

RECEIVED FOR RECORD
DISTRICT COURT FOR
BALTIMORE CITY

2016 JUL 15 A 11: 53

STATE OF MARYLAND,

Plaintiff,

v.

GARRETT MILLER

Defendant.

* IN THE
CRIMINAL DIVISION *
* CIRCUIT COURT
*
* FOR
* BALTIMORE CITY
*
* Case No. 115141034

2016 JUL 15 A 11: 53
CRIMINAL DIVISION

RECEIVED FOR RECORD
DISTRICT COURT FOR
BALTIMORE CITY

* * * * *

**ADMINISTRATIVE DISTRICT COURT COMMISSIONER
LINDA LEWIS' MOTION TO QUASH SUBPOENA
AND FOR PROTECTIVE ORDER**

Administrative District Court Commissioner Linda Lewis, through her undersigned counsel, pursuant to Rule 4-266(c), moves to quash the subpoena directed to her and for a protective order, for the following reasons:

1. Defendant, Garrett Miller, has caused a subpoena to be issued compelling Administrative District Court Commissioner Linda Lewis, District Court of Maryland for Baltimore City, to personally appear and testify at Defendant's criminal trial scheduled for July 27, 2016, at 9:30 a.m. (Exhibit 1).

2. The case in which the subpoena is issued involves a criminal case in which the Defendant, a Baltimore City police officer, is charged in connection with the arrest of Freddie Grey, Jr. Baltimore City police officers Alicia White, Caesar Goodson, Jr., William Porter, Edward Nero and Brian Rice are also charged in connection with Mr. Grey's arrest.

3. The connection between the criminal matter that is the subject of this trial

and Commissioner Lewis derives from the exercise of her judicial functions; Commissioner Lewis issued Edward Nero and Alicia White's statement of charges and arrest warrants. (Exhibit 2); (Exhibit 3).

4. In determining if an employee of the court has performed a judicial act, the court uses a functional analysis in considering "whether [the act] is a function normally performed by a judge" and "[the parties] dealt with the judge in his [or her] judicial capacity," *Parker v. State*, 337 Md. 271, 290 (1995) (quoting *Stump v. Sparkman*, 435 U.S. 349, 356-64 (1978)), or whether the act performed by court personnel is "integral to the judicial process." *Briscoe v. LaHue*, 460 U.S. 325, 335 (1983).

5. Court commissioners are judicial officers and, therefore, integral to the judicial process. Md. Rule 4-102(f) ("Judicial Officer" means a judge or District Court commissioner.") The Court of Appeals has held that "it is beyond question that Commissioners of the District Court of Maryland are judicial officers in name and in fact. The Maryland Rules so designate them. ... Their duties are those which may also be exercised by District Court Judges. They are, in the true sense of the term, 'judicial officers,' and they perform judicial functions." *State v Smith*, 305 Md. 489, 517 (1986). By statute, "[a] commissioner shall receive applications and determine probable cause for the issuance of charging documents," Md. Code Ann. Cts. & Jud. Proc. ("CJP") § 2-607(c)(1), "warrant[s], or criminal summons" CJP § 2-607(c)(2), and "set bond ... or release ... [an individual] on personal recognizance." *Id.* Rule 4-211(b)(1) provides that "a judicial officer may file a statement of charges in the District Court against a defendant

who has not been arrested upon written application containing an affidavit showing probable cause that the defendant has committed the offense charged.” Additionally, Rule 2-608 permits district court commissioners to issue a statement of charges against law enforcement officers after the investigation of the alleged offense by the State’s Attorney. The determination of probable cause, the issuance of warrants and charging documents, and determining pre-trial release are quintessential judicial acts performed by court commissioners, who are judicial officers. *See Davis v. DiPino*, 337 Md. 642, 652 (1995) (recognizing that a district court commissioner is “entitled to absolute judicial immunity from civil liability” for his actions as a judicial officer in issuing arrest warrant).

6. The subpoena must be quashed, and a protective order issued because Commissioner Lewis is entitled to absolute judicial immunity for actions taken in exercising her judicial functions. *Parker v. State*, 337 Md. 271 (1995). *See also D’Aoust v. Diamond*, 424 Md. 549, 598 (2012) (individual entitled to absolute judicial immunity if “the act performed was by a judicial officer” and “the act was a judicial act”). “Absolute immunity is designed to free the *judicial process* from the harassment and intimidation associated with litigation.” *Gill v. Ripley*, 352 Md. 754, 769 (1999) (citation omitted) (emphasis in original).

A district court commissioner, therefore, cannot be compelled to testify concerning any aspect of her judicial decision making process including her mental processes or the reasons that motivated her in carrying out her official duties. *See, e.g., Grant v. Shalala*, 989 F.2d 1332, 1344 (3d Cir. 1993) (“It has long been recognized that attempts to probe

the thought and decision making processes of judges and administrators are generally improper.”); *United States v. Roebuck*, 271 F. Supp. 2d 712 (D.V.I. 2003) (citing *United States v. Morgan*, 313 U.S. 409 (1941)); *Robinson v. Commissioner of Internal Revenue*, 70 F.3d 34, 38 (5th Cir. 1995); *State v. Sims*, 725 N.W.2d 175 (Neb. 2006). In short, court commissioners, like judges, have no obligation to testify about matters that “probe into or compromise the mental processes employed in formulating [a] judgment.” *Standard Packaging Corp. v. Curwood, Inc.*, 365 F. Supp. 134 (N.D. Ill. 1973). Whatever testimony Commissioner Lewis can offer clearly flows from the exercise of her judicial functions and is, therefore, not the proper subject of a subpoena.

