

STATE OF MARYLAND

Plaintiff

v.

CAESAR GOODSON

Defendant

* IN THE
* CIRCUIT COURT
* FOR
* BALTIMORE CITY
* Case No. 115141032

RECEIVED

MAY 11 2016

**Criminal Div.
Circuit Court For
Baltimore City**

* * * * *

**OFFICER GOODSON'S MOTION IN LIMINE TO PRECLUDE ANY
REFERENCE TO AN OUT-OF-COURT STATEMENT THAT OFFICER
PORTER ALLEGEDLY MADE TO DETECTIVE SYREETA TEEL ON APRIL 15, 2015**

The State's theory in this case is that Freddie Gray died because he was not given prompt medical attention after suffering a neck injury between the second and fourth stops made by the van driven by Officer Caesar Goodson. A critical predicate for that theory—and one that the State's medical examiner, Carol H. Allan, M.D., relies on to reach her conclusions regarding Mr. Gray's injuries and manner of death—is that Mr. Gray told Officer William Porter at the fourth stop that he could not breathe. The State intends to rely on this "fact"—as it did throughout Officer Porter's trial—to argue that Mr. Gray should have been given prompt medical attention after telling Officer Porter at the 4th stop that he could not breathe.

There is a problem with the State's theory: No admissible evidence exists to establish that Mr. Gray told Officer Porter at the fourth stop that he could not breathe. Officer Porter denies that Mr. Gray said as much. The only potential evidence that suggests otherwise is an out-of-court statement that Officer Porter allegedly made to Detective Syreeta Teel on April 15, 2015. While that statement may have been properly admitted at Officer Porter's trial under Md. Rule 5-803(a), which creates an exception to the hearsay rule for an out-of-court statement that is offered against, and made by, a party-opponent, Officer Porter will not be a party-opponent in

Officer Goodson's trial. Extrinsic evidence of Officer Porter's hearsay statement to Detective Teel, moreover, cannot be introduced in Officer Goodson's trial to impeach Officer Porter under the "subterfuge" limitation on the State's ability to impeach its own witnesses. Because there is no other way for the State to admit evidence of Officer Porter's alleged out-of-court statement to Detective Teel, the statement is inadmissible.

Consequently, this motion seeks to preclude: (1) the State from making any mention of Officer Porter's alleged out-of-court statement to Detective Teel in its opening statement; (2) the State from eliciting testimony regarding that statement from Detective Teel or Officer Porter; and (3) the State's medical examiner, Dr. Allan, from referring to, or relying on, that statement in her testimony or in documents admitted through Dr. Allan, including her autopsy report. Any other result would deny Officer Goodson a fair trial.

I. THE LAW

A. The hearsay rule.

"Hearsay" is "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Md. Rule 5-801(c). "Statement" for purposes of the hearsay rule includes both written and oral assertions. *Id.* at 5-801(a). Unless a hearsay statement falls within a recognized exception, it is not admissible. *Id.* at 5-802. Finally, whether an out-of-court statement is hearsay depends on the purpose for which it is offered: A statement that is offered substantively, to prove the truth of its contents, is hearsay, and is not admissible unless an exception to the rule against hearsay applies. By contrast, a statement that is offered for a purpose other than to prove its truth is not hearsay. *See, e.g., Stoddard v. State*, 389 Md. 681, 688-89 (2005).

B. The admissibility of prior inconsistent statements as an exception to the hearsay rule.

Md. Rule 5-802.1 governs the admissibility of a witness's prior statement that is offered substantively, to prove the truth of its contents, where the witness testifies to the contrary at trial. Although any such statement is, on its face, inadmissible hearsay, Md. Rule 5-801.2 makes an exception to the hearsay rule for limited types of prior inconsistent statements made by a witness. Md. Rule 5-801.2 provides:

Hearsay Exceptions—Prior Statements By Witnesses

The following statements previously made by a witness who testifies at the trial or hearing and who is subject to cross-examination concerning the statement are not excluded by the hearsay rule:

(a) A statement that is inconsistent with the declarant's testimony, if the statement was (1) given under oath subject to the penalty of perjury at a trial, hearing or other proceeding or in a deposition; (2) reduced to writing and signed by the declarant; or (3) recorded in substantially verbatim fashion by stenographic or electronic means contemporaneously with the making of the statement. . . .

C. The admissibility of prior inconsistent statements for impeachment purposes.

Md. Rule 5-613 governs the admissibility of a witness's prior statement that is offered not as substantive evidence but to impeach a witness who testifies to the contrary at trial. Because prior statements offered for impeachment purpose are "offered for a purpose *other* than to prove its truth, such statements are "not hearsay at all." *Hardison v. State*, 118 Md. App. 225, 234 (1997) (emphasis added). Md. Rule 5-613 provides:

Prior Statements of Witnesses

(a) **Examining Witness Concerning Prior Statement.** A party examining a witness about a prior written or oral statement made by the witness need not show it to the witness or disclose its contents at that time, provided that before the end of the examination (1) the statement, if written, is disclosed to the witness and the parties, or if the statement is oral, the contents of the statement and the circumstances under which it was made, including the persons to whom it was

made, are disclosed to the witness and (2) the witness is given an opportunity to explain or deny it.

(b) Extrinsic Evidence of Prior Inconsistent Statement of Witness. Unless the interests of justice otherwise require, extrinsic evidence of a prior inconsistent statement by a witness is not admissible under this Rule (1) until the requirements of section (a) have been met and the witness has failed to admit having made the statement and (2) unless the statement concerns a non-collateral matter.

Md. Rule 5-613(b) permits the use of extrinsic evidence where the statement "concerns a non-collateral matter." The test for whether a matter is non-collateral turns on "whether the fact, as to which error is predicated, could have been shown in evidence for any purpose independently of the self-contradiction." *Smith v. State*, 273 Md. 152, 160 (1974). "In other words, a fact that is material to the issues in a case so as to be admissible irrespective of its use to counter contrary evidence is a non-collateral fact." *Hardison*, 118 Md. App. at 239.

