

STATE OF MARYLAND

* IN THE

Plaintiff

* CIRCUIT COURT

v.

* FOR

CAESAR GOODSON

* BALTIMORE CITY

Defendant

* Case No. 115141032

* * * * *

**OFFICER GOODSON'S MOTION TO DISMISS
BASED ON THE STATE'S VIOLATIONS OF
DEFENDANT'S CONSTITUTIONAL AND DISCOVERY RIGHTS**

RECEIVED FOR RECORD
CIRCUIT COURT FOR
BALTIMORE CITY
2016 JUN -6 A 8:39
CRIMINAL DIVISION

A letter received late Friday afternoon from attorney Jack B. Rubin shows that the State has concealed exculpatory evidence of a meeting with a potentially critical witness, Donta Allen, for over a year, in violation of Officer Caesar Goodson's constitutional rights. The Court determined that the State improperly failed to produce discoverable evidence on two prior occasions. Officer Goodson would never have learned of this third instance without the intervention of a conscientious lawyer who felt duty bound to alert the Court and the defendants to the State's misconduct. This is the State's third strike—the only remedy that can rectify the State's violations of *Brady v. Maryland*, *United States v. Giglio*, and *Kyles v. Whitley* (among others), and deter these and other prosecutors from engaging in the same improper game playing in the future, is dismissal of the charges against Officer Goodson.

BACKGROUND

On April 12, 2015, Donta Allen was arrested and placed in the back of a police transport wagon at the 1600 block of W. North Avenue at approximately 10:15 a.m. Unbeknownst to Mr. Allen, Freddie Gray was on the other side of the partition inside the wagon. The wagon was

being operated by Officer Goodson. According to the State, prior to Mr. Allen entering the wagon, Mr. Gray had already sustained a catastrophic injury to his neck.

At approximately 12:40 p.m. the same day, Mr. Allen was interviewed by Detectives William Boyd and Joseph Poremski, members of the Baltimore Police Department Force Investigation Team. *See* Ex. A, Apr. 12, 2015 Interview Tr. During that interview, Mr. Allen provided information that was helpful to Officer Goodson and his co-defendants. Mr. Allen denied being under the influence of drugs or alcohol. *Id.* at 6:10-17. He also indicated that on the way to the Western District, the passenger on the other side of the wagon was "banging his head against the metal like he was trying to knock himself out or something" (*id.* at 11:9-24) and that the person on the other side sounded like a "crazy man." *Id.* at 12:1-4. Mr. Allen told the detectives that the banging from the other side was like a "loud bang" and "pretty hard" and then it just stopped. *Id.* at 14:2 to 16:4. Mr. Allen also told the detectives that wagon did not make any sudden stops or turns and that it was a "smooth ride." *Id.* at 24:1-22. At the time of the police interview, Mr. Allen did not know the other passenger was Freddie Gray. *Id.* at 16:18 to 17:9.

On May 6, 2016, the State informed Officer Goodson's counsel that it had interviewed Mr. Allen on May 4, 2016, and described select statements that Mr. Allen had allegedly made in that interview. *See* Ex. B, Letter, May 6, 2016. On May 16, 2016, counsel for Officer Goodson asked the State whether the interview was recorded, and requested that the State disclose all of its meetings with Mr. Allen and the content of those meetings. *See* Ex. C, Letter from M. Fraling to J. Bledsoe, May 16, 2016. The State wrote back that the May 4, 2016 interview had not been recorded, and further that the State "does not believe its discovery obligation extends to

itemizing and detailing all of the contacts we may have had with Mr. Allen including the contents of any meetings." *See* Ex. D, Letter from J. Bledsoe to M. Fraling, May 24, 2016.

The State never mentioned in its letter of May 24th, or any time before that date, that an interview of Mr. Allen took place on May 7, 2015, just after the charges against Officer Goodson and the other officers were publicly announced, but before the grand jury proceedings. The State did not disclose that it held "an extended proffer session" that was attended by three members of the State's Attorney's Office, Mr. Allen, and Mr. Rubin, a respected lawyer who has practiced in Baltimore City for decades, who represented Mr. Allen at that interview. *See* Ex. E, Letter from J. Rubin to J. Bledsoe, *et al.*, June 3, 2016.

In reaction to Mr. Rubin's letter of June 3, 2016 that informed defense counsel and this Court for the first time of the May 7, 2015 meeting with Mr. Allen, the State explained to Officer Goodson's counsel on Sunday, June 5, 2016 by telephone that Mr. Allen was "consistently inconsistent" in the May 7, 2015 meeting and therefore it did not believe that it was obligated to produce any information regarding the meeting. *See* Ex. F, Aff. of Matthew B. Fraling, III. The State said that there are no notes of the meeting or any summary. *Id.* The State asserted that Officer Goodson is not entitled any information from the May 7, 2015 meeting regardless of whether Mr. Allen's statements are consistent or inconsistent with his April 12, 2015 police interview. *Id.*

The State is wrong.

LEGAL STANDARD

In *Brady v. Maryland*, 373 U.S. 83, 87 (1963), the Supreme Court held that "the suppression by the prosecution of evidence favorable to an accused . . . violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or

bad faith of the prosecution." The *Brady* rule includes impeachment evidence. *United States v. Giglio*, 405 U.S. 150, 154 (1972). The State is required to obtain, and disclose, *Brady* evidence in the possession of its agents, including the police. *Kyles v. Whitley*, 514 U.S. 419, 437-38 (1995). *Brady* applies to cases where suppressed evidence was made known to the defense after the conclusion of a trial. *Williams v. State*, 416 Md. 670, 691 (2010).

Mr. Rubin's June 4th letter brought this matter to defense counsel's attention in advance of trial. Undersigned counsel has been unable to find a case where, prior to a conviction, evidence was disclosed by a third party—not the State—and the State was entitled to reap the benefit of its concealment up to that point. If not the letter, then the spirit of *Brady* has been violated due to the State's intentional withholding of information that is either exculpatory or impeachment evidence.

