

STATE OF MARYLAND

Plaintiff

v.

ALICIA WHITE

Defendant

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IN THE

CIRCUIT COURT

FOR

BALTIMORE CITY

Case No. 115141036

CRIMINAL DIVISION

2016 JAN 15 P 4:25

RECEIVED FOR RECORD  
CIRCUIT COURT FOR  
BALTIMORE CITY

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**DEFENDANT'S SECOND MOTION FOR RECONSIDERATION OF THE  
DENIAL OF MOTION FOR REMOVAL AND REQUEST FOR HEARING**

Defendant Alicia White, through her counsel, files this Second Motion for Reconsideration of the Denial of Motion for Removal and in support thereof states:

**INTRODUCTION**

This Court has previously considered Defendant's Motion for Removal, and Defendant's Motion for Reconsideration of the Denial of the Motion for Removal.<sup>1</sup> Based on the publicity generated by the trial of *State v. Porter*, the pretrial hearings in *State v. Goodson*, and the pending Court of Special Appeals case involving Officer Porter, Sergeant White renews her Motion for Removal, and Motion for Reconsideration of the previous denial. All of the reasons for the original motion and request for reconsideration remain, and are now compounded by the added publicity attendant to *State v. Porter*, and the news coverage of testimony during that trial relating to the role and alleged responsibilities of Sergeant White, the publicity following the Porter's mistrial, and the most recent article regarding the deliberations of the jurors in Officer Porter's trial.

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<sup>1</sup> Sergeant White incorporates her previous motion for removal, and her motion for reconsideration of the denial of the first motion.

## ARGUMENT

"The Sixth Amendment secures to criminal defendants the right to trial by an impartial jury." *Skilling v. United States*, 561 U.S. 358, 377 (2010). This is an "extreme case" where "*presumption of prejudice*" arises. *Id.* at 380-81. The *Skilling* factors mandate removal of this case.

The first *Skilling* factor examines the relative "size and characteristics of the community in which the crime occurred." In Baltimore City, the potentially untainted jury pool shrinks by the day as the small subset of the population eligible for service has been and continues to be bombarded by the constant media reports regarding Officer Porter's trial, Officer Goodson's pretrial hearings, and general news coverage of the Freddy Gray case.

The second factor under *Skilling* is whether the substance of the media coverage contains "blatantly prejudicial information" that has been publicized, such that potential jurors "could not reasonably be expected to shut from sight." Much of the news that came out of Officer Porter's trial concerned Sergeant White. Throughout Officer Porter's trial and following his mistrial, potential jurors have been exposed to multiple live blogs and countless Twitter feeds exposing the public to a play-by-play of Officer Porter's trial. See *Officer William Porter Trial: Freddie Gray Case Live Coverage*, Baltimore Sun (last visited Dec. 14, 2015 6:33 PM)<sup>2</sup>; *Officer William G. Porter Trial Recaps: Days 1-10*, Baltimore Sun (last visited Dec. 14, 2014 7:23 PM).<sup>3</sup> Local and national news outlets alike

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<sup>2</sup> [http://live.baltimoresun.com/Event/Officer\\_William\\_Porter\\_trial\\_Freddie\\_Gray\\_case\\_live\\_coverage](http://live.baltimoresun.com/Event/Officer_William_Porter_trial_Freddie_Gray_case_live_coverage)

<sup>3</sup> <http://www.baltimoresun.com/news/maryland/freddie-gray/trials/>

hang on every word of the case. See CBS-WJZ,<sup>4</sup> NBC-WBAL,<sup>5</sup> CNN,<sup>6</sup> Fox News.<sup>7</sup> Members of the media and the public debate legal theories in daily editorials and related comments sections. See, e.g., Ian Duncan, *William Porter Case Poses Rare Question: When Is Failing To Act a Crime?*, Baltimore Sun (Dec. 12, 2015).<sup>8</sup> Sergeant White has been on trial in the media before she has set foot in the courtroom.<sup>9</sup> Thus, the remaining jury pool is further tainted by the onslaught of prejudicial information.

Under the third *Skilling* factor, this uninterrupted stream of media attention and the public demonstrations outside the courthouse show that, even a few months later, not enough time has passed between the alleged criminal activity and Sergeant White's trial to accord her a fair trial in Baltimore City. The media coverage throughout her co-Defendant's trial, *State v. Porter* was kept alive, on a daily basis, the statements and accounts of that day and continued following the conclusion of this trial. *Id.* at 381-84.