7. Rule 4-266 provides that “the court may enter an order which justice requires to protect the person from annoyance, embarrassment, oppression, or undue burden or expense, including . . . that the subpoena be quashed.” Compelling the appearance of Commissioner Lewis in this case would inflict the very sort of “annoyance” and “undue burden or expense” that the limited criminal discovery rules and absolute judicial immunity are intended to prevent. *Gill*, 352 Md. at 769; Md. Rule 4-266(c). Such compelled testimony would be not only an annoyance, and burden to Commissioner Lewis personally, but also a disruption and inconvenience to the commissioner’s office that must accommodate Commissioner Lewis’ absence, as she is the Administrative Commissioner for the District Court of Maryland for Baltimore City.

8. Because compelling a court commissioner to testify falls squarely within this directive, the subpoena compelling Commissioner Lewis to appear should be quashed and

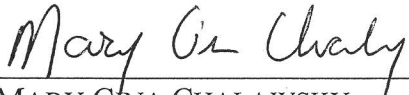
a protective order should issue preventing the compelled appearance and testimony at this or any trial.

9. Alternatively, if the subpoena compelling Commissioner Lewis to appear is not quashed, a protective order should issue limiting the scope of Commissioner Lewis' testimony. Md. Rule 4-266(c)(3) ("the court, for good cause shown, may enter an order . . . [t]hat certain matters not be inquired into or that the scope of examination or inspection be limited to certain matters").

WHEREFORE, for these reasons, Administrative District Court Commissioner Linda Lewis respectfully requests that this Court quash the subpoena and issue a protective order.

Respectfully submitted,

BRIAN E. FROSH
Attorney General of Maryland



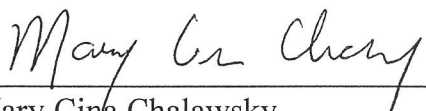
MARY CINA CHALAWSKY
Assistant Attorney General
Courts & Judicial Affairs Division
200 St. Paul Place
20th Floor
Baltimore, Maryland 21202
(410) 576-6388
(410) 576-6393 (fax)
mchalawsky@oag.state.md.us

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this July 15, 2016, a copy of the foregoing was served electronically, and by mailing a copy, U.S. Mail, first class, postage prepaid, to:

Catherine Flynn, Esq.
Brandon R. Mead, Esq.
Mead, Flynn & Gray, PA
One North Charles Street
Suite 2470
Baltimore, MD 21201
*Attorneys for Defendant,
Garrett Miller*

Michael Schatzow, A.S.A.
Janice L. Bledsoe, A.S.A.
Office of the State's Attorney for Baltimore City
120 E. Baltimore Street, 10th Floor
Baltimore, MD 21202
Attorneys for State



Mary Cina Chalawsky
Assistant Attorney General

EXHIBIT 1



CIRCUIT COURT FOR BALTIMORE CITY
 100 N. Calvert Street, Baltimore, Maryland 21202
 Phone: (410) 333-3722 Maryland Relay call: 711

Case No. 115141034

STATE OF MARYLAND
 or

Plaintiff

TO: Commissioner Linda Lewis

Name

500 North Calvert Street

Address

Address 2

Baltimore, Maryland 21202

City, County, State, Zip

vs.

Garrett Miller

Defendant

Issue Date: 03/22/2016

Service Deadline: 60 days after Issue Date.

SUBPOENA

You are hereby compelled to appear at a court proceeding deposition at the following location:

Circuit Court for Baltimore City - 111 N. Calvert Street Rm. 234

On July 27, 2016

Date

at 9:30

Time

a.m. or p.m.

Address of court or other location
 Baltimore, Maryland 21202

City, State, Zip

To testify in the above case, and/or

To produce the following documents, items, and information, not privileged: _____

To produce, permit inspection and copying of the following documents or other tangible items: _____

Garrett Miller

Requested By

Catherine Flynn

Name

(410) 727-6400 or (410) 440-0462

Phone

requested issuance of this subpoena. Questions should be referred to:

1 North Charles Street, Suite 2470

Address

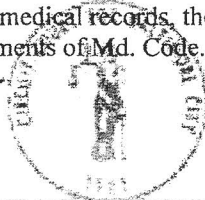
Baltimore, Maryland 21201

City, State, Zip

Special Message: Please contact counsel to confirm the exact date and time that your testimony will be needed.

If this subpoena compels the production of financial information, or information derived from financial records, the requestor of this subpoena hereby certifies having taken all necessary steps to comply with the requirements of Md. Code Ann., Fin. Inst. §1-304 and any other applicable law.

If this subpoena compels the production of medical records, the requestor of this subpoena hereby certifies having taken all necessary steps to comply with the requirements of Md. Code Ann., Health-Gen. §4-306 and any other applicable law.



Lavinia G. Alexander, Clerk
 Circuit Court for Baltimore City

NOTICE:

- YOU ARE LIABLE TO BODY ATTACHMENT AND/OR FINE FOR FAILURE TO OBEY THIS SUBPOENA.
- This subpoena is effective for the date and time stated and any subsequent dates as directed by the court.
- If this subpoena is for attendance at a deposition and the party served is an organization, notice is hereby given that the organization must designate one or more persons who will testify on its behalf, pursuant to Rule 2-412(d).
- Serving or attempting to serve a subpoena more than 60 days after the date of issuance is prohibited.