"The State has the obligation, under the Maryland Rules, as well as the Constitution, without any request by the defense, to provide to the defense all exculpatory material which would negate the defendant's guilt or punishment as to the offense charged." *Williams*, 416 Md. at 693. In Maryland, the requirement to disclose *Brady* information is set forth in Rule 4-263. *See id.*; Md. Rule 4-263(d).¹

"The purpose of discovery is to avoid surprise at trial and to give the defendant sufficient time to prepare a defense." *Hutchinson v. State*, 406 Md. 219, 227 (2008). The mandatory disclosure obligation extends to exculpatory evidence and impeachment evidence. *See Williams*, 416 Md. at 695. Failure for the State to do so is a violation of the discovery rules, as well as its

¹ Ethical rules also embody these principles. *See, e.g.*, Md. Lawyers' Rules of Professional Conduct 3.3, 3.4, 3.8. Although the ultimate determination as to whether the State has violated those Rules is reserved for Attorney Grievance Commission proceedings, the ethical standards that all lawyers swear to uphold, as well as the special responsibilities that prosecutors undertake, should certainly aid this Court's determination as to the reason for the non-disclosure, the presence of bad faith, the resulting inherent prejudice, and all other relevant circumstances. *See Thomas v. State*, 397 Md. 557, 571 n.8 (2007) (noting that "bad faith on the part of the State can justify exclusion of the evidence or serve as a factor for a harsher sanction.") *See also* ABA Standards 3-3.1, 3-3.11(a), 3-3.5.

obligations under the Constitution. *Id.* at 693. As this Court noted, whether the State's conduct warrants dismissal requires an evaluation of whether the defendant is denied a fair trial. *See* Ex. G, Sept. 2, 2015 Hearing Tr. at 10:14-16 (recognizing the Court's authority to dismiss charges in the appropriate circumstance); 11:21-25 (but concluding that the State's conduct, although "troubling," did not, at that juncture, violate defendants' rights to fair trial).

ARGUMENT

The State has repeatedly failed to disclose exculpatory information and impeachment evidence, in violation of due process and the discovery standards of the Maryland Rules. Consequently, Officer Goodson's right to a fair trial has been prejudiced. This latest example of the State's withholding of evidence must be viewed not just in isolation, but cumulatively. *United States v. Bagley*, 473 U.S. 667, 683 (1985). The most recent revelation, concerning the concealed May 7, 2015 meeting with Mr. Allen, comes close on the heels of a series of late disclosures by the State going all the way to the last day before the re-scheduled trial date.² Since the January 2016 date on which Officer Goodson's trial was originally scheduled to begin, the State has on at least thirteen occasions supplemented its disclosures with material that was already within its possession, custody, or control, or that it was constitutionally required to obtain and disclose, prior to the January trial date. *See* Ex. H, List of Supplemental Disclosures. As of 4:30 p.m. on Sunday, June 5, 2016, supplemental discovery was still rolling in. *Id.*

The State represented months ago to the Court and to the defense, on the record, that it had "provided everything that is in the Discovery Rules." Ex. I, Sept. 10, 2015 Hearing Tr. at 24:5-8. The State even touted the disclosure of "Donta Allen's statement" (singular) as an example of how the defendants were given everything to which they were entitled. State's Resp.

² The State stopped filing notices of service with the Court after February 11, 2015. A list of late productions, and their subject matter, is provided as Exhibit H.

to Defs.' Supp. to Mot. to Compel and for Sanctions (Oct. 9, 2015) at 21; *see also id.* at 24 (referring to a report of the same Apr. 12, 2015 interview). As an explanation for why discovery material was not produced until after the deadline mandated in Rule 4-263, the State contended that it was only required to disclose the evidence when it decided such information was "material."³ *Id.* at 8-9. The State assured that "the Court should have full confidence that the attorneys for the State have dutifully sorted and disclosed a mountain of evidence in this case and have always maintained perfect candor with the Court." State's Resp. to Defs.' Supp. at 19.

The Court twice disagreed with the State's restrictive assessment of the limits of its discovery obligation. First, on September 10, 2015, the Court determined that the defendants were entitled to the State's investigative materials, which the State had previously refused to produce. Ex. I. Then, on October 14, 2015, this Court "found that the State has failed to produce information that this Court deems exculpatory and required by Maryland Rule 4-263." Ex. J. Despite these instructive rulings, the defendants' suspicion that they "are in no position to trust the State's assertion that it has disclosed everything to which the Defendants are entitled" has sadly been confirmed. Defs.' Supp. to Mot. to Compel and for Sanctions

The State's conduct here echoes that of the federal prosecutors in the case against Senator Ted Stevens. *See* Henry F. Schuelke III, Special Counsel, Report to Hon. Emmet G. Sullivan of

³ Of course, the State's Attorney's Office will say that it had no obligation under any discovery rule, ethical principle, or constitutional right to inform Officer Goodson of the May 7, 2015 meeting with Mr. Allen, or its contents, because the information is not material. As they have done throughout this case, the Office of the State's Attorney will disclose information as it sees fit, stating that it is not required to produce the information, but are only doing so "in an abundance of caution." And, the State's Attorney will deny that any information in the May 7, 2015 meeting could be considered exculpatory. This is a familiar, but hollow, refrain. *See, e.g.*, Hon. Alex Kozinski, *Criminal Law 2.0*, 44 Geo. L.J. Ann. Rev. Crim. Proc. III, xxiv n.118 (2015) ("Lack of materiality is the Justice Department's standard defense when it is caught committing a *Brady* violation."). But this Court has already determined that the prosecutors in this case have not properly made that call. *See* Exs. I & J, Sept. 10, 2015 Hearing Tr. at 48:19-21 (ruling that the State improperly withheld documents related to its "independent investigation"); October 14, 2015 Order (granting defendants' motion, "having found that the State has failed to produce information that this Court deems exculpatory and required by Maryland Rule 4-263 . . ."). Indeed, from the objective view of Mr. Rubin, who has no interest in the outcome of this trial, the May 7, 2015 meeting with Mr. Allen contained exculpatory information.

