STATE OF MARYLAND	*	IN THE
Plaintiff	*	CIRCUIT COURT
v.	*	FOR
ALICIA WHITE	*	BALTIMORE CITY
Defendant	*	Case No. 115141036

* * * * * * * * * * * * *

MOTION *IN LIMINE* TO PRECLUDE TESTIMONY AND EVIDENCE CONCERNING BALTIMORE POLICE DEPARTMENT GENERAL ORDERS AND POLICIES AS THEY RELATE TO THE USE OF SEATBELTS IN POLICE VEHICLES

Defendant, Alicia White, by undersigned counsel, hereby files this Motion *in Limine* to order the preclusion of testimony and evidence concerning Baltimore Police Department general orders and policies as they relate to the use of seatbelts in police vehicles. In support thereof, Defendant states the following:

I. Baltimore Police Department general orders and policies relating to the use of seatbelts in police vehicles must be excluded from the trial of Sergeant White because the failure to seatbelt a detainee cannot constitute evidence of gross or criminal negligence.

It is anticipated that the State may seek to introduce testimony and evidence concerning Baltimore Police Department general orders and policies as they relate to the use of seatbelts in police vehicles. Specifically, it is anticipated that the State will make reference to such information as evidence that the failure of a Baltimore police officer to seatbelt a detainee during transport constitutes the gross or criminal negligence necessary to establish the crimes of second degree assault, involuntary manslaughter, and reckless endangerment. However, given that the general orders and policies are unique to Baltimore City, they cannot be admitted for this purpose. Accordingly, they are irrelevant to, and must be excluded from, the trial of Defendant Sergeant Alicia White.

In *State v. Pagotto*, the Court of Appeals of Maryland analyzed the legal significance (or insignificance) of an alleged violation of a geographically unique Baltimore Police Department guideline. 361 Md. 528, 550–51 (2000). In *Pagotto*, a Baltimore Police Department sergeant was convicted of involuntary manslaughter and reckless endangerment as a result of a traffic stop during which his handgun accidentally discharged, killing the driver of the vehicle. *Id.* at 534–38. In order to establish the gross or criminal negligence needed for the conviction, the State relied upon three alleged violations of Baltimore Police Department guidelines. *Id.* at 538–39. One of the guidelines at issue required police officers to place their trigger finger underneath the trigger guard of their weapon when drawn. *Id.* at 544. Sergeant Pagotto had allegedly violated this guideline by placing his finger along the "slide" or side of his weapon, thereby negligently increasing the risk that his finger would slip to a position where it could cause the weapon to accidentally discharge. *Id.*

In evaluating whether the evidence presented by the State was legally sufficient to sustain the conviction, the Court found that the trigger finger placement guideline was unique to Baltimore City. *Id.* at 544–45. Officers in other jurisdictions were permitted to place their trigger finger along the side of their weapon in order to improve their reaction time in critical situations. *Id.* at 544. Moreover, the guideline was recently enacted as it had been published just three years prior to the events at issue. *Id.* In light of this information, the Court adopted the reasoning of the intermediate appellate court and held that any alleged violation of the Baltimore Police Department guideline, "whether considered alone or in combination with *any* other factor, [did] not remotely generate a *prima facie* case of gross negligence." *Id.* at 550 (emphasis added) (quoting *Pagotto v. State*, 127 Md. App. 271, 310 (1999)). Rather, "at best, [it] amounted to an actionable case in civil negligence." *Id.*

In elaborating upon the absurdity of the State's argument that a police officer's conduct can be permitted in one jurisdiction, while also being deemed criminally negligent in another merely because it violates a departmental guideline, the Court adopted the following language from the intermediate appellate court:

> Had a Maryland State Trooper or a Baltimore County Officer, for instance, ridden along with Sergeant Pagotto on February 7, 1996, and engaged in precisely the same conduct that Sergeant Pagotto did, that State Trooper or County Officer would have been acting with complete propriety with respect to the placement of the trigger finger on a weapon. Had Sergeant Pagotto himself placed his trigger finger on the "slide" of his weapon on February 7, 1993, instead of on February 7, 1996, he would then have been acting with complete propriety. Except for a criminal violation of a local municipal or county ordinance, precisely the same act under precisely the same circumstances cannot be a crime in Baltimore City but not a crime in Baltimore County.

Id. at 551 (citations omitted). The Court of Appeals further reaffirmed the intermediate's court's finding that the State's reasoning was "illogical":

> The State's logic leads to the conclusion that a police officer placing his finger on the slide of the weapon is criminally negligent behavior if committed by a Baltimore City Police Officer in Baltimore City, but acceptable, non-criminal behavior if committed by any other police officer anywhere else in the State. The Court of Special Appeals was correct in concluding that this result is illogical.

361 Md. at 551.

Any Baltimore Police Department general order or policy relating to the use of seatbelts in police vehicles is geographically unique to Baltimore City. Handcuffed detainees are routinely transported in police vans, without seatbelts, in other jurisdictions throughout Maryland. As detailed in a survey published by The Baltimore Sun, "prisoner transport vans used by county law enforcement agencies [in the Baltimore region] generally are not equipped with seat belts." *See* Alison Knezevich & Pamela Wood, *Most Police Vans in Baltimore Region Lack Seat Belts*, BALT. SUN (May 10, 2015) (attached as **Exhibit A**). In Baltimore County, for instance, none of the ten vans used by police officers to transport detainees are equipped with seatbelts. *Id.* Additionally, in

Carrol County, "only one of the agency's two vans has seatbelts." *Id.* Consequently, any alleged violation of a Baltimore Police Department general order or policy relating to the use of seatbelts is unique to Baltimore City, and cannot constitute gross or criminal negligence under *Pagotto*. This remains true even if the alleged violations are taken into consideration with other factors the State may raise at trial. 361 Md. at 550.

Given that the violation of the general orders and policies cannot constitute gross or criminal negligence, they are inadmissible to Sergeant White's case with respect to the crimes of second degree assault, involuntary manslaughter, and reckless endangerment. In order to be admissible, the general orders and policies must be relevant: they must have a "tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." MD. RULE 5-401. The only potential use of these items with respect to the crimes of second degree assault, involuntary manslaughter, and reckless endangerment, would be to support the State's contention that a police officer can be held criminally negligent for failing to seatbelt a detainee during transport. However, under *Pagotto*, the general orders and policies cannot be used for this purpose. They are therefore irrelevant to, and must be excluded from, the trial of Sergeant White. MD. RULE 5-402 ("Evidence that is not relevant is not admissible.").

Baltimore Police Department general orders and policies relating to the use of seatbelts in police vehicles must also be excluded from the trial of Sergeant White because their "probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury[.]" MD. RULE 5-403. As explained above, the general orders and policies have little, if any, probative value to Sergeant White's trial. Instead, their admission would only serve

to mislead the jury into believing that a violation of the general orders or policies constitutes a criminally negligent act when, as a matter of law, it does not.

II. Baltimore Police Department Policy 1114 must be excluded from trial because the State cannot show that Sergeant White had actual knowledge of the policy

The State may also seek to argue that Baltimore Police Department Policy 1114 as evidence that Sergeant White consciously ignored a duty required of her position for the crime of misconduct in office. However, in order to be relevant to the crime, the State must prove that Sergeant White had *actual knowledge* of the Policy. *See* MPJI-CR 4:23 ("The word 'corruption,' as an element of misconduct in office, is used in the sense of depravity, perversion or taint . . . Thus, the conduct must be a *willful* abuse of authority and not merely an error in judgment.") (emphasis added) (internal citations omitted).

Despite the fact that Policy 1114 was published just nine days prior to Freddie Gray's arrest, and disseminated just three days before his arrest, it is anticipated that the State will argue that Sergeant White was subjectively aware of the Policy. However, the State has failed to identify any expert capable of showing that Sergeant White actually received the email, opened the email, or read the new Policy. Absent such evidence, the mere existence of Policy 1114 is irrelevant to the crime of misconduct in office and must be excluded from trial.

III. Baltimore Police Department Policy 1114 as well as any testimony regarding a failure to seatbelt by Sergeant White must be excluded as it directly conflicts with the State's Theory as to when Mr. Gray's injuries occurred and is therefore irrelevant to the Defendant's case and thus inadmissible under Maryland Rules of Evidence.

The State's experts testified that it was their opinion that Mr. Gray received his injuries at some point between the second and the fourth stop. Specifically, the medical examiner, Dr. Carol Allen opined in her autopsy report that it is likely the injury occurred after the second but before

the fourth stop of the van. (**Exhibit B**).[1] Additionally, the State's expert Dr. Morris Soriano testified in *State v. Porter*, that the assuming the facts as the State presented them, the he opined to reasonable degree of medical certainty that the injuries suffered occurred prior to the fourth stop at Druid Hill and Dolphin. *See* Trial Testimony of Dr. Soriano (*State v. Porter*) at pages 43-47, attached hereto as **Exhibit C**. Therefore, it is clear from the evidence and testimony provided by the State that their theory of the case is that the injuries to Mr. Gray occurred prior to the fourth stop and therefore prior to Sergeant White's involvement in the matter. The State further alleges that the failure to seatbelt is what led to the injuries suffered by Mr. Gray.

It follows that if it is the State's theory that the injuries were a result of a failure to seatbelt Mr. Gray and those injuries occurred prior to Sergeant White's interaction with Mr. Gray, any potential relevance to the general order regarding seatbelts would only be admissible against the defendants that allegedly failed to seatbelt him prior to his injuries. As the State argues Mr. Gray had already sustained his injuries prior to Sergeant White becoming involved in the incident, whether or not she ensured Mr. Gray was in a seatbelt and whether or not Sergeant White should have ensured Mr. Gray was in a seatbelt is entirely irrelevant to the charges against her.

Maryland Rule 5-401 defines relevant evidence as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence." As the Baltimore City General Order regarding seatbelts has absolutely no tendency to make existence of any fact in consequence more or less probable, due to the State's argument that the injuries had already occurred prior to Sgt. White's involvement it is inadmissible and must be excluded.

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[1] In light of the sensitive nature of the information contained in the autopsy report, it will not be attached as an exhibit, but will be made available for the Court's review at a hearing, with a request that the document be filed under seal.

WHEREFORE Defendant Sergeant Alicia White respectfully requests this Honorable Court to order the preclusion of any and all reference to or argument concerning Baltimore Police Department General Orders and Policies as they relate to the use of seatbelts in police vehicles. In the alternative, we request to order the preclusion of any reference to the Baltimore Police Department General Orders and Policies as "the law" or that they are consider Maryland law, as well as any statements made by the State or their witnesses alluding to the reference that the policies are Maryland law or that by violating any of the policies a person may violate Maryland law.