Finally, Md. Rule 5-613 is sometimes used in connection with Md. Rule 5-607, which provides that "[t]he credibility of a witness may be attacked by any party, including the party calling the witness." Together, Md. Rules 5-607 and 5-613 make clear that either party may impeach a witness (its own or adverse) at any time and may do so using extrinsic evidence of a prior inconsistent statement so long as the statement is non-collateral and the witness has an opportunity to reconcile it with his or her live testimony.

D. The "subterfuge" limitation on the State's ability to use extrinsic evidence of prior inconsistent statements for impeachment purposes.

There exists a well-established limitation to the rule that a party may impeach its own witness with a hearsay statement that is proven through extrinsic evidence: "[T]he State cannot, over objection, have a witness called who it knows will contribute nothing to its case, as a subterfuge to admit, as impeaching evidence, otherwise inadmissible hearsay." *Jones v. State*, 178 Md. App. 123, 138-39 (quoting *Spence v. State*, 321 Md. 526, 530 (1991)). The State may

also not question a witness, who provides otherwise relevant information, on an "independent area of inquiry in order to open the door for impeachment and introduce a prior inconsistent statement." *Bradley v. State*, 333 Md. 593, 604 (1994). Where the State has "full knowledge" that a witness will not give substantive testimony helpful to its case, leading that witness into contradiction with a prior inconsistent statement that is "proven up" by extrinsic evidence denies a criminal defendant the right to a fair trial. *See id.*

This rule—sometimes called the "subterfuge" limitation—was principally developed in two cases: *Spence* and *Bradley*. In *Spence*, the State sought to examine a witness for the sole purpose of "get[ting] before the jury prior out-of-court statements [the witness] had made to police officers that, in fact, [the Defendant] was one of the perpetrators of [the crime at issue]." 321 Md. at 528. The State asked the trial court to call the witness as a court's witness, allowing the State to impeach the witness's testimony with the out-of-court statements. *Id.* The Court of Appeals, however, disapproved of this maneuver, holding that the State's impeachment of the witness by prior inconsistent statement constituted reversible error. *Id.* at 531. The Court first noted the "inescapable conclusion" that the State had engaged in gamesmanship: "[T]he State, over objection, prevailed on the court to call a court's witness who would contribute nothing to the State's case, for the sole purpose of 'impeaching' the witness with otherwise inadmissible evidence." *Id.* at 530. It then concluded that such a "blatant attempt to circumvent the hearsay rule and parade inadmissible evidence is not permissible." *Id.* The Court thus held that the State was forbidden from calling a witness whom it knew would contribute nothing but a basis for impeachment. *Id.*

In *Bradley*, the Court of Appeals expanded the subterfuge limitation by holding that not only was the State prohibited from calling a witness solely for the purpose of impeachment, the

State was also forbidden from broaching an "independent area of inquiry" with an otherwise helpful witness solely for the sake of impeachment. 333 Md. at 604. In a prosecution for kidnapping, armed robbery, and related offenses (stemming from a carjacking and theft), the State in *Bradley* called as a witness the defendant's cousin for a number of reasons helpful to the State's case. *Id.* at 596. The cousin-witness established his relationship with the defendant, identified his phone number on the victim's car phone bill, and verified that he spoke to the defendant while the defendant called from the victim's car phone. *Id.* at 601. The State asked the cousin-witness to relate the contents of the telephone conversation he had with the defendant. *Id.* In response, the cousin-witness denied telling detectives that the defendant bragged to him about stealing a car. *Id.* at 597.

Prior to that line of questioning, the prosecutor explained at a bench conference that he expected the cousin-witness to recant his statement to detectives. *Id.* at 597-98. Expanding on its reasoning in *Spence*, the Court of Appeals held that the State's impeachment was improper. *Id.* at 604. The *Bradley* Court recognized that the cousin-witness was not "call[ed]" for the "sole purpose" of introducing a prior inconsistent statement, *id.* at 601; nevertheless, the Court realized that the State had inquired about the content of the telephone call—an "independent area of inquiry"—to impeach the cousin-witness on that very point. *Id.* at 601-02. The Court concluded that "there is no reason to distinguish between the State requesting that a court's witness be called as a way to get inadmissible hearsay before the trier of fact . . . and the State questioning its own witness, in an independent area of inquiry, in order to get inadmissible hearsay before the trier of fact. . . . In both situations, the rationale of *Spence* dictates that a subterfuge to introduce the statements should not be permitted." *Id.* at 604. After all, impeachment is a "shield" that "protects a party from unfavorable testimony"; it is not a "sword" to place "otherwise

inadmissible evidence before the jury when there [was] no reason whatsoever for eliciting the unfavorable testimony upon which the need for impeachment [was] predicated." *Id.* at 606.

The *Bradley* Court's conclusion is clear: "[A] defendant is denied a fair trial if the State, with full knowledge that its questions will contribute nothing to its case, questions a witness concerning an independent area of inquiry in order to open the door for impeachment and introduce a prior inconsistent statement." *Id.* at 604. The State can only impeach the unhelpful testimony of its own witness when the subject matter is not "clearly independent," *id.*, or if the witness' unfavorable testimony "comes as a surprise." *Id.* at 606.

II. FACTUAL BACKGROUND

A. Detective Teel's testimony at Officer Porter's trial.

In Officer Porter's trial, the State called Detective Teel in its case-in-chief to establish, among other things, that Mr. Gray told Officer Porter that he could not breathe at the van's fourth stop at Druid Hill Ave. and Dolphin St. (the "4th stop"). Specifically, Detective Teel was asked about a telephone call that she placed to Officer Porter on April 15, 2015:

- Q. And what was the main purpose of calling him?
- A. To find out what happened at Druid Hill and Dolphin [the 4th stop]. . . .
- Q. So what did Officer Porter say to you on the telephone when you contacted him? . . .
- A. That he did respond to Druid Hill and Dolphin with Officer Goodson. As he pulled up behind the wagon, he exited his vehicle, approached the rear of the wagon. Officer Goodson got out of the driver's side of the wagon, and proceeded to the back as well.