Since the mistrial of Officer William Porter, the media and the citizens of Baltimore have been speculating as to what impact, if any, that outcome has on later trials. If anything, the media focus on the six Freddie Gray cases has only intensified with their speculation as to how the Porter jury voted on specific charges- - charges that are also faced

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<sup>4</sup> <http://baltimore.cbslocal.com/freddie-gray-trial-in-baltimore/>

<sup>5</sup> [http://livewire.wbaltv.com/Event/Trial\\_of\\_Officer\\_William\\_Porter](http://livewire.wbaltv.com/Event/Trial_of_Officer_William_Porter)

<sup>6</sup> <http://www.cnn.com/2015/12/15/us/baltimore-police-trial-freddie-gray/index.html>

<sup>7</sup> <http://www.foxnews.com/us/2015/12/14/jury-to-hear-closing-arguments-in-baltimore-police-officer-trial-in-freddie/>

<sup>8</sup> Available at <http://www.baltimoresun.com/news/maryland/freddie-gray/bs-md-ci-porter-analysis-20151212-story.html>.

<sup>9</sup> In contrast, Mr. Gray has been portrayed as a tragic hero figure. Catherine Rentz, *Freddie Gray Remembered as a Jokester who Struggled to Leave Drug Trade*, Baltimore Sun (Nov. 22, 2015), available at <http://www.baltimoresun.com/news/maryland/freddie-gray/bal-freddie-gray-remembered-as-jokester-who-struggled-to-leave-drug-trade-20151120-story.html>.

by Sergeant White. In an effort to preserve the sanctity of the jury deliberation process, as well as to prevent any prejudicial impact the Porter jury's votes may have on the trials of the remaining officers, the Court declined to release for dissemination to the public how the Porter jury voted on the four counts in Porter's indictment. Despite the safeguards put in place by the Court, on December 16, 2015, the attorney for Freddie Gray's family, William H. Murphy, Esquire, went on national television and indicated that he had information suggesting how the Porter jury actually voted, and that he obtained it from the Baltimore State's Attorney's Office.

Specifically, Mr. Murphy was interviewed by Ms. Greta Van Susteren of Fox News on December 16, 2015. When Ms. Van Susteren asked him whether the prosecution should be concerned about the outcome of the Porter trial, Mr. Murphy provided, in part, the following response:

I think the prosecution is somewhat encouraged by the fact that there were *evidently a substantial number of jurors who felt that Officer Porter should have been convicted on one or more of the charges*. We don't know the breakdown, and, someone will start talking sooner or later.

See On the Record with Greta Van Susteren, Fox News (Dec. 16, 2015), <http://www.foxnews.com/on-air/on-the-record/index.html#/v/4664684759001> (emphasis added). Mr. Murphy repeated that he thought the prosecution was encouraged in light of the jury's votes and also quoted a statistic regarding the likelihood of a conviction following a retrial. When Ms. Van Susteren pressed Mr. Murphy concerning the source of this information about how the Porter jury voted, Mr. Murphy confirmed that the source was a member of the prosecution team with whom he had spoken that day (i.e., December 16,



2015). *Id.* Mr. Murphy refused to disclose the identity of the prosecution team member claiming that he did not "talk out of school," and stated that he considered it unprofessional to "repeat what I've been told with attribution " *Id.*

It seems very apparent that the spirit, if not the letter, of the Court's October 14, 2015 "gag" order was violated by a representative of the State's Attorney's Office, and this violation prejudices Sergeant White's right to a fair trial. In its October 14<sup>th</sup> Order, the Court recognized the impact that statements, like the ones made by Mr. Murphy, would have on Sergeant White's right to a fair trial, stating that "[t]here is a substantial likelihood that certain forms of publicity, such as extrajudicial statements by the parties involved in this case to members of the press or media, could impair the rights of the Defendant, the State and the public to a fair trial by an impartial jury." The Court ordered that the parties and the attorneys (and their respective employees, representatives, or agents) involved in this case were prohibited from making or issuing "any extrajudicial statement, written or oral, concerning this case for dissemination by means of public communication." The Order further provided that "[n]o person covered by this order shall avoid or circumvent its effect by actions that indirectly, but deliberately, bring about a violation of this order."

