

RECEIVED

STATE OF MARYLAND

* IN THE

Plaintiff

* CIRCUIT COURT

MAY 11 2016

v.

* FOR

Criminal Div.
Circuit Court For
Baltimore City

CAESAR GOODSON

* BALTIMORE CITY

Defendant

* Case No. 115141032

* * * * *

OFFICER GOODSON'S MOTION IN LIMINE TO PRECLUDE THE ADMISSION OF THE AUTOPSY REPORT OF CAROL H. ALLAN, M.D. IN UNREDACTED FORM

To protect defendant Officer Caesar Goodson's right to confront the witnesses against him under the U.S. Constitution and the Maryland Declaration of Rights, and because Md. Code Ann., Health-Gen. § 5-311(d)(1) makes clear that official autopsy records do "not include a statement of a witness or other individual," Officer Goodson moves to preclude the admission of that portion of the autopsy report prepared by the State's medical examiner, Carol H. Allan, M.D., that refers to, and relies on, witness statements.

Specifically, Officer Goodson requests that the three-page "Opinion" section of Dr. Allan's autopsy report be redacted should the report be entered into evidence at Officer Goodson's trial. That section of the report is replete with out-of-court witness statements, at least one of which the State cannot admit at Officer Goodson's trial for any purpose. See 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." With respect to the other extrajudicial statements reflected in Dr. Allan's report, while some version of those statements *may* come into evidence at Officer Goodson's trial (depending on whom the State calls and how they testify), even then the jury should rely solely on witness testimony, not Dr.

Allan, as the basis for such statements. This is especially true given the "testimonial" nature of the out-of-court statements at issue. Under the Confrontation Clause, it would be improper to allow "testimonial" hearsay to come into evidence through Dr. Allan.

Consequently, Officer Goodson seeks an order providing that if Dr. Allan's autopsy report is to be admitted into evidence at Officer Goodson's trial, the three-page "Opinion" section of that report must be redacted.

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. Where a statement contains multiple "levels" of hearsay, an independent exception to the hearsay rule must exist for each level of hearsay for the statement to be admissible. *See* Md. Rule 5-805. 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 Confrontation Clause.

A criminal defendant has the right to "be confronted with the witnesses against him" under the Confrontation Clause, Amendment VI of the U.S. Constitution and Article 21 of the

Maryland Declaration of Rights.¹ In *Crawford v. Washington*, the Supreme Court held that the Confrontation Clause prohibits the admission of "testimonial" hearsay unless the hearsay declarant is unavailable and the defendant had a prior opportunity to cross-examine the declarant. 541 U.S. 36, 68 (2004). If the hearsay statement is "non-testimonial," its introduction is outside the scope of the Confrontation Clause and is governed by the applicable hearsay rules. See *Davis v. Washington*, 547 U.S. 813, 821 (2006); *Whorton v. Bockting*, 549 U.S. 406, 413-14 (2007).

In this context, confrontation means nothing less than the in-person cross-examination of the witness by the accused. *Davis v. Alaska*, 415 U.S. 308, 315 (1974). The "main and essential purpose" of the Confrontation Clause is to ensure that the defendant has an opportunity for effective cross-examination of adverse witnesses, "which cannot be had except by the direct and personal putting of questions and obtaining immediate answers." *Id.* at 315-16 (citations and quotation marks omitted). Through cross-examination, "the accused has an opportunity, not only of testing the recollection and sifting the conscience of witnesses, but of compelling him to stand face to face with the jury in order that they may look at him, and judge his demeanor upon the stand and in the manner in which he gives his testimony whether he is worthy of belief." *Mattox v. United States*, 156 U.S. 237, 242-43 (1895).

II. THE HEARSAY STATEMENTS IN DR. ALLAN'S AUTOPSY REPORT

A. Dr. Allan's autopsy report.

Dr. Allan's autopsy report contains seven parts. The only part that this motion addresses is the three-page "Opinion" section at the end of the report. See Dr. Allan's 4/30/15 autopsy

¹ The Sixth Amendment applies in Maryland through the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution. See *Green v. State*, 199 Md. App. 386, 399 n. 7, 22 A.3d 941 (2011); *Pointer v. Texas*, 380 U.S. 400, 403 (1965).

report, at 7-9.² There, Dr. Allan presents a chronology of events relating to Freddie Gray's arrest and transport on April 12, 2015. Given that Dr. Allan lacks personal knowledge of those events, her report relies exclusively on information furnished to Dr. Allan by the State. That information consists, in large part, of written and recorded witness statements. Officer Goodson expects that Dr. Allan will testify at trial regarding such out-of-court witness statements (as she did at Officer William Porter's trial), and that the State will seek to admit the hearsay statements into evidence as part of Dr. Allan's unredacted autopsy report (as it did at Officer Porter's trial). For reasons explained below, the section of Dr. Allan's report that contains and relies on these hearsay statements should not come into evidence at Officer Goodson's trial.

Below are exemplary hearsay statements from the "Opinion" section of Dr. Allan's report:

Hearsay Statement 1: "Upon being apprehended, Mr. Gray placed himself on the ground and his hands were cuffed behind his back. He reportedly asked for an inhaler, but none was found on his person."

Hearsay Statement 2: "He was reportedly placed on the metal bench running from front to back along the outside wall of the van After the inner and outer doors were closed, it is reported that Mr. Gray would be heard yelling and banging, causing the van to rock."

Hearsay Statement 3: "The 2nd stop was several blocks down (on Baker Street) to place an identification band and leg restraints on Mr. Gray. Reportedly, Mr. Gray was still yelling and shaking the van. He was removed from the van and placed on the ground in a kneeling position, facing the van doors, while ankle cuffs were

² 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.

This motion does not address the remaining sections of Dr. Allan's report, which are labeled "External Examination," "Evidence of Therapy," "Evidence of Injury," "Internal Examination," "Microscopic Examination," and "Pathologic Diagnoses." *Id.* at 1-6. Nor does this motion address the Neuropathology Report or Toxicology Report appended to Dr. Allan's report. *Id.* Officer Goodson reserves the right to object to the admission of these sections of, and attachments to, Dr. Allan's autopsy report for reasons not set forth in this motion.

placed, and then slid onto the floor of the van, belly down and head first, reportedly still verbally and physically active."

Hearsay Statement 4: "The van proceeded to the 4th stop (at Dolphin Street and Druid Hill Avenue). . . The assisting officers 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."

Hearsay Statement 5: "At this 5th stop (at North Avenue and Pennsylvania Avenue), Mr. Gray was found kneeling on the floor, facing the front of the van and slumped over to his right against the bench, and reportedly appeared lethargic with minimal responses to direct questions."

Id. at 7.

B. The "testimonial" nature of the hearsay statements relied on by Dr. Allan.

As shown below, the statements that Dr. Allan relied on to reach her opinions regarding Mr. Gray's injuries and manner of death—including Hearsay Statements 1-5 above—constitute archetypal "testimonial" hearsay that invokes the Confrontation Clause.

First, Dr. Allan testified at Officer Porter's trial that the statements she relied on to reach her opinions came from taped or recorded statements of witness-police officers, or second-hand reports of such statements, that were provided to Dr. Allan by the Baltimore City Police Department, its Force Investigation Team, and the State:

Q. And what additional data collection did you do?

A. Actually, *I spoke on numerous occasions to the Baltimore City Police and their Force Investigation Team to get the circumstances that surrounded Mr. Gray's injury.*

Q. Okay. Did you do any other data collection? Did you visit the van?

A. I visited -- that was part of it. I visited a van on the day after the autopsy. And I visited the van approximately a week later. *And I also, part of the data collection, listened to taped witness statements of the officers that were involved - - or some of the officers that were involved in Mr. Gray's incident -- the incident involving Mr. Gray. As well as some of the captured videos that were found --*

taken at the time of the incident, and a still photograph of one of the van stops. And that's about it.

Trial Testimony of Dr. Allan, attached as **Exhibit A**, at 75:25-76:18 (emphasis added); *see also id.* at 80:2-3 (where Dr. Allan testifies that she "received the officer's recorded statements from the State's Attorney's Office"). Dr. Allan explained how she relied on witness-police officer observations on a "stop by stop" basis to reach her opinions regarding Mr. Gray's injuries and manner of death. *Id.* at 57:13-87:23 & 97:14-114:15 & 149:21-151:9 & 153:17-154:24 & 160:23-163:16.

Second, Dr. Allan relies on the statements from the witness-police officers as substantive evidence, *i.e.*, for the truth of the matters asserted in those statements. As Dr. Allan explained to Officer Porter's jury, "medical examiners are kind of like medical detectives" who "put together the evidence -- or the material that is presented to us, whether -- in this case it was witness statements with the examination that we find when we do the autopsy." *Id.* at 60:6-10. Ultimately, Dr. Allan developed a "theory based on the witness statements of Mr. Gray's behavior and the medical evidence of his injury." *Id.* at 102:14-15. Officer Goodson anticipates that, just as Dr. Allan did at Officer Porter's trial, Dr. Allan will relay that theory to the jury in Officer Goodson's trial as the truth regarding what happened to Mr. Gray on April 12, 2015. Thus, it is beyond reasonable dispute that Dr. Allan is relying on these hearsay statements substantively, *i.e.*, for the truth of the matters asserted in those statements, and not for any other purpose.

Third, the hearsay statements at issue here—recorded witness statements made to law enforcement officers investigating a potential crime—constitute "testimonial" hearsay that triggers the Confrontation Clause, which, in turn, demands that the State produce the hearsay declarants at trial so that Officer Goodson can cross-examine them.

In *Crawford v. Washington*, the Supreme Court redefined the standard for evaluating whether a criminal defendant has the right to require the prosecution to produce the declarants of extrajudicial statements for cross-examination. 541 U.S. 36 (2004). The defendant in that case, Michael Crawford, stabbed a man. *Id.* at 38. Crawford's wife, Sylvia, witnessed the stabbing. *Id.* At trial, Crawford's wife did not testify, "because of the state marital privilege, which generally bars a spouse from testifying without the other spouse's consent." *Id.* at 40. The trial court nevertheless allowed the State to introduce a recording of statements from a police interrogation, in which Sylvia Crawford arguably undermined her husband's claim of self-defense. *Id.* The Supreme Court determined that the use of Ms. Crawford's statements at Crawford's trial, where Crawford had no opportunity to cross-examine her, violated his rights under the Confrontation Clause. *Id.* at 68-69.