As the doors were opened, Officer Goodson -- I'm sorry -- Officer Porter advised that Mr. Gray was lying on the wagon floor with his head towards the front of the van and his feet towards the door. He asked him what was up. He stated he couldn't -- he said he can't breathe. Officer Porter asked -- asked Mr. Gray to get up. At which time, he said he couldn't. So Officer Porter stated he reached in and helped him up onto the bench.

Officer Porter advised that he asked him if he needed a medic. Mr. Gray said yes. Officer Porter -- they shut the wagon doors, and he has a conversation with Officer Goodson in reference to the conversations with Mr. Gray. He then advised that he proceeds as immediate backup-up for 7-Baker-09

Trial Testimony of Det. Teel, attached as **Exhibit A**, at 20:20-21 & 21:11-22:13. The State made the same point a few minutes later:

Q. After Officer Porter indicated to you that Mr. Gray said "Help," what else did Freddie Gray say?

A. He stated that he couldn't breathe.

Id. at 23:22-24.

The out-of-court statement that Detective Teel relayed to the jury—that Officer Porter allegedly told Detective Teel that Mr. Gray told Officer Porter that he could not breathe at the van's 4th stop ("Officer Porter's Alleged April 15 Hearsay Statement")—was admissible in Officer Porter's trial under Md. Rule 5-803(a)(1), which creates an exception to the hearsay rule for "[a] statement that is offered against a party and is . . . [t]he party's own statement, in either an individual or representative capacity." Consequently, the statement came in at Officer Porter's trial as substantive evidence, *i.e.*, it was offered to prove the truth of its contents.¹ Because Officer Porter will not be a party-opponent in Officer Goodson's trial, however, his out-of-court statement to Detective Teel cannot fall within the purview of Md. Rule 5-803.

¹ This motion is concerned only with Officer's Porter's alleged hearsay statement to Detective Teel. Although this motion is not concerned with the second level of hearsay embedded within that statement, *i.e.*, Mr. Gray's alleged statement that he could not breathe, Officer Goodson reserves the right to object to the introduction of testimony or other evidence regarding that second hearsay statement. *Cf.* Md. Rule 5-805 ("If one or more hearsay statements are contained within another hearsay statement, each must fall within an exception to the hearsay rule in order not to be excluded by that rule.").

B. Officer Porter's testimony at his trial.

When Officer Porter took the stand in his trial, he testified in no uncertain terms that Mr. Gray did *not* tell Officer Porter that he could not breathe at the 4th stop, and denied stating as much to Detective Teel.

Q. At Druid Hill and Dolphin [the 4th stop], did Mr. Gray tell you he couldn't breathe?

A. Absolutely not.

Q. So why does Detective Teel's report say differently?

A. Detective Teel's report. She called me on my way down to Virginia. I was on my way -- I answered the phone just because I knew it was a Baltimore City number. She asked me, you know, could I explain to her what happened.

And assuming that she had known -- that she had investigated the case, that she had known that I had been all of the stops from one to -- well, with the exception of one, but one to six I had been at all the stops from the beginning. So I started from the beginning, which was Presbury and Mount [the first stop], in which Mr. Gray had been hurt, saying he couldn't breathe, and that he needed an asthma inhaler.

Trial Testimony of Officer Porter, attached as **Exhibit B**, at 5:20-6:15.

Officer Porter later testified that Mr. Gray said "I can't breathe" at the first stop (Presbury St. and Mount), not the 4th:

Q. So, Officer Porter, as you're searching for the second suspect, do you hear anything?

A. Yes, sir. While searching for the second suspect, I can hear a gentleman, I didn't know at the time, but I know now, to be Mr. Gray. He was just yelling inaudible stuff. At some point in time, he said I can't breathe, I need an asthma inhaler. He also said something about his legs. I could hear -- I was just a block over, and I could hear what he was yelling.

Id. at 24:25-25:8.

Finally, on cross-examination, Officer Porter explicitly denied telling Detective Teel that Mr. Gray told him that he could not breathe at the 4th stop:

Q. Now, you deny that you told Detective Teel that Mr. Gray, at the fourth stop, said I can't breathe.

A. Yes, that is true.

Id. at 96:3-5; *see also id.* at 62:23-63:21; *id.* at 99:5-10 (same).

C. The State's representations regarding the scope of Officer Porter's testimony at Officer Goodson's trial.

The issue whether Officer Porter can be compelled to testify at Officer Goodson's trial has been litigated since Officer Porter's trial concluded. In the course of that litigation, the State filed briefs with both the Court of Special Appeals and the Court of Appeals representing that it will *not* elicit at Officer Goodson's trial substantive testimony from Officer Porter regarding what Mr. Gray allegedly told him at the 4th stop:

The State argued at Porter's trial that portions of Porter's taped statement and trial testimony (specifically, his testimony regarding his inability to identify the other officers at one of the scenes, Gray's physical condition at one point in the series of events, and *where Porter first heard Gray say that he could not breathe*) were not credible. *The State has no intention of soliciting that testimony "as true" from Porter at Goodson's trial.*

The State is confident, however, that Porter will offer truthful testimony regarding other events that occurred the day of Gray's arrest. The State has a good-faith belief that, if compelled to do so, Porter will testify to conversations he had with Goodson regarding Gray's condition and whether to seek medical attention for Gray, and to conversations he had with White regarding the plan to seek medical attention for Gray. *It is that testimony that the State seeks to compel.*

State's Opening Brief before the Court of Appeals, *Goodson & White v. State*, No. 99, filed 2/29/16, attached as **Exhibit C**, at 31-32 (emphasis added); State's Opening Brief, *Goodson v. State*, No. 2308, filed 2/10/16, attached as **Exhibit D**, at 23-24 (same).

D. Officer Porter and Detective Teel's anticipated testimony at Officer Goodson's trial.

Officer Goodson believes that the State will seek to admit in Officer Goodson's trial extrinsic evidence of Officer Porter's Alleged April 15 Hearsay Statement. The basis for this

belief is the State's representation that it "has no intention of soliciting that testimony '*as true*' from Porter at Goodson's trial." *Id.* (emphasis added). Instead of eliciting that testimony "as true" (*i.e.*, substantively, to prove the truth of the statement's contents), the State apparently intends seek to admit the testimony for another purpose (*i.e.*, to impeach Officer Porter). For reasons stated below, any such attempt would deny Officer Goodson a fair trial.