Sergeant White recognizes that Mr. Murphy, although closely connected to the prosecution team, is not employed with the State and therefore may not be considered its "employee, representative or agent" and subject to the Gag Order. It is clear, however, that the State's Attorney's Office, which *is* subject to the Court's Order, deliberately provided Mr. Murphy (who has been appearing regularly in the media) with information to which the general public is not privy and that may very well materially prejudice Sergeant White's

fair trial right. Such unnecessary disclosure of information violates Rules 3.6 and 3.8 of the Maryland Rule of Professional Conduct. Mr. Murphy's presence in the media is not a secret. No person or party subject to the Court's so called gag Order was permitted to disclose the information Mr. Murphy shared with the nation, not to mention Baltimore City prospective jurors in Sergeant White's case, on December 16th. The State's Attorneys knew or should have known that there was and is a substantial likelihood that any information provided to Mr. Murphy (or any other non-press individual) would end up in the public domain and would thus materially prejudice the subsequent trials involving the death of Mr. Gray.

Blame lies with the State, not Mr. Murphy. In addition to enjoying a reputation as one of Baltimore City's foremost trial attorneys, Mr. Murphy's presence has become center stage through his representation of Mr. Gray's family and his negotiation of a \$6.4 million settlement. He also has close ties with the Mosby administration and could likely be seen as part of the "prosecution team" to a member of the general public. Certainly, both Mr. Murphy and the State's Attorney take the same position as to the cause of Mr. Gray's death and responsibility for the occurrence. Mr. Murphy's words carry great weight with the residents of Baltimore City who comprise the potential jury pool in this case.

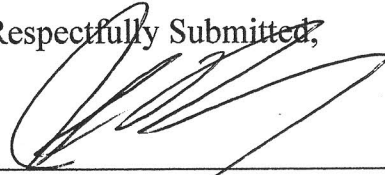
The State's Attorney's Office's violation of the Court's Order regarding extra-judicial statements is yet another reason why Sergeant White's trial needs to be moved to a different venue. As made evident by Mr. Murphy's appearance on Fox News a gag order has not proved sufficient to keep the jury pool from being tainted.

The appropriate remedy, other than dismissal of Sergeant White's indictment, for the State's violation of the Court's Order, as well as the Rules of Professional Conduct is to transfer this case to another jurisdiction, where the jury pool will have been less irreparably tainted and where Sergeant White at least has a better chance of receiving a fair trial.

Finally, in the most recent press regarding the Freddy Gray matter, the Baltimore Sun has reported an interview with an anonymous juror who served on the jury in Officer Porter's trial. (See Attached Exhibit A, Kevin Rector and Justin Fenton, Jury in Officer Porter trial was one vote from acquittal on most serious charge, The Baltimore Sun (January 15, 2016), <http://www.baltimoresun.com/news/maryland/freddie-gray/bs-md-ci-porter-jury-split-20160115-story.html>) Not only does the article discuss the private discussions and deliberations of the jury but it also gives an exact break down of the votes the jurors made on each and every charge Officer Porter was charged with. As Sergeant White is charged with the exact same charges as Officer Porter, her jury pool has now been tainted with the opinions of the jury in Officer Porter's case. Although Officer Porter is charged with the same crimes, the actions and involvement of Officer Porter are drastically different than those of Sergeant White so she will be greatly prejudiced by any reflection of his trial on hers. The article, which was posted on the Baltimore Sun's website on at 10:35am on January 15, 2016, the date of this filing, is contained in the local media and will have a much larger effect on the local population, i.e. the Baltimore City jury pool.

Based on the foregoing, voir dire cannot sufficiently ensure a fair and impartial jury. Therefore, Sergeant White renews her request that her trial be removed from Baltimore City to a venue where she can be guaranteed his constitutional right to a fair trial.