RETURN OF SERVICE

certify that I delivered the original of this Subpoena to the following person(s): _____

on the following date: _____ by the following method (specified as required by Rule 2-126): _____

Signature

Printed Name

EXHIBIT 2



DISTRICT COURT OF MARYLAND FOR Baltimore City

Located at 5800 Wabash Avenue, Baltimore, Maryland 21215



Case No. 4B02294450

STATE OF MARYLAND VS. NERO, EDWARD MICHAEL



CC#: 7150400000

SID:

LID:

DL#:



Charge | Statute | Arrest

ASSAULT-SEC DEGREE | CR 3 203 | MISCONDUCT IN OFFICE | CL |

Charge | Statute | Arrest

ASSAULT-SEC DEGREE | CR 3 203 | MISCONDUCT IN OFFICE | CL | FALSE IMPRISONMENT | CL |

ARREST WARRANT ON CHARGING DOCUMENT - Warrant No. D140689043

STATE OF MARYLAND, Baltimore City

TO ANY PEACE OFFICER, Greetings:



YOU ARE ORDERED to arrest and bring before a judicial officer the above-named Defendant as soon as practicable and without unnecessary delay. If a judicial officer is not readily available, this Warrant shall authorize the prisoner's detention until compliance is had with Rule 4-212 and the arresting officer is authorized and required to comply with Rule 4-212.

IF THE DEFENDANT IS NOT IN CUSTODY FOR ANOTHER OFFENSE,

Initial appearance is to be held in county in which Warrant was issued.

IF THE DEFENDANT IS IN CUSTODY FOR ANOTHER OFFENSE, this Warrant is to be lodged as a

detainer for the continued detention of the Defendant for the offense charged in the charging document.

When the Defendant is served with a copy of the charging document and Warrant, the Defendant shall be taken before a judicial officer of the District Court.

Date: 05/01/2015 Time: 8:53 AM Judge/Commissioner: [Signature] ID: 1243

Given to: BALTIMORE CITY SHERIFF'S DEPT

RETURN OF SERVICE

I certify that at 1:31 PM on 5/1/15 at CENTRAL BOOKING INTAKE

CENTER, I executed this Arrest Warrant by arresting the Defendant and delivered a copy of the Statement of Charges to the Defendant.

I left a copy of the Warrant and Charging Document as a detainer for the continued detention of the Defendant at:

Facility: CENTRAL BOOKING INTAKE CENTER

Location: 300 E. MADISON ST. BALTO MD 21202

Signature & Title of Peace Officer: [Signature] SERGEANT

Printed Name of Officer: E. SANTIAGO

Agency, Sub-Agency, I.D.: 22, 24 #0161

Date: 5/1/15

Tracking No: 141001528894

ARREST WARRANT ON CHARGING DOCUMENT

SAD



DISTRICT COURT OF MARYLAND FOR Baltimore City

Located at 5800 Wabash Avenue, Baltimore, Maryland 21215



Case No. 4B02294450

STATE OF MARYLAND VS. NERO, EDWARD MICHAEL

COMPLAINANT:
COGEN, MAJOR SAM
100 N. CALVERT STREET
BALTIMORE, MD 21202

CC#: 7150400000
LID:

SID:
DL#:



STATEMENT OF CHARGES

UPON THE FACTS CONTAINED IN THE APPLICATION OF COGEN, MAJOR SAM IT IS FORMALLY CHARGED THAT NERO, EDWARD MICHAEL at the dates, times and locations specified below:

NUM	CHG/CIT	STATUTE	PENALTY	DESCRIPTION OF THE CHARGE
001	1 1415	CR 3 203	10 Y &/or \$2,500.00	ASSAULT-SEC DEGREE On or About 04/12/2015 - 04/12/2015 at 8:45AM 1700 BLOCK OF N. MOUNT STREET BALTIMORE, MARYLAND ...did assault Freddie Gray, Jr. in the second degree in violation of CR 3-203, contrary to the form of the act of the assembly in such case made and provided and against the peace, government, and dignity of the state. Against the Peace, Government, and Dignity of the State.
002	1 1415	CR 3 203	10 Y &/or \$2,500.00	ASSAULT-SEC DEGREE On or About 04/12/2015 - 04/12/2015 at 8:45AM 1600-1700 BLOCKS OF N. MOUNT STREET BALTIMORE, MARYLAND ...did assault FREDDIE GRAY, JR. in the second degree in violation of CR 3-203, contrary to the form of the act of the assembly in such case made and provided and against the peace, government, and dignity of the state. Against the Peace, Government, and Dignity of the State.
003	2 0645	CL		MISCONDUCT IN OFFICE On or About 04/12/2015 - 04/12/2015 at 8:45AM 1700 BLOCK OF PRESBURY STREET BALTIMORE, MARYLAND ...That Edward Michael Nero, a public officer, while acting under color of his office, corruptly did an unlawful act and corruptly failed to do an act required by the duties of his office and corruptly did a lawful act in violation of the common law of Maryland. Against the Peace, Government, and Dignity of the State.
004	2 0645	CL		MISCONDUCT IN OFFICE On or About 04/12/2015 - 04/12/2015 at 8:45AM 1600-1700 BLOCKS OF N. MOUNT STREET BALTIMORE, MARYLAND ...That Edward Michael Nero, a public officer, while acting under color of his office, corruptly did an unlawful act and corruptly failed to do an act required by the duties of his office and corruptly did a lawful act in violation of the common law of Maryland. Against the Peace, Government, and Dignity of the State.
005	1 0042	CL		FALSE IMPRISONMENT On or About 04/12/2015 - 04/12/2015 at 8:45AM 1700 BLOCK OF PRESBURY STREET BALTIMORE, MARYLAND ...did unlawfully and intentionally detain Freddie Gray, Jr. , in violation of the Common Law. Against the Peace, Government, and Dignity of the State.