III. THIS COURT SHOULD PRECLUDE THE STATE FROM MAKING ANY REFERENCE TO THE OUT-OF-COURT STATEMENT THAT OFFICER PORTER ALLEGEDLY MADE TO DETECTIVE TEEL ON APRIL 15, 2015.

A. Officer Porter's out-of-court statement cannot be admitted as substantive evidence in Officer Goodson's trial because it is hearsay and does not fall within an exception to the hearsay rule.

Officer Porter's alleged April 15, 2015 statement to Detective Teel that Officer Porter heard Mr. Gray say "I can't breathe" at the 4th stop is "hearsay" because it is a "statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Md. Rule 5-801(c). The statement does not fall within any of the exceptions to the hearsay rule set forth in the Maryland Rules of Evidence.²

Therefore, Officer Porter's Alleged April 15 Hearsay Statement "is not admissible" at Officer Goodson's trial if offered for its truth. Md. Rule 5-802.

B. Officer Porter's Alleged April 15 Hearsay Statement cannot be admitted as impeachment evidence in Officer Goodson's trial because of the "subterfuge" limitation on the State's ability to impeach its own witnesses.

The only way the State could possibly introduce Officer Porter's Alleged April 15 Hearsay Statement at Officer Goodson's trial is as impeachment evidence under Md. Rule 5-613.

² As noted above, because Officer Porter will not be a party-opponent in Officer Goodson's trial, Officer Porter's Alleged April 15 Hearsay Statement does not fall with the exception for statements by a party-opponent under Md. Rule 5-803. Any note made by Detective Teel that purportedly memorializes this conversation is likewise inadmissible because, among other reasons, it does not fall within the categories of Md. Rule 5-802.1.

But that avenue is foreclosed by the subterfuge limitation, which prohibits the State from questioning a witness concerning an "independent area of inquiry" to open the door for impeachment by way of a prior inconsistent statement where the State possesses "full knowledge" that its questions will contribute nothing substantive to its case. *Bradley*, 333 Md. at 604; *Spence*, 321 Md. at 530. As shown below, the requirements for applying the subterfuge limitation here are easily satisfied.

First, the "full knowledge" component of the subterfuge limitation is satisfied "if the state had full knowledge that the witness was going to recant" his prior statement. *Jones v. State*, 178 Md. App. 123, 142 (2008). Here, the State has already asked Officer Porter whether he recants his alleged April 15 statement to Detective Teel:

Q. Now, you deny that you told Detective Teel that Mr. Gray, at the fourth stop, said I can't breathe.

A. Yes, that is true.

Ex. B at 62:23-63:21; *id.* at 99:5-10 (same).³

Second, the "independent area of inquiry" component of the subterfuge limitation is satisfied because the State has *already* divided Officer Porter's testimony into distinct and independent areas by representing to the Court of Appeals and the Court of Special Appeals that it "has no intention of soliciting . . . 'as true'" from Officer Porter testimony regarding "where Porter first heard Gray say that he could not breathe. . . ." **Ex. C** at 31-32; **Ex. D** at 23-24 (same). Thus, the State cannot credibly argue that such testimony would be an "independent area of inquiry" or that failure to inquire about Officer Porter's conversation with Detective Teel on April 15, 2015 "could create a gap in the witness's testimony such that a negative inference may

³ For the same reasons, the State obviously cannot argue that it would be "surprised" if Officer Porter denied making the alleged statement to Detective Teel.

arise against the prosecution." *Bradley*, 333 Md. at 606. Again, this element of the limitation is satisfied.

Given that the elements of the subterfuge limitation are satisfied, this Court should preclude the State from referencing Officer Porter's Alleged April 15 Hearsay Statement in opening statements or eliciting testimony regarding that statement from Detective Teel or Officer Porter at trial. Officer Goodson's "right to a fair trial would certainly be circumvented" if such testimony were elicited. *Bradley*, 333 Md. at 604.

C. Dr. Allan's opinions regarding Mr. Gray's injuries and manner of death must be excluded to the extent they rely on Officer Porter's out-of-court statement.

The State's medical examiner, Dr. Allan, relies on Officer Porter's Alleged April 15 Hearsay Statement to reach her opinions regarding Mr. Gray's injuries and manner of death. Specifically, Dr. Allan's autopsy report provides:

The van proceeded to the 4th stop (at Dolphin Street and Druid Hill Avenue) where the van driver called for assistance to check on Mr. Gray. The assisting officer opened the doors and observed Mr. Gray lying belly down on the floor with his head facing the cabin compartment, and reportedly he was asking for help, *saying he couldn't breathe*, couldn't get up and needed a medic. The officer assisted Mr. Gray to the bench and the van continued on its way until it was diverted to pick up another individual who was in custody.

See Dr. Allan's 4/30/15 autopsy report, at 7 (emphasis added).⁴ The "van driver" is, obviously, Officer Goodson; the "assisting officer" is Officer Porter.

Dr. Allan relies on the "fact" that Mr. Gray said he could not breathe at the 4th stop to conclude that Mr. Gray had suffered a serious neck injury by that stop:

Review of the chronology of the events from the when [sic] Mr. Gray was taken into custody in the context of a severe and unstable cervical spine

⁴ Because Dr. Allan's autopsy report contains protected personal medical information, a copy of that report has not been attached to this publicly-filed motion. Officer Goodson would be happy to provide the Court with a copy of Dr. Allan's report upon request.

fracture/dislocation that would be immediately symptomatic, is most consistent with Mr. Gray sustaining the injury in the police van sometime after the 2nd stop where ankle restraints were placed and before the 4th stop when the driver called assistance. At this 4th stop, Mr. Gray was displaying symptoms of a high spinal cord injury: *difficulties in breathing* and movement.

Id. at 8 (emphasis added).