Significantly, *Crawford* repudiated a prior test that had premised the admissibility of unconfuted hearsay upon judicial determinations of reliability. In so doing, the *Crawford* Court overruled *Ohio v. Roberts*, 448 U.S. 56 (1980), which held that it did not violate the Confrontation Clause to admit hearsay statements from a declarant who was not present for cross-examination, as long as the declarant was unavailable, and the statement either fell "within a firmly rooted hearsay exception" or bore "particularized guarantees of trustworthiness." *Crawford*, 541 U.S. at 66. *Crawford* rejects the notion that courts can employ general hearsay exceptions or the "indicia or reliability" of an out-of-court statement to dispense with a defendant's right to require the prosecution to produce the witnesses against him or her so that they could be subjected to cross-examination. *See id.* at 51. Reasoning that the Confrontation Clause permits "only those exceptions established at the time of the founding," the Court held that testimonial hearsay from an absent witness is generally admissible against a criminal

defendant only if the declarant is unavailable and the defendant had a prior opportunity to cross-examine that witness. *Id.* at 54.

Over the last decade, the Supreme Court has developed its analysis of what *Crawford* termed "testimonial" hearsay. Although the clarity of that analysis is obscured by a number of recent, fractured Supreme Court decisions, the witness statements at issue here—*ex parte* statements solicited as part of a criminal investigation—undoubtedly constitute "testimonial" hearsay.

In *Davis v. Washington*, the Supreme Court ruled that statements taken by police officers during the course of police questioning are considered "nontestimonial," and not subject to the Confrontation Clause, when they are made "under circumstances objectively indicating that the primary purpose of the interrogation is to enable police assistance to meet an ongoing emergency." 547 U.S. 813, 822 (2006). The Court held that statements made by a domestic abuse victim in response to a 911 operator's questions while the defendant was inside her home in violation of a no-contact order, in which the victim identified her assailant, were not testimonial because the victim was speaking about events as they were actually happening, rather than describing past events, and the primary purpose of the 911 operator's interrogation was to enable police assistance to meet an ongoing emergency caused by a physical threat to the victim. *Id.* at 826-28. In so ruling, the Court noted that "a 911 call . . . and at least the initial interrogation conducted in connection with a 911 call, is ordinarily not designed primarily to 'establis[h] or prov[e]' some past fact, but to describe current circumstances requiring police assistance." *Id.* at 827.

In the companion case consolidated for decision with *Davis*—*Hammon v. Indiana*—the Supreme Court focused on a different type of statement. There, the victim made statements to

the police after their arrival at her home, when the domestic incident that prompted the police response had ended and where the police were questioning the victim and the defendant in separate rooms. Such statements were considered to be testimonial and, consequently, inadmissible, because the defendant had no opportunity to cross-examine the victim, who refused to testify at trial. *Id.* at 822.

In this case, the written and recorded statements of the witness-police officers that Dr. Allan relies on to formulate her opinions regarding Mr. Gray's injuries and manner of death were obviously not made in the context of any ongoing emergency. Instead, the subject assertions were "statements resulting from 'formalized dialogue,'" *i.e.*, statements made during the interrogation of witnesses by law enforcement in the course of investigating a potential crime.³ Such statements are "testimonial" under the Confrontation Clause:

Whatever else the term ["testimonial"] covers, it applies at a minimum to prior testimony at a preliminary hearing, before a grand jury, or at a former trial; *and to police interrogations*. These are the modern practices with closest kinship to the abuses at which the Confrontation Clause was directed.

Crawford, 541 U.S. at 68 (emphasis added); *see also Taylor v. State*, 226 Md. App. 317, 336-37 (2016) (acknowledging post-*Crawford* cases holding that statements in police interrogations made for the primary purpose of creating evidence, not meeting an ongoing emergency, are "testimonial"); *see generally id.*, 226 Md. App. at 332-343 (summarizing recent federal and Maryland decisions that address the Confrontation Clause).

³ Before being interviewed, the witness-police officers in this case were read their rights under the Law Enforcement Officers Bill of Rights ("LEOBR"). Like a Miranda warning, the reading of the LEOBR "imports a solemnity" to the witness-officers' out-of-court statements that makes them "testimonial." *Cf. Davis*, 547 U.S. at 837-38 (Thomas, J., concurring) (explaining that a *Miranda* warning "imports a solemnity to the process that is not present in a mere conversation between a witness and a suspect or a police officer").

III. THE HEARSAY STATEMENTS RELIED ON BY DR. ALLAN SHOULD NOT BE ALLOWED INTO EVIDENCE THROUGH DR. ALLAN'S AUTOPSY REPORT.

A. The hearsay statements relied on by Dr. Allan contain multiple levels of hearsay.

The extrajudicial statements relied on by Dr. Allan contain multiple levels of hearsay. For example, with respect to the statement allegedly made by Mr. Gray at the 1st stop requesting an inhaler, the first level of hearsay is Mr. Gray's statement ("I need an inhaler."). The second level of hearsay is the witness-police officer relaying that Mr. Gray said he needed an inhaler ("Mr. Gray told me that he needed an inhaler.") A potential third level of hearsay would exist if Dr. Allan did not learn of Mr. Gray's statement through the witness-police officer directly, but rather through the testimony or report of a member of the Force Investigation Team or the State ("Officer X was told by Mr. Gray that he needed an inhaler."). A fourth level of hearsay is Dr. Allan writing what the witness-police officer said or what Dr. Allan was told concerning Mr. Gray's request for an inhaler ("[Mr. Gray] reportedly asked for an inhaler. . .," Dr. Allan's autopsy report at 7). Absent a showing by the State that each level of hearsay falls within an independent exception to the hearsay rule, the statement must be excluded. *See* 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. Because the hearsay statements relied on by Dr. Allan are "testimonial," the State must call the hearsay declarants to testify as witnesses at Officer Goodson's trial.

In addition to the problem of multiple layers of hearsay, the out-of-court statements relied on by Dr. Allan are "testimonial" in nature. *See* § II.B, *supra*. Consequently, those statements are inadmissible at Officer Goodson's trial unless Officer Goodson has the right to cross-examine the hearsay declarants. *See, e.g., Crawford*, 541 U.S. at 61. In this case, the State has placed a

number of the witness-police officers on its witness list, *e.g.*, Officers Porter, Garrett Miller, Zachary Novak, Mark Gladhill, and Matthew Wood. Should the State call these officers to testify at Officer Goodson's trial, it is possible that the State may elicit testimony regarding the events of April 12, 2015 that does not violate Officer Goodson's Confrontation Clause rights. That testimony, however, must come through the direct and cross-examination of the witness-police officers; it cannot come into evidence through Dr. Allan. *See Crawford*, 541 U.S. at 61 ("Where testimonial statements are involved, we do not think the Framers meant to leave the Sixth Amendment's protection to the vagaries of the rules of evidence . . . [the Confrontation Clause] commands not that evidence be reliable, but that reliability be assessed in a particular manner: by testing in the crucible of cross-examination.").

C. Dr. Allan's report should be redacted to remove any reference to testimonial hearsay and opinions that rely on such hearsay.

Dr. Allan's autopsy report is hearsay because it is an out-of-court statement being offered to prove the truth of the matter asserted. The State will argue, however, that Dr. Allan's autopsy report is admissible as a business record under Md. Code Ann., Health-Gen. § 5-311(d)(2). As shown below, any such argument is ill-founded with respect to the extrajudicial witness statements in Dr. Allan's report.

Md. Code Ann., Health-Gen. § 5-311(d)(2) provides that:

A record of the Office of the Chief Medical Examiner or any deputy medical examiner, if made by the medical examiner or by anyone under the medical examiner's direct supervision or control, or a certified transcript of that record, is competent evidence in any court in this State of the matters and facts contained in it.

See also Rollins v. State, 161 Md. App. 34, 66 (2005) (acknowledging that the receipt of an

autopsy report as an official business record is governed by § 5-311(d)).⁴

There are, however, two significant limitations on the State's ability to admit Dr. Allan's autopsy report as a business record under § 5-311(d). *First*, § 5-311(d) defines "record" as "the result of an external examination of or an autopsy on a body" but "[d]oes *not* include a statement of a witness or other individual." *Id.* at § 5-311(d)(1) (emphasis added). Thus, to the extent that Dr. Allan's report contains a "statement of a witness or other individual," the report is not a business record under § 5-311(d).⁵ As shown above, the "Opinions" section of Dr. Allan's autopsy report exclusively relies on such witness statements. Consequently, that portion of Dr. Allan's report should not come into evidence through Dr. Allan and the report, if it is to be admitted, should be redacted to remove any reference to such witness statements.⁶

Second, Md. Rule 5-703(a) limits the State's ability to admit as a business record any document that contains "testimonial hearsay." Md. Rule 5-703(a), which governs the facts or data that an expert may rely on to reach an opinion, provides that:

The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence.

⁴ The *Rollins* court noted that "any analysis [of an autopsy report] pursuant to Maryland law governing public records would lead us to the same result that we have reached applying the business records exception." 161 Md. App. at 34, 66.

⁵ Officer Goodson has been unable to find any Maryland cases that apply this aspect of Md. Code Ann., Health-Gen. § 5-311(d)(1).

⁶ The result is the same under the public records exception to the hearsay rule set forth in the Maryland Rules of Evidence. *See* Md. Rule 5-803(8)(C) ("A record of matters observed by a law enforcement person" is specifically excluded from the exception when offered against a defendant in a criminal action.). In addition, the Committee Note to Maryland Rule 5-803(b)(6), the business records exception to the hearsay rule, provides that "[p]ublic records specifically excluded from the public records exceptions in subsection (b)(8) of this Rule may not be admitted pursuant to this exception."

