



Written by [C. Mitchell Shaw](#) on June 11, 2016

Freddie Gray Trial: Judge Excoriates Prosecution For Withholding Evidence

Almost as soon as the third trial in the death of Freddie Gray was underway, Baltimore Circuit Judge Barry G. Williams ruled that prosecutors had withheld evidence that would help the defense. After the first two cases ended in a mistrial and an acquittal respectively, Baltimore City State's Attorney Marilyn Mosby appears to have pulled out all stops — including legal ethics — in an effort to get what has eluded her thus far: a conviction in this case.



As this writer [noted](#) after the acquittal of Officer Edward Nero late last month:

While Baltimore City State's Attorney Marilyn Mosby was thrust into the national scene by charging the six officers, her time in the limelight may have been short-lived. Unable to bring a conviction in either of the first two trials, her decision to charge the officers appears to be losing its veneer of reasonableness. In fact, from the beginning the prosecution of these officers has looked more like persecution for political reasons.

As *The New American's* Bob Adelman [wrote](#) Tuesday:

Much of what happened on April 12, 2015 is now public knowledge. Gray was arrested for allegedly possessing an illegal switchblade knife and placed in a police van to take him to the precinct station for booking. There were six officers involved, including [Caesar] Goodson, the driver of the van. In the van was another suspect being transported as well.

Testimonies given by the officers and the suspect in the previous trials indicated that Gray became violent to the extent that officers were unable to fasten his seatbelt as ordinarily required. So violent, according to testimonies, that he began to rock the van from side to side. At some point he apparently hit his head against the inside of the van so violently that he broke his neck, severing his spinal cord, which led to his death seven days later.

On May 1 Mosby announced that the medical examiner had ruled Gray's death a homicide and charged all six officers with crimes that included everything from false arrest and illegal imprisonment to murder. A grand jury indicted them on all charges (except false arrest and illegal imprisonment) while adding a couple of its own: reckless endangerment and misconduct in office.

Officer Caesar Goodson, the defendant in the third trial in the Freddie Gray case, opted for a bench trial in a pretrial motions hearing on Monday. This was the same decision made by Officer Edward Nero, who was found not guilty on May 23, 2016. Baltimore Circuit Judge Barry G. Williams presided over that trial as well as the earlier trial of Officer William Porter, which ended in a mistrial. Porter is scheduled for a retrial in September.

As the actual trial got underway on Thursday, prosecutors alleged that Goodson — who is charged with depraved heart murder — caused the death of Gray by deliberately driving the van in such a way as to



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toss Gray around. This is what is known as taking a suspect for a “rough ride.” But prosecutors did not disclose a statement made by Donta Allen, another suspect in the van that day.

That statement — in which Allen described the trip to the police station as “a smooth ride” — contradicts the prosecution’s claim. As ABC News reports:

In his original statement to police in April last year, Allen said he heard banging coming from Gray’s side of the vehicle. He gave a similar statement in a separate interview with prosecutors a month later, but the state never turned it over as evidence to defense attorneys. Williams found today that prosecutors committed a Brady violation — after *Brady v. Maryland*, a 1963 Supreme Court decision requiring prosecutors to disclose evidence that would aid the defense — because Allen’s May 2015 statement was deemed exculpatory evidence.

Allen’s first statement was disclosed by prosecutors and widely reported. The subsequent, undisclosed (“smooth ride”) statement was brought to the court’s attention by Allen’s lawyer. Goodson’s lawyer, Andrew Graham, said that if Allen’s lawyer had not come forward, the defense would have been unaware of that subsequent statement. He asked Judge Williams to dismiss the charges against Goodson, saying, “The state doesn’t get to decide whether or not to disclose information. The state sat on it for over a year. It’s not up to them to make that decision.”

How did the prosecution respond to those claims? What explanation was offered for willfully withholding evidence? Chief Deputy State’s Attorney Michael Schatzow (shown above) told Judge Williams that the prosecution did not think the statements were important. In his explanation, he called the interview with Allen last year a “waste of time.”

Judge Williams, while rejecting the defense’s request to dismiss the case, excoriated the prosecution and gave Schatzow a Monday deadline to turn over to the defense any other evidence it may have withheld. He made it clear that he meant “any evidence,” whether it pertains to this trial or the next four trials.

Considering the outcome of the previous trials, especially the trial of Officer Edward Nero — in which Judge Williams ruled that prosecutors had failed to make a case — it seems that the writing is on the wall. In the absence of withholding evidence, Mosby’s office is not likely to see a single conviction in any of the trials of the six officers involved.

After Judge Williams delivered his verdict of not guilty in the Nero case, this writer observed:

Perhaps the most telling part of the judge’s verdict is his ruling that by not restraining Gray in a seatbelt, Nero acted reasonably since Gray was violent and uncooperative. His decision that Nero acted as “any reasonable officer” would have indicates that one of the major claims of the prosecution — that the officers caused Gray’s injuries by not buckling him in — will not stand up to scrutiny.

The other trials are scheduled as follows:

- Brian Rice, July 5
- Garrett Miller, July 27
- William Porter (retrial), September 6
- Alicia White, October 13

Whether those trials will take place *at all* depends — at least in large part — on the outcome of the



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current trial of Officer Goodson. It appears the prosecution is aware that it must violate long-held standards of disclosing evidence in an effort to make a case where it has none. If — as many expect — this case ends without a conviction, the prosecution may finally have to face the facts and drop its witch-hunt. Because Judge Williams is not likely to overlook another episode of procedural misconduct to gain a criminal conviction by prosecutors who clearly have a lack of moral convictions.

Photo of Chief Deputy State's Attorney Michael Schatzow and Deputy State's Attorney Janice Bledsoe (right) arriving at court: AP Images



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