

irrelevant aspects of or to raise baseless accusations about the State's Attorney's pre-indictment actions." Id. At 4. Thus, there are actually two separate questions: can the defense elicit testimony as to the matters, and, if yes, can the defense call prosecutors to elicit said evidence. Firstly, taking each subject matter *seriatim*:

[a] The State's Attorney's Office use of its own employees to investigate Mr. Gray's death.

The defense in this case believes it is absolutely fair game to adduce evidence that there was a "rush to judgment" in this case. By the same token, the *lack* of investigation by the State's Attorney's Office is admissible to buttress this point. Counsel cannot count on their fingers how many times they have offered a defense that their client was quickly identified as the culprit, and all other leads and evidence ignored. And not once has this testimony and argument been claimed by the prosecution to be inadmissible. Nor should it be here. As the Court is well aware, on May 1st, Ms. Mosby told the world that:

Over the course of our independent investigation, in the untimely death of Mr. Gray, my team worked around the clock; 12 and 14 hour days to canvas and interview dozens of witnesses; view numerous hours of video footage; repeatedly reviewed and listened to hours of police video tape statements; surveyed the route, reviewed voluminous medical records; and we leveraged the information made available by the police department, the community and family of Mr. Gray.

The findings of our comprehensive, thorough and independent investigation, coupled with the medical examiner's determination that Mr. Gray's death was a homicide that we received today, has

led us to believe that we have probable cause to file criminal charges.

Id. The State's Attorney's Office cannot have its cake and eat it. They have declared to all and sundry that they conducted a thorough and independent investigation, and now seek to stymie a defense that asserts to the contrary.¹ A grand jury subsequent indictment cannot wash clean an investigation that the defense will seek to show sacrificed thoroughness for timeliness.

[b] relationship between prosecutors and their friends, partners or spouses

Officer Porter currently has no intention of delving into these areas and has no objection to the Court granting the motion in that respect. In the unlikely event that counsel seeks to elicit these matters later, the undersigned hereby undertakes to approach the bench and flag the issue for the Court, prior to bringing up such matters in open court.

[c] civil actions against prosecutors involving the underlying events of this case

Officer Porter currently has no intention of delving into these areas and has no objection to the Court granting the motion in that respect. In the unlikely event that counsel seeks to elicit these matters later, the undersigned hereby

¹ To the extent that the state now seeks to be relieved of the truthfulness of Ms. Mosby's words, they nevertheless remain admissible as a Statement by a Party-Opponent. Md. Rule § 5-803(a).

undertakes to approach the bench and flag the issue for the Court, prior to bringing up such matters in open court.

[d] prosecutors' past coordination with police to address crime in certain neighborhoods

Officer Porter currently has no intention of delving into these areas and has no objection to the Court granting the motion in that respect. In the unlikely event that counsel seeks to elicit these matters later, the undersigned hereby undertakes to approach the bench and flag the issue for the Court, prior to bringing up such matters in open court.

[e] prosecutors' involvement in coordinating or prioritizing aspects of the police investigation into Mr. Gray's death

Several police officers will be testifying in this case, presumably in both the defense and the prosecution case. The extent to which they prioritized certain matters, ignored other leads, or otherwise conducted their investigation is absolutely fair inquiry.

[f] prosecutors' involvement in drafting/editing Statements of Probable Cause in this case

Officer Porter is unable to respond to this until such times as the Court has resolved the discovery dispute, being separately litigated under seal.

[g] prosecutors' involvement in obtaining search and seizure warrants in this case

Officer Porter currently has no intention of delving into these areas and has no objection to the Court granting the motion in that respect. In the unlikely event that counsel seeks to elicit these matters later, the undersigned hereby undertakes to approach the bench and flag the issue for the Court, prior to bringing up such matters in open court.

[h] prosecutors' coordination with the Office of the Chief Medical Examiner in sharing and discussing evidence in this case

If there is one bone of contention in this case, it is that the coroner's finding is that the manner of death is homicide. In another of the state's pleadings filed on November 12, 2015 they appear to be demanding that Officer Porter provide the prosecution with all of the underlying materials that defense experts used in rendering opinions. Paradoxically, in [h] above, the same prosecution team appears to be attempting to curtail the defense doing exactly the same thing. To the extent the coroner relied on information provided by prosecutors, or anyone working at their direction, it is valid inquiry at trial in this matter.