Investigation Conducted Pursuant to the Court's Order, dated Apr. 7, 2009, *In re Special Proceedings*, No. 1:09-mc-00198-EGS (D.D.C. Mar. 15, 2012).⁴ The government in that case concealed exculpatory information from a key witness (coincidentally also named Allen), re-interviewed the witness to obtain more favorable statements, and disclosed only the statements from the second interview to the defendant. *Id.* When the government's conduct finally came to light, all charges against Senator Stevens were dismissed, but not before a jury had convicted him based on tainted evidence. *In re Special Proceedings*, 842 F. Supp. 2d 232, 236 (2012) (citing *United States v. Stevens*, No. 08-CR-231 EGS, 2009 WL 6525926, at *1 (D.D.C. Apr. 7, 2009)).

If the concealment of exculpatory evidence and the prosecution's misconduct is discovered before trial, and the disclosure of the evidence is not made known to the defendant by the State, prompt pre-trial dismissal may be an appropriate remedy. *See, e.g.*, Robert P. Mosteller, *The Duke Lacrosse Case, Innocence, and False Identifications: A Fundamental Failure to "Do Justice"*, 76 *Fordham L. Rev.* 1337 (2007) (citing Office of the Att'y Gen. of N.C., Durham County Superior Court case file Nos. 06 CRS 4332-4336, 5582-5583 (prosecutor's improper media statements and withholding of exculpatory evidence warranted dismissal of charges pre-trial)).⁵ In this case, thanks to Mr. Rubin's concern as an officer of the court that an injustice had occurred, the Court can prevent further injustice, instead of having to remedy it after trial.

For the foregoing reasons, Officer Goodson moves for dismissal of all of the charges against him. Based on the State's latest constitutional violation, and those that came before,

⁴ Available at http://legaltimes.typepad.com/files/Stevens_report.pdf.

⁵ Undersigned counsel has been unable to find a case discussing whether dismissal of an indictment was warranted where the State deliberately failed to produce exculpatory information prior to trial, where there was evidence of bad faith based on the State's previous discovery and ethical violations, *and* where the violation was disclosed not by the prosecution but by a neutral third party.

severe sanctions are warranted. The State has violated Rule 4-263, and this Court's instructions issued pursuant to this Rule. Md. Rule 4-263(n). To determine the appropriate sanction, this Court should consider: "(1) the reasons why the disclosure was not made; (2) the existence and amount of any prejudice to the opposing party; (3) the feasibility of curing any prejudice with a continuance; and (4) any other relevant circumstances," including the prosecutor's bad faith. *Raynor v. State*, 201 Md. App. 209, 227-28 (2011).

First, this is not a case in which the State forgot, or made a mistake, in failing to disclose the May 7, 2015 meeting with Mr. Allen. It made a conscious decision not to inform Officer Goodson about the meeting at all, or the information obtained in it. And, the meeting only came to light because of someone outside the State's Attorney's Office. Had Mr. Rubin not intervened, Officer Goodson would never have learned of this meeting.

Second, Officer Goodson has been significantly prejudiced. Mr. Allen is an important witness to Officer Goodson's defense. Obviously, the State thinks Mr. Allen's testimony is important to its case. Indeed, Mr. Allen's testimony as to the events following Stop 5 is crucial to the case, particularly on the issue of cause and timing of Mr. Gray's death. Yet the State, possessing information bearing on Mr. Allen's credibility for over a year, never disclosed it to Officer Goodson. The alternative is that Mr. Allen again confirmed his statement to police, thereby providing critical support to Mr. Goodson's defense. Either way, the State chose not to disclose the information. The State says it took no notes regarding the meeting, and has refused to provide any information except that Mr. Allen was "consistently inconsistent." The contents of the meeting clearly constitute either impeachment or exculpatory evidence that the State is constitutionally and unconditionally required to provide to Officer Goodson. There is no way for Officer Goodson to now assess what effect the information in the meeting might have had on the

grand jury proceedings that took place just days later, had it been made available. For present purposes, even if the State now discloses its recollection of the meeting,⁶ the surprise caused by the last minute production of whatever information is provided adds more of a burden to the already truncated trial schedule.

But as to the third factor, the prospect of a continuance to get to the bottom of the information the State has not disclosed would unfairly force Officer Goodson to choose between a fair trial and a speedy trial. Based on the State's course of conduct throughout this case—a hasty "investigation" and decision to charge, improper use of the media, and discovery violations—Officer Goodson doubts that any trial can be completely fair. Therefore, a continuance will cure nothing and merely keep Officer Goodson in limbo that much longer. A "no harm, no foul" approach will not serve justice in this case, in the cases of the other officer defendants, or in future prosecutions in Baltimore. This Court should deter this kind of prosecutorial misconduct in its ruling on this motion.

If the Court is not inclined to dismiss the charges, Officer Goodson requests that the trial proceed as currently scheduled, and that evidence of Mr. Allen's statements be limited to those he made to the BPD Force Investigation Team on April 12, 2015, before the State's Attorney's Office conducted its sessions with him. No reference should be made to anything Mr. Allen allegedly said in the May 4, 2016 interview. As to the secret meeting of May 7, 2015, ordering discovery such as depositions of the Deputy State's Attorneys regarding the meeting (and any other meetings that Officer Goodson still does not know about), at this stage, will only serve to excuse the State's failure to promptly disclose that information over a year ago. Therefore,

⁶ Mr. Rubin is bound by his ethical duty to maintain the attorney-client privilege not to delve into the contents of the meeting, nor would the defense ask him to divulge that information. Thus, Officer Goodson is left with whatever version of the meeting the State decides to give him on the eve of trial. Both the timing of any disclosure he receives from this point forward, and the suspect reliability and completeness of its contents, prejudices Officer Goodson's right to receive a fair trial.

Officer Goodson requests that the Court, as the finder of fact, draw the inference that the information obtained by the State in the May 7, 2015 meeting with Mr. Allen was detrimental to the prosecution and exculpatory to the defendant, and that it was for that reason that the State chose not to disclose that evidence to Officer Goodson.

