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STATE OF MARYLAND

v.

CAESAR GOODSON

\* \* \* \* \*

CRIMINAL DIVISION

IN THE  
CIRCUIT COURT FOR  
BALTIMORE CITY  
CASE No. 115141032

**STATE'S MOTION IN LIMINE TO PROHIBIT THE TESTIMONY OF CHARLES G. RUSSELL, OR IN THE ALTERNATIVE, LIMIT HIS TESTIMONY TO ACCIDENT RECONSTRUCTION**

Now comes the State of Maryland, by and through Marilyn J. Mosby, the State's Attorney for Baltimore City; Michael Schatzow, Chief Deputy State's Attorney for Baltimore City; Janice L. Bledsoe, Deputy State's Attorney for Baltimore City; and John Butler, Assistant State's Attorney for Baltimore City; and pursuant to Rule 4-252(d) respectfully moves this Court *in limine* to issue a pretrial order to prohibit the testimony of Charles G. Russell or, in the alternative, to limit his testimony to the field of accident reconstruction, his area of presumed expertise. In support of this Motion, the State submits the following:

1. The Defendant has informed the State that he proposes to call Charles G. Russell as an expert in the area of Accident Reconstruction.
2. Maryland Rule 5-702 governs the admissibility of expert testimony and provides:

Expert testimony may be admitted, in the form of an opinion or otherwise, if the court determines that the testimony will assist the trier of fact to understand the evidence or to determine a fact at issue. In making that determination, the court shall determine (1) whether the witness is qualified as an expert by knowledge, skill, experience, training, or education, (2) the appropriateness of the expert testimony on a particular subject, and (3) whether a sufficient factual basis exists to support the expert testimony.

Additionally, as the Court of Special Appeals has explained,

If a proffered expert opinion, properly challenged, fails the Rule 5-702 test in any respect, it does not come into evidence at all. It does not come halfway in, with less than full efficacy. Under Rule 5-702, the evidence is either in or out.

*Terumo Med. Corp. v. Greenway*, 171 Md. App. 617, 624 (2006). Further, “if an expert's opinion testimony is based upon a premise which is shown to be unsound or faulty, the judge should strike the testimony.” *Franch v. Ankney*, 341 Md. 350, 361 (1996).

3. To date, the Defendant has provided the State with the opinions, credentials, and curriculum vitae of Charles G. Russell, including his employment history and prior court appearances in which he was designated as an expert in the field of accident reconstruction. However, the solitary reference within these materials to the field of biomechanics is a class attended by Mr. Russell entitled “Occupant Kinematics & Biomechanics.” Stated another way, according to his own credentials Mr. Russell has a limited educational background in the field of biomechanics, no previous work experience in the field of biomechanics, nor has he ever previously been qualified as an expert in the field of biomechanics.

4. While Maryland’s appellate courts have yet to differentiate the fields of biomechanics and accident reconstruction, the Sixth Circuit, in *Smelser v. Norfolk S. Ry.*, 105 F.3d 299, 305 (1997), explains that biomechanics “apply the principles in mechanics to the facts of a specific accident and provide information about the forces generated in that accident, explain how the body moves in response to those forces, and thus determine what types of injuries would result from the forces generated.” The Twelfth Circuit, in a similar fashion, defines accident reconstruction as “[a] mathematical recreation of a wreck [which] uses the speeds and weights of the vehicles and factors in the coefficient of friction of the relevant surfaces and vehicles to create a model that integrates the physical evidence into a mathematical equation that explains the wreck.” *Brown v. State*, 303 S.W.3d 310, 320 (2009). In *Withrow v. Spears*, 967 F. Supp. 2d 982, 992 (D. Del.

2013), the United States District Court excluded testimony by a “licensed professional engineer, accredited in four states . . . [who] served as an expert witness in civil and criminal courts . . . [with] over 40 years of experience . . . in accident reconstruction,” because said testimony involved hand placement and body movements, an area outside the scope of accident reconstruction. In explaining the difference between the two fields, the Court explained that biomechanical testimony involves, “apply[ing] the principles in mechanics to the facts of a specific accident . . . and the forces generated in that accident” and explaining “how the body moves in response to those forces [to] determine what types of injuries would result from the forces generated.” *Id.* Furthermore, “accident reconstruction testimony [entails] facts involved in the sequence of events immediately preceding an accident, such as those relating to vehicle mass; direction of skid marks; dimensions of vehicles involved; dents, breaks and paint transfers of vehicles; road surface textures; and physics principles of mechanics such as inertia, velocity, coefficients of friction, and operating characteristics of vehicles.” *Id.* (internal quotation marks omitted).

5. On December 7, 2015, the Defendant disclosed Dr. Michael Woodhouse as an expert in the field of biomechanical engineering. Along with a two-paragraph opinion and curriculum vitae, the Defendant disclosed multiple graphs displaying “Police Van Accident plots” and eight (8) videos, each depicting a different angle of a singular event in which a handcuffed, leg-shackled, figure falls backwards while striking the rear wall of what appears to be a replication of the interior of a Baltimore City police van. The State received no detailed report.