The Committee Note to Rule 5-703, however, recognizes that hearsay cannot be disclosed to the jury by way of an expert when doing so would violate a defendant's right of confrontation: "Subject to Rule 5-403, *and in criminal cases the confrontation clause*, experts who rely on information from others may relate that information in their testimony if it is of a type reasonably relied upon by experts in the field." (Emphasis added). *Cf. United States v. Johnson*, 587 F.3d 625, 635 (4th Cir. 2009) ("Allowing a witness simply to parrot out-of-court testimonial statements of cooperating witnesses and confidential informants directly to the jury in the guise of expert opinion would provide an end run around *Crawford*.") (quoting *United States v. Lombardozzi*, 491 F.3d 61, 72 (2d. Cir. 2007)). Again, the proper vehicle for eliciting this sort of evidence is the testimony of the witness-police officers, not Dr. Allan.

As shown above, Dr. Allan's autopsy report contains statements that, if allowed into evidence through Dr. Allan's report and not through the testimony (including cross-examination) of the hearsay declarant, would violate § 5-311 and Mr. Goodson's rights under the Confrontation Clause. Consequently, those portions of Dr. Allan's autopsy report should be redacted if Dr. Allan's report is to be admitted into evidence.

D. Officer Porter's alleged out-of-court statement that Mr. Gray could not breathe at the fourth stop.

One critical extrajudicial statement that Dr. Allan relies on to reach her conclusions regarding Mr. Gray's injuries and manner of death is that Mr. Gray allegedly told Officer Porter at the fourth stop that he could not breathe. *See* Dr. Allan's autopsy report at 7 ("The van proceeded to the 4th stop . . . reportedly [Mr. Gray] was asking for help, saying *he couldn't breathe*, couldn't get up and needed a medic.") (emphasis added). Officer Goodson has filed a separate motion seeking to preclude the admission of that statement because it does not fall within any exception to the hearsay rule and cannot be admitted at Officer Goodson's trial to

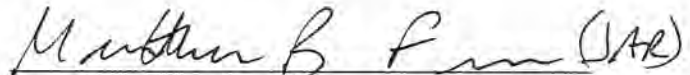
impeach Officer Porter. See Officer Goodson's "Motion *In Limine* to Preclude any Reference to an Out-Of-Court Statement that Officer Porter allegedly made to Detective Syreeta Teel on April 15, 2015." This hearsay statement differs from the others set forth in Dr. Allan's report because the State cannot possibly get it into evidence no matter who the State calls to testify at Officer Goodson's trial. Like the other hearsay statements embedded in Dr. Allan's report, Mr. Gray's alleged statement to Officer Porter that he could not breathe at the fourth stop should also be redacted from any version of the autopsy report that is admitted into evidence at Officer Goodson's trial.

IV. CONCLUSION

For the reasons presented above, Officer Caesar Goodson respectfully requests that this Court issue an Order providing that if Dr. Allan's autopsy report is to be admitted into evidence at Officer Goodson's trial, the three-page "Opinion" section of that report must be redacted.

Dated: May 11, 2016

Respectfully submitted,



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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 the Admission of the Autopsy Report of Carol H. Allan, M.D. in Unredacted Form, 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

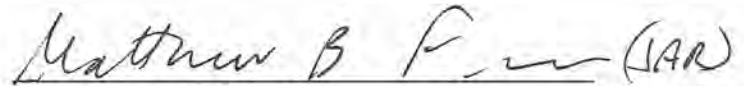
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REQUEST FOR A HEARING

Defendant Caesar Goodson respectfully requests a hearing on his Motion *In Limine* to Preclude the Admission of the Autopsy Report of Carol H. Allan, M.D. in Unredacted Form.

Dated: May 11, 2016

Respectfully submitted,

 (SAR)

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Counsel for Officer Caesar Goodson

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 the Admission of the Autopsy Report of Carol H. Allan, M.D. in Unredacted Form, 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 if Dr. Allan's autopsy report is admitted into evidence at Officer Goodson's trial, the three-page "Opinions" section of Dr. Allan's autopsy report must first be redacted.

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 Carol Allan, M.D.)

Baltimore, Maryland

Monday, December 7, 2015

BEFORE:

HONORABLE BARRY G. WILLIAMS, Associate Judge
And a jury

APPEARANCES:

For the State:

JANICE L. BLEDSOE, ESQUIRE

MICHAEL SCHATZOW, ESQUIRE

MATTHEW PILLION, ESQUIRE

JOHN BUTLER, ESQUIRE

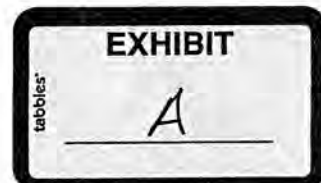
For the Defendant:

JOSEPH MURTHA, ESQUIRE

GARY E. PROCTOR, ESQUIRE

* 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 you; correct?

2 A. Yes.

3 Q. The Baltimore Police Department; correct?

4 A. Yes. Yes, they were.

5 Q. And do you recall telling me on July the 9th
6 when we met that the police had their own take and the
7 State's Attorney's Office had their own take on it?

8 MS. BLEDSOE: Objection, Your Honor.

9 THE COURT: Sustained. Strike the question.

10 Not relevant.

11 Next question please.

12 BY MR. MURTHA:

13 Q. Do you consider the observations of witnesses
14 stop by stop; is that correct? When I say stop by stop,
15 there were a series of interactions between Mr. Gray and
16 the police. And we, for the purpose of sort of making it
17 easy and generic, they've been described as Stop 1, Stop
18 2, Stop 3, Stop 4, Stop 5, and Stop 6. And are you
19 familiar with that?

20 A. Yes.

21 Q. And you actually used that assessment in your
22 review of the evidence in this case; is that correct?

23 A. Personally, I thought it was my assessment.

24 Q. Well, then I'll give you credit. We all used
25 your assessment.

1 If you would look at page seven of your report,
2 which actually has been admitted into evidence and is, I
3 believe, State's Exhibit 49. You make -- you actually
4 comment on Stop 1; is that correct?

5 A. Yes.

6 Q. And that's the arrest scene; is that correct?

7 A. Yes.

8 Q. At that point Mr. Gray exhibited both verbal
9 and physical resistance, and you said that; correct?

10 A. Correct.

11 Q. And Mr. Gray was able bear weight on his legs
12 and was actively speaking; correct?

13 A. Yes. That was in between -- yes.

14 Q. This is all just coming out of your report.

15 A. Okay.

16 Q. After Mr. Gray was handcuffed and placed on the
17 bench inside the transport van the doors to the van were
18 shut. Mr. Gray then began to yell and bang on the van,
19 causing the van to rock; correct?

20 A. Yes.

21 Q. So in looking at Stop 1, as you identified it,
22 at the point of arrest, clearly Mr. Gray was capable of
23 exercising use of his limbs; correct?

24 A. That is correct.

25 Q. And he was able to breathe; correct?

1 A. Yes.

2 Q. And he caused enough physical force to move the
3 van from side to side; is that correct?

4 A. That is what was in the witness statements, as
5 well as on the videos.

6 Q. And then there --

7 A. Most of the witness statements.

8 Q. -- was Stop 2, the van stops shortly
9 thereafter, and officers remove Mr. Gray and place leg
10 restraints on Mr. Gray because he was still yelling and
11 shaking the van; correct?

12 A. I just said that he was at stop -- the second
13 stop was several blocks down, and he had placed an
14 identification then in restraints.

15 Reportedly, he was still yelling and shaking
16 the van.

17 Q. And after restraints were placed on Mr. Gray,
18 he was slid onto the van, head first on his stomach, he
19 remained verbally and physically active; correct?

20 A. Correct.

21 Q. So that's Stop 2.

22 So I'm going to jump ahead a little bit because
23 it's your opinion that you're offering in this written
24 document that the injury occurred between Stops 2 and 4;
25 is that correct?

1 A. That is correct.

2 Q. And now, again, you're not making any comment
3 on Officer Porter at all. You're just assessing the
4 facts as they are presented, and then developing a theory
5 of what happened; correct?

6 A. Yes. Because medical examiners are kind of
7 like medical detectives. We put together the evidence --
8 or the material that is presented to us, whether -- in
9 this case it was witness statements with the examination
10 that we find when we do the autopsy.

11 Q. In -- in the process of that you made a
12 determination that at Stop 2 Mr. Gray was placed on the
13 floor of the transport wagon; correct?

14 A. According to the witness statements that's
15 where -- how he was placed.

16 Q. And, in fact, you said that was probably the
17 safest way for him to travel; correct?

18 A. Absolutely not.

19 Q. Well, it -- it -- you're saying that if he
20 remained on the floor the injury to his neck would not
21 have occurred; correct?

22 A. I didn't say that. It's not -- that's not
23 stated in my report.

24 Q. Do you remember when we met on July the 9th?
25 You thought it was offensive that a person would be laid

1 face down on the floor of a transport wagon; correct?

2 A. I thought it was a dangerous position for
3 somebody who had just been asking for an inhaler because
4 he couldn't breathe to be put face down on the floor of a
5 van.

6 And I also thought that -- it was a very narrow
7 space, the floors are dirty, and they're uncomfortable
8 because they're the raised metal grid like pattern. That
9 if somebody who had a -- was saying that they had a
10 breathing problem, and in that confined space, the thing
11 that they would do is get up. That's what I --

12 Q. Well, wait. Wait a second.

13 A. -- we were discussing. That's what we talked
14 about.

15 Q. You said what a person would do is get up?

16 A. An individual would --

17 Q. You're speculating on that.

18 A. That's a --

19 Q. 100 percent.

20 A. But that's what I was talking to you at our
21 conference. That's what I was saying. You -- you were
22 asking me a question about --

23 Q. I was.

24 A. -- what we talked about. So that's what I told
25 you.

1 Q. You have no physical evidence, no documentary
2 evidence that shows that he actually got up; correct?

3 A. That's correct.

4 Q. So he's placed in on his stomach. And one of
5 your concerns would be what's called compression
6 asphyxia; is that correct?

7 A. More positional asphyxia.

8 Q. Positional asphyxia.

9 A. Mmm-hmm.

10 Q. But you would --

11 A. Or --

12 Q. -- agree that if a person is talking that
13 they're breathing; correct?

14 A. Yes.

15 Q. So at Stop 2 he's breathing, and he's face down
16 in the wagon. And did you -- you actually went looking
17 for the wagon -- the van; right?