Turning to the second question, that is, whether a prosecutor could be called, the state talks about "any testimony a prosecutor could give," in its pleadings. As at this time, Officer Porter has no plans to call Ms. Bledsoe or Mr. Schatzow. In the event that these persons believe they are possible witnesses,

they should remove themselves from the case. If they are not: then the issue will not present itself to the Court.

STATE'S MOTION IN LIMINE TO ALLOW JURORS TO VIEW AND EXAMINE THE POLICE WAGON THAT TRANSPORTED THE WAGON

The state correctly notes in paragraph 5, that the defense joins in this request. Counsel has some hesitation with the procedure outlined by the state. But nothing that cannot be hashed out in Chambers. Accordingly, Officer Porter requests that this Court grant said motion.

STATE'S MOTION *IN LIMINE* TO PRECLUDE EVIDENCE OF, ARGUMENT ABOUT, OR REFERENCE TO IRRELEVANT OR INADMISSIBLE INFORMATION ABOUT THE VICTIM

The state posits to the Court that it “has reason to believe that the Defendant will attempt at trial to offer evidence of, argument about, or reference to irrelevant or inadmissible information about the victim in this case in an attempt to confuse, mislead, and prejudice the jury.” *Id.* at 1. The state then lays out a smorgasbord of areas where the defense may delve into.

To be clear: Officer Porter has no interest in taking gratuitous pots shots at Mr. Gray. His prior convictions are of no moment. Nor is his lead paint exposure as a child. Even the far-flung imagination of the undersigned cannot conjure up a manner in which Mr. Gray's civil settlement is admissible.

That said: what is admissible is the previous interactions Mr. Gray had with police officers in the Western District, to the extent those matters were known to Officer Porter. In Officer Porter's statement, that this Court has ruled is admissible at trial in this matter, he states that he "s[aw] Freddie gray, who I uh, recognize from the neighborhood..." See transcript provided by the state at page 7. Officer Porter went on to state at page 24 that:

I recall that an incident with Freddie Gray before...[w]here another unit tried to arrest him and he had done the same thing. He had tried to kick out the windows in the, in the, in the truck. You know, so he was always, always like banging around. It was always a big scene whenever you attempted to arrest Freddie Gray.

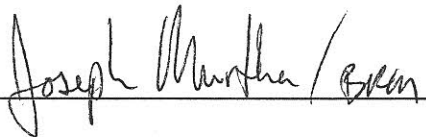
Id. This is highly relevant, because the likely jury instructions will tell the jury that, in order to convict Officer Porter, the state must show that:

[A] police officer's conduct should be judged not by hindsight but should be viewed in light of how a reasonably prudent officer would respond faced with the same difficult emergency situation." The officer "is the person who has to evaluate the potential seriousness of the [situation] and determine an appropriate response, the only caveat being that the evaluation and response must be reasonable from the perspective of a reasonable police officer similarly situated." You must look to whether a "reasonable officer on the scene," at the moment of the incident, without the benefit of 20/20 hindsight would have acted in the same manner as William Porter.

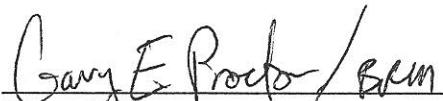
See, for example, *Richardson v. McGriff*, 361 Md. 437, 453 (2000) (quoting *Boyer v. State*, 323 Md. 558, 589 (1991)). Thus, the extent to which Officer Porter knew of the potential seriousness of the situation, and what he knew at the moment of the incident, must be informed by his prior dealings with Mr. Gray. To not allow the defense to probe these areas is reversible error.

WHEREFORE, for the reasons outlined above, and any others that may appear to this Honorable Court, Officer Porter prays that this Court grant the relief requested herein

Respectfully Submitted,



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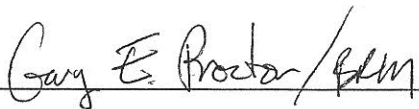


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CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of November, 2015, a copy of Defendant's Response to various state motions was sent via United States Mail to Michael Schatzow, Chief Deputy State's Attorney for Baltimore City, 120 E. Baltimore Street, 9th Floor, Baltimore MD 21202, with proper postage affixed.

A handwritten signature in black ink that reads "Gary E. Proctor" followed by a stylized flourish or initials. The signature is written over a solid horizontal line.

GARY E. PROCTOR