Respectfully submitted,

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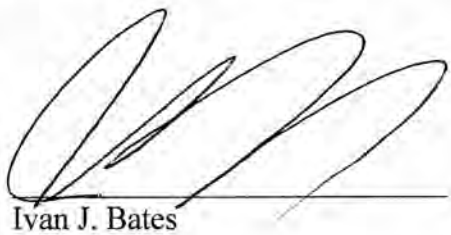
Counsel for Sergeant Alicia White

CERTIFICATE OF SERVICE

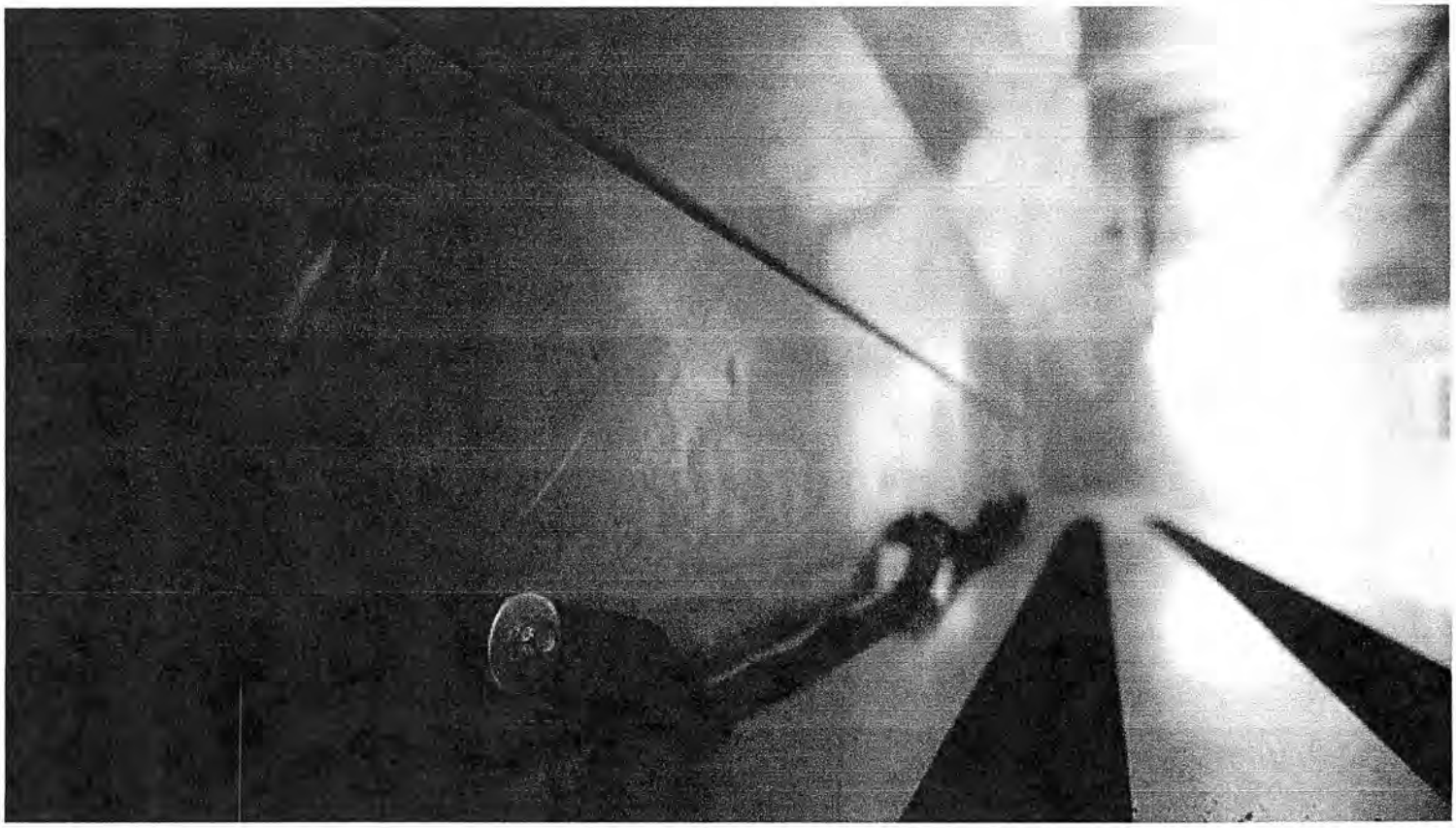
I HEREBY CERTIFY that on the 15th day of January 2016, a copy of the foregoing Motion was hand-delivered to Janice Bledsoe, Deputy State's Attorney for Baltimore City, 120 E. Baltimore Street, 9th Floor, Baltimore, Maryland 21202.



Ivan J. Bates

News / Maryland / Freddie Gray Case Trials

Most police vans in Baltimore region lack seat belts



Benches inside 2006 GMC Savana prisoner transport van seat five a side and are outfitted with grab straps. Vents provide heat or air. One-way glass is between prisoners and driver. (Kim Hairston, Baltimore Sun)

By **Alison Knezevich and Pamela Wood · Contact Reporters**
The Baltimore Sun

MAY 10, 2015, 5:53 PM

Two Baltimore-area police departments say they're reviewing their practices for the transport of prisoners in the wake of Freddie Gray's death from an injury that prosecutors say he suffered in the back of a police van.

The reviews by the Howard and Baltimore County police departments come as a survey by The Baltimore Sun found that prisoner transport vans used by county law enforcement agencies generally are not equipped with seat belts.

City officers involved in Gray's arrest are accused of violating department policy by not placing him in a seat belt. Gray suffered a fatal spinal injury while unrestrained in the van, according to Baltimore State's Attorney Marilyn Mosby.

The Sun's survey found that vans used to transport suspects in Anne Arundel, Harford, Howard and Baltimore counties do not have seat belts. The Carroll County sheriff's office says one of its two police vans has seat belts.

In Howard County, police spokeswoman Sherry Llewellyn said her agency has two vans, which have straps across the lower back of each seat for handcuffed prisoners to hold. Because of Gray's death, Llewellyn said, the department is considering adding new features — possibly padded safety bars, traditional seat belts, or a video monitoring system.

In Baltimore County, suspects arrested on the street usually are driven to a precinct in a police cruiser, where they are placed in seat belts, police spokeswoman Elise Armacost said. The county also owns 10 vans that are sometimes used, none of which have seat belts for prisoners, she said.

"We are currently reviewing complex and ambiguous federal and state law relevant to the wearing of seat belts," Armacost said. She said the department does not support adding seat belts to the vans, saying it could be unsafe for officers to buckle an uncooperative prisoner in such a confined space.

"The issue of prisoner safety is about a lot of things other than seat belts," she said. She pointed to features such as straps suspects can hold behind them, and limits on the number of people who can be in a van.

A lawyer who has represented people who claim they were given "rough rides" by Baltimore police argues that vans lacking seat belts are unsafe for the people in custody — even if a prisoner has a strap to hold onto.

"They're like metal prisons," lawyer Stephen Norman said. "There's metal all over these things. There's bolts sticking out. ... You can slide back and forth."

The federal government has no regulations for transporting prisoners, according to U.S. transportation officials. Such policies are decided by individual law enforcement agencies and private transport companies, based on state laws about occupant protections.

Under Maryland law, passengers in the rear of a motor vehicle must wear a seat belt unless the vehicle is specifically exempted, as school buses are, said Buel Young, a spokesman for the Maryland Motor Vehicle Administration. Young said he was not aware of an exemption for police vans. Some local departments say they do not believe vans are required to have the belts.

The accrediting body for law enforcement agencies says departments should have policies on the safety of detainees during transport, but does not require the use of seat belts in vans.

Baltimore City Councilman Brandon Scott has said he plans to hold hearings on the state of the city police department's fleet of vans. Police had pledged to replace them last year but scrapped the plan. Officials said last month they are checking all of the vans to make sure they're outfitted with proper restraints and are considering putting cameras inside.

City police officials did not respond to requests about when their policy requiring seat belt use took effect and why they put it in place. The policy is unique in the area.

"I've never actually seen a seat belt in the back of a wagon," said David Rose, second vice president for Baltimore County FOP Lodge No. 4.

Rose said buckling in a prisoner would be impractical in some cases.

"Someone who's fighting you and resisting, it would be a very difficult task to seat belt them," he said.

Not all agencies use "wagons," as the vans are sometimes called.

Maryland State Police do not have vans, said Sgt. Marc Black. A person in custody typically rides in the front seat, next to a trooper, and must be seat belted.

In Carroll County, vans are used only for taking prisoners between the county detention center and the Circuit Court, which are in the same complex, said Cpl. Jon Light, a spokesman for the sheriff's office. Only one of the agency's two vans has seat belts, he said.

During longer rides, sheriff's deputies use a vehicle with seat belts, Light said.

In Harford County, prisoners are taken to the Interagency Processing Center near Bel Air in a police cruiser or SUV "99.9 percent of the time," according to Maj. John Simpson of the county sheriff's office.

Prisoners are put in the back seat, Simpson said. "That keeps you away from the deputy and the deputy away from you," he said.

Prisoners are buckled in seat belts, unless deputies fear they could be injured by a prisoner while they secure the belt, Simpson said.

On the "rare occasion" that a prisoner is disruptive or dangerous, Simpson said deputies use one of the two prisoner transport wagons the department owns. They also use the vans during raids or other times when deputies expect to arrest several people at once.

The vans have aluminum benches on each side of the rear compartment, with straps for prisoners to hold behind their backs. The side-facing seats do not have seat belts.

Simpson said the benches with no seat belts are standard among most police agencies.

"Like most agencies, it's the responsibility of the deputy who has taken someone into custody and the deputies that assisted. They are responsible for the safety of the prisoners ... as long as they have them in our custody," Simpson said.

In Anne Arundel, prisoners are usually handcuffed behind their backs and seat belted in the front seat of a police cruiser, said police spokesman Lt. T.J. Smith. He said officers can keep a better eye on them there.

If the police car has a barrier between the front and back seats, the prisoner is placed in the back.

After booking at a district station, a contractor operating vans takes prisoners to a district court commissioner for an initial bail review, Smith said. The contractors' vans do not have seat belts, but do have straps for prisoners to hold.

Smith said the incident involving Gray is a "teachable moment" for police officers and a reminder to follow policies on how to safely transport prisoners.

"We think we have good policies and procedures in place to protect prisoners when we place them in our custody," he said.

Baltimore Sun reporter Justin George contributed to this article.

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This article is related to: Crime

IN THE CIRCUIT COURT FOR BALTIMORE CITY, MARYLAND

STATE OF MARYLAND

vs.

Case Number:
115141037

WILLIAM PORTER,

DEFENDANT.
_____/

REPORTER'S OFFICIAL TRANSCRIPT OF PROCEEDINGS
(Excerpt - Testimony of Morris Marc Soriano, M.D.)

Baltimore, Maryland

Monday, December 7, 2015

BEFORE:

HONORABLE BARRY G. WILLIAMS, Associate Judge
(and a jury)

APPEARANCES:

For the State:

JANICE BLEDSOE, ESQUIRE

MICHAEL SCHATZOW, ESQUIRE

MATTHEW PILLION, ESQUIRE

JOHN BUTLER, ESQUIRE

For the Defendant:

JOSEPH MURTHA, ESQUIRE

GARY PROCTOR, ESQUIRE

* Proceedings Digitally Recorded *

Transcribed by:
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P R O C E E D I N G S

(Excerpt - Testimony of Morris Marc Soriano, M.D. began at 12:10 p.m.)