18 A. I -- yes. I actually saw two vans. But I did
19 see the van.

20 Q. Did you see -- and when you say the van, the
21 van that was actually used to transport Mr. Gray on April
22 the 12th of 2015; correct?

23 A. That is correct.

24 Q. So did you actually take any measurements?

25 A. I did.

1 Q. Do you know what the width of the floor space
2 is from what essentially would be the wheel well
3 covering, which is where bench is, to the dividing cage;
4 do you know what that -- how wide that was?

5 A. Yes.

6 Q. And how wide is that?

7 A. 19 inches.

8 Q. I'm sorry?

9 A. 19 inches.

10 Q. 19 inches.

11 Do you -- and so do you have the measurements
12 of the width of Mr. Gray from shoulder to shoulder?

13 A. No. Because when I saw him he was close to 50
14 lbs heavier than what he checked into because of all the
15 fluids. So any kind of measurement would be -- it would
16 be inaccurate to what his pre-hospital physique was.

17 Q. And --

18 A. But I can tell you that my shoulders at 17
19 inches.

20 Q. And Mr. Gray, based on your review of the
21 medical records from the University of Maryland Medical
22 System, wasn't a big man; correct? I mean, he weighed
23 130 --

24 A. 150 pounds when he went into the hospital was
25 what they weighted him. But that actually could include

1 the backboard and things like that.

2 Q. And he was 50 -- how many inches?

3 A. He was 5'9", I think.

4 Q. So 5'9", 150 some pounds. So based on your
5 investigation in this case, he actually did fit within
6 that 19 inch space though. It might be firm and tight,
7 but he did fit within that space; correct?

8 A. I -- he could have fit.

9 Q. I --

10 A. But I -- I did not see him in that position, so
11 I can't say. So --

12 Q. So then -- but at stop two he's breathing, and
13 there's no suggestion that -- from the information that
14 he has incurred any injury that would interfere with his
15 ability to use his limbs; is that correct?

16 A. That's correct.

17 Q. Then you got to stop -- what's called Stop 3.
18 This one causes you some concern; doesn't it?

19 A. The Mosher Street stop?

20 Q. Yes. Mmm-hmm. Didn't you express you had --
21 you had concerns about what might have happened?

22 A. Yes.

23 Q. Because based on your review of the information
24 -- and if you don't know, you don't know. But Officer
25 Porter isn't the person who would put Mr. Gray in the

1 wagon at Stop 1.

2 He wasn't the person who put in him the wagon
3 or removed him and put him in the wagon at Stop 2.

4 And the only person, to the best of your
5 knowledge, that's in the transport wagon at Stop 3 is
6 Officer Goodson; is that correct?

7 A. That is correct.

8 Q. And your concern is that at Mosher Street the
9 transport wagon comes to a stop. The ladies and
10 gentlemen of the jury have seen a videotape that actually
11 has come into evidence. It appears that Officer Goodson
12 stops the van. And the length of the video --, or the
13 part of the video that's relevant is approximately 17
14 seconds.

15 Were Officer Goodson -- actually, if this is
16 the -- the wagon, and the front of the wagon is -- did
17 you actually watch this video?

18 MS. BLEDSOE: Objection, Your Honor.

19 THE COURT: Overrule.

20 If?

21 THE WITNESS: I saw a still photograph of the -
22 - of Mr. Goodson on the -- behind the van. That's it.

23 BY MR. MURTHA:

24 Q. So -- but you never watched the video?

25 A. That -- I didn't have -- I did not get the

1 video.

2 Q. Did you ask to watch it?

3 A. Nope.

4 Q. Was it described to you that Officer Goodson,
5 if I use where Officer Porter is at the trial table is
6 the front of the van, he exits the van, walks around to
7 the back. But you can't see what occurs in the back;
8 correct?

9 A. Mmm-hmm. No.

10 Q. Were you familiar with the fact that there was
11 a video system that had been installed in the van that
12 was inoperable?

13 A. Yes.

14 Q. And so -- and, in fact, that inoperable video
15 system would have maybe allowed Officer Goodson to see on
16 a screen mounted on the dashboard what was -- what, if
17 anything, was going on in the back; do you know that?

18 A. No. But I can imagine that that's what it
19 would do.

20 Q. Based on Officer Goodson stopping at Stop 3,
21 you have no factual basis or information to believe,
22 other than speculation, that Mr. Gray had gotten up from
23 the position he was on the floor; is that correct?

24 A. That's correct.

25 Q. So we have Stop 2 he's on his stomach. Stop 3

1 there's literally no information available.

2 And then we get to Stop 4, which is Druid Hill
3 and Dolphin; is that correct?

4 A. Yes.

5 Q. And are you familiar with the fact -- well --
6 Officer Goodson stops the van, the wagon; correct?

7 A. Okay.

8 Q. Well, the van driver called for assistance and
9 pulled over. Those are the words you used. An officer
10 arrived. When the van door opened Mr. Gray was head
11 first on his stomach; correct?

12 A. Correct.

13 Q. So what was the position that Mr. Gray was in
14 at Stop 2?

15 A. It's actually -- it seems like it's the same
16 position all along.

17 Q. When you say it seems, it is. It's the same
18 position. He's on his stomach with his head facing the
19 front of the van; correct?

20 A. Correct.

21 Q. And he's on his stomach. He hasn't flipped
22 over. Because it's only 19 inches; correct? From wheel
23 well, bench, to the interior dividing wall; correct?

24 A. Correct.

25 Q. That would be, and you saw and observed the

1 size. I know not consistent with at the time of his
2 admission to the hospital because of the extra weight
3 related to the procedures. But is it conceivable that he
4 was in the same position because he couldn't move?

5 A. No. Because I -- well, I mean, it's -- if
6 that's -- it's speculation. I don't agree with that
7 because I think the injury that he sustained can only be
8 done -- can only be -- can only happen in certain manner
9 -- in certain ways.

10 Q. Well, and that's not the question I asked you.

11 A. Yeah. So no.

12 Q. What I --

13 A. So I don't -- I think -- I still think that he
14 may not have moved -- I mean, no one was there. There's
15 --

16 Q. Well, tell the ladies and gentlemen of the jury
17 --

18 MS. BLEDSOE: Objection, Your Honor.

19 THE COURT: Overruled. Overrule

20 BY MR. MURTHA:

21 Q. Tell the ladies and gentlemen of the jury --

22 MS. BLEDSOE: Objection.

23 BY MR. MURTHA:

24 Q. -- what it is between Stop 2, Stop 3 and Stop 4
25 that has evidence of value that was observed, that

1 someone saw, someone described, that says that Freddie
2 Gray was in some position other than face down on the
3 floor?

4 A. I cannot because -- I can only say that he went
5 in without a neck injury --

6 Q. That's not my question.

7 A. So --

8 Q. Answer the question.

9 A. All right. He was face down in the van with
10 his head facing the cabin. Whether he was exactly in the
11 same place, whether his feet were closer to the door or
12 not, I can't say because that's not reported.

13 Q. You have no -- now, science isn't based on
14 speculation; is it?

15 A. Some of it is; yes.

16 Q. That's dangerous then.

17 MS. BLEDSOE: Objection.

18 THE COURT: Overrule.

19 Once again, the testimony --

20 THE COURT: Overrule.

21 MR. MURTHA: Objection.

22 THE COURT: Next question.

23 MR. MURTHA: Yes, Your Honor.

24 BY MR. MURTHA:

25 Q. So the only information that you have, because

1 your opinion is -- and we're going to get to this because
2 it's in the report, your opinion is that something
3 happened to Mr. Gray between Stops 2 and Stop 4; is that
4 correct?

5 A. That is correct.

6 Q. And even though that's your opinion, you agree
7 with me, that you have no physical evidence, no
8 independent observations, no information whatsoever that
9 would suggest that Mr. Gray was in any other position at
10 Stop 2, Stop 3 and Stop 4, other than face down on the
11 floor facing the front of the van; correct?

12 A. That was the position he was in.

13 Q. At Stop 4, are you familiar with the fact that
14 Officer Porter was the officer that backed up Mr. -- or
15 Officer Goodson?

16 A. Yes.

17 Q. So Officer Porter is actually -- are you
18 familiar with the fact that he's not in the van, that
19 he's actually in a patrol car; correct?

20 A. Yes.

21 Q. And, in fact, he gets -- you may not know it,
22 but it's what's called a 10-11 for a back up, and he
23 arrives at Dolphin and Druid Hill, where Officer Goodson
24 has stopped the transport wagon, you're familiar with
25 that; correct?

1 A. Yes.

2 Q. And you write Mr. Gray allegedly asked for her,
3 and you say in here, saying he could breath, couldn't get
4 up, and needed a medic. You sort of put all those things
5 together.

6 A. I did.

7 Q. And the jury has heard what it's heard, so I'm
8 just going to use what you were considering.

9 A. Right.

10 Q. You would agree with me again that if a person
11 is actually talking they're breathing; correct?

12 A. That is correct.

13 Q. And at that point, are you familiar with the
14 fact -- well, did you ever ask to speak to Officer
15 Porter?

16 A. No, I did not. That's not something the
17 Medical Examiner's Office will do.

18 Q. So if you had any questions about what Mr. Gray
19 -- did you watch his entire recorded statement?

20 A. I did.

21 Q. So --

22 THE COURT: I'm sorry. I didn't hear your
23 answer.

24 THE WITNESS: I did.

25 THE COURT: Thank you.

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BY MR. MURTHA:

Q. So you're familiar with the fact that Officer Porter stands at the back of the wagon. And Officer Goodson opens the doors. And then -- because there's two sets of doors. In fact, the jurors are familiar with it. They've viewed the van. So there's an exterior door, and then there's an interior cage door. So at that point Officer Goodson is present --

THE COURT: Counsel, approach.

REDACTED

(Counsel and the defendant returned to the trial table, and the following ensued:)

BY MR. MURTHA:

Q. Based on -- whoops. Based on your review of Officer Porter's statement, you are aware of the fact

1 that Officer Porter's -- Mr. Gray says help. Officer
2 Porter says, what do you mean, help; do you -- do you
3 recall that?