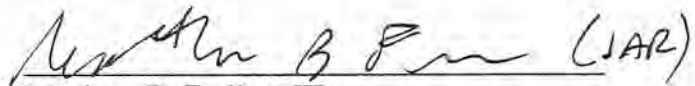
Dr. Allan should be precluded from testifying at trial regarding Mr. Gray stating that he could not breathe at the 4th stop, and her report should be redacted to remove any reference to that alleged statement. The only basis for such a statement is Officer Porter's Alleged April 15 Hearsay Statement. For reasons explained above, that statement is inadmissible in Officer Goodson's trial as substantive or impeachment evidence.⁵

IV. CONCLUSION

For the reasons presented above, Officer Caesar Goodson respectfully requests that this Court issue an Order precluding: (1) the State from making mention of Officer William Porter's alleged out-of-court statement to Detective Teel in opening statements; (2) the State from eliciting testimony regarding that alleged statement from Detective Teel or Officer Porter; and (3) the State's medical examiner, Carol Allan, M.D., from referring to, or relying on, that alleged statement in her testimony or in documents admitted through Dr. Allan, including her autopsy report.⁶

Dated: May 11, 2016

Respectfully submitted,



Matthew B. Fraling, III
Harris Jones & Malone, LLC
2423 Maryland Avenue, Suite 1100

⁵ Consequently, Dr. Allan lacks a "sufficient factual basis to . . . support" any opinion that relies on Mr. Gray stating that he could not breathe at the 4th stop. Md. Rule 5-702.

⁶ Officer Goodson reserves the right to object to the admission of some or all of the remainder of Dr. Allan's autopsy report for reasons not set forth in this motion.

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Counsel for Officer Caesar Goodson

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11th day of May 2016, a copy of Defendant Caesar Goodson's Motion *In Limine* to Preclude any reference to an out-of-court Statement that Officer Porter allegedly made to Detective Syreeta Teel on April 15, 2015, Request for a Hearing, and Proposed Order were served via first class mail, postage prepaid upon:

Michael Schatzow, Esquire
Chief Deputy State's Attorney for Baltimore City
120 E. Baltimore Street
9th Floor
Baltimore, Maryland 21202



Amy E. Askew

STATE OF MARYLAND

Plaintiff

v.

CAESAR GOODSON

Defendant

* IN THE
* CIRCUIT COURT
* FOR
* BALTIMORE CITY
* Case No. 115141032

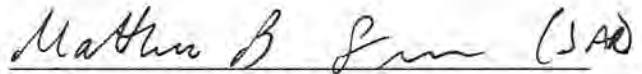
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REQUEST FOR A HEARING

Defendant Caesar Goodson respectfully requests a hearing on his Motion *In Limine* to Preclude any reference to an Out-Of-Court Statement that Officer Porter allegedly made to Detective Syreeta Teel on April 15, 2015.

Dated: May 11, 2016

Respectfully submitted,



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STATE OF MARYLAND

Plaintiff

v.

CAESAR GOODSON

Defendant

* IN THE
* CIRCUIT COURT
* FOR
* BALTIMORE CITY
* Case No. 115141032

* * * * *

ORDER

Upon consideration of Defendant Caesar Goodson's Motion *In Limine* to Preclude any reference to an Out-Of-Court Statement that Officer Porter allegedly made to Detective Syreeta Teel on April 15, 2015, and any opposition thereto, the record in this case, the applicable law, and for good cause shown, it is this ____ day of _____, 2016,

ORDERED, that Defendant's motion is GRANTED, and it is further

ORDERED, that the State is precluded from making any reference during its opening statement to: (1) any statement that Officer Porter allegedly made to Detective Teel on April 15, 2015; or (2) any alleged statement by Freddie Gray at the van's fourth stop (Druid Hill Ave. and Dolphin St.) to the effect that Mr. Gray was unable to breathe; and it is further

ORDERED, that the State is precluded from introducing or eliciting any witness testimony (on either direct examination or cross-examination) regarding: (1) any statement that Officer Porter allegedly made to Detective Teel on April 15, 2015; and (2) any statement allegedly made by Freddie Gray at the van's fourth stop to the effect that Mr. Gray was unable to breathe; and it is further

ORDERED, that Carol H. Allan, M.D., Assistant Medical Examiner for the State of Maryland, is precluded from making any reference in her testimony to the effect that Mr. Gray

stated that he could not breathe at the van's alleged stop, or relying on any such statement by Mr. Gray as a factual basis for any opinion; and it is further

ORDERED, that Dr. Allan's autopsy report, if it is to be admitted into evidence, be redacted to remove any reference to any alleged statement by Mr. Gray to the effect that he could not breathe at the van's 4th stop, and to remove any opinion that relies on any such statement.

The Honorable Barry Williams,
Circuit Court for Baltimore City, Maryland

IN THE CIRCUIT COURT FOR BALTIMORE CITY, MARYLAND

STATE OF MARYLAND

vs.

Case Number:
115141037

WILLIAM PORTER,

Defendant.

REPORTER'S OFFICIAL TRANSCRIPT OF PROCEEDINGS
(Excerpt - Testimony of Syreeta Teel)

Baltimore, Maryland

Monday, December 7, 2015

BEFORE:

HONORABLE BARRY G. WILLIAMS, Associate Judge
(and a jury)

APPEARANCES:

For the State:

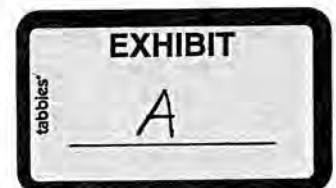
JANICE BLEDSOE, ESQUIRE
MICHAEL SCHATZOW, ESQUIRE
MATTHEW PILLION, ESQUIRE
JOHN BUTLER, ESQUIRE

For the Defendant:

JOSEPH MURTHA, ESQUIRE
GARY PROCTOR, ESQUIRE

* 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



1 A. April the 15th, 2015.

2 Q. Okay. And why did you contact Officer Porter
3 at that time?

4 A. I wanted to confirm that Officer Porter was 43
5 that responded with 7-Baker-91.

6 Q. Okay. And at that time was Officer Porter
7 working?

8 A. No.

9 Q. Okay. So how did you contact him?

10 A. By his cellular phone.

11 Q. And at that time when you contacted Officer
12 Porter, did you order him to talk to you?

13 A. No.

14 Q. Did you threaten him to talk to you?

15 A. No.

16 Q. Did you tell him if he didn't talk to you, some
17 administrative action would happen to him?

18 A. No.

19 Q. And what was the main purpose of calling him?

20 A. To find out what happened at Druid Hill and
21 Dolphin.

22 Q. Okay.

23 MS. BLEDSOE: May I have one second, please,
24 Your Honor?

25 (Brief pause.)