Whereupon,

MORRIS MARC SORIANO, M.D.,

a witness produced on call of the State, having first been duly sworn, was examined and testified as follows:

THE CLERK: You may be seated. Please keep your voice up. Speak into the microphone. State your name and your business address for the record.

THE WITNESS: Morris Marc Soriano. I'm sorry. What else did you want?

THE CLERK: Your business address?

MR. SCHATZOW: Business address, sir?

THE WITNESS: 973 Featherstone Road, Rockford, Illinois.

THE COURT: You may proceed.

MR. SCHATZOW: Thank you.

DIRECT EXAMINATION

BY MR. SCHATZOW:

Q. Dr. Soriano, are you a medical doctor?

A. Yes.

Q. What's your speciality?

A. Neurological surgery.

Q. Tell us about your post-high school education,

please.

A. I went to Seattle University where I graduated with honors, a bachelor of science degree in 1974. I went to Illinois State University in Normal-Bloomington, Illinois where I graduated with a master's degree in biochemistry and physiology in 1976.

I went to the University of Illinois School of Medicine where I graduated with honors in 1980. And then I went to Loyola University Medical Center, just a short suburb from Chicago where I graduated as a board eligible neurosurgeon in 1986.

Q. What does it mean to be a board eligible neurosurgeon?

A. Board eligible means you have reached the highest level of excellence that a neurosurgeon in the United States can reach. It means you've gone through six, seven, or eight years of speciality training. It means you've passed. It means you've published a paper in a journal. It means you have passed an eight-hour written exam. And it means that you have demonstrated technical abilities to do brain, and spinal cord surgery.

And then you go out and practice for it between two and five years and then you sit before a board of 20 other neurosurgeons who pepper you with questions for four to five hours. That's called your oral examination.

And if you answer those questions appropriately, they grant you the title of being a board-certified neurosurgeon.

Q. Are you a board-certified neurosurgeon?

A. I am.

Q. Since when you have been a board-certified neurosurgeon?

A. Since May of 1992.

Q. Are you currently in private practice of medicine?

A. Yes.

Q. Can you tell us oh, since -- well, since -- when did you begin the private practice of medicine?

A. January 1st, 1987.

Q. And from that date until today, what has your practice consisted of?

A. Well, it's been a private practice. I've had, I've had limited partners in terms of cross referrals and sharing overhead, but I've basically been an independent practicing physician.

When I first started, for the first 15 years, I did all neurosurgery. I did spinal cord trauma. I did brain trauma. I did brain tumors, aneurism's. And then I got ill and I gave up the brain surgery portion about 15 years ago. And now I've been concentrating primarily

on spinal cord, spinal column, and peripheral neurosurgery for the past 15 or 16 years.

Q. Are you familiar with the anatomy of the human neck and the cervical spine?

A. Yes.

Q. Are you familiar with the neuroanatomy of the spinal cord, in general, and particularly, as it relates to the cervical spine?

A. Yes.

Q. Are you familiar with injuries to the cervical spine?

A. Yes.

Q. Among the injuries that you're familiar with, are you familiar with fracture subluxation?

A Yes.

Q. Are you familiar with locked facets?

A. Yes.

Q. Are you familiar with fractures to the pedicles and lamina?

A. Yes.

Q. Are you familiar with the effect of those injuries on the spinal cord?

A. Yes.

Q. Are you familiar with a radiographic appearance on CT scans or MRI's of those types of injuries?

A. Yes. And approximately, how many occasion have you interpreted CT scans or MRI's for those kinds of injuries?

A. Those specific injuries, I can't be absolutely sure. I would say thousands, but I can't pin it down any better than that.

Q. Have you ever evaluated, diagnosed, and treated injuries to the cervical spine?

A. Yes.

Q. Approximately, how many times?

A. Thousands of times.

Q. Are you familiar with the neuro anatomy of the spinal -- well, excuse me. I think I asked you that already. Are you familiar with what happens to the neuro anatomy of the spinal cord if it becomes injured by a fracture subluxation?

A. Yes.

Q. Have you treated patients who sustained fracture subluxations of the cervical spine?

A. Yes.

Q. Are you familiar with the mechanisms of injury to the cervical spine?

A. Yes.

Q. And are you familiar with the nature and degree of force required to create those kinds of injuries?

A. Yes.

Q. Are you familiar with the natural consequences of a significant spinal cord injury as a result of a cervical spine fracture and subluxation?

A Yes.

Q Are you familiar with injuries to the brain?

A. I am.

Q. What is anoxic brain injury?

A. Well, anoxic is the Latin term for lack of oxygen basically is all it means. So if at any point the brain or the spinal cord experience a decrease in the amount of oxygen going to the brain, or a complete lack of oxygen going to the brain, the injury can be considered anoxic meaning, no oxygen.

Q. How, if at all, does that differ from a hypoxic brain injury?

A. Well, hypoxic means it's not a total lack of oxygen. It's a decreased amount of oxygen. So if you slow the amount of blood flow and oxygen going to the brain you can get sleepy. You can start acting stupid, but you're not in a coma. Your brain's not dying. It's just sort of getting sleepy. The difference being, if you get a lack of oxygen, your brain dies. That's the difference.

Q. Do you see -- excuse me. Have you seen these

types of injuries in your practice of medicine?

A. Yes.

Q. Are you familiar with injuries to neurological tissue?

A. Yes.

Q. Have you seen injuries to neurological tissue in your practice of medicine?

A. Yes.

Q. Are you familiar with the effect on the body as a whole of an injury to the cervical spine?

A. Yes.

Q. And are you familiar with the method and treatment which is necessary in order to sustain life after such an injury?

A. Yes.

Q. Now, Doctor, have you ever testified before as an -- well, let me ask you this question. Have you ever been qualified by a court of law as an expert before today?

A. Yes.

Q. On approximately, how many occasions?

A. Oh, I would guess around 50 times, maybe 75 times in the last 20 to 29 years.

Q. And in what jurisdictions have you been so qualified?

A. A Federal Court in New York, State Courts in Ohio, Maryland, Iowa, Illinois, Wisconsin, California, Florida.

Q. In fact, you've been qualified as an expert here in the Circuit Court for Baltimore City; is that correct?

A. That's true.

MR. SCHATZOW: Your Honor, at this time I would tender Dr. Soriano as an expert in neurosurgery with a special emphasis on traumatic anoxic and hypoxic brain injuries, spinal cord injuries, and spinal cord pathology.

THE COURT: First off, any voir dire?

MR. MURTHA: Court's indulgence. Just one moment, please.

(Brief pause.)

MR. MURTHA: No questions, Your Honor.

THE COURT: All right. You're offering him as an expert, I got the part of neurosurgery and anoxic and hypoxic. What else are you offering him as an expert in?

MR. SCHATZOW: Spinal cord injuries and spinal cord pathology.

THE COURT: All right. Without objection, ladies and gentlemen, I will accept the --

MR. MURTHA: Excuse me. May we just approach?

THE COURT: You may.

(Counsel and Defendant approached the bench, and the following ensued:)

MR. SCHATZOW: I didn't hear him testify about neuropathology. I heard him talk about neuro --

THE COURT: Well, he said a lot and that's why, that's why I ask these questions. I don't -- you didn't give me a list of what he was qualified for, so.

MR. SCHATZOW: Oh, I'm sorry, Your Honor.

MR. MURTHA: I didn't recall him -- I mean, he's a neurological surgeon which is a whole lot different than neurological or a neuropathologist.

THE COURT: Right.

MR. MURTHA: And he just actually offered him as an expert in neuropathology also.

MR. SCHATZOW: No, I didn't. I offered him as an expert in spinal cord pathology.

THE COURT: Okay. So --

MR. MURTHA: He didn't testify as to any of that.

THE COURT: Right, not -- because again, she made it clear that there's a significant difference between a neurosurgeon and a neuropathologist. So I --

MR. SCHATZOW: Are you going to accept all of her testimony?

THE COURT: I accept all of it for whatever you guys use. And so -- this is --

MR. SCHATZOW: No. This is my notes on the question.

THE COURT: Can I see them?

MR. SCHATZOW: You certainly can, Your Honor.

THE COURT: I just want to see what he --

MR. SCHATZOW: This is what -- this is the -- it's right under the fold.

THE COURT: As a neurosurgeon with specific emphasis on traumatic anoxic and hypoxic brain injuries, spinal cord. Okay. Those are all fine, but he didn't testify about spinal cord pathology.

MR. SCHATZOW: I'll ask him some questions then.

THE COURT: Sure, sure, not a problem, but.

MR. MURTHA: Yeah.

THE COURT: Just so that I'll have it.

MR. MURTHA: Okay.

THE COURT: Neurosurgery, traumatic injury. I got the anoxic and hypoxic injury. So spinal cord injuries. And you hope spinal cord pathology? Okay.

MR. SCHATZOW: I'll ask a few more questions, Your Honor.

THE COURT: Thank you.

(Counsel and Defendant returned to the trial table, and the following ensued:)

THE COURT: You may proceed, Mr. Schatzow.

BY MR. SCHATZOW:

Q. Dr. Soriano, what is spinal cord pathology?

A. Well, in simple terms, spinal cord pathology is something other than the normal, the normal function, and shape, and anatomy of the spinal cord.

Q. So when we talk about spinal cord pathology, you're talking, do you -- well, let me ask you this question. Do you have experience as a physician, as a neurosurgeon, dealing with spinal cord pathology, which if I understand what you just said is differences from the natural normal condition of the spinal cord?

A. Yes, for 37 years.

MR. SCHATZOW: Your Honor, I offer him at this time as an expert in the areas previously discussed; neurosurgery -- neurosurgery, excuse me, Your Honor, with a special emphasis on traumatic anoxic and hypoxic brain injuries, spinal cord injuries, and spinal cord pathology.

THE COURT: Any voir dire?

MR. MURTHA: Just briefly.

THE COURT: You may.

VOIR DIRE EXAMINATION

BY MR. MURTHA:

Q. Dr. Soriano, you certainly testified at length about your experiences as a neurological surgeon, correct?

A. Yes, sir.

Q. And a neuropathologist has a different role than a neurological surgeon; is that correct?

A. True.

Q And one of the questions that you were just asked by Mr. Schatzow was your experience with spinal cord pathology; is that correct?

A. Yes.

Q. Do you typically, if there's a pathology question, do you tend to consult with the neuropathologists who may do the examination of the spinal cord?

THE WITNESS: May I clarify, Your Honor? I can't answer yes or no.

THE COURT: Well --

BY MR. MURTHA:

Q. Well, let me -- let me rephrase.

THE COURT: You may.

BY MR. MURTHA:

Q. A neuropathologist looks at spinal cords and oftentimes, and the brain, and assesses it for certain

diseases and injuries, correct?

A. At the cellular level, the microscopic level, yes.

Q. Such as, like, if a person has Parkinson's or Alzheimer's, those kinds of diseases at the molecular level, they are making that determination?