4 A. Yes.

5 Q. And Mr. Gray says help me up; do you recall
6 that?

7 A. Actually, no.

8 Q. You don't.

9 A. I don't.

10 Q. Okay. You don't recall that.

11 A. No.

12 Q. Well -- but Officer Porter did help Mr. Gray
13 up; is that correct?

14 A. Yes.

15 Q. And he puts him on the bench?

16 A. Yes.

17 Q. Do you have any idea of the physical dimensions
18 of Officer Porter?

19 A. I think it would have been a really tight
20 squeeze in that van.

21 Q. Because --

22 MR. MURTHA: Officer Porter, would you stand up
23 please?

24 BY MR. MURTHA:

25 Q. He's bigger than Mr. Gray; isn't he?

1 A. Yes.

2 Q. And I'm going to guess, but he --

3 THE COURT: No, you're not.

4 MR. MURTHA: Okay. (Laughter.)

5 BY MR. MURTHA:

6 Q. Will you guess --

7 THE COURT: Nor will she.

8 MR. MURTHA: Okay.

9 BY MR. MURTHA:

10 Q. He's bigger than -- you said it would have been

11 a tight fit; correct? With both of them in there.

12 A. Yes.

13 Q. And you would agree that previously Mr. Gray

14 had been acting in a manner that was, I'm not going to

15 say violent, but he was acting out. He was physically

16 reacting to being placed in the van; correct?

17 A. He was active.

18 Q. And you he had acted to a degree where the van

19 actually shook; correct?

20 A. That was the witness statements.

21 Q. So Officer Porter helps him up, or if you're

22 aware, he -- you're aware that he places him on the

23 bench; correct?

24 A. Correct.

25 Q. And you're -- it's going to come to cross-

1 examination, you're aware that he didn't seatbelt him at
2 that time; correct?

3 A. That is correct.

4 Q. And you're not familiar with whether or not he
5 had any officer safety concerns about whether he might
6 get kicked in the face by Mr. Gray because he had been
7 acting violently --

8 MS. BLEDSOE: Again. Objection, Your Honor.

9 THE COURT: Sustained.

10 Counsel, do not testify in front of the jury.

11 Question is struck.

12 Ask a question.

13 MR. MURTHA: Yes, Your Honor. Yes, sir.

14 BY MR. MURTHA:

15 Q. Were you familiar with whether or not Officer
16 Porter had any safety concerns?

17 A. No.

18 Q. You didn't ask anybody to go ask him or follow
19 up; correct?

20 A. No. I -- that's not the kind of information
21 that we need -- that I need.

22 Q. But you did actually rely upon the general
23 order in regard to whether or not he should have, in your
24 mind, seatbelted him; correct?

25 A. There was the other part of the general orders

1 that was more important to my determination.

2 Q. So for your determination the seatbelting issue
3 wasn't of concern?

4 A. It was not the primary concern.

5 Q. Okay. So Officer Porter -- are you aware of
6 the fact that Officer Porter engages in a very limited
7 conversation with Mr. Gray where he asked him some
8 questions?

9 A. Based on Mr. Porter's statement; yes.

10 Q. So he asked him, like, how are we going to do -
11 - are you familiar with the fact that he says, how are we
12 going to do this, what do you need, do you need a medic?

13 MS. BLEDSOE: Objection.

14 THE COURT: Overrule.

15 THE WITNESS: What I was -- was that based on
16 my recollection of the recorded statement of Officer
17 Porter was that Mr. Gray said, help, I can't breathe.
18 And when Mr. Porter asked him to -- whether he could --
19 to get up, he says I can't move. And then Mr. Porter
20 asked do you need a medic. And Mr. Gray said -- replied,
21 yes.

22 Q. So just to make this clear --

23 A. Mmm-hmm.

24 Q. -- your recollection is that at Stop 4 Mr. Gray
25 communicates, based on your review of Officer Porter's

1 recorded statement, your recollection is that Mr. Gray
2 tells Officer Porter that he can't breathe?

3 A. Yes.

4 Q. That's your recollection?

5 A. Yes.

6 Q. Then Mr. -- excuse me, Officer Porter places
7 him on the seat, and then are familiar with what Officer
8 Porter does next?

9 A. No.

10 Q. Do you know who actually shut the doors?

11 A. No.

12 Q. Do you know who was driving the wagon?

13 A. Yes.

14 Q. And who was that?

15 A. Officer Goodson.

16 Q. And are you familiar with the fact that Officer
17 Porter then told Officer Goodson that he asked for medic,
18 he's not going to pass medical at Central Booking, we'll
19 have to take him to the hospital?

20 A. That was in the witness state -- Officer
21 Porter's statement; yes.

22 Q. Now, if -- so Officer Porter clearly, from your
23 -- based on your review of the recorded statement,
24 Officer Porter clearly indicated to Officer Goodson that
25 Mr. Gray needed to go to the hospital; correct?

1 A. Yes.

2 Q. So if Officer Goodson had followed the request
3 of Officer Porter, and had driven directly to the
4 hospital, then you wouldn't have considered this a
5 homicide; correct?

6 A. That is correct.

7 Q. The next stop is Stop 5. And that is at 1600
8 West Pennsylvania Avenue; is that correct, if you know?

9 A. North Avenue -- I haven't --

10 Q. I'm sorry. Excuse me. Yes. 1600 West North
11 Avenue.

12 A. Mmm-hmm.

13 Q. And again, do you know who the operator of the
14 wagon is at that point?

15 A. Officer Goodson.

16 Q. Do you know what, if anything, Officer Porter
17 did after Officer Goodson drove off with Mr. Gray?

18 A. According to his statement he responded to
19 another call.

20 Q. And was that call to provide backup to the same
21 place where Officer Goodson went?

22 A. That -- those details I did not -- I know that
23 they arrived in the same place.

24 Q. So they -- they end up arriving at 1600 West
25 North Avenue; is that correct?

1 A. Yes.

2 Q. And at that point they're -- it's there to
3 actually provide assistance to officers who are arresting
4 someone; is that correct?

5 A. That was my understand.

6 Q. And that other person is an individual by the
7 name of Donte Allen; is that correct?

8 A. That is what my understanding. Mmm-hmm.

9 Q. And did you ask to see or hear all the
10 statements of the officers that were present at Stop 5?

11 A. Not all of them, just the ones that were
12 involved in Mr. Gray's.

13 Q. Did you ever hear from Officer Gladhill -- or
14 when I say did you hear from Officer Gladhill did you
15 ever have any -- have an opportunity to see the recorded
16 statement of Officer Gladhill?

17 A. No.

18 Q. So if -- so you're not familiar with Officer
19 Gladhill's observations were of Mr. Gray at Stop 5;
20 correct?

21 A. Not through his recorded statement.

22 Q. Because, and I'm not being smart, but you
23 didn't see his recorded statement?

24 A. No.

25 Q. Who made the decision of what statements to

1 show you and what ones not to show you?

2 A. I received the officer's recorded statements
3 from the State's Attorney's Office.

4 Q. And Officer Porter just merely provided back up
5 at that location; is that correct?

6 A. I don't --

7 Q. If you know.

8 A. I don't know what his role was.

9 Q. Do you know if there was a supervisor on the
10 scene at Stop 5? Are you familiar with Sergeant Alicia
11 White?

12 A. Yes.

13 Q. Are you familiar with the fact that Officer
14 Porter told Sergeant White that Mr. Gray needed to go to
15 the hospital?

16 A. There was -- that was in Officer Porter's
17 statement.

18 Q. And there were observations that were provided
19 at that point -- your opinion is whatever happened
20 between Stops 2 and 4; correct?

21 A. Based on the witness statements and knowledge
22 of what the ultimate injury was, what his physical -- and
23 response would be to it.

24 Q. So your belief is that whatever happened,
25 happened before Stop 5; correct?

1 A. Yes.

2 Q. And you're familiar with the fact that -- are
3 you familiar with the fact that there's -- there are
4 statements -- do you didn't look at Officer Gladhill's
5 recorded statement. How about Officer Porter's?

6 A. Though -- I had the recorded statement, and
7 then a written -- I don't -- because you didn't sign it,
8 but it was a written, like, telephone conversation --

9 Q. But that was a telephone conversation with
10 Detective Teel that preceded the recorded statement; is
11 that correct?

12 A. I -- no. It was after, from what I understood.

13 Q. It was after; okay.

14 A. Yeah.

15 Q. So Stop 5 there were observations that Mr. Gray
16 is actually in a kneeling position; is that correct?

17 A. Yes.

18 Q. And his -- at this point his -- he's still
19 handcuffed; correct?

20 A. Yes.

21 Q. If you know.

22 And he's still shackled?

23 A. Correct.

24 Q. But he's kneeling. He's actually -- now, I'm
25 going down on my knees, and he has his hands behind his

1 back, and he's actually leaning against the bench though;
2 correct?

3 A. Yes.

4 Q. And you have information that he was actually
5 able to hold his head erect; correct?

6 A. That I actually found out later, but --

7 Q. But he was.

8 A. Because the observation that was made on all
9 the witness statements is that he was actually slumped
10 over. And what I was told by all the -- Baltimore City
11 Police on the day of the autopsy was that he was slumped
12 over.

13 Q. That's what you were told. But subsequently --

14 A. Mmm-hmm.

15 Q. -- it appeared that he wasn't slumped over, but
16 he was just leaning; is that correct? There was other
17 observations consistent with that; correct?

18 A. There was somebody who said that his -- that he
19 was -- that he was just leaning. That's fine.

20 Q. And -- but a person suffers a catastrophic
21 complete C4-C5 jumped facet with either a compression or
22 transection, you agree that they would lose the use --
23 wait, if it's complete, they would lose the use of their
24 limbs below C4 and C5; correct?

25 A. That is correct.

1 Q. So if a person is in a kneeling position, hands
2 behind their back, maybe even leaning -- I'm actually
3 using muscles that are below C4 and C5; correct?

4 A. Not necessarily.

5 Q. I'm not?

6 A. No. Because, I mean, that -- you knew how
7 tight that space is, so if you're just leaning -- I mean,
8 somebody who is paralyzed is going to be -- they -- okay.
9 So you put on the bench. The motion of the van tips him
10 onto the ground. This is again --

11 Q. Or speculation; right?

12 A. A reasonable explanation of what -- how to get
13 from step A to step B, based on the information.

14 So he doesn't need -- if somebody is paralyzed,
15 if you put them in a position or he's in a position,
16 he'll stay there until gravity is going to move him. And
17 he would still have muscular control of his neck and his
18 head. Shoulders -- even -- maybe even the tops of his
19 shoulders.

