

RECEIVED FOR RECORD
CIRCUIT COURT FOR
BALTIMORE CITY

STATE OF MARYLAND 2016 MAY 27 P*2 36

IN THE
CIRCUIT COURT FOR
BALTIMORE CITY
CASE No. 115141032

v.

CRIMINAL DIVISION

CAESAR GOODSON

* * * * *

**STATE'S RESPONSE TO DEFENDANT'S MOTION IN LIMINE TO PRECLUDE THE
ADMISSION OF THE AUTOPSY REPORT OF CAROL H. ALLAN, M.D. IN
UNREDACTED FORM**

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 Matthew Pillion, Assistant State's Attorney for Baltimore City; and responds herein to the Defendant's Motion in Limine to Preclude the Admission of the Autopsy Report of Carol H. Allan, M.D., in Unredacted Form.

The Defendant's Motion seeks to preclude the admission of the Medical Examiner's Autopsy report unless the "Opinion" section of the report is redacted. As a basis for this Motion, the Defendant spends 14 pages outlining various tenets of the Confrontation Clause and different ways in which Dr. Allan's report would purportedly violate the Confrontation Clause because the report contains supposedly testimonial hearsay in the form of witness statements relied upon in developing the autopsy report. Remarkably, in all of these 14 pages, the Defendant never once addresses the governing rule and controlling authority on this subject—Rule 5-703(b)—nor ever discusses the fact that none of the challenged "hearsay" witness statements in Dr. Allan's report are being offered for the truth of the matters asserted therein. In other words, the Defendant ignores the glaring problem with his argument—the challenged witness statements are not hearsay and so do not present Confrontation Clause problems.

To concisely correct the Defendant's misapprehension of the relevant law, Rule 5-801(c) defines "hearsay" as "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." Though hearsay is generally inadmissible, Rule 5-703 provides:

(a) **In general.** 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.

(b) **Disclosure to jury.** If determined to be trustworthy, necessary to illuminate testimony, and unprivileged, facts or data reasonably relied upon by an expert pursuant to section (a) may, in the discretion of the court, be disclosed to the jury even if those facts and data are not admissible in evidence. Upon request, the court shall instruct the jury to use those facts and data only for the purpose of evaluating the validity and probative value of the expert's opinion or inference.

(c) **Right to challenge expert.** This Rule does not limit the right of an opposing party to cross-examine an expert witness or to test the basis of the expert's opinion or inference.

Regarding the Defendant's Confrontation Clause worries, the Court of Appeals in *Cooper v. State*, 434 Md. 209, 233 (2013), succinctly described that "the right of confrontation is implicated only when two conditions are met: the challenged out-of-court statement or evidence must be presented for its truth and the challenged out-of-court statement or evidence must be 'testimonial.'"

To similarly correct the Defendant's ostensible misunderstanding of the relevant facts that will be applied to these legal principles, Dr. Allan's report will not be admitted into evidence with the witness statements contained therein being offered as true accounts by persons who never testified. Rather, her report would be admitted into evidence with the witness statements therein being offered as facts upon which Dr. Allan reasonably relied in formulating her opinion. Once the report is admitted into evidence, the jury could be instructed that they must use the

witness statements only for the purpose of evaluating the validity and probative value of Dr. Allan's opinion. Additionally, the Defendant will have the opportunity to cross-examine Dr. Allan about anything on which she relied.¹

With these clarifications established, the State might justifiably expect that the Defendant would withdraw his Motion in favor of allowing settled law to operate as usual. If the Defendant maintains his Motion, the State asks that the Court deny it for the simple reasons outlined herein. Rule 5-703(b) plainly permits out-of-court statements, such as the challenged witness statements in Dr. Allan's report, to be disclosed to the jury for the limited purpose of helping to illuminate and evaluate Dr. Allan's expert opinion. The State does not intend to offer any witness statements in Dr. Allan's report for the truth of the matters those statements assert. As such, those statements would not constitute hearsay as defined by Rule 5-801 and, therefore, those statements also would not offend the Confrontation Clause as they would not satisfy *Cooper's* first implicating condition.

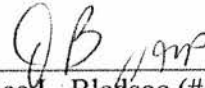
Wherefore, the State asks that this Court deny the Defendant's Motion in Limine to Preclude the Admission of the Autopsy Report of Carol H. Allan, M.D., in Unredacted Form.

Respectfully submitted,

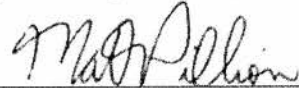
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¹ The State notes that this is the same procedure that was used in the *Porter* trial.



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CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of May, 2016, a copy of the State's Response to the Defendant's Motion in Limine to Preclude the Admission of the Autopsy Report of Carol H. Allan, M.D., in Unredacted Form was mailed and e-mailed to:

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