCE

4 (Bench Conference begins - 12:33:04 p.m.)

5 (The bailiff approaches the bench where the following  
6 ensues:)

7 THE COURT: I say 10:30. I say 10:30 that should  
8 be (inaudible).

9 THE BAILIFF: Um-hum.

10 THE COURT: Because then that's not a problem  
11 (inaudible).

12 THE BAILIFF: Yeah, yeah. Um-hum. Yeah, that's  
13 good.

14 THE COURT: Okay. Thanks.

15 (Bench Conference concluded - 12:33:15 p.m.)

16 (The bailiff leaves the bench where the following  
17 ensues:)

18 THE COURT: Court will stand in recess until  
19 10:30 Monday morning when the Court will issue its ruling.

20 THE CLERK: All rise.

21 (Off the record - 12:33:21 p.m.)

22  
23  
24  
25

TRANSCRIBER'S CERTIFICATE

This is to certify that the excerpt of proceedings in the matter of the State of Maryland v. Michael Edward Nero, Case No. 115141033, heard in the Circuit Court for Baltimore City on May 19, 2019, was recorded on digital media with video.

I hereby certify that the excerpt of proceedings herein contained were transcribed by me or under my direction. That said transcript is a true and accurate record to the best of my ability and constitutes the official transcript thereof.

In witness thereof, I have hereunto subscribed my name on June 8th, 2016.

*Sherry R. Miller*

Sherry R. Miller, President