20 So no, it doesn't surprise me given the
21 constraints of that van that he could have been on the
22 bench, with an injury, and then end up in a kneeling
23 position with -- leaning.

24 Q. So the constraints of the van, for the purpose
25 of Stop 5, are important because it could have held him

1 up; correct?

2 A. Yes.

3 Q. So the constraints of the width of the space
4 between the wheel well, where the seat is, and the
5 interior wall, could constrain an individual from being
6 able to move also if they were lying on their stomach;
7 correct?

8 A. If they were paralyzed; yes.

9 Q. Well, wait a second. He could have also,
10 because you're saying the person would be constrained
11 because of the tightness of it. So if, again, we're
12 going back, you --

13 MS. BLEDSOE: Objection, Your Honor.

14 THE COURT: Overrule.

15 BY MR. MURTHA:

16 Q. You have no factual information to suggest that
17 Freddie Grey was anything but stuck between the wall and
18 the bench between Stops -- Stops 2 and 4; right? You
19 don't have any facts.

20 A. When I say constraints -- okay. If you're
21 paralyzed --

22 Q. Well, let me -- answer the question.

23 A. -- yeah, you're not going to be able to move.

24 MS. BLEDSOE: Objection.

25 THE COURT: Overruled.

1 Answer the question that is posed.

2 THE WITNESS: Go ahead. What was your
3 question?

4 BY MR. MURTHA:

5 Q. The question was you have no factual
6 information that you can tell the ladies and gentlemen of
7 the jury that Freddie Gray was anything but stuck between
8 the wall and the bench between Stops 2 and 4 because he
9 ended up --

10 THE COURT: Well, ask a question.

11 BY MR. MURTHA:

12 Q. Between Stops 2 and 4.

13 MR. MURTHA: Yes, Your Honor.

14 THE COURT: Sustained.

15 MS. BLEDSOE: Thank you.

16 THE COURT: Because I think I'm very clear, I
17 want you to ask questions.

18 And I'm very clear, I want you to answer the
19 questions.

20 I don't want banter back and forth between
21 either of you.

22 Have I made myself clear to you, ma'am?

23 THE WITNESS: Yes, Your Honor.

24 THE COURT: Have I made myself clear to you,
25 sir?

1 MR. MURTHA: Yes, Your Honor.

2 THE COURT: Please ask a question.

3 And please answer the question that he poses.

4 Ask a question.

5 MR. MURTHA: Yes, Your Honor.

6 BY MR. MURTHA:

7 Q. You have no other information that he was
8 anything but stuck; right?

9 A. Other than -- no.

10 Q. Okay.

11 A. All right. That's it.

12 Q. So Stop 5, Officer Porter doesn't really have
13 anything to do with that; do you know? Other than
14 telling Sergeant White --

15 MS. BLEDSOE: Objection, Your Honor.

16 THE COURT: Sustained.

17 BY MR. MURTHA:

18 Q. Are you familiar with, other than telling
19 Sergeant --

20 THE COURT: Sustained.

21 BY MR. MURTHA:

22 Q. What, if any, information do you have
23 concerning Officer Porter's involvement at Stop 5?

24 A. Other than questioning Mr. Gray, and asking how
25 -- asking questions.

1 Q. And --

2 A. Getting minimal responses.

3 Q. And telling Sergeant White anything, if you

4 know?

5 A. Saying that he needed medical attention.

6 Q. So --

7 A. That's -- Mmm-hmm.

8 Q. Would you agree that Officer --

9 A. That was -- again, that was in the recorded

10 statement.

11 Q. So Officer Porter, upon Mr. Gray asking medical

12 attention, conveys that to Officer Goodson at Stop 4;

13 correct?

14 A. Yes.

15 Q. Conveys it to Sergeant White at Stop 5;

16 correct?

17 A. Correct. In his recorded statement.

18 Q. Then they get to the Western District, which

19 you have identified and we've all adopted, as Stop 6.

20 A. Yes.

21 Q. And that is where Mr. Gray is unresponsive; is

22 that correct?

23 A. That is correct.

24 Q. And did you have an opportunity to review the

25 pre-hospital report that was prepared by the -- the EMT

1 A. No. But I had multiple people tell me what the
2 recording said.

3 Q. Well --

4 A. And they all agreed, depending on -- it didn't
5 what the source was, who was telling me, so I didn't feel
6 it was -- since it wasn't in the group of witness
7 statements that I received, I didn't feel it was
8 necessary to try to obtain that.

9 Q. Well, the last person to be in the physical
10 proximity with Freddie Gray from the time that he's in
11 the wagon --

12 A. Mmm-hmm.

13 Q. -- at Stop 5, at 1600 West North Avenue, and
14 between there and getting to the Western District on
15 Mosher Street, there was one person, other than Officer
16 Goodson, who was in the van, and who was that?

17 A. Mr. Allen.

18 Q. And you reviewed the statements of all the --
19 the recorded statements of all the officers; correct?

20 A. Correct.

21 Q. But you thought -- did anybody ever give you
22 some information about Donte Allen that made you choose
23 not to --

24 A. No.

25 Q. -- review the statement?

1 A. I first heard about it on the -- Mr. Allen's
2 statement, thought I didn't know it was Mr. Allen because
3 I didn't -- they didn't tell me his name, by -- on the
4 day of the autopsy because the police officers were --
5 told me about that.

6 I then heard about it in the subsequent --
7 well, the next two, three -- three times that I met with
8 the police.

9 And then I heard about it when I -- and it was
10 repeated to me in exactly the same of what Mr. Allen had
11 said in reference to the sounds that he heard from
12 Freddie Gray's compartment by the State's Attorney's
13 Office.

14 So it was at this point, I mean, I heard it
15 from at least five or six different people, and they told
16 me it in exactly the same words. So I didn't feel that
17 it was necessary for me to actually sit down and watch
18 Mr. Allen say exactly the same thing.

19 Q. Although he was the last -- the only person,
20 other than Officer Goodson, who --

21 A. Right. And he did not see him.

22 Q. He heard him.

23 A. He heard him.

24 Q. Now --

25 A. Supposedly -- mmm-hmm.

1 Q. Used another sensory perception to assess what
2 he thought went on; right?

3 A. The witness statement -- yeah. This is --

4 Q. Excuse me? You said no he didn't use
5 another --

6 A. No, no, no. I was going to go on and explain,
7 but then I decided --

8 THE COURT: No, you aren't.

9 THE WITNESS: -- I wasn't --

10 THE COURT: No, you weren't.

11 THE WITNESS: I learned.

12 BY MR. MURTHA:

13 Q. Donte -- so you do know the substance of Donte
14 Allen's statement; right?

15 A. Yes, I do.

16 Q. Donte Allen actually said that he heard what
17 appeared to be Mr. Grey striking his head as if he wanted
18 to hurt himself; correct?

19 A. Yes.

20 Q. Four or five times he -- he heard this -- do
21 you know if he demonstrated that to the police? Did they
22 explain that to you when you spoke to them?

23 A. No.

24 Q. Would it have been important if a witness
25 demonstrated to the police what it is that he thought he

1 heard?

2 A. Well, I can tell you when I was in the van --

3 THE COURT: That's not a response, ma'am.

4 THE WITNESS: Okay. All right. Actually, no,
5 I didn't feel that it was necessary.

6 BY MR. MURTHA:

7 Q. And that's because you had concluded that
8 whatever happened, happened between Stops 2 and 4. And
9 whatever Mr. Allen heard could have been something that
10 affected your decision; right?

11 A. I'm sorry? Could you repeat that?

12 Q. Well, you decided that, although there's not
13 any physical evidence --

14 THE COURT: Question.

15 MS. BLEDSOE: Objection, Your Honor.

16 THE COURT: I got it. I got it.

17 Question.

18 Mr. Murtha, look at me and listen. Do not
19 testify. Ask question of the witness.

20 MR. MURTHA: Yes, Your Honor.

21 THE COURT: And both sides, when you object,
22 simply object. I don't want to hear anything else unless
23 I ask for something else.

24 MR. MURTHA: Yes, Your Honor.

25 THE COURT: Thank you.

1 You may continue.

2 MR. MURTHA: Thank you.

3 BY MR. MURTHA:

4 Q. You had decided that whatever injury was
5 sustained by Mr. Gray was sustained between Stops 2 and
6 4.

7 A. Yes.

8 Q. And whatever Donte Allen said would not effect
9 your decision.

10 A. Correct.

11 Q. Because you had determined that Mr. Gray has
12 sustained, as you would describe it, a high energy injury
13 most often caused by abrupt deceleration of a rotated
14 head and a hyperflex neck, such as seen in shallow water
15 diving incidents; correct?

16 A. That's what I said.

17 Q. And how -- the timing of the injury you have
18 concluded occurred between Stops 2 and 4; correct?

19 A. Yes.

20 Q. And your belief is speculative; correct?

21 A. It's based on the witness statements and the
22 medical evidence.

23 Q. What --

24 A. So it is not based on -- on direct observation.

25 Q. Who provided information that Freddie Gray was

1 in any position other than laying on his stomach between
2 seats -- Stops 2 and 4?

3 MS. BLEDSOE: Objection.

4 THE COURT: Overrule.

5 THE WITNESS: There's no evidence. There was
6 no witness in the van that could say anything other than
7 at those three stops he was in -- in -- face down with
8 his head facing the van.

9 BY MR. MURTHA:

10 Q. But you've developed this theory about how it
11 happened; right?

12 A. It is -- it is a -- it doesn't --

13 Q. It's a theory.

14 A. A theory based on the witness statements of Mr.
15 Gray's behavior and the medical evidence of his injury.

16 Q. So you believe that somehow between Stops 2 and
17 4, I mean, this is -- there's --

18 THE COURT: Question.

19 MR. MURTHA: Yes, Your Honor.

20 BY MR. MURTHA:

21 Q. You say that possibly before the third stop;
22 correct? Possibly.

23 A. Correct.

24 Q. When a video showed the driver stopping,
25 stepping out, and looking in the back of van; correct?

1 A. That's what it says.

2 Q. So your belief the mechanism of the injury is
3 you say, this is literally what you're opinion is; right?
4 "Due to the size of the van, because he was not belted
5 with the safety belts that were present in the van, when
6 Mr. Gray decided to get out of the position the police
7 placed him in, he would have been hunched over. And
8 because of the obstructed view of the roadway, would have
9 had trouble anticipating the van's motion. As a result,
10 he was at risk for an unsupported fall during
11 acceleration or deceleration of the van."