Respectfully Submitted,



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*Counsel for Sergeant Alicia White*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 15th day of January 2016, a copy of the foregoing

Motion was sent by first class mail, postage prepaid to the following:

Michael Schatzow, Chief Deputy State's Attorney  
Office of the State's Attorney for Baltimore City  
120 East Baltimore Street  
Baltimore, Maryland 21202



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Ivan J. Bates

News / Maryland / Freddie Gray Case Trials

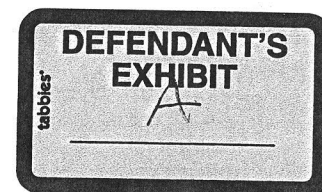
# Jury in Officer Porter trial was one vote from acquittal on most serious charge



Courtroom sketch during the William Porter trial about the death of Freddie Gray while in police custody. (Credit: Wm Hennessy)

By **Kevin Rector** and **Justin Fenton** • Contact Reporters  
The Baltimore Sun

JANUARY 15, 2016, 10:35 AM



**T**he jury in the trial of Baltimore Police Officer William G. Porter was one vote from acquitting him of involuntary manslaughter in the death of Freddie Gray, the most serious charge he faced, according to sources familiar with the deliberations.

Judge Barry G. Williams declared a mistrial because the jury deadlocked on all four charges last month. Jurors were two votes from convicting Porter of misconduct in office, and more divided on charges of assault and reckless endangerment, sources said.

How the jury voted was not publicly revealed, and the judge ruled that jurors' names should not be revealed.

Legal experts say the information is critical to understanding the process now playing out as prosecutors and Porter's defense attorneys prepare for his scheduled retrial in June. The information also could help

shape legal strategies in the pending cases against the other five police officers charged in Gray's April arrest and death.

Prosecutors and Porter's defense attorneys are barred by a gag order from discussing the case. When reached by The Baltimore Sun, the attorneys declined to be interviewed.

One juror said some on the panel in Porter's trial were driven to tears during deliberations and afterward. The juror agreed to be interviewed by The Sun but asked to remain anonymous because Williams requested that panel members not discuss their experience.

The jurors had to vote unanimously to be able to convict or acquit Porter of any of the four charges he faced, and their inability to reach a verdict weighed heavily on their minds, the juror said.

While deliberations turned tensed at times, the juror said the panel members were "heartfelt in their duty."

"I was very touched by the passion that many jurors brought to their arguments," the juror said.

In addition to the final 11-1 split in favor of acquittal on involuntary manslaughter, sources said the jury split the following ways:

- They voted 8-2 in favor of acquittal on second-degree assault, with two jurors remaining undecided.
- On reckless endangerment, the jury split 7-3 in favor of conviction, with two jurors undecided.
- On misconduct in office, the jury split 10-1 in favor of conviction, with one juror undecided, sources said.

"This was the vote that was on the board when the jury conceded to deadlock," the juror said. "Had we continued discussions, there's great likelihood that the numbers could have switched, but I couldn't say which way."

Members of the panel had changed their votes multiple times during the deliberations, the juror said. For example, a few more jurors wanted to convict Porter of manslaughter at the start of the deliberations but later changed their minds, the juror said.

The jury included four black women, three black men, three white women and two white men.

Legal experts say a juror's right to speak after a trial concludes is protected by the U.S. Constitution, and that Williams' request likely had a chilling effect.



A second juror, attorney Susan Elgin — the only juror to be publicly identified — previously told The Sun she wanted to discuss the jury's deliberations but could not because of Williams' request. She declined to comment for this article.

Williams spoke to the jury after the mistrial, but it is unclear what information about their deliberations, if any, he shared with prosecutors and defense attorneys.

Williams can't comment on pending cases, a court spokeswoman said.

When Williams declared the mistrial, he said the jury had "clearly been diligent" in their deliberations. After he dismissed the jurors, they were quickly escorted from the courthouse and driven away in court-provided vans before reporters could ask them questions.

Gray, a 25-year-old black man, died in April after suffering a severe spinal cord injury in the back of a police van. His death sparked widespread protests against police brutality, and his funeral was followed by rioting, looting and arson.

The six police officers charged in Gray's arrest and death have all pleaded not guilty. Four have been suspended without pay; the other two who only face misdemeanors are suspended with pay.

Porter, a 26-year-old officer on the force since 2012, was the first to go to trial.

Prosecutors consider Porter a witness against the other five officers, and are asking the court to force him to testify. That issue is pending before the Maryland Court of Special Appeals, the state's second-highest court.