1 THE COURT: Ladies and gentlemen of the jury,
2 does anyone still have a copy of the transcript?

3 THE CLERK: No. Okay. Thank you.

4 THE COURT: All right. Thank you.

5 BY MS. BLEDSOE:

6 Q. And did you, in fact, contact Officer Porter?

7 A. Yes.

8 Q. And do you know what -- just for clarification,
9 do you know what 10-16 means?

10 A. Yes. It means immediate backup unit.

11 Q. So what did Officer Porter say to you on the
12 telephone when you contacted him?

13 A. That he confirmed -- he answered up to --

14 MR. PROCTOR: Judge, I should just renew the
15 earlier objection.

16 THE COURT: Very well. Objection is overruled.

17 BY MS. BLEDSOE:

18 Q. Go ahead.

19 A. That he did respond to Druid Hill and Dolphin
20 with Officer Goodson. As he pulled up behind the wagon,
21 he exited his vehicle, approached the rear of the wagon.
22 Officer Goodson got out of the driver's side of the
23 wagon, and proceeded to the back as well.

24 As the doors were opened, Officer Goodson --
25 I'm sorry -- Officer Porter advised that Mr. Gray was

1 lying on the wagon floor with his head towards the front
2 of the van and his feet towards the door. He asked him
3 what was up. He stated he couldn't -- he said he can't
4 breathe. Officer Porter asked him -- asked Mr. Gray to
5 get up. At which time, he said he couldn't. So Officer
6 Porter stated he reached in and helped him up onto the
7 bench.

8 Officer Porter advised that he asked him if he
9 needed a medic. Mr. Gray said yes. Officer Porter --
10 they shut the wagon doors, and he has a conversation with
11 Officer Goodson in reference to the conversation with Mr.
12 Gray. He then advises that he proceeds as immediate
13 back-up for 7-Baker-09.

14 Q. Now, prior to -- during your conversation when
15 you were listening to Officer Porter, prior to Officer
16 Porter saying that he advised that he asked Mr. Gray what
17 he needed, what else did Officer Porter say that Mr. Gray
18 said?

19 A. May I refer to my notes?

20 Q. Absolutely. And, in fact, this might help
21 refresh your recollection.

22 (Brief pause.)

23 THE COURT: Mark it for identification.

24 MS. BLEDSOE: Sure, Your Honor. State's
25 Exhibit Number 30 for identification.

1 THE CLERK: 31.

2 (State's Exhibit Number 31
3 was marked for identification.)

4 BY MS. BLEDSOE:

5 Q. And just take a minute. See if it helps
6 refresh your recollection.

7 (Brief pause.)

8 BY MS. BLEDSOE:

9 Q. Does that help refresh your recollection?

10 A. Yes.

11 Q. Okay. So when Officer Porter opened the door,
12 what did he say to you that Mr. Gray said to him?

13 A. He advised that Mr. Gray was stating, "Help."

14 Q. And what else did Officer Porter say after --

15 MR. PROCTOR: Objection.

16 THE COURT: Same objection?

17 MR. PROCTOR: It's asked and answered.

18 MS. BLEDSOE: You don't know what the question
19 is, so.

20 THE COURT: Objection is overruled.

21 BY MS. BLEDSOE:

22 Q. After Officer Porter indicated to you that Mr.
23 Gray said "Help," what else did Freddie Gray say?

24 A. He stated that he couldn't breathe.

25 MS. BLEDSOE: Your Honor, at this time, the

IN THE CIRCUIT COURT FOR BALTIMORE CITY, MARYLAND

STATE OF MARYLAND

vs.

Case Number:
115141037

WILLIAM PORTER,

DEFENDANT.

REPORTER'S OFFICIAL TRANSCRIPT OF PROCEEDINGS
(Excerpt - Testimony of William Porter)

Baltimore, Maryland

Wednesday, December 9, 2015

BEFORE:

HONORABLE BARRY G. WILLIAM, Associate Judge
(and a jury)

APPEARANCES:

For the State:

JANICE L. BLEDSOE, ESQUIRE

MICHAEL SCHATZOW, ESQUIRE

MATTHEW PILLION, ESQUIRE

JOHN BUTLER, ESQUIRE

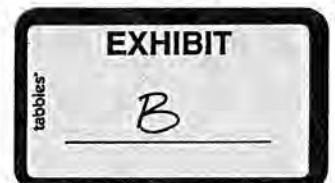
For the Defendant:

JOSEPH MURTHA, ESQUIRE

GARY E. PROCTOR, ESQUIRE

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1 any cuts or wounds or anything.

2 And the medic usually takes a while to come --
3 come to a scene. Where we were Mr. -- the transport
4 would have transported Mr. Gray to the hospital in 10
5 minutes. It usually takes a little bit longer for them
6 to get to us, and for them to assess the scene, and take
7 him to a hospital.

8 Q. And why didn't you seatbelt him at Druid Hill
9 and Dolphin?

10 A. Just prior training and experience, as everyone
11 has said, that wagon back there is pretty tight. You
12 know, it becomes a -- when I'm walking in, my gun side --
13 I'm right handed, so my gun side is on the right. So
14 going into the wagon, my gun is always presented to the
15 prisoners who are sitting along the wall. So it always
16 presents a problem getting into the wagon.

17 It's just -- throughout all of my training,
18 I've seatbelted people inside my vehicle, but I -- my
19 personal cruiser, but never the wagon.

20 Q. At Druid Hill and Dolphin, did Mr. Gray tell
21 you he couldn't breathe?

22 A. Absolutely not.

23 Q. So why does Detective Teel's report say
24 differently?

25 A. Detective Teel's report. She called me on my

1 way down to Virginia. I was on my way -- I answered the
2 phone just because I knew it was a Baltimore City number.
3 She asked me, you know, could I explain to her what
4 happened.