Date : 05/01/2015 Time : 8:49 AM
Tracking No. 141001528894

Judicial Officer:  1243



DISTRICT COURT OF MARYLAND FOR Baltimore City, Wabash Ave.

(City/County)

LOCATED AT (COURT ADDRESS)
5800 Wabash Ave
Baltimore, MD 21215-3330

DC Case No: 4B02294450

RELATED CASES:



COMPLAINANT DEFENDANT

Cogen, Maj. Sam
Printed Name
100 N. Calvert Street
Number and Street Address
Baltimore, MD 21202
410-396-1155
Telephone
Baltimore City Sheriff's Office #0073
City, State, and Zip Code Telephone
Agency, sub-agency, and I.D.# (Officer Only)

Nero, Edward Michael
Printed Name
Number and Street Address
City, State, and Zip Code Telephone
CC#

DEFENDANT'S DESCRIPTION: Driver's License#
Hair Eyes Complexion Other ID

APPLICATION FOR STATEMENT OF CHARGES

Page 1 of 5

I, the undersigned, apply for statement of charges and a summons or warrant which may lead to the arrest of the above named Defendant because on or about April 12, 2015 at (See Below) Date Place

the above named Defendant
On April 12, 2015, between 8:45 and 9:15 a.m., near the corner of North Avenue and Mount Street, Lieutenant Brian Rice of the Baltimore Police Department (BPD), while on bike patrol with Officers Garrett Miller and Edward Nero, made eye contact with Mr. Freddie Carlos Gray, Jr. (DOB 8-16-1989). Having made eye contact, Mr. Gray subsequently ran from Lt. Rice. Lt. Rice then dispatched over a departmental radio that he was involved in a foot pursuit, at which time bike patrol Officers Miller and Nero also began to pursue Mr. Gray. (continued)

(Continued on attached 4 pages) (DC/CR 1A)

I solemnly affirm under the penalties of perjury that the contents of this Application are true to the best of my knowledge, information and belief.

May 1, 2015 Date Officer's Signature

I have read or had read to me and I understand the Notice on the back of this form.

May 1, 2015 Date Applicant's Signature

Subscribed and sworn to before me this 1st day of May 2015
Time: 8:30 AM Judge/Commissioner Andre Lewis I.D. 1243

I understand that a charging document will be issued and that I must appear for trial on at when notified by the Clerk, at the Court location shown at the top of this form.

I have advised applicant of shielding right. Applicant declines shielding.

I declined to issue a charging document because of lack of probable cause.

5-1-15 Date

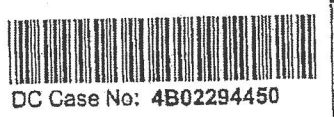
Andre Lewis Commissioner I.D.

Tr.# 141001528894



DISTRICT COURT OF MARYLAND FOR Baltimore City, Wabash Ave. (City / County)

LOCATED AT (COURT ADDRESS)
5800 Wabash Ave.
Baltimore, MD 21215-3330



DEFENDANT'S NAME (LAST, FIRST, M.I.)
Nero, Edward Michael

APPLICATION FOR STATEMENT OF CHARGES (CONTINUED) Page 2 of 5

Having come in contact with the pursuing officers, Mr. Gray surrendered to Officers Miller and Nero in the vicinity of the 1700 block of Presbury Street. Officers Miller and Nero then handcuffed Mr. Gray and moved him to a location a few feet away from his surrendering location. Mr. Gray was then placed in a prone position with his arms handcuffed behind his back. It was at this time that Mr. Gray indicated that he could not breathe and requested an inhaler to no avail. Officers Miller and Nero then placed Mr. Gray in a seated position and subsequently found a knife clipped to the inside of his pants pocket. The blade of the knife was folded into the handle. The knife was not a switchblade knife and is lawful under Maryland law. These officers subsequently removed the knife and placed it on the sidewalk. Mr. Gray was then placed back down on his stomach, at which time Mr. Gray began to flail his legs and scream as Officer Miller placed Mr. Gray in a restraining technique known as a "leg lace" while Officer Nero physically held him down against his will until a BPD wagon arrived to transport Mr. Gray. Lt. Rice, Officer Miller and Officer Nero failed to establish probable cause for Mr. Gray's arrest as no crime had been committed by Mr. Gray. Accordingly, Lt. Rice, Officer Miller, and Officer Nero illegally arrested Mr. Gray. Upon arrival of the transport wagon, driven by Officer Ceasar Goodson, Lt. Rice, Officer Nero, and Officer Miller loaded Mr. Gray into the wagon and at no point was he secured by a seat belt while in the wagon, contrary to a BPD General Order. Lt. Rice then directed the BPD wagon to stop at Baker Street. At Baker Street, Lt. Rice, Officer Nero and Officer Miller removed Mr. Gray from the wagon, placed flex cuffs on his wrists, placed leg shackles on his ankles, and completed required paperwork. Officer Miller, Officer Nero and Lt. Rice then

05/01/15

Date

Applicant's Signature



DISTRICT COURT OF MARYLAND FOR Baltimore City, Wabash Ave. (City / County)