A. The cellular level.

Q. Cellular?

A. Not molecules, but cells.

Q. At the cellular level?

A. Yes.

Q. A neurological surgeon is, and again, I'm not a doctor, so I might ask you a question like that. That's fine.

I mean, it's the mechanics of the spinal column and the effect that injuries have on the spinal cord though; correct?

A. That's part of what a neurosurgeon does, yes.

Q. But you, yourself, don't engage in the practice of neuropathology though, do you?

A. Well, I don't -- I don't look at the cells. I may go down to the pathology office and look at the cells if I take out a spinal cord tumor or a brain tumor I may look at the cells. But I was answering the question. The reason I couldn't answer yes or no is his question

was pathology means anything that's wrong with the spinal column or the spinal cord. That I do look at in surgery. But actually no, I don't diagnose the actual cellular, the cellular damage, but I do diagnose the actual more gross damage or pathology such as a bruise of the spinal cord, or a fracture, or an artery that got torn. I do diagnose that. That's in my area, but not the cells, no.

Q. Okay. And so the distinction is that in the course of practicing neurological surgery you have to look at the, you have to look at the damage and make a determination from a pathology standpoint at a gross level, is what you said?

A. Yes, yes.

Q. You're not assessing it in the same manner as a neuropathologist. So when you're qualified for the purposes of spinal pathology, what does that mean, and I'm not being rude. I just don't know.

A. Well, it means -- I mean, to expand a little bit further, Your Honor. I did six months of training in the lab with neuropathologists looking at these tissues, so and we had to pass that on our oral boards and we had to pass that on our written boards. So when you ask me do I look, or do I know what the cell looks like when its oxygen damaged or bruised, yes, I know what that looks like under a microscope and I can identify that. I deal

with that on a more gross level. But if you showed me a slide, I could identify that. If you showed me a gross specimen of a spinal cord taken out at autopsy, I can identify the areas of damage. And if you showed me a brain at autopsy, after autopsy, or even in the live person, I can identify areas of damage based on color changes, swelling, blood vessel disturbances. So I can do both. I just wouldn't put any money on me to make the right diagnosis at the cellular level any more. It's been, it's been 29 years since I've been in the lab, so, but I do have training in that. I'm just not holding myself out to be an expert at the cellular level.

Q. Okay. So if you were asked a question about spinal pathology, it would be limited to the scope of what you just testified to?

A. Right, and including what I see on the MRI's because I have the experience where if I see something on an MRI and I go into operate and I have 35 or 36 years of experience correlating what that MRI finding is with the actual human live anatomy, so I can comment on that as well. So yes, the actual anatomy, plus I have expertise in what the MRI CT scan, plain x-rays is also showing. I consider myself an expert in that as well.

Q. Okay.

MR. MURTHA: No further questions, Your Honor.

THE COURT: Thank you. All right. Any objection at this time?

MR. MURTHA: No, Your Honor.

THE COURT: All right. I will accept Dr. Morris Marc Soriano as an expert in neurosurgery, traumatic injury of anoxic and hypoxic brain injuries, spinal cord injury, and spinal cord pathology as indicated.

You may -- you may proceed until --

MR. SCHATZOW: Do you want us, Your Honor, because we have an agreement with them.

THE COURT: I can't hear you.

MR. SCHATZOW: We were going to stop at this point, but it's certainly up to you, Your Honor, whatever you want us to do.

THE COURT: I don't like wasting time and lunch is not here, so start.

MR. SCHATZOW: We'll move along, Your Honor.

THE COURT: Thank you.

DIRECT EXAMINATION

BY MR. SCHATZOW:

Q. Dr. Soriano, just so it's clear to everybody, you were present in court this morning for everything that's happened in court since court started this morning, correct?

A. Yes.

Q. Okay.

MR. MURTHA: May we just approach very briefly, Your Honor?

THE COURT: You may.

(Counsel and Defendant approached the bench, and the following ensued:)

MR. MURTHA: It may be appropriate to advise the jury that experts are allowed to hear the testimony of one another, that there is a sequestration of witnesses.

THE COURT: Okay. Well, I don't know that they know that, but I have no problem. That's fair to let them know, you know.

MR. MURTHA: Only because there's not going to be anybody else sitting in the courtroom testifying about what someone else says or does, okay?

THE COURT: That's fair.

MR. PILLION: Not at Mr. Murtha.

MR. MURTHA: That's true.

THE COURT: I think that's fair. I'm going to let you go -- do you have basic questions that you --

MR. SCHATZOW: Well, here's the problem.

THE COURT: Okay.

MR. SCHATZOW: I'm going to ask him what

materials he reviewed.

THE COURT: Okay.

MR. SCHATZOW: The next thing I'm going to ask him about is what the injuries of Mr. Gray were.

THE COURT: Okay.

MR. SCHATZOW: And that's when he's going to get off the stand and he's going to go through about ten exhibits.

THE COURT: We're not going to go through all that.

MR. SCHATZOW: Right, so.

THE COURT: So wherever we are. So ask about the materials and then you will have to break at that time because --

MR. SCHATZOW: Okay.

THE COURT: -- I'm not going to make you start that until --

MR. SCHATZOW: Very good. And that will also save us time because I can get the exhibits numbered.

THE COURT: Okay. Thank you.

(Counsel and Defendant returned to the trial table, and the following ensued:)

THE COURT: All right. Ladies and gentlemen of the jury, just so that you're aware of the fact, generally, witnesses are not allowed in the courtroom

while testimony is going on, but you may or may not have noticed that this witness has been sitting here. Experts are allowed to be in the courtroom so that they can listen to the testimony and opine on it. So there's no problem with this witness or any other expert who you may notice in the courtroom. You may proceed.

BY MR. SCHATZOW:

Q. Let me ask you this question, Doctor. What materials have you reviewed in order to prepare yourself to give testimony in this case?

A. I reviewed all the medical materials from Maryland Shock Trauma, the autopsy report, the photographs of the, the various pathology reports. I reviewed statements of the officers. I reviewed a short video and photographs of, I think, one of the scenes. I can't remember exactly which one. And I think that pretty much is what I reviewed.

MR. SCHATZOW: Your Honor, I think we're at that point. I'm sorry. I should have let you swallow. I apologize.

THE COURT: I was hoping maybe another five or ten minutes. All right.

With that, ladies and gentlemen, we will -- this is an appropriate time to break for lunch, ladies and gentlemen. Please do not discuss the testimony even

among yourselves.

Leave your notepads on the chair.

We'll return at 1:45.

All rise for the jury.

I thought you had more.

MR. SCHATZOW: I'm sorry, Your Honor. I wasn't clear as --

THE COURT: That's fine. That's not a problem.

(Whereupon, a luncheon recess was taken at 12:31 p.m.)

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AFTERNOON SESSION

(1:56 p.m.)

(The jury was not present in the courtroom upon reconvening.)

THE CLERK: All rise. Circuit Court for Baltimore City, Part 31, will start the afternoon session. The Honorable Barry G. Williams presiding.

THE COURT: Thank you. You may be seated. Counsel, approach.

(Whereupon, counsel and the defendant approached the bench, and the following ensued:)

THE COURT: Good afternoon, Counsel.

MS. BLEDSOE: Good afternoon.

MR. MURTHA: Good afternoon.

THE COURT: I just -- so that you are aware of all that I'm aware of, I just finished speaking with the jury. And here's what I told them. When the Sheriff indicated to me, not Mayo, but the Sheriff who was back there with them indicated that one of the jurors wanted to walk out, the told her that he could not -- because he did not know of anything else, and I understand that.

So what I just did, I explained to the jurors that they have every right to leave if they want to. They're not trapped back there. And I explained to them that if they leave the back area, that they would simply

be at the whims of everyone else. And if they wanted to be seen, that's certainly their right. They know that they can't talk.

And I did inform them, but if you left, you would not have a sheriff walking with you. And if you came back in, you would have to come through these doors here because they don't have access the way they do now. That is all that I said to them.

And that was because, as I said, the Sheriff said -- actually it's the way it exactly happened. The woman was opening the door and walking out on her own. And he did say if you have any concerns, write it down. So that's the information that was presented to me, and that's what I literally maybe three seconds ago came from talking to the jurors about their ability to leave, which they have every right to do, or not to leave.

Any questions of defense?

MR. MURTHA: No, Your Honor.

THE COURT: State?

MR. SCHATZOW: No, Your Honor.

THE COURT: Okay. They should be ready to start up again. Anything now that you're up here, State?

MR. SCHATZOW: I am very sorry we were late getting back, Your Honor, and I appreciate your indulgence.

THE COURT: He was late this morning because he was coming down 83.

MR. PROCTOR: The record should reflect I'm a pillar of the courtroom community.

(Laughter.)

THE COURT: You're always here until you're not.

All right. Thank you everyone.

(Whereupon, counsel and the defendant returned to the trial table, and the following ensued in open court:)

THE COURT: Simmone, go tell Mayo that we're ready whenever he's -- oh, that will be difficult.

I thought you were back there. I'm ready for them. Are they in the hall?

THE SHERIFF: Yes, they are.

(Brief pause.)

THE COURT: All rise.

(Whereupon, the jury returned to the courtroom at 1:58 p.m.)

THE COURT: Thank you. Everyone may be seated. Good afternoon, ladies and gentlemen.

THE JURORS: Good afternoon.

THE COURT: Thank you. Mr. Clerk.

THE CLERK: Just to remind you, you're still

under oath. State your name for the record.

THE WITNESS: Dr. Marc Soriano.

THE COURT: You may proceed.

MR. SCHATZOW: Your Honor, at this time, with the permission of the Court, I would like to read to the jury a stipulation of fact that's been entered into between the State and Defendant.

THE COURT: You may.

MR. SCHATZOW: Stipulation of fact: The parties agree that all of University of Maryland Hospital records presented in this case, it says "The above-captioned case," which pertain to the medical treatment of Freddie Carlos Gray, Jr., on April 12, 2015 until April 19, 2015 are a fair and accurate representation of those records dissembled and stored in the ordinary course of business for the purposes of medical treatment.

May I hand it up to the Clerk, Your Honor?

THE COURT: You may.

MR. SCHATZOW: At this time, Your Honor, pursuant to that stipulation, I offer into evidence Exhibits Numbers 50 through 66.

THE COURT: 50 through 66. All right. Without objection?

MR. MURTHA: Yes, Your Honor.

THE COURT: Madam Clerk, you have that?

THE CLERK: I do.

THE COURT: Okay. Mr. Clerk? All right.

(State's Exhibit Numbers 50 through 66 were received in evidence.)

MR. SCHATZOW: And, Your Honor, with the Court's permission, I'm going to ask Dr. Soriano to describe the injuries that Mr. Gray received, and with the Court's permission, we're going to move the TV to the center area after we let Mr. Murtha get by so we can explain it to the jury. So Mr. Murtha, if you'd like to move.

THE COURT: Very well.

MR. MURTHA: May I move, Your Honor?

THE COURT: Of course.

MR. MURTHA: Thank you.

MR. SCHATZOW: And Dr. Soriano, if you'd like to step down from the stand. And we're going to move the TV over, so you might want to come through before the TV gets moved. It's going to fill up that little space there.