12 Do you have any evidence that there was rapid
13 acceleration or deceleration of the van other than your
14 belief that it just happened?

15 A. I have no evidence because there were no
16 witnesses. As I said, my opinion as to how Mr. Gray was
17 injured is based on the witness statements of his
18 condition at each stop where it was assessed, and the
19 injuries that I found at autopsy, and the injuries that
20 were documented in the hospital.

21 Q. So -- but your assessment is a theory; correct?

22 A. It is based -- there is no witnesses, so --

23 Q. It's a theory.

24 A. -- it is a theory. However, I think it --

25 THE COURT: Ma'am. Ma'am. There is no

1 however, just --

2 THE WITNESS: Okay.

3 THE COURT: He'll ask you another question. I
4 promise he'll ask you another question.

5 Answer the question.

6 BY MR. MURTHA:

7 Q. So you've actually sort of made up this thing
8 that you're calling evidence.

9 A. I didn't call it evidence.

10 Q. Well, what you have concluded is based on what
11 you believe happened; right?

12 A. No. It's -- well, I do --

13 Q. Well, you --

14 A. I do believe it. I do believe it.

15 Q. Then that's all I was asking.

16 A. Okay.

17 Q. You believe somehow that Mr. Gray, who's lying
18 face down with handcuffs behind his back and shackles,
19 face down in the van, somehow gets up and because the
20 compartment isn't that big he's hunched over; right?
21 He's hunched over, and he has his shackles on, and he's --
22 -- he's handcuffed; right?

23 So he's sort of -- and I'm hunched over, I have
24 my hands behind my back, and my leg are -- my feet are
25 apart. So he would have no ability to completely move or

1 hold on to something; correct?

2 A. That's correct.

3 Q. And your belief is that there was some rapid
4 deceleration or acceleration that would have caused his
5 body to jerk in response; correct?

6 A. Yes.

7 Q. He might have fallen backwards, but when he --
8 in order for this injury to occur, there has to be a
9 turning of the neck to the left; correct?

10 A. It's slightly rotated, yes.

11 Q. Slightly rotated with the chin touching the
12 chest typically; correct?

13 A. No. Not necessarily.

14 Q. Or could it just be that you're believing that
15 he was then thrust into the wall of the van?

16 A. Depending -- it depends on where his position
17 was --

18 Q. But you don't know.

19 A. If -- if he was -- yeah. If he stood up, which
20 is possible given the constraints of the van. I mean, I
21 could do it if I was on the floor. It would have been
22 possible.

23 Q. Did you try it?

24 A. The floor was pretty dirty.

25 Q. Well, wait a second.

1 A. Because --

2 Q. Wait a second. You said you could do it.

3 A. Yes, I could.

4 Q. You went and looked at the van; right?

5 A. Yes.

6 Q. Well, why didn't you ask the police officers

7 that were there, who were completely cooperative, do me a

8 favor, can you put flex cuffs on me. Can you put

9 shackles on me. And can you clean the floor first.

10 A. Yeah.

11 Q. Or at least put something down there. And let

12 me replicate what it is that I believe happened; did you

13 do that?

14 A. No.

15 Q. Did you ask for anybody to replicate it?

16 A. No. Because I looked at the inside of the van,

17 and I knew it was possible.

18 Q. Are you a biomechanical engineer?

19 A. No. But --

20 Q. Eeh. That's all I'm asking.

21 A. Okay.

22 Q. Because that's a different science than

23 forensic pathology; correct?

24 A. It has connections with forensic pathology.

25 They often use our findings in their analysis.

1 Q. So somehow you believe that Mr. Gray gets up --
2 did you ever ask if there were any software programs
3 installed in the vehicle that would produce -- like a
4 black box?

5 A. I did.

6 Q. Was there one?

7 A. No. Not the -- not which would tell
8 acceleration or deceleration or anything like that.

9 Q. Did you ever ask, because you had access to
10 everything, that -- because you said you saw the one
11 video at Mosher Street; right?

12 A. I saw the still photograph from that.

13 Q. Do you know, in your experience in preparing
14 this case, whether or not the police officers recorded
15 whatever they could as far as from beginning to end, as
16 far as the travel or the route of the wagon?

17 A. Recorded how?

18 Q. Where, when?

19 A. By what means? I'm not sure I understand what
20 you mean by how they recorded.

21 Q. Well, did you ever ask, you know, I know there
22 was no black box, but was there another way you could
23 calculate it? Like could you access the CCTV, the Close
24 Circuit Television, and then time how long it took to get
25 from the first stop to the Western District?

1 MS. BLEDSOE: Objection, Your Honor.

2 THE COURT: Sustained.

3 THE WITNESS: I know --

4 THE COURT: Well, ma'am. Ma'am, when I say
5 sustained you don't --

6 THE WITNESS: Oh, I'm sorry.

7 THE COURT: I know it's a shock here, but just
8 -- next one.

9 BY MR. MURTHA:

10 Q. So there was no mechanism that was either
11 available or created to determine whether the vehicle
12 rapid accelerated or decelerated; correct?

13 A. That is correct.

14 Q. So your belief that the vehicle rapidly
15 accelerated or decelerated is based on your conclusion
16 that that's what happened -- had to happen; right?

17 A. Based on the assessment of what kind of energy
18 impact that fracture -- this -- Mr. Gray's injury
19 occurred, and based on his -- the assessment -- excuse
20 me, at every stop and the medical findings that I found
21 at autopsy, and in the hospital.

22 Q. And then, despite the fact that he got up,
23 twisted around, in absolute --

24 THE COURT: Sustained.

25 BY MR. MURTHA:

1 Q. He had no control of his body is what you're
2 saying?

3 MS. BLEDSOE: Objection, Your Honor.

4 THE COURT: Sustained.

5 BY MR. MURTHA:

6 Q. He landed in the same position that he started
7 in?

8 MS. BLEDSOE: Objection.

9 THE COURT: Ask a question.

10 BY MR. MURTHA:

11 Q. Did he, based on your -- on the evidence in
12 this case, did he land in the same position that he
13 started in at Stop 2, when he landed on the floor at Stop
14 4 after your speculative conclusion?

15 A. He was found face down on the van with his head
16 facing the front of the van.

17 Q. And you would agree that he was able to talk to
18 Officer Porter; correct?

19 A. He was able to respond to questions.

20 Q. And you watched Officer Porter's recorded
21 statement.

22 A. I did.

23 Q. Officer Porter said he assisted him up;
24 correct?

25 A. No. He actually said he put -- he picked him

1 up.

2 Q. Well, you --

3 A. I know, I have it in my report as being
4 assisted. But I --

5 Q. Well --

6 A. Assisted to me is the same as being picked up.

7 Q. So for the purpose of your testimony when
8 someone says assist it equals picked up.

9 A. I think the -- the -- the mechanism was the
10 same. It does not inter -- it does not assume that Mr.
11 Gray was helping. That definitely was not implied in the
12 assist. Is that Mr. -- that Officer Porter was assisting
13 Mr. Gray.

14 A. That's -- that's your conclusion, but you never
15 followed up and asked any questions, like, hey, Officer
16 Porter, was he able to, like, use his legs to stabilize
17 himself to get on the bench?

18 A. The constraints on the Assistant Medical
19 Examiners in a case that is suspicious -- a police
20 involved and a suspicious death is that we do -- we don't
21 interview those that are involved.

22 We interact with the detectives that are
23 assigned to investigate.

24 Q. And they were completely cooperative; correct?

25 A. They were cooperative; yes.

1 Q. So you could have -- now, was Detective Corey
2 also whom you met with; right?

3 A. Yes.

4 Q. At that time Major, now Colonel Brandford;
5 correct; if you recall?

6 A. Yes.

7 Q. Detective Teel also; correct?

8 A. Correct.

9 Q. Was it Sergeant Gaines, was he another one who
10 you met with?

11 A. No.

12 Q. If you recall?

13 A. No.

14 Q. So you could have -- but since they were
15 completely cooperative, if you had a question, hmm, did
16 he assist or did he pick up, could you have asked the
17 detective to go back and ask Officer Porter to be more
18 specific in regard to his physical interaction with Mr.
19 Gray at Stop 4?

20 A. I probably could have.

21 (Phone noise.)

22 BY MR. MURTHA:

23 Q. And you didn't?

24 A. Nope.

25 THE COURT: Ladies and gentlemen, let me be

1 very, very clear. I have stated, my sheriffs have
2 stated, do not have any electronic devices on whatsoever.
3 I do not want to have to clear this courtroom, ladies and
4 gentlemen. But, again, if you can't follow the rules,
5 you will be escorted out, anyone and everyone. No one is
6 excluded from this Court's ruling.

7 I am sorry, Mr. Murtha. You may continue.

8 MR. MURTHA: Thank you, Your Honor.

9 BY MR. MURTHA:

10 Q. So in your report, you actually write: If the
11 motion, acceleration/deceleration, of the van was abrupt
12 enough, given the confined space in the vehicle, it is
13 possible -- it is possible that this neck injury occurred
14 with him in a partially reclining position or as he was
15 changing his position in the floor of the van; correct?

16 A. That's what it says.

17 Q. So there's a if; correct? If. If the motion,
18 deceleration, of the van occurred, that would have to
19 happen in order for your conclusion to be correct; right?

20 A. That is true.

21 Q. And it is possible but not conclusive that the
22 neck injury occurred in the manner that you have
23 described; correct?

24 A. That is correct.

25 Q. You then indicate that the reported kicking

1 heard after the fourth stop would have not been possible,
2 however a seizure resulting from decreased oxygen
3 supplied to the brain may have caused the banging noise
4 reportedly heard from Mr. Gray's compartment; is that
5 correct?