LOCATED AT (COURT ADDRESS)
5800 Wabash Ave.
Baltimore, MD 21215-3330

DISTRICT COURT
CASE NUMBER

DEFENDANT'S NAME (LAST, FIRST, M.I.)
Nero, Edward Michael

APPLICATION FOR STATEMENT OF CHARGES (CONTINUED) Page 3 of 5
loaded Mr. Gray back into the wagon, placing him on his stomach, head first onto the floor of the wagon. Once again, Mr. Gray was not secured by a seatbelt in the wagon, contrary to a BPD General Order. Lt. Rice then directed Officer Goodson to transport Mr. Gray to the Central Booking and Intake Facility. Following transport from Baker Street, Mr. Gray suffered a severe and critical neck injury as a result of being handcuffed, shackled by his feet, and unrestrained inside of the BPD wagon. From Baker Street, Officer Goodson proceeded to the vicinity of Mosher Street and Fremont Avenue, where he subsequently parked the wagon and proceeded to the back of the wagon in order to observe Mr. Gray. Despite stopping for the purpose of checking on Mr. Gray's condition, at no point did he seek, nor did he render, any medical assistance for Mr. Gray. Officer Goodson returned to his driver's seat and proceeded toward the Central Booking and Intake Facility, with Mr. Gray still unsecured by a seat belt, contrary to a BPD General Order. Several blocks later, Officer Goodson called into dispatch that he needed to check on the status of his prisoner and requested additional units at Dolphin Street and Druid Hill Avenue. Officer William Porter arrived on the scene near Dolphin Street and Druid Hill Avenue. Both Officer Goodson and Officer Porter proceeded to the back of the wagon to check on the status of Mr. Gray's condition. Mr. Gray requested "help" and indicated that he could not breathe. Officer Porter asked Mr. Gray if he needed a medic, at which time, Mr. Gray indicated at least twice that he was in need of a medic. Officer Porter then physically assisted Mr. Gray from the floor of the van to the bench. However, despite Mr. Gray's appeal for a medic, both officers assessed Mr. Gray's

05/01/15
Date

[Signature]
Applicant's Signature



DISTRICT COURT OF MARYLAND FOR Baltimore City, Wabash Ave. (City / County)

LOCATED AT (COURT ADDRESS)
5800 Wabash Ave.
Baltimore, MD 21215-3330

DC Case No: 4B02294450

DEFENDANT'S NAME (LAST, FIRST, M I)
Nero, Edward Michael

APPLICATION FOR STATEMENT OF CHARGES (CONTINUED) Page 4 of 5

condition and at no point did either of them restrain Mr. Gray, per BPD General Order, nor did they render or request medical assistance.

While discussing the transportation of Mr. Gray for medical attention, a request for additional units was made for an arrest at 1600 W. North Avenue. Officer Porter left the vicinity of Dolphin Street and Druid Hill Avenue to assist in the arrest of another prisoner at North Avenue. Despite Mr. Gray's obvious and recognized need for medical assistance, Officer Goodson, in a grossly negligent manner chose to respond to the 1600 block of W. North Avenue, with Mr. Gray still unsecured by a seat belt in the wagon, without rendering to or summoning medical assistance for Mr. Gray

Officer Goodson arrived at North Avenue to transport the individual arrested at the location of North and Pennsylvania Avenues, at which time he was again met by Officers Nero, Miller, Porter, and Lt. Rice. Once the wagon arrived, Officer Goodson walked to the back of the wagon and again opened the doors to the wagon to make observations of Mr. Gray. Sgt. Alicia White, Officer Porter, and Officer Goodson observed Mr. Gray unresponsive on the floor of the wagon. Sgt. White, who was responsible for investigating two citizen complaints pertaining to Mr. Gray's illegal arrest, spoke to the back of Mr. Gray's head. When he did not respond, she did nothing further despite the fact that she was advised that he needed a medic. She made no effort to look, assess or determine his condition. Despite Mr. Gray's seriously deteriorating medical condition, no medical assistance was rendered to or summonsed for Mr. Gray at that time by any officer.

After completing the North Avenue arrest and loading the additional prisoner into

05/01/15
Date

Applicant's Signature



DISTRICT COURT OF MARYLAND FOR

Baltimore

(City/County)

LOCATED AT (COURT ADDRESS)

5800 Wabash Av
Balto, MD 21215



DC Case No: 4B02294450

DEFENDANT'S NAME (LAST, FIRST, M.I.)

Nero, Edward Michael

APPLICATION FOR STATEMENT OF CHARGES (CONTINUED) Page 5 of 5

the opposite side of the wagon containing Mr. Gray, Officer Goodson then proceeded to the Western District Police Station, where contrary to the BPD General Order, he again failed to restrain Mr. Gray in the wagon for at least the fifth time. At the Western District Police Station, the defendant arrested at North Avenue was unloaded, escorted, and secured inside of the police station prior to attending to Mr. Gray. By the time Officer Zachary Novak, Sgt. White, and an unknown officer attempted to remove Mr. Gray from the wagon, Mr. Gray was no longer breathing at all. A medic was finally called to the scene, where upon arrival, the medic determined that Mr. Gray was now in cardiac arrest and was critically and severely injured. Mr. Gray was rushed to the University of Maryland Shock Trauma Unit, where he underwent surgery. On April 19, 2015, Mr. Gray succumbed to his injuries and was pronounced dead. The manner of death, deemed a homicide by the Maryland State Medical Examiner, is believed to be the result of a fatal injury that occurred while Mr. Gray was unrestrained by a seat belt in the custody of the BDP wagon. All events occurred in Baltimore City, Maryland.