(Witness steps down from the stand.)

DIRECT EXAMINATION (Resumed)

BY MR. SCHATZOW:

Q. Dr. Soriano, using the exhibits that we

referred to, well, first, please describe for the jury the injuries that were sustained by Mr. Gray.

A. If it's okay if I use the model?

Q. Yes.

MR. SCHATZOW: Your Honor, for the record, he's using the model of the cervical spine that was used previously in the trial.

THE WITNESS: So this is a model of the neck. This is the back of the skull right here, and these are the bones of the back of your neck. And then the yellow, the yellow material that you see going up and down is essentially where the spinal cord is.

The key of the injury is going to be these joints right here. These are overlapping joints, and they're very small, in essence. But what's happened is the injury where Mr. Gray -- what he sustained was that joint basically got pushed so far forward that instead of aligning one over the other, that joint got pushed way forward and got jammed into the bone below it, and that's called a locked facet. That's the medical term. You don't need to know that.

But in the process of doing that, he broke some of these bones back here, which is the bone you feel on the back of your neck. He broke the bone that slipped forward. He fractured that.

There's an artery on the left side that goes up that supplies the back and the central part of the brain. He tore that artery.

And then the spinal cord underneath got pinched and then once that happened, he developed an injury where it's swelling of the spinal cord that traveled up to the brain and down to the brain.

And those are the basic injuries that he suffered.

So I'll show you pictures of that. So this is the --

BY MR. SCHATZOW:

Q. Excuse me, Doctor. Let me -- let me just so the record is clear, we're looking at what's marked Image 9 of 17. This is Exhibit Number 50.

A. Actually, let me skip to a different to kind of followup.

MR. SCHATZOW: This, Your Honor, is something that was marked for identification earlier in the trial. It's 41 for identification, Your Honor.

THE COURT: All right. And so -- well, it's ID only. Is it something that is going to be in by agreement, or is it part of the 50 through 66 or what?

MR. SCHATZOW: It's not part of the 50 through 66, Your Honor. This was for ID only. This is not Mr.

Gray. This is just a -- for the record, it's a x-ray of a spine, of a cervical spine.

THE COURT: In general?

MR. SCHATZOW: Yes.

THE COURT: Thank you.

BY MR. SCHATZOW:

Q Go ahead, Doctor.

A. So we talked about these joints, which are basically gliding joints, and they help you to tip your head forward and turn to the side. That's what these gliding joints do. And this is a normal picture of those joints right there.

So you can see the top joint is gliding over the bottom joint. And the injury that he, Mr. Gray sustained is right here. The fourth gliding top joint normally slides over the bottom, so I wanted to show you that.

And then this is --

Q. Excuse me, Doctor. This is Image 090, which is, yeah, 90.

MR. SCHATZOW: That is Exhibit 62, Your Honor.

THE COURT: All right. This is a picture of what?

THE WITNESS: This is the CT scan, the first CT scan he had when he got to the hospital on the 12th, on

January 12th, 2015. And it's of the neck, of the cervical spine.

BY MR. SCHATZOW:

Q I'm sorry.

A So I showed you those gliding joints and that's one of the gliding joints there. That's the gliding joint there. Here's another one here. But look at this joint right here. This bone used to be back here.

And because of the injury that Mr. Gray sustained when his head went forward, that bone got pushed all the way forward and locked itself on the bone below. You can see it's not gliding anymore. It's pushed way forward probably about a half an inch or so.

The next picture I'll show you in terms of -- this is a --

MR. SCHATZOW: Just one second, Doctor. This is Exhibit 60, Your Honor, in evidence and it's another CT scan of the cervical spine.

THE WITNESS: So not only did this joint no longer slide, but in the process of pushing the whole spinal cord forward and locking itself, it pushed, you can see the whole --

BY MR. SCHATZOW:

Q Excuse me. Now, we're on Exhibit 60. Oh, it's the same thing.

THE COURT: You switched it and came back?

THE WITNESS: Yeah, I came back. It has pushed the whole bone forward about a third of an inch or about a centimeter or so, and there's a little, you can see the white thing right here. There's a little tear of the ligament and the fracture and this bone is no longer aligned and that's what makes this an unstable fracture, meaning the bones are kind of flopping forward like that.

Now, in the process of doing this, the other injuries that you cannot see is that between each one of these bones in the back of your neck, you can just feel each one, there's dozens of little ligaments that go between each one of these.

And then at the very top here, there's a big thick ligament that connects all these up to the base of the skull.

And then, if you can imagine, going all up and down on both the right and the left side of your neck are hundreds of little muscles that keep your neck stable. Every one of those was ripped and torn.

BY MR. SCHATZOW:

Q. Doctor, just briefly, what again, is a ligament?

A. Well, ligaments just -- it's a thick tissue that basically tries to lock your bones together. It's

not like a muscle which you can feel. You can kind of move your muscle. A ligament is a lot harder. It's kind of a thick rope that attaches between bones. And so, for instance, that rope would attach from here to here and then also lower down from here to here.

And then, also, that little piece right there that I showed you, that's a ligament that connects all these bones down on this side of the column, and there's another ligament down here. Every one of those has been ripped and torn. They're no longer functional. That's what let -- that gliding thing, that's what let it go out of control.

Q Are there any other injuries that were sustained by Mr. Gray?

A. Yes.

Q. Get to where you're going and then stop.

A. I will.

Q. Please. Okay.

MR. SCHATZOW: And this, Your Honor, is Exhibit 50.

THE WITNESS: So I showed you the ligaments and the bones that were fractured. So the next thing that was injured is --

THE COURT: Well, what is this? This is a picture of what?

THE WITNESS: It's the MRI of the neck or the spinal cord in the neck. And also, Your Honor, it shows the bones move forward. And it's a side view of the neck. That's what it's showing.

THE COURT: Thank you.

THE WITNESS: You're welcome. So again, we have the spinal cord which normally, would kind of look like that, but the spinal cord here you can see it is somewhat pinched. It doesn't have the normal diameter like it does here.

And then it has this white dot in the center right where the spine has gone forward. That white dot is a bruise of the spinal cord. And, in essence, we call that a contusion. It means bruise in medical terms. And what's happened there is you basically have a bruise of the spinal cord, swelling is developing, and that probably represents some degree of permanent damage to the spinal cord, not complete, but some degree of permanent damage.

The other thing that you can see here, the other injury that happened was when the spinal cord got somewhat pinched, if all of you can see the kind of fluffy white material here going up and the fluffy white material going down. That white fluffy stuff is going all the way up to the base of the brain.

That's -- that's really spread out swelling inside the spinal cord that started here. And for a variety of reasons, it's now spreading up towards the brain and the brain stem, which is what controls all your functions, and going down towards the bottom of the spinal cord. And that's called -- that's again, just edema or swelling inside the spinal cord.

It's not -- as you can see, it's different because there's not one specific little dot where it's swollen, but it's spreading throughout all the different cells and tissues up and down.

And then the final injury, well, it's not just the final, but --

BY MR. SCHATZOW:

Q. Let's stop for a minute.

MR. SCHATZOW: Your Honor, this would be Exhibit 58 and this is, I believe, a MRI that was taken at 3:12 p.m. on April 12th showing, I would say, the brain, but I think the Doctor can probably explain it clearly.

THE COURT: Very well.

THE WITNESS: It is showing the brain. It's showing the back of the brain. It's one out of about 25 or 26 different x-rays. I show this just because it gives you an idea of what's going on, not only in the

back part of the brain here just above the spinal cord, but going on in the rest of the brain as well.

So remember that patchy thing I showed you and the spinal cord going up and going down, the back part of the brain it has already within six to eight hours developed patchy swelling, increased fluid content, and all that's related to the injury as well.

So not only the spinal cord is developing this patchy swelling and increased water content, but the brain is already -- this is I think at six or eight hours after the actual trip to the hospital. This is also developing now in the brain.

Q. What is the impact on the brain of these patchy areas? Well, let's back up a little bit. What caused, what causes the patchy areas? What does it show? What is that?

A. We want to go to the next picture. I was just getting to that.

Q. Okay.

A. Just give me one more shot. Yeah, this one.

MR. SCHATZOW: This is Exhibit 64, Your Honor. And this appears to be a CT scan color photo, color CT scan of the cervical spine, of Mr. Gray's cervical spine.

THE WITNESS: So the purpose of this film is to show you -- remember I talked about the force being so

great that it tore the artery on one side, the artery that supplies the back part of that brain. Well, if you look -- and this is looking from the back and looking straight through towards the Adam's apple. This is the back of Mr. Gray's neck.

And what you see here is that red line going up into the brain right there. Can everybody see that? That's called a vertebral artery. It supplies the back part of the brain and it supplies the main portion of the lower brain called the brain stem, which basically it controls everything we do. It controls movement, breathing. It controls everything.

So on the right side, that artery is still functioning and full of blood. On the left side, you don't see it. So in the process of him fracturing the bones, jumping that sliding joint forward, he literally ripped that artery and stopped it from providing blood up to, not only to the brain, but that artery also supplies oxygen to the spinal cord as well.

So when we saw all that swelling in the spinal cord going all the way up into the brain, that's probably contributing to some of that.

And then the other, the other question that was asked is back on the patchy areas in the back of the brain on that previous exhibit. The other --

Q. Excuse me.

A. Sure.

MR. SCHATZOW: That's Exhibit 58.

THE WITNESS: So we already saw this one. So in addition to the swelling noted here and here, the other thing that would cause that -- and this was present basically throughout the rest of the brain as well, the other thing, the other injury that would cause that would be just simply the lack of blood flow period to the brain, lack of breathing.

So if you're not breathing, therefore, you're not getting oxygen to the brain, or if your heart stops, you're not getting oxygen to the brain and that's how the brain shows you that it's basically dying. And that was the other injury that Mr. Gray sustained was he sustained basically generalized brain death.

BY MR. SCHATZOW:

Q. Thank you, Doctor.

(Witness resumed the witness stand.)

BY MR. SCHATZOW:

Q. What was the impact on Mr. Gray of the injuries that you described?

A. You mean the impact that caused the injuries or?

Q. No, no. The result. What was the result,

instead of impact, the result of the injuries upon Mr. Gray?

A. Damage to the spinal cord, which I showed is that one white dot. The impact was swelling in the spinal cord, a direct bruise to the spinal cord, and then hypoxic brain death.

Q. What does -- why is swelling of the spinal cord -- well, is swelling of the spinal cord a problem?

A. It is.

Q. Why?

A. The tissues and the cells of the spinal cord are exquisitely sensitive to a lack of oxygen and glucose. So -- and the lack of blood, obviously. So if you swell the spinal cord, the blood supply can't get to the tiny little areas inside of the spinal cord because there's so much swelling the body just doesn't have enough power to push the blood and the oxygen and the glucose to those tissues. And they are very, very sensitive to the lack of oxygen and glucose and they die.

Q. And what -- how does that affect the body? They die, but so what, can you still run, walk, talk, jump, play?

A. No.

Q. Why not?

A. It can range anywhere from being a complete,

immediate loss of function below the injury to a gradual loss of function or -- and then stabilization to a continuing loss of function to complete death of the spinal cord and the brain. It can be any range of those, those things I described.