6 A. That's in my report, yes.

7 Q. You, even though you might take exception to
8 this, if it was a complete compression, pinch, a
9 transection below C4, the limbs would not be working;
10 right?

11 A. That's true.

12 Q. I mean, it's almost like simplifying it for my
13 own understanding, if there's electric, if there's a
14 switch on the wall, but someone has cut the cord, you
15 flip on the switch, no message is going to the rest of
16 the body; correct?

17 A. It's actually a very good analogy.

18 Q. So a person who may be -- who may have suffered
19 the consequence of a complete transection or compression,
20 their lower extremities, their limbs, would not receive
21 the message to kick?

22 A. That's correct. That's why I said that he
23 would not have been able to hear kicking.

24 Q. So it is your suggestion that Donte Allen
25 didn't hear what he said he heard?

1 A. Well, he wasn't in the same compartment with
2 Mr. Gray. He may have heard banging, and that does not
3 mean that he did not have a seizure. Because just
4 because he can't move his arms and his legs, he could
5 still move his head.

6 And in a seizure, everything -- I mean, the
7 typical view of a seizure is everything is moving. But
8 if it's paralyzed, the things that will move will move --

9 Q. Would be his head?

10 A. Will be his head. Head and neck.

11 Q. Because you've already testified above C4 and
12 C5 would move; right?

13 A. Above C4.

14 Q. C4. Excuse me.

15 A. It's between C5 and C4. C4 and above.

16 Q. And so your opinion though isn't that it was
17 purely as a result of not being seatbelted though;
18 correct?

19 MS. BLEDSOE: Objection, Your Honor.

20 THE COURT: Sustained.

21 BY MR. MURTHA:

22 Q. Well, you actually say that safety equipment
23 was available, but not used; correct?

24 A. Yes.

25 Q. And part of what you base your opinion on is

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REDACTED

(Whereupon, counsel and the defendant returned to the trial table, and the following ensued:)

BY MS. BLEDSOE:

Q. Dr. Allan, do you remember Mr. Murtha talking to you about the issues of officer safety and the wagon and the seatbelt? Just a general discussion about those three (inaudible at 3:51:53 p.m. for one word)?

A. Officer safety wasn't mentioned.

Q. Okay. Do you recall Mr. Murtha asking you about -- do you recall Mr. Murtha asking you about Mr. Porter -- Mr. Gray being combative?

A. No.

Q. Do you recall Mr. Murtha asking you questions about an officer being kicked in the van and how small the van was?

A. No.

Q. Do you recall Mr. Murtha talking to you about Mr. Allen?

A. Yes.

Q. Donte Allen, do you remember that?

A. Yes.

1 Q. Okay. And do you -- can you explain to the
2 jury why you discounted Donte Allen's statements?

3 A. I didn't discount that he didn't hear anything.
4 I discounted that because as I -- it was relayed to me on
5 numerous occasions that Mr. -- that Mr. Allen heard Mr.
6 Gray kicking, and that I discounted because he would not
7 have been able to kick with a high cervical, with a C4-C5
8 injury.

9 Q. And how did --

10 A. But --

11 Q. Go ahead. Sorry. I didn't mean to interrupt
12 you.

13 A. But he would be able to -- it was possible for
14 him to move his head in a seizure, and that can -- and I
15 -- from my being sitting inside the van, and not -- and
16 the walls between the two compartments are kind of like
17 almost hollow metal, and that just even a light tap could
18 be -- because I had someone sitting on the other side --
19 could be heard easily so.

20 Q. And did you also have an opportunity to look
21 into the van and see that you couldn't see between the
22 two compartments?

23 A. Yes.

24 Q. So when Mr. Allen says he heard or he saw or he
25 believes Mr. Gray was banging his head, why would you

1 discount that statement?

2 A. It was -- I don't think I discounted the
3 banging of his head. It was more the -- I had heard the
4 kicking noise or banging noise. So it was not from
5 kicking.

6 Q. And having reviewed and looked at the van, can
7 you see in between the two divide -- in between the two
8 compartments?

9 A. No.

10 Q. And did you -- do you need to consult with the
11 Baltimore Police Department to determine whether a
12 seatbelt is used or not used?

13 A. No.

14 Q. Okay. Didn't you, in fact, just review Officer
15 Porter's statement and hear that a seatbelt wasn't used
16 at Druid Hill and Dolphin?

17 A. There was no mention of a seatbelt being used
18 or actually not used in any of the officers' statements.

19 Q. And is it your job as a medical examiner to
20 determine who a defendant is in the case?

21 A. No.

22 Q. And you indicated from questioning from Mr.
23 Murtha that you had reviewed the medical reports from the
24 Maryland Medical Center for Mr. Gray and the EMS report;
25 is that correct?

1 patients now, is that it's basically on how they're
2 acting and how they're moving or if they can't move.

3 If they say, they can't move, you ask why can't
4 you move. And if he said -- because Mr. Gray may not
5 have known what the -- what happened to him himself. So
6 you have to -- you kind of elicit that kind of
7 information just by asking.

8 And because you're not going to pull out a pin
9 and say can you feel here, can you feel here, can you
10 feel there, which is what a neurological examination
11 would do for determining a level of damage.

12 But if somebody is saying, I mean --

13 Q. So asking questions about --

14 A. Asking questions --

15 Q. -- that person's condition?

16 A. Yes.

17 Q. Now, do you recall Mr. Murtha talking to you or
18 asking you questions about your conclusions about how the
19 injury occurred between or whether the injury occurred
20 between the second and the fourth stop?

21 A. Yes.

22 Q. Okay. Now, what physical symptoms, as
23 described by Officer Porter, led you to that conclusion?

24 A. I need help. I can't breathe. I can't move.
25 And responding yes to do I need a medic.

1 Q. And did you have an opportunity to -- were you
2 aware that Officer Goodson had called in and said I need
3 to check this prisoner out; I need assistance?

4 MR. MURTHA: Objection.

5 THE COURT: Sustained.

6 BY MS. BLEDSOE:

7 Q. Did you have an opportunity as part of your
8 investigation to listen to any of the dispatch?

9 MR. MURTHA: Objection.

10 THE COURT: Sustained. Beyond the scope.

11 BY MS. BLEDSOE:

12 Q. Were there other factors that led to your
13 conclusion that the injury happened between the second
14 and the fourth stop, other than what you've already
15 expressed, which was I can't breathe. I can't move.
16 Help me. And in response to do I need a medic, yes.
17 Were there other factors?

18 A. (Inaudible at 4:00:03 p.m.) that he was rocking
19 the van at the second stop. And the fourth stop, he was
20 in the condition that I just described. And I was told
21 that by both Baltimore -- I was told by the Baltimore
22 City Police that the driver of the van had called
23 dispatch that they -- he needed assistance to check
24 out -- check this guy out is the way it was told to me.

25 Q. Now do you recall Mr. Murtha talking to you --

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REDACTED

(Whereupon, counsel and the defendant returned to the trial table, and the following ensued:)

THE COURT: Based on Mr. Murtha's objection, the Court will strike the testimony of the witness after Ms. Bledsoe's question. That means you do not take it into consideration in your deliberations.

Next question?

BY MS. BLEDSOE:

Q. Based on Mr. -- Officer Porter's statement, were you able to determine whether or not Mr. Gray was in the same position from the fifth stop to the sixth stop?

1 A. No, I couldn't. Actually, I --

2 Q. You don't recall?

3 A. Not on Mr. -- on Officer Porter's statement.

4 Q. Do you recall Mr. Murtha talking to you about
5 and he actually did a demonstration of Mr. Gray kneeling?

6 A. Yes.

7 Q. Do you recall that?

8 A. Yes.

9 Q. Okay. And do you recall reviewing Officer
10 Porter's statement specifically in regard to how Officer
11 Porter described Mr. Gray kneeling?

12 A. Yes.

13 Q. Okay. And isn't it fair to say that -- can you
14 describe how Officer Porter described Mr. Gray kneeling?

15 A. That he was kneeling, facing front of the front
16 of the van and slumped over towards his right side over
17 the seat, by the seat.

18 Q. Okay. With his hands behind his back?

19 A. Yes.

20 Q. Okay. And given the injury that Mr. Gray
21 suffered, is that position medically possible?

22 A. Yes.

23 Q. Okay. And don't you recall Officer Porter
24 doing a demonstration in the video where he is down -- or
25 he is showing that Mr. Gray is actually leaning over and

1 slumped on the bench?

2 A. Yes.

3 Q. And that came from Officer Porter's statement;
4 is that right?

5 A. Yes.

6 Q. So when Mr. Murtha keeps asking you about
7 speculation, the speculation is based on a number of
8 things; isn't that right?

9 MR. MURTHA: Objection.

10 THE COURT: Sustained.

11 BY MS. BLEDSOE:

12 Q. What do you base your findings on?

13 A. It's based on the investigation --

14 Q. All right. Stop right there. The
15 investigation, does that include Officer Porter's
16 statement?

17 A. Yes.

18 Q. Okay. Does that include other officers'
19 statements?

20 A. Yes.

21 Q. All right. Does that include information that
22 the Baltimore Police Department told you?

23 A. Yes.

24 Q. Does that include information from Detective
25 Teal?

1 A. Yes.

2 Q. Does that include information from --

3 MR. MURTHA: Objection.

4 THE COURT: Sustained.

5 BY MS. BLEDSOE:

6 Q. Other than just the investigation, what else?

7 A. The autopsy findings.

8 Q. The autopsy findings, okay. How about video?

9 A. Cap -- well, captured videos. That's part, to

10 me, is all the investigation part of it.

11 Q. Okay.

12 A. Lump that all together. The medical findings

13 from autopsy, as well the medical records from his stay,

14 Mr. Gray's stay, in the hospital.

15 Q. And that's what you based your conclusions on?

16 A. Yes.

17 MS. BLEDSOE: Thank you very much.

18 THE COURT: Any re --

19 MR. MURTHA: Yes, Your Honor.

20 THE COURT: Any recross?

21 MR. MURTHA: Yes. May I have the State's

22 exhibit that was just on, please.

23 THE COURT: 67?

24 MS. BLEDSOE: Yes.

25 MR. MURTHA: Thank you.