05/01/16

Date

Applicant's Signature

SAM COHEN #0073

Printed Name

Tr.#141001528894

EXHIBIT 3



DISTRICT COURT OF MARYLAND FOR Baltimore City

Located at 5800 Wabash Avenue, Baltimore, Maryland 21215



Case No. 5B02294451

STATE OF MARYLAND VS. WHITE, ALICIA DANIELLE

CC#: 7150400000
LID:

SID:
DL#:

Eyes:
Phone(W):

Charge | Statute | Arrest
MANSLAUGHTER | CR 207 (A) |
MISCONDUCT IN OFFICE | CL |

Charge | Statute | Arrest
ASSAULT-SEC DEGREE | CR 3 203 |

RECEIVED
2015 APR 31 PM 2:25

ARREST WARRANT ON CHARGING DOCUMENT - Warrant No. D140689054

STATE OF MARYLAND, Baltimore City
TO ANY PEACE OFFICER, Greetings:



YOU ARE ORDERED to arrest and bring before a judicial officer the above-named Defendant as soon as practicable and without unnecessary delay. If a judicial officer is not readily available, this Warrant shall authorize the prisoner's detention until compliance is had with Rule 4-212 and the arresting officer is authorized and required to comply with Rule 4-212.

IF THE DEFENDANT IS NOT IN CUSTODY FOR ANOTHER OFFENSE,
Initial appearance is to be held in county in which Warrant was issued.

IF THE DEFENDANT IS IN CUSTODY FOR ANOTHER OFFENSE, this Warrant is to be lodged as a detainer for the continued detention of the Defendant for the offense charged in the charging document. When the Defendant is served with a copy of the charging document and Warrant, the Defendant shall be taken before a judicial officer of the District Court.

Date: 05/01/2015 Time: 9:06 AM Judge/Commissioner: [Signature] ID: 1243

Given to: BALTIMORE CITY SHERIFF'S DEPT

RETURN OF SERVICE

I certify that at 1:31 P M on 5/1/15 at CENTRAL BOOKING INTAKE CENTER, I executed this Arrest Warrant by arresting the Defendant and delivered a copy of the Statement of Charges to the Defendant.

I left a copy of the Warrant and Charging Document as a detainer for the continued detention of the Defendant at:

Facility: CENTRAL BOOKING INTAKE CENTER

Location: 300 E. MADISON ST. BALTO MD 21202

Signature & Title of Peace Officer: [Signature] / SERGEANT

Printed Name of Officer: E. SANTIAGO

Agency, Sub-Agency, I.D.: 22, 24 #0161

Date: 5/1/15

Tracking No: 141001528905

ARREST WARRANT ON CHARGING DOCUMENT

S/A



DISTRICT COURT OF MARYLAND FOR Baltimore City

Located at 5800 Wabash Avenue, Baltimore, Maryland 21215



Case No. 5B02294451

STATE OF MARYLAND VS. WHITE, ALICIA DANIELLE

COMPLAINANT:
COGAN, MAJ. SAM
100 N. CALVERT STREET
BALTIMORE, MD 21202

CC#: 7150400000
LID:

SID:
DL#:

Hair: Eyes:
Phone(W):

STATEMENT OF CHARGES

UPON THE FACTS CONTAINED IN THE APPLICATION OF COGAN, MAJ. SAM IT IS FORMALLY CHARGED THAT WHITE, ALICIA DANIELLE at the dates, times and locations specified below:

NUM	CHG/CIT	STATUTE	PENALTY	DESCRIPTION OF THE CHARGE
001	1 0910	CR 2 207 ((a))	10 Y &/or \$500.00	<p>MANSLAUGHTER On or About 04/12/2015 - 04/12/2015 PENNSYLVANIA & NORTH AVENUES BALTIMORE, MARYLAND ...did, feloniously, without malice aforethought, kill and slay FREDDIE GRAY, JR., against the peace, government, and dignity of the State. Against the Peace, Government, and Dignity of the State.</p>
002	1 1415	CR 3 203	10 Y &/or \$2,500.00	<p>ASSAULT-SEC DEGREE On or About 04/12/2015 - 04/12/2015 PENNSYLVANIA & NORTH AVENUES BALTIMORE, MARYLAND ...did assault FREDDIE GRAY, JR in the second degree in violation of CR 3-203, contrary to the form of the act of the assembly in such case made and provided and against the peace, government, and dignity of the state. Against the Peace, Government, and Dignity of the State.</p>
003	2 0645	CL		<p>MISCONDUCT IN OFFICE On or About 04/12/2015 - 04/12/2015 PENNSYLVANIA & NORTH AVENUES BALTIMORE, MARYLAND ...That Alicia Danielle White, a public officer, while acting under color of her office, corruptly did an unlawful act and corruptly failed to do an act required by the duties of her office and corruptly did a lawful act in violation of the common law of Maryland. Against the Peace, Government, and Dignity of the State.</p>



DISTRICT COURT OF MARYLAND FOR Baltimore City, Wabash Ave. (City/County)

LOCATED AT (COURT ADDRESS)

5800 Wabash Ave.
Baltimore, MD 21215-3330

DC Case No: 5B02294451



RELATED CASES:

COMPLAINANT

DEFENDANT

Cogen, Maj. Sam
Printed Name

100 N. Calvert Street

Number and Street Address

Baltimore, MD 21202

City, State, and Zip Code

Baltimore City Sheriff's Office #0073

Agency, sub-agency, and I.D. #

(Officer Only)

White, Alicia Danielle

Printed Name

Number and Street Address

City, State, and Zip Code

CC#

DEFENDANT'S DESCRIPTION: Driver's License#

Hair _____ Eyes _____ Complexion _____ Other _____

APPLICATION FOR STATEMENT OF CHARGES

Page 1 of 5

I, the undersigned, apply for statement of charges and a summons or warrant which may lead to the arrest of the above named Defendant because on or about April 12, 2015 at (See Below)

On April 12, 2015, between 8:45 and 9:15 a.m., near the corner of North Avenue and Mount Street, Lieutenant Brian Rice of the Baltimore Police Department (BPD), while on bike patrol with Officers Garrett Miller and Edward Nero, made eye contact with Mr. Freddie Carlos Gray, Jr. (DOB 8-16-1989). Having made eye contact, Mr. Gray subsequently ran from Lt. Rice. Lt. Rice then dispatched over a departmental radio that he was involved in a foot pursuit, at which time bike patrol Officers Miller and Nero also began to pursue Mr. Gray. (continued)

(Continued on attached 4 pages) (DC/CR 1A)

I solemnly affirm under the penalties of perjury that the contents of this Application are true to the best of my knowledge, information and belief.

May 1, 2015

Date

Officer's Signature

I have read or had read to me and I understand the Notice on the back of this form.

May 1, 2015

Date

Applicant's Signature

Subscribed and sworn to before me this 1st day of May

Time: 8:30 AM

Judge/Commissioner

Handwritten signature of Linda H. Lewis

2015 Year
1243 I.D.

I understand that a charging document will be issued and that I must appear for trial on _____ at _____, when notified by the Clerk, at the Court location shown at the top of this form.

Applicant's Signature

I have advised applicant of shielding right. I have declined shielding.

I declined to issue a charging document because of lack of probable cause.

5-1-15

Date

Handwritten signature of Linda H. Lewis

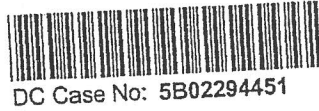
Commissioner

I.D.

Tr.# 141001528905



LOCATED AT (COURT ADDRESS)
5800 Wabash Ave.
Baltimore, MD 21215-3330



DEFENDANT'S NAME (LAST, FIRST, M.I.)

White, Alicia Danielle

APPLICATION FOR STATEMENT OF CHARGES (CONTINUED) Page 2 of 5

Having come in contact with the pursuing officers, Mr. Gray surrendered to Officers Miller and Nero in the vicinity of the 1700 block of Presbury Street. Officers Miller and Nero then handcuffed Mr. Gray and moved him to a location a few feet away from his surrendering location. Mr. Gray was then placed in a prone position with his arms handcuffed behind his back. It was at this time that Mr. Gray indicated that he could not breathe and requested an inhaler to no avail. Officers Miller and Nero then placed Mr. Gray in a seated position and subsequently found a knife clipped to the inside of his pants pocket. The blade of the knife was folded into the handle. The knife was not a switchblade knife and is lawful under Maryland law. These officers subsequently removed the knife and placed it on the sidewalk. Mr. Gray was then placed back down on his stomach, at which time Mr. Gray began to flail his legs and scream as Officer Miller placed Mr. Gray in a restraining technique known as a "leg lace" while Officer Nero physically held him down against his will until a BPD wagon arrived to transport Mr. Gray. Lt. Rice, Officer Miller and Officer Nero failed to establish probable cause for Mr. Gray's arrest as no crime had been committed by Mr. Gray. Accordingly, Lt. Rice, Officer Miller, and Officer Nero illegally arrested Mr. Gray. Upon arrival of the transport wagon, driven by Officer Ceasar Goodson, Lt. Rice, Officer Nero, and Officer Miller loaded Mr. Gray into the wagon and at no point was he secured by a seat belt while in the wagon, contrary to a BPD General Order. Lt. Rice then directed the BPD wagon to stop at Baker Street. At Baker Street, Lt. Rice, Officer Nero and Officer Miller removed Mr. Gray from the wagon, placed flex cuffs on his wrists, placed leg shackles on his ankles, and completed required paperwork. Officer Miller, Officer Nero and Lt. Rice then

05/01/15
Date

[Signature]
Applicant's Signature



LOCATED AT (COURT ADDRESS)
5800 Wabash Ave.
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DC Case No: 5B02294451