Q. And in this particular case, do you have an opinion to a reasonable degree of medical certainty whether the injury suffered by Mr. Gray was complete at the time of the injury was suffered or incomplete?

A. It was not complete.

MR. MURTHA: Objection.

THE WITNESS: Oh, sorry.

THE COURT: Overruled.

THE WITNESS: No, I don't believe it was complete at the moment of the injury. I think it was significant but I don't think it was complete.

BY MR. SCHATZOW:

Q. Why don't you think it was complete?

A. Well, maybe I should define what we mean for the jury by incomplete and complete. So incomplete means yeah, I have a white dot in the spinal cord, and you lose some function. But some of the function of the spinal cord was still most likely there as opposed to complete.

Where if someone stabbed a knife in his back, cut the spinal cord in half, or something came down on

the back of his neck like a huge boulder and crushed his spinal cord, that would be a complete lesion, if it were actually crushed into a pancake. So either cutting it in half or crushing it would complete. There's no chance of return of function, as opposed to incomplete, which leaves you with some function.

Q. And what we talk about some function -- excuse me. When you refer to some function, can you tell us in the case of Mr. Gray, given the location of the injury on his cervical spine what function he had after the injury?

A. Well, I would say at that level he probably may have had some function below the neck for his arms and legs, although we don't know exactly how much function. He was probably still able to breathe and speak on his own, at least temporarily. And then obviously, it progressed from there to the point where he couldn't talk, couldn't breathe, and then he loss oxygen supply to the brain.

Q. Do you have an opinion to a reasonable degree of medical certainty as to what caused the injuries that you've described about Mr. Gray?

A. Yes.

Q. What is that opinion?

A. Well, this is a -- the forces involved are to get this kind of sliding of the joint, the neck has to go

dramatically forward and typically rotate to the right or the left. In this case, it probably rotated a little bit to the left because the right side, his gliding joint was the one that got pinched or locked. So that is the medically accepted mechanism of forces that were applied to his neck at the time.

Q. In your experience, Doctor, what are the kinds of forces that are necessary to cause this injury?

A. Well, I think it was referred to earlier this morning, diving accidents, where you dive into a shallow end of a pool, and your head hits the bottom, and your neck snaps down like that. That's the kind of force involved.

Unseatbelted, people who are ejected or thrown forward in a car; motorcycle riders who get knocked off and snap their head when they hit the ground; those are the kinds of forces that would be required to rip all those muscles, ligaments, tendons, and take that sliding joint and completely dislocate it.

Q. Do you have an opinion, Doctor, to a reasonable degree of medical certainty about whether Mr. Gray could have generated sufficient force to cause these particular type of injuries simply by banging his head against a surface in a van?

A. No, he could not have.

Q. Why is that?

A. Well, first of all, if he's sitting on the bench, and I have reviewed the inside of the van by pictures, if he's sitting on the bench and he's banging his head against the wall like this. It's the wrong motion. So tipping your head back actually makes that gliding joint more gliding back. It doesn't -- it doesn't jump it forward. It actually pushes it back. So the mechanism of injury by banging your head backwards would not be possible.

Q. If he were able to somehow go across that 17 or 19 inches, whatever the distance was from his bench and bang his head against the opposite, the opposite dividing wall, again, it would not be sufficient force by just banging the front of his head. It would have to -- he would have had to tip his head down like this and provide enough force going across that 19 inches to really snap his head forward and rip all those ligaments like that. So, in my opinion, and based upon my medical knowledge and surgical knowledge, that's not possible.

Q. Doctor, I'm going to ask you to assume certain facts for the purposes of my next question, okay?

A. Okay.

Q. So I want you to assume that at the fourth, what we've been referring to as the fourth wagon stop at

Druid Hall and Dolphin. I want you to assume that Mr. Gray presented himself as follows: That he said, "Help" as soon as the wagon doors were opened, that he was on the floor of the wagon, that he said, "I can't breathe," that he said he couldn't get up. And when asked, he indicated that he wanted a medic and to go to the hospital. I want you to assume those facts.

Now, assuming those facts, do you have an opinion to a reasonable degree of medical certainty whether such a presentation would be consistent or inconsistent with Mr. Gray having already suffered the neck and related injuries that you have described?

MR. MURTHA: Objection. I'd ask to approach, Your Honor.

THE COURT: Approach.

(Counsel and Defendant approached the bench, and the following ensued:)

THE COURT: Basis?

MR. MURTHA: It's beyond the scope of the designation, Your Honor. I can give the Court a copy of the designation of the nature and opinions that Dr. Soriano would be offering. This area of testimony -- there's actually two.

THE COURT: As opposed to what? Because what he said, so.

MR. MURTHA: As to -- yeah. I have two. Actually, this one is highlighted, but I'll still -- that was the first one. That was something I --

THE COURT: Okay. So what's beyond the scope?

MR. MURTHA: It's the question that he's asking is, at the time that he presented, what were the nature of his injuries, assuming these facts.

THE COURT: Right. So what am I missing? Because even what you highlighted said Dr. Soriano (inaudible at 2:23:47 p.m) concerning the injuries suffered by Mr. Gray, including their cause and effect.

MR. MURTHA: And that's already all been testified to.

THE COURT: And how they occurred.

MR. MURTHA: And he's already testified to that. Now, there's a hypothetical question that actually does -- is incorporating, essentially, the time that the injury occurred. There's no information in the designation.

THE COURT: Do you want to be heard?

MR. SCHATZOW: Just briefly, Your Honor. It goes to the question of whether it was a complete or an incomplete injury, and whether it's consistent or not consistent with the Doctor's description of the injuries and how they would manifest themselves. I think it's

well within the scope of both letters.

THE COURT: It seems to be, based on the testimony that's been presented so far, based on the testimony that has been presented so far, whether this is a complete injury or not complete injury and, Mr. Murtha, you've gone over that back and forth with Dr. Allan. That seems to be some relevant issues.

And so whether it was a complete injury or not complete -- yeah, a complete injury or not complete, based on how he was proffered as an expert to you, I believe that falls within that range. And, therefore, your objection is denied for that basis.

MR. MURTHA: And just so I make the record clear. I believe that what's being elicited -- and I -- I just want to just make sure I clarify the record.

THE COURT: No, that's fine.

MR. MURTHA: It's really the State's effort to establish the time of the injury, which isn't included in any of the designations. And I understand what the Court said, but just so that the record is clear.

THE COURT: Okay.

MR. MURTHA: Thank you.

THE COURT: Mmm-hmm.

(Counsel and Defendant returned to the trial table, and the following ensued:)

THE COURT: Objection is overruled.

BY MR. SCHATZOW:

Q. Assuming the facts that I've just stated, the question is, do you have an opinion to a reasonable degree of medical certainty whether such a presentation would be consistent or inconsistent with Mr. Gray having already suffered the neck and related injuries that you described?

A. It would be perfectly consistent with those injuries having already occurred.

Q. Why?

A. Well, if you assume those facts that he's asking for help, he can't breathe, he needed help getting up on the bench, or he was lifted up on the bench, is what I heard this morning, if you assume all those facts to be in evidence, then that was an indication that he already had sustained the spinal cord injury.

He already had weakness sufficient that he couldn't get up under his own power and he was already, he was already developing a hunger for air, if you will. That's what we call it medically. It means he's having a hard time breathing because the swelling -- if the jury will remember the patchy areas that I showed you going upward, the areas or the patchy areas of swelling I showed you are right where the breathing mechanisms are.

And if you get that swelling going up quickly like that, that would start to decrease your ability to breathe and you would start developing this sensation of a hunger for air and a sensation that you can't breathe. So everything that I heard this morning and everything that I've seen in the records and on the x-rays would be consistent with that injury occurring at that point.

Q. Do you have an opinion to a reasonable degree of medical certainty whether once Mr. Gray suffered the injuries that you've described, he would have benefitted from receiving prompt medical attention?

A. Yes.

Q. And what is that opinion?

A. Well, I think that the opinion that I have is that basically, the cause, the ultimate cause of death was brain death because of lack of oxygen going to the brain. So if he had been intubated immediately, or prior to the point where he basically stopped breathing and went into a coma --

Q. Excuse me, Doctor. Let me interrupt you. You said intubated.

A. I'm sorry. If you, like the paramedic had put the breathing tube in for him, that's called intubation. I apologize to the jury. So if the paramedic had gotten there right away while he was still able to talk and

still apparently breathe and gotten the breathing tube into him and started the respirations for him, he wouldn't have suffered, he would not have suffered the brain injury, which is ultimately what killed him.

He still would have had some of the swelling or the patchy area, but that could have been treated again, by delivering oxygen to the spinal cord, controlling his blood pressure. How much we would have saved of the spinal cord? I really have no idea, but by doing, by putting the oxygen in, we definitely would have saved his brain which was ultimately, not saved.

So yes, he would have, he would have, his brain would have likely survived had that breathing tube been put in immediately.

Q. And do you have an opinion to a reasonable degree of medical certainty whether if Mr. Gray received prompt medical attention after he suffered his injuries would have increased his chances of survival?

MR. MURTHA: Objection.

THE COURT: Sustained.

BY MR. SCHATZOW:

Q. I want you to assume for the purposes of my next question that Mr. Gray suffered his injuries before that fourth van stop at Druid Hill and Dolphin. Just assume that, okay?

A. Okay.

Q. And I want you to further assume that he continued to be transported around in that police wagon without wearing a seatbelt. Do you have an opinion to a reasonable degree of medical certainty whether the failure to restrain Mr. Gray in a seatbelt would have contributed to his condition worsening?

A. Well, my understanding was that --

MR. MURTHA: Objection.

THE COURT: Sustained.

THE WITNESS: I'm sorry.

THE COURT: Sustained. You may rephrase.

BY MR. SCHATZOW:

Q. What -- do you have an opinion to a reasonable degree of medical certainty what would have been the impact on someone situated such as Mr. Gray, if they had suffered the neck injury that you described, and then were seated on the bench of the van, but not in a seatbelt, and the van continued to drive around to three more stops?

A. Well, my understanding is --

THE WITNESS: Your Honor, I can answer?

(No audible response.)

THE WITNESS: Okay. My understanding --

BY MR. SCHATZOW:

Q. Believe me, the Judge will let you know if he doesn't want you to.

A. Okay. Is that after he was seated, then the next stop they found him on the floor, which means he had moved from the bench down to the floor, and was slumped on against the bench.

So the number one rule in neurosurgical spine trauma or any spine trauma is, you secure the neck, you secure the chest, you secure the head, you do everything you can to wrap this patient up so that nothing moves because you really don't know what else is going to happen to the spinal cord. Any movement in a fracture like this can cause additional spinal cord injury, additional artery damage.

So the number one rule is, don't let the patient go from being on the bench to falling onto the floor, and then slumped over and being shaken possibly with any movement of the van.

So it, I don't know exactly how much more injury it caused, but I know it didn't help him at all. It may very well have caused significantly more injury.