If this Court deems further evidence of the May 7, 2015 meeting is appropriate, Officer Goodson requests an evidentiary hearing. Mr. Schatzow and Ms. Bledsoe will be necessary witnesses, and both should be disqualified from acting as advocates at trial. The State has three other prosecutors who have entered their appearances in this case, so there should be no continuance or other delay. To be clear, Officer Goodson reiterates his demand that his speedy trial rights not be further violated. Officer Goodson is also entitled to a fair trial. He should not have to choose one constitutional right at the expense of another.

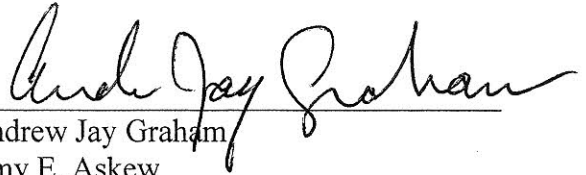
For all the reasons above, Officer Goodson moves this Honorable Court to dismiss the charges against him as a sanction and remedy for the State's violation of his constitutional rights. In the alternative, if this indictment is not dismissed, Officer Goodson requests the entry of an order providing such relief as the Court deems appropriate.

Dated: June 6, 2016

Respectfully submitted,



Matthew B. Fraling, III
Harris Jones & Malone, LLC
2423 Maryland Avenue, Suite 1100
Baltimore, Maryland 21218
Phone: (410) 366-1500
Fax: (410) 366-1501



Andrew Jay Graham
Amy E. Askew
Justin A. Redd
Kramon & Graham, P.A.
One South Street, Suite 2600
Baltimore, Maryland 21202
Phone: (410) 752-6030
Fax: (410) 539-1269

Counsel for Officer Caesar Goodson

CERTIFICATE OF SERVICE

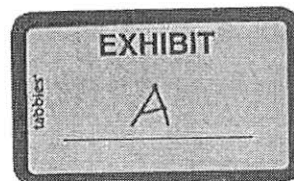
I HEREBY CERTIFY that on this 6th day of June 2016, a copy of Defendant Caesar Goodson's Motion to Dismiss for Prosecutorial Misconduct was served via email and hand delivery upon:

Michael Schatzow, Esquire
Chief Deputy State's Attorney for Baltimore City
120 E. Baltimore Street, 9th Floor
Baltimore, Maryland 21202


Amy E. Askew

In the Matter Of:
FREDDIE GRAY INVESTIGATION

DONTA ALLEN
April 12, 2015



2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

-----X

BALTIMORE CITY POLICE
FREDDIE GRAY INVESTIGATION
INTERVIEW WITH DONTA ALLEN
APRIL 12, 2015 12:40 P.M.

-----X

TRANSCRIBED FROM

Donta_Allen.mp3

MP3 FILE

DATED APRIL 12, 2015

REPORTED BY: MICHELLE R. KILLEN

1 [START Donta_Allen.mp3]

2 DET. MICHAEL BOYD: Have a seat in the
3 silver chair, if you would.

4 MR. DONTA ALLEN: Okay.

5 DET. BOYD: All right, Mr. Allen.
6 Before we start, I got to let you know this
7 room is being audio and video recorded.
8 Okay? Do you got any I.D. on you, bro?

9 MR. ALLEN: They just gave me my I.D.
10 back. Here you go.

11 DET. BOYD: Thanks, bud. Is the
12 address on here good?

13 MR. ALLEN: [REDACTED]

14 DET. BOYD: - -. What do people call
15 you?

16 MR. ALLEN: Huh?

17 DET. BOYD: What do people call you?

18 MR. ALLEN: Twin.

19 DET. BOYD: Twin?

20 MR. ALLEN: Yeah.

21 DET. BOYD: Where are you living at
22 now?

23 MR. ALLEN: [REDACTED]

24 DET. BOYD: [REDACTED] what?

25 MR. ALLEN: [REDACTED]

1 DET. BOYD: Street. And a house,
2 apartment?
3 MR. ALLEN: A house.
4 DET. BOYD: House? All right. Do you
5 have a home phone there?
6 MR. ALLEN: I've got my phone.
7 DET. BOYD: What is it, a cell phone?
8 MR. ALLEN: Yeah.
9 DET. BOYD: What is it?
10 MR. ALLEN: ██████████
11 DET. BOYD: ██████
12 MR. ALLEN: Yeah, ██████
13 DET. BOYD: ██████
14 MR. ALLEN: Yeah, ██████
15 DET. BOYD: All right. How old are you,
16 bro?
17 MR. ALLEN: I'm 22.
18 DET. BOYD: How tall are you? Height
19 and weight, they're all on here?
20 MR. ALLEN: Yeah.
21 DET. BOYD: 6'3", 170?
22 MR. ALLEN: 175.
23 DET. BOYD: All right.
24 MR. ALLEN: Yeah.
25 DET. BOYD: You ever wear glasses?

1 MR. ALLEN: Mm-mm.

2 DET. BOYD: How is your hair?

3 MR. ALLEN: Hmm?

4 DET. BOYD: How is your hair?

5 MR. ALLEN: Oh, braids.

6 DET. BOYD: All right. And your

7 social?

8 MR. ALLEN: [REDACTED]

9 DET. BOYD: - - face. What else?

10 You've got tattoos on your neck?

11 MR. ALLEN: Neck, right here, right

12 here, right here.

13 DET. BOYD: That's cool. I don't need

14 to see them. I was just asking. Face, neck,

15 arms, chest. You know, I wanted to see

16 tattoos today. I just--

17 MR. ALLEN: I'm trying to get another

18 one.

19 DET. BOYD: Yeah, I would have like to

20 have went to that show, too.

21 MR. ALLEN: Yeah, I was on my way to

22 the tattoo convention, when they called me.