6. On December 7, 2015, as referenced above, the Defendant furnished the State with Mr. Russell's opinions and outlined his intent to testify to the following statements:

a. "[W]ithout some action or actions on Mr. Gray's part, his injury could not have resulted from being transported in the back of the van."

b. "Mr. Gray could not have sustained his injury while in a prone position on the floor of the van with his head facing forward, as officers positioned him while the van was stopped at North Mount Street and Baker Street."

c. "Mr. Gray could not have sustained his injury while in a seated position on the bench in the van, as officers positioned him originally upon his arrest, and again at the corner of Dolphin Street and Druid Hill Park Avenue, unless Mr. Gray himself took some action such as banging his own head against the outer wall of the van, the metal divider separating the driver's cab, or the door at the rear."

d. "[P]lacing a seat belt on Mr. Gray in the seated position could have had no effect on Mr. Gray's injury."

e. "[A]n arrestee, with wrists and ankles restrained, could easily unfasten a seat belt fixed on his lap."

f. "[E]ven if the seat belt remained fastened over an arrestee's lap, an arrestee could still bang his head violently against the wall, divider, or door of the van."

g. "[A]n arrestee (whether he was initially seat belted and removed the seat belt, or was not belted) could stand inside the van in a hunched position."

h. “[H]ad Mr. Gray chosen to rise to a hunched position on his feet, even braking under normal traffic circumstances could have caused him to fall and sustain injury.”

7. On December 17, 2015, the State requested, pursuant to page nine (9) of the Defendant’s December 7, 2015, Discovery of Disclosures, “the opportunity, on Monday, Tuesday, or Wednesday of next week, ‘to inspect and copy all written reports and statements made in connection with the action by [each of your experts], including the results of any physical or mental examination, scientific test, experiment, or comparison.’” On December 23, 2015, after receiving no response to this request, the State reminded the Defendant of the December 17 inquiry, to which the Defendant replied that the requested material would be available the following day. On December 24, 2015, the State received a disclosure from the Defendant which included four (4) pictures, four (4) documents, and three (3) videos, all which related to a specific instance in which a police officer was allegedly bitten while placing an arrestee in a police wagon. No documents disclosed on December 24, 2015, made reference to accident reconstruction or biomechanical engineering. To date, in spite of two good-faith requests, the State has received no report, no equations, no speed calculations, no vehicle mass calculations, no skid mark measurements, no estimated physics principles of mechanics, nor any written reports or mathematical conclusions which would allow the State to prepare a proper defense for the testimony of Charles G. Russell as a presumed expert in the field accident reconstruction. Additionally, the State also has received no documentation which would remotely allow proper preparation for the testimony of Mr.

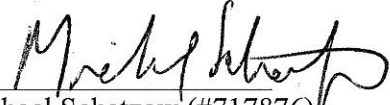
Russell as an expert in the field of biomechanics, an area which he has little to no recognized experience.

8. To date, the Defendant has provided the State with no report authored by Dr. Woodhouse (the sole biomechanical engineer disclosed by the Defense) which Mr. Russell could have reasonably relied upon to make the above quoted statements, none of which rely upon expertise in the field of accident reconstruction.

Wherefore, the State asks this Court to issue a pretrial order to prohibit the testimony of Charles G. Russell or, in the alternative, to limit his testimony to the field of accident reconstruction, his area of presumed expertise.

Respectfully submitted,

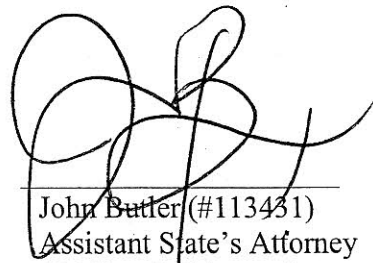
Marilyn J. Mosby



Michael Schatzow (#717876)  
Chief Deputy State's Attorney  
120 East Baltimore Street  
The SunTrust Bank Building  
Baltimore, Maryland 21202  
(443) 984-6011 (telephone)  
(443) 984-6256 (facsimile)  
[mschatzow@stattorney.org](mailto:mschatzow@stattorney.org)



Janice L. Bledsoe (#68776)  
Deputy State's Attorney  
120 East Baltimore Street  
The SunTrust Bank Building  
Baltimore, Maryland 21202  
(443) 984-6012 (telephone)  
(443) 984-6256 (facsimile)  
[jbledsoe@stattorney.org](mailto:jbledsoe@stattorney.org)



John Butler (#113431)  
Assistant State's Attorney  
120 East Baltimore Street  
The SunTrust Bank Building  
Baltimore, Maryland 21202  
(443) 984-6145 (telephone)  
(443) 984-6252 (facsimile)  
[jbutler@statorney.org](mailto:jbutler@statorney.org)

**CERTIFICATE OF SERVICE**

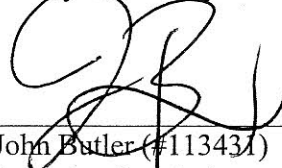
I hereby certify that on this 5<sup>th</sup> day of January, 2015, a copy of the State's Motion *in Limine* to Prohibit The Testimony of Charles G. Russell, or in the Alternative, Limit His Testimony to Accident Reconstruction, was mailed and e-mailed to:

Matthew B. Fraling, III  
Sean Malone  
Harris Jones & Malone, LLC  
2423 Maryland Avenue, Suite 100  
Baltimore, MD 21218  
(410) 366-1500  
[matthew.fraling@mdlobbyist.com](mailto:matthew.fraling@mdlobbyist.com)  
Attorneys for Officer Caesar Goodson

Andrew Jay Graham  
Amy E. Askew  
Kramon & Graham, P.A.  
1 South Street, Suite 2600  
Baltimore, MD 21202  
410-752-6030  
[AGraham@kg-law.com](mailto:AGraham@kg-law.com)  
Attorney for Officer Caesar Goodson

Respectfully submitted,

Marilyn J. Mosby



John Butler (#113431)  
Assistant State's Attorney  
120 East Baltimore Street  
The SunTrust Bank Building  
Baltimore, Maryland 21202  
(443) 984-6145 (telephone)  
(443) 984-6252 (facsimile)  
[jbutler@stattorney.org](mailto:jbutler@stattorney.org)