Q. Let me ask you this question. Again, for purposes of this question, I want you to assume that Mr. Gray suffered his neck and related injuries that you described prior to the fourth van stop at Dolphin and

Druid Hill.

And I want you to further assume for the purposes of this question that the Defendant did not call a medic to that location. Do you have an opinion to a reasonable degree of medical certainty whether the failure of Mr. Porter to summon a medic to the Druid Hill location contributed to the death of Mr. Gray?

MR. MURTHA: Objection. May we approach?

THE COURT: No. Sustained.

MR. MURTHA: Thank you.

BY MR. SCHATZOW:

Q. Do you have an opinion, Doctor, to a degree of medical certainty about what the impact on Mr. Gray would be from the failure to summon a medic at Druid Hill and Dolphin Avenue assuming that his neck had been injured prior to that fourth stop?

MR. MURTHA: Objection.

THE COURT: Approach.

(Counsel and Defendant approached the bench, and the following ensued:)

THE COURT: Basis for objection?

MR. MURTHA: This is clearly beyond the scope of the designation. There was nothing contained and I will give it, I will provide it to the Court again, but there's literally nothing that suggests that we were put

on notice that he actually would render an opinion about whether or not the alleged failure to act on behalf of Mr. Porter contributed to the --

THE COURT: I didn't hear what you said, the last thing you said?

MR. MURTHA: That there's nothing that we were put on notice for that would suggest that this witness would testify that the actions, or the failure to act, by Officer Porter contributed to the continued or deterioration or --

THE COURT: Got it. Clearly, Mr. Schatzow, you have information from this witness about the injury, how it happened, and the effect on certain things, but this does seem to be beyond the scope of this expert's expertise certainly as presented.

MR. SCHATZOW: Well, I think --

THE COURT: And also, as far as his ability to testify to what you're asking. But go ahead. I'll hear from you.

MR. SCHATZOW: Yes, Your Honor. First off, I think if you look at both letters, it's fairly, it's fairly contained in there because it refers to --

THE COURT: No, that's okay. Go ahead.

MR. SCHATZOW: It refers to the cause of death.

THE COURT: Mmm-hmm.

MR. SCHATZOW: And this is part of the cause of death.

THE COURT: What is? When you say this is, what is the 'this'?

MR. SCHATZOW: The failure to call a medic. I mean, it's not a great surprise. That's what he's charged with. And so I'm looking for the specific words. "As the time increased between the occurrence of the injury and medical treatment, Mr. Gray's chance of survival decreased."

MR. MURTHA: He already testified to that.

MR. SCHATZOW: But that wasn't the basis of your objection. You said it wasn't in our disclosure and it's clearly in our disclosure.

MR. MURTHA: Well, I disagree with you on that.

MR. SCHATZOW: And so -- that he died on April 19th as a direct result of the injuries he suffered in the police van.

THE COURT: Let me see it for a second.

MR. SCHATZOW: I'm sorry.

THE COURT: No, it's okay.

MR. SCHATZOW: I'm reading in this general area.

MR. MURTHA: That has nothing to do with saying that Officer Porter's actions or inactions contributed to

it.

THE COURT: Okay. Hold on.

(Court perused document.)

THE COURT: -- injury to his neck (inaudible at 2:24:37 p.m.) further injury because of failure to immobilize his neck and head after his neck was fractured while he continued to be transported without restraints. As the time increased between the occurrence of the injury and medical treatment, Mr. Gray's chance of survival decreased. Okay.

All right. So now having read this and, again, just so the record is clear, I didn't have this before, but now I see what his opinion is supposed to be, and you were placed on notice back in when, September that this is, what I assume is Mr. -- Dr. Soriano would testify to. Okay.

So as far as the objection, specifically to talking about Mr. Porter's failure, I'll still sustain that objection. I will overrule the objection to getting medical treatment period, because --

MR. MURTHA: Okay.

THE COURT: -- again, it is referenced in here.

MR. MURTHA: Yes, Your Honor.

THE COURT: Okay. Over the Defense objection.

MR. MURTHA: Yes, Your Honor.

THE COURT: Thank you.

MR. SCHATZOW: That's mine.

MR. MURTHA: Thank you, Your Honor.

THE COURT: Wait. That who's?

MR. SCHATZOW: That's mine.

MR. MURTHA: Oh.

THE COURT: Oh, okay.

MR. MURTHA: I was going to head off with the next objection, Your Honor.

MR. SCHATZOW: Sure.

THE COURT: Thank you.

(Counsel and Defendant returned to the trial table, and the following ensued:)

THE COURT: Objection is overruled, but you may want to restate the question.

MR. SCHATZOW: Yes, Your Honor.

BY MR. SCHATZOW:

Q. Again, I want you to assume that the neck and related injuries that you've described were suffered by Mr. Gray before the fourth wagon stop at Druid Hill and Dolphin Street.

And I want you to further assume that he did not receive medical attention at the scene. With those assumptions, do you have an opinion to a reasonable degree of medical certainty whether the failure, the

failure to get Mr. Gray medical attention at that scene contributed to his death?

A. Yes.

Q. And what is that opinion and what's the basis for it?

A. Well, again, I think that if the testimony I heard this morning, and the testimony of the officers, he said he needed medical help. He said he was short of breath. He needed help. He was lifted up to the bench. That was the beginning of the spinal cord injury.

And if he had been intubated at that point, he wouldn't have stopped breathing and he wouldn't have gone into brain death and into a coma. That's the simple answer to that question.

MR. SCHATZOW: Your Honor, that's all the questions I have for this witness at this time.

THE COURT: Cross?

MR. MURTHA: Thank you.

CROSS-EXAMINATION

BY MR. MURTHA:

Q. Good afternoon, Dr. Soriano.

A. Afternoon.

Q. My name is Joe Murtha and Mr. Proctor and I represent Officer Porter. We have never met nor have we discussed the case; is that correct?

A. True.

Q. Obviously, you're very qualified and I'm not going to try to pretend to be a neurological surgeon, but I have some very basic questions. You -- the -- actually, were you ever told by anyone from the State's Attorney's Office, or given any materials that suggest that Mr. Gray had a preexisting back injury?

A. No.

Q. Would that affect your opinion if you were aware that he might have a preexisting back injury?

A. Not in the least.

Q. It wouldn't?

A. No.

Q. And if you don't even know the nature of his preexisting back injury, would it make a difference at all?

A. Well, when you say back, it means low back.

Q. Well, then let me say this. You've reviewed all the medical records?

A. I have.

Q. And you've reviewed all the CT scans and the imaging studies that have been provided to you, correct?

A. I have.

Q. And it's clear that he didn't have any injury to his thoracic spine, correct?

A. Correct.

Q. To his lumbar, correct?

A. I didn't see any films of the lumbar. I have to apologize.

Q. And that would be the lower back?

A. That's correct.

Q. But assume for the purposes of this question that the imaging studies showed that he had no injuries to his thoracic, lumbar, or sacral, or coccyx. And if they were eliminated, and he said, I had a preexisting back injury, you wouldn't be able to tell because of the nature of the procedures that had been completed on his cervical spine, right?

A. (No audible response.)

Q. I mean, if he had a preexisting cervical spine injury?

A. Well, your term preexisting cervical spine injury is a generic term.

Q. Well, let's -- I'll --

A. That could be a soft tissue injury. That could be a bruise. That could be a ligament tear. It could be a herniated disc.

Q. What if he had a C4/C5 jumped facet?

A. If he had that, then that would be a significant injury, yes.

Q. It would be a significant injury that you would want to know about before rendering an opinion, correct?

A. It would be.

Q. And you've described, artfully, the nature of the injury in this case. And it's your opinion, you've said that you think, assuming the facts that were given to you by Mr. Schatzow, and whether we agree with him or not, you assumed those for the purposes of your opinion, correct?

A. I do.

Q. A jumped facet injury that's not complete is rather a painful injury; isn't it?

A. It can be, yes.

Q. So --

A. Well, I think, not to confuse the jury, but the jumped facet is the jumped facet. It's not a question of whether the jumped facet is complete or incomplete. The Medical Examiner was using that term as a complete injury. It's just a jumped facet. That's not where the term complete or incomplete comes in. When we use complete or incomplete, we're talking about the spinal cord injury.

Q. So there was -- I mean, you explained where the bones slid over top of the other and locked, so there's a locked facet, right?

A. Yes.

Q. And that impinged upon the spinal cord; is that correct?

A. It did cause a pinch of the spinal cord, yes.

Q. Which a pinched spinal cord would be from your years of experiencing in treating your patients they would complain of pain associated with an injury like that, correct?

A. No, not necessarily.

Q. But if a person had a neck injury that actually resulted in the kind of damage that was done that was demonstrated by these imaging studies a person wouldn't complain about pain?

A. This injury?

Q. Yes?

A. Yeah, that would be a painful injury, yes.

Q. It would be a painful injury?

A. Yeah.

Q. So for the purpose of the information that you've already testified to, Mr. Schatzow has asked you to assume certain facts and that Mr. Gray, and you sat through the testimony of the medical examiner, and you also reviewed the statements of the police officers, that there's no disputing that Mr. Gray at stop 4 was found faced down in the interior of the wagon with his hands

behind his back because he's handcuffed and shackled, correct?

A. At which stop are we talking?

Q. Stop 4?

A. Well, I'm not sure that anybody was 100 percent sure, but that's what was testified to this morning. I wasn't clear in what I reviewed that was the absolute position that he was in. But if that's what accepted --

Q. Assume for the purposes of --

A. Absolutely.

Q. -- your testimony that --

A. Sure.

Q. -- he was handcuffed behind his back and he was on the floor of the wagon and he was shackled.

A. Sure.

Q. And he says, "Help." And Officer Porter says, "What do you mean, help?" He says, "Help getting up." Now, could that be consistent with a person who might be stuck on the floor of the van rather than having suffered a neck injury?

A. I think it's possible, sure.

Q. And if a person had suffered the kind of cervical spine injury that's been displayed to the jurors, if Officer Porter used his arm to interlock it under Freddie Gray's arm and pulled him up after

suffering that kind of injury, he would have had significant pain in the movement of the body; is that correct?

A. No, not necessarily.

Q. No? It's -- so he would not -- he just broke or there was just a fracture to his spine impinged upon his spinal cord --

A. Correct.

Q. -- supposedly affecting his breathing, right?

A. (No audible response.)

Q. I mean, based on the assumption of facts that Mr. Schatzow gave to you, correct?

A. Correct.

Q. And a deteriorating physical condition, correct?

A. Correct.

Q. And no pain?

A. I said, not necessarily. He may have had pain, but he not necessarily have had pain either. That joint is locked and it's not, at least at that point, it's not moving, so it may not be creating any pain at that point.

Q. What happens when a bone is compressed upon the spinal cord? That doesn't cause any pain?

A. There's no pain fibers in the spinal cord.

Q. But it would cause certain sensations below C5

though, correct, possibly --

A. You would be --

Q. -- starting to lose the ability to feel, correct?

A. You would be numb. If it were complete -- again, I don't want to confuse the jury with medical terms, but if there's a complete severing of the sensory fibers, below that injury, he would be numb or unable to feel anything below that. And similarly, if there's already swelling going up, the sensory fibers may not be functioning either. So he may not feel any pain going up or down below that level.