23 DET. BOYD: You got golds in both? Are

24 they permanent or just a--

25 MR. ALLEN: No, they pull out.

1 DET. BOYD: Can you read and write,
2 bro?
3 MR. ALLEN: Mm-hmm.
4 DET. BOYD: What hand do you write
5 with?
6 MR. ALLEN: Right hand.
7 DET. BOYD: Where did you go to school
8 at? Last school you attended?
9 MR. ALLEN: Israel Harbor.
10 DET. BOYD: Did you graduate?
11 MR. ALLEN: Well, I'm attending school
12 now.
13 DET. BOYD: Where are you going?
14 MR. ALLEN: I go to Strive on North
15 Monroe, 2201.
16 DET. BOYD: Stride. What's that, a--
17 MR. ALLEN: It's like a--
18 DET. BOYD: Get your GED?
19 MR. ALLEN: Yeah.
20 DET. BOYD: Yeah.
21 MR. ALLEN: But it's also other stuff
22 in there.
23 DET. BOYD: Yeah, like you can do trade
24 work, and everything like that?
25 MR. ALLEN: Yeah - - like that.

1 DET. BOYD: What kind of schooling are
2 you going for?

3 MR. ALLEN: Right now I'm just going
4 for my GED.

5 DET. BOYD: Mm-hmm. What kind of work
6 do you want to get into? Do you know?

7 MR. ALLEN: I haven't really decided,
8 but it's like construction and things, and
9 like that.

10 DET. BOYD: I got you. You sober
11 today?

12 MR. ALLEN: Yeah.

13 DET. BOYD: No drugs, no alcohol,
14 nothing like that?

15 MR. ALLEN: Mm-mm.

16 DET. BOYD: All right.

17 MR. ALLEN: Just Pepsi.

18 DET. BOYD: What you got, gray? Is it
19 a full out suit or just a gray top and the--

20 MR. ALLEN: I have Russell sweat pants
21 on, black and gray shoes on, and this shirt.

22 DET. BOYD: Got injuries or anything
23 like that?

24 MR. ALLEN: Mm-mm.

25 DET. BOYD: Here's your I.D. back, bro.

1 Are you working anywhere right now?

2 MR. ALLEN: I just--well I had just
3 started, but I'm getting hired at Checkers.

4 DET. BOYD: Checkers?

5 MR. ALLEN: Yeah.

6 DET. BOYD: Which one?

7 MR. ALLEN: I don't know where it's at.

8 DET. BOYD: Oh, you just apply and they
9 put you somewhere?

10 MR. ALLEN: Yeah. I was referred by a
11 person who own it, so he will give me one at
12 either one.

13 DET. BOYD: Putting my name down here
14 and - - twice. Long night, man.

15 DET. JOSEPH POREMSKI: - -. My ears
16 are still ringing.

17 DET. BOYD: Do you got anybody you live
18 with, anybody we can get in contact with if,
19 God forbid, something happens to you? Is
20 there somebody like that?

21 MR. ALLEN: My baby momma.

22 DET. BOYD: Where does she live at?

23 MR. ALLEN: [REDACTED].

24 DET. BOYD: [REDACTED]?

25 MR. ALLEN: [REDACTED].

1 DET. BOYD: [REDACTED]
2 MR. ALLEN: Yeah.
3 DET. BOYD: Street?
4 MR. ALLEN: Avenue.
5 DET. BOYD: Avenue. What's her last
6 name?
7 MR. ALLEN: [REDACTED]
8 DET. BOYD: T?
9 MR. ALLEN: [REDACTED]
10 DET. BOYD: [REDACTED] First name?
11 MR. ALLEN: [REDACTED]
12 DET. BOYD: Girlfriend? Are you all
13 still together or just baby momma?
14 MR. ALLEN: Baby momma. Yeah, we still
15 together, though.
16 DET. BOYD: How old is your kid?
17 MR. ALLEN: We ain't had it yet.
18 DET. BOYD: Not yet? How far along is
19 she?
20 MR. ALLEN: Probably a month.
21 DET. BOYD: Do you know what you're
22 going to having? You said it's a month.
23 Yeah, it's still too early.
24 MR. ALLEN: Yeah.
25 DET. BOYD: Are you all going to find

1 out?

2 MR. ALLEN: Yeah.

3 DET. BOYD: Okay. What's her number?

4 MR. ALLEN: [REDACTED], sorry.

5 DET. BOYD: [REDACTED]?

6 MR. ALLEN: [REDACTED].

7 DET. BOYD: [REDACTED]?

8 MR. ALLEN: Yeah.

9 DET. BOYD: All right, bro. Let's go
10 with that. Let me walk you through why
11 you're here. Obviously I'm Detective Boyd,
12 okay? This is my partner, Detective
13 Poremski. All right? We'll be doing an
14 interview with you, okay, in regards to an
15 incident that happened somewhere in the--
16 somewhere, while you were traveling in the
17 Western. All right? To my knowledge, at
18 some point, you were placed in police
19 custody and placed into the wagon, correct?
20 For the sake of you not incriminating
21 yourself, I'm not going to ask you any
22 questions about why you were--

23 MR. ALLEN: Okay.

24 DET. POREMSKI: Detained.

25 DET. BOYD: You were detained.

1 MR. ALLEN: Okay.

2 DET. BOYD: Okay. To be honest with
3 you, I don't even know what the
4 circumstances leading up to that were.

5 MR. ALLEN: Okay.

6 DET. BOYD: I just have to make it
7 clear for the record that in your contact
8 with us, we haven't promised you anything,
9 correct?

10 MR. ALLEN: Mm-mm.

11 DET. BOYD: We haven't threatened you
12 in any way?

13 MR. ALLEN: No sir.

14 DET. BOYD: You're giving this
15 statement of your own free will?

16 MR. ALLEN: Yes sir.

17 DET. BOYD: No one just said okay, if
18 you give us this statement we'll give you
19 something back for it. Nothing like that
20 has happened, correct?

21 MR. ALLEN: Mm-mm.

22 DET. BOYD: You're just sitting here
23 giving your statement, correct? If you
24 could walk us through--and again, like I
25 said, not why you became in police custody,

1 but at what point you became, kind of like
2 start from there. Do you understand what
3 I'm saying?