5 And assuming that she had known -- that she had
6 investigated the case, that she had known that I had been
7 all of the stops from one to -- well, with the exception
8 of one, but one to six I had been at all the stops from
9 the beginning. So I started from the beginning, which
10 was Presbury and Mount, in which Mr. Gray had been hurt,
11 saying he couldn't breathe, and that he needed an asthma
12 inhaler.

13 Q. Okay. Now let's start at the beginning.

14 Where did you grow up, sir?

15 A. I grew up in Baltimore City, West Baltimore
16 more specifically. Within the -- in the Western
17 District, various areas. Carey and Edmondson Avenue is
18 where I lived. I lived on Braddish, 1800 block of
19 Braddish. The 1700 block of Ashburton. I lived on --
20 then on Riggs. So a lot of areas in the Western.

21 Q. And other than being a police officer, have you
22 had any other jobs?

23 A. Yes, I have.

24 Q. And what are those?

25 A. Other than being a police officer, I worked at

1 Defendant's Exhibit 9, and ask you if you recognize that?

2 A. Yes. That looks familiar.

3 Q. What is it?

4 A. That's going to be Bruce Street, and that is
5 Presbury.

6 Q. Okay. And does that fairly and accurately
7 depict the area where you were looking for the second
8 suspect, part of it?

9 A. I -- yes. I would have been behind these
10 houses here.

11 Q. Okay. And you're pointing to the top right
12 corner of the screen, to the right of where the person on
13 the bicycle is?

14 A. Yes.

15 MR. PROCTOR: I'd ask that be published to the
16 jury.

17 THE COURT: Very well. It's entered and
18 published.

19 (Brief pause.)

20 THE COURT: Excuse me one moment.

21 (Brief pause.)

22 THE COURT: You can retrieve it.

23 MR. PROCTOR: Thank you, sir.

24 BY MR. PROCTOR:

25 Q. So, Officer Porter, as you're searching for the

1 second suspect, do you hear anything?

2 A. Yes, sir. While searching for the second
3 suspect, I can hear a gentleman, I didn't know at the
4 time, but I know now, to be Mr. Gray. He was just
5 yelling inaudible stuff. At some point in time, he said
6 I can't breathe, I need an asthma inhaler. He also said
7 something about his legs. I could hear -- I was just a
8 block over, and I could hear what he was yelling.

9 Q. So you can hear it, but can you see it?

10 A. I cannot see it, no. I'm behind houses.

11 Q. So approximately how long do you spend
12 searching for a second suspect?

13 A. I don't have a good -- it was -- it wasn't --
14 it was a short time. It wasn't very long.

15 Lieutenant Rice walks back over -- walks back
16 to me and, you know, tells me to 10-6, don't continue
17 that search any longer.

18 Q. Okay. So again --

19 THE COURT: Excuse me one second. I need
20 Defense 9. I need it over here with the exhibits
21 until --

22 MR. PROCTOR: Absolutely, sir.

23 THE CLERK: Thank you.

24 THE COURT: Thank you.

25 BY MR. PROCTOR:

1 be drugs. It can be other things.

2 Q. What are Miranda Rights?

3 A. Miranda Rights are just your right to remain
4 silent. You know, just ask for a lawyer to be present.

5 Q. Okay. And have you had detainees exercise
6 those rights?

7 A. Absolutely. I have detainees not talk to me
8 all the time. They -- I mean, there's a culture here in
9 Baltimore called no snitching. You know, people don't
10 say anything to police all the time.

11 Q. So when Mr. Gray ceases to answer -- he didn't
12 say much; is that fair -- did you testify to that
13 already?

14 A. Yes. He didn't say much.

15 Q. So he's not saying much. What are you
16 thinking?

17 A. I didn't think anything about it. I mean, it
18 happens quite often. Whenever someone's arrested, they
19 don't want to talk to police.

20 Q. Did you have any belief that he was under
21 any -- that he was injured beyond tired?

22 A. No, sir.

23 Q. Now, you were here when Detective Teel
24 testified; is that correct?

25 A. Yes, I was present.

1 Q. And she said, did she not, that at Stop 4, you
2 reported Mr. Gray said he couldn't breathe.

3 A. She wrote at Druid Hill and Baker that that's
4 what I said.

5 Q. Do Druid Hill and Baker ever intersect?

6 A. They do not.

7 Q. So at Stop 4, did Mr. Gray discuss anything
8 about his ability to breathe?

9 A. No, he did not.

10 Q. Did you hear him express that he couldn't
11 breathe?

12 A. No. He was able to have -- to speak words. He
13 had a regular tone of voice when he was talking to me.

14 Q. At any point on April 12th, did you hear him say
15 he couldn't breathe?

16 A. Yes.

17 Q. Where was that?

18 A. At the first stop he said he needed an asthma
19 inhaler.

20 Q. And what did you tell Detective Teel?

21 A. That's what I told her from the first stop.

22 Like I said earlier, when she called, I assumed
23 that she already the information that I had been at the
24 majority of the stops. So once she had told me to tell
25 me -- when she said tell me what happened, I started from

1 Q. It's not in there; is it?

2 A. It isn't, no.

3 Q. Now, you deny that you told Detective Teel that
4 Mr. Gray, at the fourth stop, said I can't breathe.

5 A. Yes, that is true.

6 Q. If he had said I can't breathe, and you heard
7 him say I can't breathe, would you agree that that would
8 be a reason to get medical attention?

9 A. I do agree, yes.

10 Q. You know Detective Teel from when she was at
11 the Western District; correct?

12 A. I do, yes.

13 Q. When she saw you at Shock Trauma on April 12th,
14 2015, she gave you a hug; didn't she?

15 A. Perhaps. I'm not certain.

16 Q. And when she saw you, when you came down to
17 Police Headquarters to give the statement that was video
18 and audio recorded, she gave you a hug then, too; didn't
19 she, before the statement?

20 A. I can't say if she did.

21 Q. You heard her testify she did.

22 A. I heard her testify, yes.

23 Q. You don't deny that she did?

24 A. I'm sorry?

25 Q. You don't deny that she did?

1 opened, you observed Mr. Gray lying on his stomach, head
2 facing the front of wagon, with his feet towards the
3 doors, saying help; is that what you told her?