DEFENDANT'S NAME (LAST, FIRST, M.I.)
White, Alicia Danielle

APPLICATION FOR STATEMENT OF CHARGES (CONTINUED) Page 3 of 5

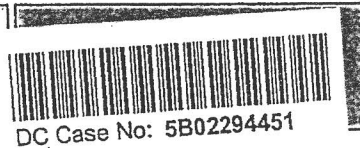
loaded Mr. Gray back into the wagon, placing him on his stomach, head first onto the floor of the wagon. Once again, Mr. Gray was not secured by a seatbelt in the wagon, contrary to a BPD General Order. Lt. Rice then directed Officer Goodson to transport Mr. Gray to the Central Booking and Intake Facility. Following transport from Baker Street, Mr. Gray suffered a severe and critical neck injury as a result of being handcuffed, shackled by his feet, and unrestrained inside of the BPD wagon. From Baker Street, Officer Goodson proceeded to the vicinity of Mosher Street and Fremont Avenue, where he subsequently parked the wagon and proceeded to the back of the wagon in order to observe Mr. Gray. Despite stopping for the purpose of checking on Mr. Gray's condition, at no point did he seek, nor did he render, any medical assistance for Mr. Gray. Officer Goodson returned to his driver's seat and proceeded toward the Central Booking and Intake Facility, with Mr. Gray still unsecured by a seat belt, contrary to a BPD General Order. Several blocks later, Officer Goodson called into dispatch that he needed to check on the status of his prisoner and requested additional units at Dolphin Street and Druid Hill Avenue. Officer William Porter arrived on the scene near Dolphin Street and Druid Hill Avenue. Both Officer Goodson and Officer Porter proceeded to the back of the wagon to check on the status of Mr. Gray's condition. Mr. Gray requested "help" and indicated that he could not breathe. Officer Porter asked Mr. Gray if he needed a medic, at which time, Mr. Gray indicated at least twice that he was in need of a medic. Officer Porter then physically assisted Mr. Gray from the floor of the van to the bench. However, despite Mr. Gray's appeal for a medic, both officers assessed Mr. Gray's

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Date

Applicant's Signature



LOCATED AT (COURT ADDRESS)
5800 Wabash Ave.
Baltimore, MD 21215-3330



DEFENDANT'S NAME (LAST, FIRST, M.I.)
White, Alicia Danielle

APPLICATION FOR STATEMENT OF CHARGES (CONTINUED) Page 4 of 5

condition and at no point did either of them restrain Mr. Gray, per BPD General Order, nor did they render or request medical assistance. While discussing the transportation of Mr. Gray for medical attention, a request for additional units was made for an arrest at 1600 W. North Avenue. Officer Porter left the vicinity of Dolphin Street and Druid Hill Avenue to assist in the arrest of another prisoner at North Avenue. Despite Mr. Gray's obvious and recognized need for medical assistance, Officer Goodson, in a grossly negligent manner chose to respond to the 1600 block of W. North Avenue, with Mr. Gray still unsecured by a seat belt in the wagon, without rendering to or summoning medical assistance for Mr. Gray. Officer Goodson arrived at North Avenue to transport the individual arrested at the location of North and Pennsylvania Avenues, at which time he was again met by Officers Nero, Miller, Porter, and Lt. Rice. Once the wagon arrived, Officer Goodson walked to the back of the wagon and again opened the doors to the wagon to make observations of Mr. Gray. Sgt. Alicia White, Officer Porter, and Officer Goodson observed Mr. Gray unresponsive on the floor of the wagon. Sgt. White, who was responsible for investigating two citizen complaints pertaining to Mr. Gray's illegal arrest, spoke to the back of Mr. Gray's head. When he did not respond, she did nothing further despite the fact that she was advised that he needed a medic. She made no effort to look, assess or determine his condition. Despite Mr. Gray's seriously deteriorating medical condition, no medical assistance was rendered to or summonsed for Mr. Gray at that time by any officer. After completing the North Avenue arrest and loading the additional prisoner into

05/01/15
Date

[Signature]
Applicant's Signature



LOCATED AT (COURT ADDRESS)

5800 Wabash Av
Balto, MD 21215

DISTRICT COURT
CASE NUMBER

DEFENDANT'S NAME (LAST, FIRST, M.I.)

White, Alicia Danielle

APPLICATION FOR STATEMENT OF CHARGES (CONTINUED) Page 5 of 5

the opposite side of the wagon containing Mr. Gray, Officer Goodson then proceeded to the Western District Police Station, where contrary to the BPD General Order, he again failed to restrain Mr. Gray in the wagon for at least the fifth time. At the Western District Police Station, the defendant arrested at North Avenue was unloaded, escorted, and secured inside of the police station prior to attending to Mr. Gray. By the time Officer Zachary Novak, Sgt. White, and an unknown officer attempted to remove Mr. Gray from the wagon, Mr. Gray was no longer breathing at all. A medic was finally called to the scene, where upon arrival, the medic determined that Mr. Gray was now in cardiac arrest and was critically and severely injured. Mr. Gray was rushed to the University of Maryland Shock Trauma Unit, where he underwent surgery. On April 19, 2015, Mr. Gray succumbed to his injuries and was pronounced dead. The manner of death, deemed a homicide by the Maryland State Medical Examiner, is believed to be the result of a fatal injury that occurred while Mr. Gray was unrestrained by a seat belt in the custody of the BDP wagon. All events occurred in Baltimore City, Maryland.

05/01/15
Date

Sam Cohen
Applicant's Signature

SAM COHEN
Printed Name

Tr.#141001528905

STATE OF MARYLAND,

Plaintiff,

v.

GARRETT MILLER

Defendant.

*

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*

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IN THE

CIRCUIT COURT

FOR

BALTIMORE CITY

Case No. 115141034

* * * * *

ORDER TO QUASH SUBPOENA AND FOR PROTECTIVE ORDER

Upon the motion of Administrative District Court Commissioner Linda Lewis, together with any responses filed thereto, it is this _____ day of _____, 2016, hereby, **ORDERED**

(1) that any subpoena compelling Commissioner Linda Lewis to appear and testify is **QUASHED**; and

(2) that a protective order is **GRANTED** preventing the compelled appearance and testimony of Commissioner Linda Lewis in this matter.

Judge
Circuit Court for Baltimore City