4 MR. ALLEN: I became what?

5 DET. BOYD: Well you were placed--at
6 some point you were placed in the wagon,
7 correct?

8 MR. ALLEN: Yes.

9 DET. BOYD: Take me back to like that
10 point and what was going on, you know,
11 without saying what happened beforehand.
12 See what I'm saying?

13 MR. ALLEN: Well when I was in the
14 police van, we were just riding, and I heard
15 some--I didn't know somebody was on the
16 other side at first. You know what I mean?
17 But I heard him telling--banging himself. I
18 know there was nobody in the--nobody else in
19 there but me and him. Once I found out he
20 was in there, and I found out, you know,
21 what happened--he was banging. It sounded
22 like he was banging his head against the
23 metal, like he was trying to knock himself
24 out or something.

25 DET. BOYD: Okay.

1 MR. ALLEN: I heard him back there. It
2 sounded like he was just crazy or something,
3 like he was a crazy man or something. I
4 don't know. I still haven't seen him.

5 DET. BOYD: Okay. Let me walk you back
6 a little bit. At what point--where were you
7 at when you got placed into the wagon? Do
8 you the location?

9 MR. ALLEN: I was on--I was just on one
10 side. He was on the other side.

11 DET. BOYD: No, I'm talking about
12 street wise.

13 MR. ALLEN: Oh, Pennsylvania Avenue.

14 DET. BOYD: You was on Pennsylvania
15 Avenue?

16 MR. ALLEN: Yeah.

17 DET. BOYD: And the wagon, I'm assuming,
18 pulls up?

19 MR. ALLEN: Yeah.

20 DET. BOYD: They escort you to the
21 wagon. As you were getting in the wagon--
22 you know how they split down the middle,
23 right?

24 MR. ALLEN: Right.

25 DET. BOYD: You've got a right side and

1 a left side.

2 MR. ALLEN: I was on the--

3 DET. BOYD: If you're looking at it.

4 MR. ALLEN: I was on the right side.

5 DET. BOYD: Okay. So you were on the
6 right side?

7 MR. ALLEN: He was on the left side.

8 DET. BOYD: Could you see that somebody
9 was in there, when you were walking up?

10 MR. ALLEN: No, I wasn't paying no
11 attention. Now probably before I got in, if
12 I would have looked more on the other side,
13 I probably would have seen him, but I didn't
14 pay attention.

15 DET. BOYD: You didn't. You just get
16 in the wagon?

17 MR. ALLEN: Got in the wagon.

18 DET. BOYD: Okay. And at this point,
19 you're the only one on the side you were on?

20 MR. ALLEN: Yeah, nobody else.

21 DET. BOYD: And you didn't know anybody
22 else was on the other side?

23 MR. ALLEN: Nobody was in there - -. I
24 heard banging. I still didn't know if there
25 was somebody in there, but I was trying to

1 put my head - - somebody over there, man.

2 DET. BOYD: All right. So as you're
3 going, you were on Pennsylvania Avenue,
4 right? Was his head banging the whole time?
5 Did it start after you guys started moving?

6 MR. ALLEN: No, like moving, like
7 moving like in the middle of when--like we
8 first started, and a little bit, he started
9 banging his head.

10 DET. BOYD: Was he saying anything,
11 when he was banging his head?

12 MR. ALLEN: No, he was just banging his
13 head. - - and I thought it was a fiend,
14 like a dope fiend or something like that.
15 You know what I'm saying? That's what I
16 thought.

17 DET. BOYD: Now when you say he's
18 banging his head, man, would you say it was
19 like a lot of force?

20 MR. ALLEN: Like a loud bang, like he
21 was doing like this. I know he wasn't doing
22 like this.

23 DET. BOYD: So it wasn't like
24 [knocking]. It was more like that. [louder
25 knocking]

1 MR. ALLEN: It was like--he wasn't
2 doing it hard and shit, but he was
3 definitely banging himself in the head. I
4 know he was.

5 DET. BOYD: What, could you--was it
6 repeated? Was he like one time, two times?

7 MR. ALLEN: About four or five times,
8 something like that, three, four, five times.

9 DET. BOYD: Did there ever come a time-
10 -when did he stop?

11 MR. ALLEN: Like he just did it and
12 stopped, like it wasn't ongoing, like he was
13 doing it the whole ride. When we started,
14 he--when we first pulled up, he wasn't doing
15 it. Like a little bit when we was going, he
16 was--he started doing it.

17 DET. BOYD: But he wasn't saying
18 anything? You couldn't hear him say
19 anything?

20 MR. ALLEN: No, he wasn't talking. I
21 didn't hear him talking.

22 DET. BOYD: Okay. So as he is banging
23 his head and banging his head, you guys are
24 continuing down the road, and then he just
25 stops?

1 MR. ALLEN: Mm-hmm. And then we got
2 there and I realized, I was like, man, he
3 probably knocked himself out. They said he
4 was unconscious.

5 DET. BOYD: Now where did you get to?
6 Do you know where they took you to?

7 MR. ALLEN: The district.

8 DET. BOYD: Do you know which district
9 they took you to?

10 MR. ALLEN: Was it northwest? I think
11 it was Northwest District. Yeah, it was
12 Northwest District.

13 DET. BOYD: Okay. So they take you to
14 the district. Did they take you out of--did
15 you get out of the wagon at that point?
16 Describe to me what happened when you got to
17 the district?

18 MR. ALLEN: When I got to the district,
19 they took me out of the wagon. No, they--
20 first they went over there. That's how I
21 knew somebody was in there. They went to
22 him first and yelled his name, and I guess
23 he was unconscious or something. And then
24 they moved to me, and they took me out.

25 DET. BOYD: Could you hear what name

1 they yelled?

2 MR. ALLEN: I wasn't even paying no
3 attention. I'm like the police yelled his
4 name and I don't know--I forgot his--I
5 forgot what he said. I don't remember the
6 name or nothing. I don't even know his name.