4 A. I did tell her that, yes.

5 Q. And then you further advised that you asked Mr.
6 Gray what he needed, at which time he said he couldn't
7 breathe.

8 A. No. That's not true, no.

9 Q. She got that wrong?

10 A. She got that wrong, yes. She --

11 Q. And, Officer Porter, you -- you then told her
12 that you asked Mr. Gray if he needed a medic, and Mr.
13 Gray said -- stated yeah.

14 A. This is -- that's like -- a condensed version
15 of our conversation. It doesn't go in chronological
16 order, but it's a condensed version of what we spoke on
17 the phone.

18 Q. Thank you, Officer. If you could please just
19 listen to my question.

20 Did you tell her that you then asked Mr. Gray
21 again -- excuse me. That you asked Mr. Gray if he needed
22 a medic, and Mr. Gray stated yeah?

23 A. That's a part of this conversation, yes.

24 Q. And that you then asked -- you then asked Mr.
25 Gray again if he needed a medic, and you asked Mr. Gray

IN THE
COURT OF APPEALS OF MARYLAND

SEPTEMBER TERM, 2015

NO. 99

CAESAR GOODSON & ALICIA WHITE,
Appellants,

v.

STATE OF MARYLAND,
Appellee.

ON WRIT OF CERTIORARI TO THE
COURT OF SPECIAL APPEALS OF MARYLAND

BRIEF OF APPELLEE

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Counsel for Appellee



2. *Porter has no Fifth Amendment right to commit perjury, and the State's arguments at Porter's first trial regarding his credibility are irrelevant*

Porter next accuses the State of providing “the farce of a grant of immunity” in order to “lay a foundation for evidence that the State has already deemed as constituting an obstruction of justice and perjury.” (Brief of Appellant at 16). Porter seems to be arguing that because the State contended at his first trial that portions of his testimony were not credible, if he testifies consistently at Goodson’s and White’s trials, the State will have suborned perjury, and, moreover, could charge Porter with committing perjury. Porter’s claim is without merit.

First, contrary to Porter’s contention, the truthfulness *vel non* of a witness’s testimony is not an all-or-nothing proposition. The State argued at Porter’s trial that portions of Porter’s taped statement and trial testimony (specifically, his testimony regarding his inability to identify the other officers at one of the scenes, Gray’s physical condition at one point in the series of events, and where Porter first heard Gray say that he could not breathe) were not credible. The State has no intention of soliciting that testimony “as true” from Porter at Goodson’s trial.

The State is confident, however, that Porter will offer truthful testimony regarding other events that occurred the day of Gray's arrest. The State has a good-faith belief that, if compelled to do so, Porter will testify to conversations he had with Goodson regarding Gray's condition and whether to seek medical attention for Gray, and to conversations he had with White regarding the plan to seek medical attention for Gray. It is that testimony that the State seeks to compel.

Porter's argument that Goodson's or White's cross-examination of him will elicit testimony that the State believes is false, and that this is akin to suborning perjury, is likewise unpersuasive. (Brief of Appellant at 30-34). To be sure, "[f]or the prosecution to offer testimony into evidence, knowing it or believing it to be false is a violation of the defendant's due process rights." *United States v. Mills*, 704 F.2d 1553, 1565 (11th Cir. 1983). And "a conviction obtained through use of false evidence, known to be such by representatives of the State, must fall under the Fourteenth Amendment." *Napue v. People of State of Ill.*, 360 U.S. 264, 269 (1959). But the prosecution is not seeking to offer false evidence, nor to obtain a conviction through the use of false

IN THE
COURT OF SPECIAL APPEALS OF MARYLAND

SEPTEMBER TERM, 2015

NO. 2308

CAESAR GOODSON,

Appellant,

v.

STATE OF MARYLAND,

Appellee.

APPEAL FROM THE CIRCUIT COURT
FOR BALTIMORE CITY

(Hon. Barry G. Williams, Motions Judge)

BRIEF AND APPENDIX OF APPELLEE

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2. *Porter has no Fifth Amendment right to commit perjury, and the State's arguments at Porter's first trial regarding his credibility are irrelevant*

Porter next accuses the State of providing "a farcical grant of immunity" in order to "lay a foundation for evidence that the State has deemed . . . [to be] perjury." (Brief of Appellant at 24). Porter seems to be arguing that because the State contended at his first trial that portions of his testimony were not credible, if he testifies consistently at Goodson's trial, the State will have suborned perjury, and, moreover, could charge Porter with committing perjury. Porter's claim is without merit.

First, the truthfulness *vel non* of a witness's testimony is not an all-or-nothing proposition. The State argued at Porter's trial that portions of Porter's taped statement and trial testimony (specifically, his testimony regarding his inability to identify the other officers at one of the scenes, Gray's physical condition at one point in the series of events, and at what point Gray first said that

he could not breathe) were not credible.⁴ The State has no intention of soliciting that testimony "as true" from Porter at Goodson's trial.

The State is confident, however, that Porter will offer truthful testimony regarding other events that occurred the day of Gray's arrest. The State has a good-faith belief that, if compelled to do so, Porter will testify to conversations he had with Goodson regarding Gray's condition and whether to seek medical attention for Gray, and to conversations he had with White regarding the plan to seek medical attention for Gray. It is that testimony that the State seeks to compel.

⁴ One of several ethical violations Porter accuses the prosecutors of committing is opining as to his credibility. (Brief of Appellant at 8 n.2). The prosecutors did no such thing. Porter's own excerpts establish that the prosecutors argued that "the state proved through the evidence" that portions of Porter's version of events was not credible. (Brief of Appellant at 8). Indeed, one of the prosecutors explained to the jury how the State endeavored to establish that Porter was not telling the whole truth: by "showing inconsistencies in [his] statements[.]" by proving that his statements were "inconsistent with each other[.]" and by proving that Porter's version of events "makes no sense at all[.]" (Brief of Appellant at 9). The prosecutors were not offering their personal opinions as to Porter's credibility, they were urging the jury to conclude based on the evidence that part of what Porter said was not true. There was nothing inappropriate about the prosecutors' closing arguments.