The intervention of the higher court has thrown off what had been an aggressive schedule for trying the six officers between December and March. A decision from the appellate court could take months; oral arguments on the appeal have been scheduled in March.

Prosecutors said Porter failed to secure Gray in a seat belt when he was called by Officer Caesar R. Goodson Jr., the driver of the van, to check on Gray in the back of the van. They also allege Porter failed to call for a medic when Gray asked for one.

The prosecution's medical experts said Gray wasn't hurt when he entered the van, suffered his neck injury prior to the stop where Porter checked on him, and was later pulled from the van at the Western District police station unconscious and not breathing — in part because of Porter's inaction.

Porter, who took the stand in his own defense, said he did not believe Gray was seriously injured when he checked on him and that officers rarely secure detainees in seat belts in transport vans. Still, Porter

said he told Goodson and White that Gray would need to go to the hospital in order to be admitted to Central Booking.

Medical experts for the defense testified that Gray likely suffered his injuries after the stop where Porter checked on him.

In order to find Porter guilty of manslaughter, Williams told the jurors they would have to find Porter acted in a "grossly negligent manner" and that his conduct was a "gross departure" from what a "reasonable police officer" would do in a similar situation.

Williams said the charge of misconduct in office would require a finding that Porter had "corruptly failed to do an act required by his duties," and that it was "not a mere error in judgment" but involved an "evil motive and bad faith."

"You must apply the law as I describe it," Williams told the jurors. He also told them they "should not be swayed by sympathy, prejudice or public opinion," and should consider each other's opinions but not "surrender" their own "honest opinion."

During their deliberations, jurors "presented their stances" to each other, referred back to evidence presented in the case and to Williams' instructions about the charges, and looked through their own notes from the trial, according to the juror who agreed to be interviewed.

The juror declined to discuss the points of contention in the panel's deliberations.

At one point, the jurors asked the court to more clearly define "evil motive" and "bad faith," but were told that "the court has provided all of the information it can."

The way in which juries split on individual charges, as well as the specific issues that divided them, can affect subsequent decisions by prosecutors and defense attorneys — including whether to retry a defendant, drop the charges, or offer or accept a plea deal, experts said.

Jurors often begin deliberations with an initial vote. Paula Hannaford-Agor, director of the Center for Juries Studies, said that vote can be more instructive than the final tally. She said the initial size of the "minority faction" of jurors — those voting against the majority position — is more predictive of whether a subsequent jury might also hang, according to her research.

A larger minority faction in the initial vote is harder to overcome to reach a unanimous decision.

"If you've just got one or two people who are initially holding out, they are much more likely to capitulate," she said.



Still more useful would be information about the most heavily-disputed theories in the case, and those issues the jurors agreed on, Hannaford-Agor said.

"What are the competing arguments that are being made in the jury room? What seemed to resonate with people? What gave people pause?" she said.

Gerard P. Martin, a veteran defense attorney and former federal prosecutor who is not involved in the cases, said prosecutors must be heartened by the fact that the jury was leaning toward conviction on the lesser charges. He said he doesn't believe prosecutors will be deterred by the final vote because they likely understood that securing a manslaughter conviction would be difficult.

Prosecutors could amend the charges but have given no sign that is their intention. Martin said the defense should see more reasons for optimism.

"All they need is one to say 'no,'" he said. "I would hang in there if I were the defense lawyer."

Attorneys for the six officers had argued before Porter's trial that an impartial jury could not be seated in Baltimore because city residents had been exposed to publicity about the case and may fear more unrest if they acquitted the officers.

Williams rejected that idea. In December, the judge, prosecutors and Porter's attorneys questioned about 150 potential jurors over two days before selecting a 12-member panel.

The jurors — all of whom indicated they were familiar with the case — weren't supposed to talk to anyone about the case during the trial. They weren't supposed to discuss the case with each other until they began deliberating.

Hannaford-Agor said she was not surprised jury deliberations in Porter's trial turned emotional.

The fact people across the country are following the proceedings, she said, likely created an "additional weightiness" around the decision in the jurors' minds.

"A lot of jurors really feel like they've failed when they can't come to a decision — that this was something they should have been able to do and they just failed to do it," she said.

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**This article is related to:** Crime, Homicide, William Porter, Barry Williams, Freddie Gray, Caesar R. Goodson Jr.