7 DET. BOYD: Did you see who yelled his
8 name?

9 MR. ALLEN: No.

10 DET. BOYD: Did you see who was driving
11 the wagon, officer wise, if you can
12 remember?

13 MR. ALLEN: Yeah. I - - from being
14 locked up.

15 DET. BOYD: It's all right.

16 MR. ALLEN: But yeah, he definitely was
17 banging his head, and I don't know what's
18 wrong with him.

19 DET. BOYD: So they get back. They get
20 to the station. They open the door. They
21 call out his name. You don't hear him say
22 anything?

23 MR. ALLEN: No.

24 DET. BOYD: So then what happens with--
25 then what happens from there?

1 MR. ALLEN: I went in.

2 DET. BOYD: They just took you in?

3 MR. ALLEN: Yeah.

4 DET. BOYD: All right. Could you see
5 what was going on?

6 MR. ALLEN: No, not at all.

7 DET. BOYD: So they took you actually
8 inside the building?

9 MR. ALLEN: I didn't do nothing to him.
10 I was on the--

11 DET. BOYD: No, no, no. I'm not saying
12 that. I'm just trying to find out exactly
13 what happened to him. You know what I mean?
14 And I realize you couldn't see him. That's
15 why I'm asking you what you heard.

16 MR. ALLEN: Yeah.

17 DET. BOYD: How hard he was banging his
18 head, stuff like that.

19 MR. ALLEN: He was banging it pretty
20 hard. He was banging his head pretty hard.

21 DET. BOYD: Do you feel like he was
22 trying to knock himself out?

23 MR. ALLEN: If somebody hit their head
24 that hard, they probably - -.

25 DET. BOYD: Hey, you know, I'm asking

1 your opinion. That's why I asked it, bro.

2 MR. ALLEN: Yeah.

3 DET. BOYD: So when you get down and
4 they just took you in, then you couldn't--
5 you didn't see anything more after that?

6 MR. ALLEN: No, I was in there. I was
7 just in there.

8 DET. BOYD: All right. Did you hear
9 him--did you hear anybody call for a medic,
10 or anything like that?

11 MR. ALLEN: For what?

12 DET. BOYD: For a medic for him or
13 anything like that, to your knowledge?

14 MR. ALLEN: Mm-mm.

15 DET. BOYD: At any point--you didn't
16 see any kind of officer assault him or
17 anything like that?

18 MR. ALLEN: No, man. I don't really
19 like police but I can tell you the truth.
20 Nobody - - or anything. They didn't put
21 their hands on him, not in my eyesight.

22 DET. BOYD: Okay. Detective Poremski
23 do you have any questions?

24 DET. POREMSKI: Yeah. After they put
25 you in the back of the wagon and they were

1 transporting, did wagon stop any time?

2 MR. ALLEN: No.

3 DET. POREMSKI: It went straight to the
4 district?

5 MR. ALLEN: To the district.

6 DET. POREMSKI: Okay. And did you see-
7 -when you were being transported, did you
8 see any officer go in and out of the other
9 side?

10 MR. ALLEN: No, sir.

11 DET. POREMSKI: Okay. How did you know
12 it was his head? I mean, you heard - -.

13 MR. ALLEN: Yeah, it can't be nothing
14 else because he got his hands behind his
15 back. - - handcuffs on - - so I can only
16 think he's doing something like this or
17 banging his head up there like that.

18 DET. POREMSKI: Okay. When you got to
19 the station and they finally took you out,
20 how many officers--in your opinion, how many
21 officers do you remember seeing around the
22 wagon, when they were taking you out, one,
23 two, several?

24 MR. ALLEN: When I was getting out,
25 there was one in front of me that was

1 letting me out and--there was one in front
2 of me, and I think it was two of them. I
3 think it was two of them.

4 DET. POREMSKI: Okay. Were they
5 wearing regular police uniforms or did they
6 have different kind of uniforms on?

7 MR. ALLEN: No, they was in a police
8 uniform.

9 DET. POREMSKI: I mean all blue, or did
10 they have any other kind of--was it just
11 all--

12 MR. ALLEN: All blue.

13 DET. POREMSKI: All blue.

14 DET. BOYD: Black officer, white
15 officer. Do you remember?

16 MR. ALLEN: I remember seeing one black
17 officer, but this was all when I was at--

18 [crosstalk]

19 DET. POREMSKI: When you were at the
20 station and they obviously--when they were
21 taking you out to put you in the station.

22 MR. ALLEN: I only seen one police
23 officer.

24 DET. POREMSKI: Okay.

25 MR. ALLEN: That took me out the back.

1 Now when I got out the back.

2 DET. POREMSKI: White dude, black dude?

3 MR. ALLEN: When I got inside the
4 District?

5 DET. POREMSKI: No, this was when they
6 were taking you out.

7 MR. ALLEN: Yeah, I only seen one
8 officer.

9 DET. POREMSKI: Was it a white dude,
10 black dude?

11 MR. ALLEN: White dude.

12 DET. POREMSKI: Okay. Did they--did
13 you hear them saying anything, when they
14 were taking you out? Did you hear the
15 officers talking amongst themselves, saying
16 anything?

17 MR. ALLEN: No.

18 DET. BOYD: So let me ask you this, man.
19 You know how the doors are on the wagons,
20 right?

21 MR. ALLEN: Yeah.

22 DET. BOYD: They're metal, right?

23 MR. ALLEN: Yeah.

24 DET. BOYD: They make a lot of noise
25 when they open and close, and shit like that,

1 right?

2 MR. ALLEN: Yeah.

3 DET. BOYD: At any point, did you--
4 obviously you saw them open the door for you.
5 You saw them open that side door and put you
6 in, right?

7 MR. ALLEN: Yeah.

8 DET. BOYD: Close the door. You heard
9 the door close?

10 MR. ALLEN: Right.

11 DET. BOYD: At any point after that did
12 you hear them doors open or close, anything
13 like that?

14 MR. ALLEN: No sir. They better not
15 open that while we moving.

16 DET. POREMSKI: When they put you in
17 the wagon, did they seatbelt you in? Were
18 you seat belted?

19 MR. ALLEN: Who, we?

20 DET. POREMSKI: Yeah.

21 MR. ALLEN: Well I wasn't seat belted
22 in.

23 DET. POREMSKI: Okay. And your ride
24 over, do you remember, when you were riding
25 there, did you hit any big bumps, potholes?