Q. He might have some difficulty stabilizing himself because he has numbness in his legs though at that point, correct?

A. Well, the stabilizing himself has nothing to do with the spinal cord injury. It has more to do -- I mean, he was never really seen weight bearing on his feet except the initial entrance into the van.

Q. Well --

A. So when you say, stabilizing himself, he was laying flat on the floor. He was helped up by the officer and then he was next stop found slumped over against the bench indicating he had the left the bench and he's leaning up against it, but he's not moving.

Q. Well, assume for purposes of this question that he was seen weight bearing upon his legs as he was assisted to sit on the van, would that change the way that you've just answered the question?

A. No, because -- because I said. The answer is no. If you'll let me expound or no?

Q. Well, let me ask you this. Then what you're saying is --

MR. SCHATZOW: Excuse me, Your Honor. May the witness be allowed to explain his answer?

THE COURT: No. He just said if he lets him and he didn't let him.

MR. SCHATZOW: Would you consider letting him?

THE COURT: No. I'm sure he'll ask another question. I'm sure you'll come back at it.

BY MR. MURTHA:

Q. So essentially, you're saying that someone who is present with Mr. Gray at that time may not, Mr. Gray may not communicate that he has any feelings, sensations, pain, associated with injury that would alert an individual who is in his presence, correct?

A. It's possible, yes.

Q. So it could be that Officer Porter was in the back of the van assisting a person up who had just suffered from a cervical spinal injury and he could have

had no knowledge of it because Mr. Gray just didn't communicate; is that correct?

A. Well, he communicated that he couldn't get up and he communicated that he was short of breath. He communicated that.

Q. Well, let me just --

A. He just may not communicate that he's having any significant pain when the officer lifted him up.

Q. Were you aware that Mr. Gray had been in a foot pursuit with police officers and had used physical energy to literally physically rock the van back and forth which it could have tired him out and it could have been the basis for his being out of breath? Is that --

MR. SCHATZOW: Excuse me. Are you finished?

THE COURT: He is.

MR. SCHATZOW: Objection.

THE COURT: Objection is overruled.

BY MR. MURTHA:

Q. That could have been the basis for his being out of breath?

A. That's a bit of a stretch, Counselor. It's not possible. If he's a bit out of breath, that's different than saying "I can't breathe." There's a big difference.

Q. And you're assuming that's what he said, correct?

A. Well, the records -- that's what the records say. I'm just going on what the records say. I'm not making any decision.

Q. That's your interpretation of the records?

A. Okay.

Q. Do you -- did you go and measure the van, the inside of the van?

A. I was not here in Baltimore to measure it, no.

Q. Did you know the width of the distance -- I mean, you heard the testimony of Dr. Allan. She -- and you listened to -- and you can actually assist in forming your opinion based on the opinions of others, correct?

A. I can.

Q. So based on what Dr. Allan has said, the width of the distance between the wheel well where the seat was, and the interior dividing wall, Mr. Gray could have been stuck in between those two, correct?

A. True.

Q. So, no one really knows whether or not he actually had that injury at that time because there are no independent witnesses that observed something occurred inside the van that caused the cervical spine injury, correct?

MR. SCHATZOW: Objection, Your Honor.

THE COURT: Overruled.

THE WITNESS: I don't think anybody knows a hundred percent; that's correct.

BY MR. MURTHA:

Q. So Officer Porter very well may have had no knowledge whatsoever that Mr. Gray suffered a debilitating spinal injury at Stop 4, correct?

MR. SCHATZOW: Objection, Your Honor. Foundation.

THE COURT: Overruled.

THE WITNESS: I would be speculating in terms of Officer Porter didn't know what, what medical condition that Mr. Gray was having at the time.

BY MR. MURTHA:

Q. Well, based on your answers to prior questions, Mr. Gray could not have demonstrated by communicating that he had any pain or symptoms that would be consistent with that kind of injury, correct?

A. No, I didn't say that. I said that he may have had a loss of sensation of pain because of the swelling that I showed the jury going upward and affecting the spinal cord in the area where you perceive pain. That's what I said. He may not have had a pain response, but he certainly was made -- excuse me. The record shows that he was made aware that he couldn't get up on his own and he was having shortness of breath. And so again, what

the officer knew or didn't know I would be speculating in terms of his medical knowledge. I don't have -- I'm not passing any judgment on that.

Q. Well, actually, you said that you had looked at all the materials, including the officer's statements, right?

A. I did.

Q. So you would have known through a thorough review of Officer Porter's statement what he communicated to the detectives who were interviewing him though, correct?

A. I don't remember it word for word, but yes, I did review it.

Q. Okay. You said that the failure to obtain prompt medical attention contributed to Mr. Gray's death, correct?

A. It did.

Q. So are you familiar with the fact that Officer Goodson was operating the transport wagon that day?

A. I heard that this morning.

Q. So if Officer Goodson had actually gone directly to the hospital with Freddie Gray in back of it, he may have possibly been able to obtain more prompt medical assistance; is that correct?

A. Well, depending on and I'm not familiar with

the streets of Baltimore, depending on how long it would have taken him to get to the hospital, yes, he may have saved his life.

Q. And what you're saying is, time was of the essence at that point, correct?

A. That's the whole issue.

Q. And so even if Officer Goodson had hit the gas, gone to a hospital that was close enough, you can't say whether or not it actually would have saved Mr. Gray's life though, correct?

A. Well, somewhere in that, somewhere in that 22 or 24 minutes we lost Mr. Gray. And whether it was in the first minute after stop 4 or the next ten minute after stop 4, I don't know for sure.

Q. And you're an instructor at a paramedic school, correct?

A. I was.

Q. Actually, your CV suggests that it's up to the present time, correct?

A. It's not. That's an old CV. I'm no longer instructing paramedics.

Q. But you instruct paramedics to make observations of neurological injuries, correct?

A. I do.

Q. And a EMT is a highly trained individual to

provide emergency medical care; is that correct?

A. True.

Q. And so you would trust that an EMT, assuming that, assuming for the purpose of the answer to this question, that Officer Porter is not an emergency medical technician, and an emergency medical technician shows up upon the scene, that that person would have more knowledge of what to do in regards to a person who might present with a spinal injury, correct?

A. I already answered that. I wasn't going to speculate as to his medical knowledge. I really don't know how much medicine or initial emergency care he's aware of. So I don't -- that's why I didn't offer any opinions about that.

Q. Assume for the purposes of this question, if an EMT arrived upon the scene and in doing a neurological assessment said that there were no signs of neurological problems, would the EMT have been wrong?

A. Well, that hypothetical is a little bit short of details and rather vague and to answer it, I really don't think there's any reason to answer it because it --

THE COURT: I do.

THE WITNESS: Okay. Well, it depends on the nature of the exam. Did he check reflexes in the upper and lower extremities? Did he check sensory levels? Did

he check abdominal reflexes? Did he check cremasteric? Did he do a rectal exam? Did he do a bulbocavernosus reflex? I mean, I can go on and on for five more, ten more minutes.

The question is, the question is, if the paramedic being this well trained medical personnel did an exam and couldn't determine anything, I mean, that example doesn't help me. But if he did all those things and there were no deficits, then that was a great exam and there wouldn't have been any injury at all to Mr. Gray at Stop 4.

BY MR. MURTHA:

Q. Does it help you that assume for the purpose for the answer to this question that the EMT, after making an assessment administered Narcan to the individual rather than immediately taking steps to ensure that they preserve the individual from any further cervical spine injury?

THE COURT: Sustained.

MR. SCHATZOW: Objection, Your Honor.

BY MR. MURTHA:

Q. Would you have prescribed Narcan for an individual --

THE COURT: Sustained.

MR. SCHATZOW: Objection.

THE COURT: I actually have a monitor here. I can see you. It's not like I can see out of the side of my head. I just see you right here.

MR. SCHATZOW: Your Honor, I believe you can see from --

THE COURT: Yeah, I can.

BY MR. MURTHA:

Q. In fact, you've been retained as an expert; is that correct?

A. Yes.

Q. And part of your -- you're a practicing physician still; is that correct?

A. I am.

Q. And in regard to the percentage of your practice that's associated with reviewing cases and testifying, how much of your time is dedicated to reviewing and offering expert opinions?

A. Less than 20 percent.

Q. Less than 20 percent?

A. Yeah.

Q. And are you being paid hourly?

A. I'm being paid for expenses, for air flight, hotel, and I'm being paid $12,000 to be here for two days.

Q. So whether or not you testify for two days; is

that correct?

A. Well, I've been here since 10:30 yesterday morning and I won't get home until midnight today, so I'm being paid for the two days here.

Q. In addition to the expenses that are associated with your coming to court, correct?

A. Right. I stayed at a cheap hotel, so.

Q. I'm sure the State appreciates that. You can't tell the ladies and gentlemen of the jury that Officer Porter had any knowledge of the extent of Mr. Gray's injury where he encountered him at the 4th Stop on April the 12th, 2015, can you?

A. I cannot.

MR. SCHATZOW: Objection, Your Honor.

THE COURT: Overruled.

THE WITNESS: I cannot.

MR. MURTHA: Okay. Court's indulgence.

THE COURT: Certainly.

(Brief pause.)

MR. MURTHA: No further questions, Your Honor.

THE COURT: Redirect?

MR. SCHATZOW: Yes, Your Honor. I think just one question.

THE COURT: Okay.

REDIRECT EXAMINATION

BY MR. SCHATZOW:

Q. Doctor, in your experience, people who have suffered injuries of the type that you describe Mr. Gray suffered, when they are first approached, the first person after suffering the injuries, do they typically say, hey, I've got a jumped facet C4 over C5. I've got torn ligaments and I've got torn vertebral artery. I've got broken bones and I've got a partially compressed spinal cord.

MR. MURTHA: Objection.

THE COURT: Sustained.

MR. SCHATZOW: I have nothing further for the witness, Your Honor.

MR. MURTHA: I move to strike.

THE COURT: That question is struck.

MR. MURTHA: Thank you.

THE COURT: Witness is released?

MR. SCHATZOW: Yes, Your Honor.

THE COURT: Thank you, sir. You may go.

(End of Excerpt - The Testimony of Morris Marc Soriano, M.D., was concluded at 2:55 p.m.)

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REPORTER'S CERTIFICATE

I, Patricia A. Trikeriotis, an Official Court Reporter of the Circuit Court for Baltimore City, do hereby certify that the requested excerpt of the proceedings in the matter of State of Maryland vs. William Porter, Case Number 115141037, on December 7, 2015, before the Honorable Barry G. Williams, Associate Judge, were duly recorded by means of digital recording.

I further certify that the page numbers 1 through 75 constitute the official transcript of an excerpt of the proceedings as transcribed by me or under my direction from the digital recording to the within typewritten matter in a complete and accurate manner.

In Witness Whereof, I have affixed my signature this 8th day of December, 2015.

Patricia Trikeriotis

Patricia A. Trikeriotis
Chief Court Reporter