1 Did you--was it a smooth ride? Was it
2 rough? Was it, you know, any kind of--

3 MR. ALLEN: I was fine.

4 DET. BOYD: There wasn't no tossing or
5 turning, no like sudden stops or nothing
6 like that?

7 MR. ALLEN: No.

8 DET. BOYD: Didn't speed up, slam on
9 the brakes and slam you, nothing like that?

10 MR. ALLEN: - - over the railroad
11 tracks real fast.

12 DET. BOYD: So it was just a smooth
13 ride?

14 MR. ALLEN: Smooth ride.

15 DET. BOYD: So nothing? At any point,
16 you didn't hit your head. You didn't - - a
17 bump or anything like that?

18 MR. ALLEN: Ain't no reason to.

19 DET. BOYD: So it's safe to say, in
20 your opinion, if he was banging his head, he
21 was doing it on his own accord?

22 MR. ALLEN: Yes sir.

23 DET. BOYD: Wasn't nobody forced him?
24 It wasn't like the way the officer was
25 driving or anything like that?

1 MR. ALLEN: No sir.

2 DET. BOYD: Okay. I don't have
3 anything else. Mr. Allen, is there anything
4 you want to add that you feel we might have
5 missed, anything that might help us in this
6 investigation?

7 MR. ALLEN: No sir.

8 DET. BOYD: Okay. Again, nobody
9 threatened, coerced you, promised you
10 anything, in any way. Before we started
11 this interview, myself, or Detective
12 Poremski, or nobody told you what you had to
13 come in here and say, or anything like that?

14 MR. ALLEN: No sir.

15 DET. BOYD: Everything you're telling
16 us is true and accurate, to the best of your
17 knowledge?

18 MR. ALLEN: Yes, sir.

19 DET. BOYD: Okay. This concludes the
20 interview. Time now is 12:58. Can you hang
21 out here for me for a second? I'm going to
22 walk out, find out what--how to get you out
23 of here and everything like that. All
24 right?

25 [long pause]

1 MR. ALLEN: Hello. Who is this? Oh.

2 [background noise]

3 DET. BOYD: Hey bro.

4 DET. POREMSKI: Yeah, one last thing
5 we've got to run by you.

6 DET. BOYD: Just one more thing. It's
7 just we got some more information while we
8 were outside, starting with you realize
9 we're still audio and video recorded, right?
10 You're giving your statement under your own
11 free will. Still, again, it's myself and
12 Detective Poremski. When you were in the
13 wagon and they put you in--excuse me, where
14 did they position you? Or where did you
15 position yourself? Were you in front of
16 the--up by the cage, you know, further up in
17 the back?

18 MR. ALLEN: Middle.

19 DET. BOYD: Like sitting in the middle?
20 Now when you were hearing the noises and you
21 were hearing banging the head, could you
22 tell where it was coming from, like the
23 front of the wagon, the back of the wagon,
24 you know, if he was banging his head on the
25 divider or banging his head--

1 MR. ALLEN: On the divider. I think it
2 was the divider.

3 DET. BOYD: Between the two of you?

4 MR. ALLEN: Yeah.

5 DET. BOYD: And where in relation--

6 DET. POREMSKI: [crosstalk] in the back
7 of it, could you hear the thumping? Where
8 was the noise coming from?

9 MR. ALLEN: I know it was coming from
10 like--he was banging like on--like going
11 like this or something.

12 DET. BOYD: Well let me put it in
13 relation like this. Like you're sitting in
14 the middle of the wagon like you are, right?

15 MR. ALLEN: Yeah.

16 DET. POREMSKI: So if I was to go like
17 this or if I was to go like that, you know,
18 you see how you could hear kind of which
19 direction it was coming from? Could you
20 tell?

21 MR. ALLEN: Yeah. It sounded like it
22 was just coming over there. I can't tell if
23 it was right or left, but I know he was dang
24 sure banging his head somewhere. He
25 probably was banging it in the middle.

1 DET. BOYD: You know how like the wagon
2 is pretty--got a pretty decent height to it,
3 you know?

4 MR. ALLEN: Yeah.

5 DET. BOYD: You can actually get up and
6 like kind of walk into it?

7 MR. ALLEN: No, you can't do that. So
8 I'm saying he was--I don't know if it's like
9 this. If it's like this, he probably - -
10 like this, with his back. But if he was
11 sitting in the middle or anything, he
12 definitely was banging his head, like this.

13 DET. BOYD: But I'm saying like on the
14 divider, did it sound like it was a high--
15 like if I was to bang up here or banging
16 down there. You know how you can tell
17 whether it's high or low.

18 MR. ALLEN: Yeah.

19 DET. BOYD: Could you tell anything
20 like that?

21 MR. ALLEN: No, it was low.

22 DET. BOYD: It was low?

23 MR. ALLEN: It was low.

24 DET. BOYD: Okay. All right. I guess
25 that's it, again.

1 DET. POREMSKI: Yes sir.

2 DET. BOYD: All right, bro. We're
3 going to get you out of here. Thank you
4 very much. We'll grab your stuff. We'll
5 get you out of here.

6 DET. POREMSKI: One quick thing. Let
7 me give you my card, in case you think of
8 anything else. Just give me a holler and
9 let me know. All right?

10 MR. ALLEN: Mm-hmm.

11 DET. POREMSKI: I have to get one of
12 the damn things out of my wallet.

13 [END Donta_Allen.mp3]

14

15

16

17

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T E

I, Michelle R. Killen, certify that the foregoing transcript is a true record of said proceedings, that I am not connected by blood or marriage with any of the parties herein nor interested directly or indirectly in the matter in controversy, nor am I in the employ of the counsel.

Signature
Date April 27, 2015