

OpTac International News Bulletin

Does the Fifth Amendment apply to law enforcement officers?

A recent Maryland court decision throws into question whether the Fifth Amendment of the U.S. Constitution, which states, "No person...shall be compelled in any criminal case to be a witness against himself...", applies to law enforcement officers. This edition of the **OpTac International News Bulletin** explores circumstances surrounding the judicial decision, the pending appeal, and the possibility of a law enforcement officer being legally compelled to testify against other law enforcement officers in separate, but related cases while the officer is still awaiting criminal trial.

On April 19, 2015, Freddie Gray died as a result of a fatal neck injury suffered in the custody of Baltimore Police Department (BPD) officers. The facts surrounding the cause and culpability of his fatal injury are still in dispute; however, criminal charges have been brought against the six BPD officers involved in his arrest and subsequent transport for processing.

In December 2015, Officer William Porter, who was summoned by the driver of the transport van to check Gray's welfare, was the first officer to go on trial. The judge declared a mistrial when the jury could not render a verdict on the criminal charges of involuntary manslaughter, second degree assault, reckless endangerment, and misconduct in office. Prosecutors alleged that Porter should have called for a medic sooner and ensured Gray was wearing a seatbelt in the transport van.

Porter is now awaiting retrial, which is scheduled to take place on June 13, 2016; however prior to that date, prosecutors are attempting to compel him to testify against Officer Caesar Goodson Jr. and Sergeant Alicia White, even though Porter is not being granted full immunity from prosecution (Goodson was the transport van's driver and White allegedly did not provide Gray with medical attention). Circuit Court Judge Barry Williams ruled that Porter could be compelled to testify since the prosecution's agreement not to use Porter's testimony against him in his upcoming trial still protects him with limited immunity. Williams justified his decision by stating that Porter's "extremely important testimony is needed in the Goodson and White cases," even though this type of decision is unprecedented in Maryland. Goodson is facing the most serious charge of second-degree depraved-heart murder along with manslaughter, assault, misconduct in office, and reckless endangerment. Porter is appealing Williams' decision to the Maryland Court of Special Appeals.

Judge Williams, who is presiding over the trials of all six BPD officers, ruled that Officer Porter is not required to testify in the other three criminal cases because his testimony is not essential. Attorneys for the three affected officers had argued that the prosecution's request to have him testify was a "disingenuous" attempt to have all six cases postponed until after Porter's appeal in order to reshuffle the trial order. The order became problematic for the prosecution after Porter was granted a mistrial, which then moved him from first to be prosecuted, to last.

A dangerous precedent will occur if Porter is compelled to testify against Goodson and White while still awaiting retrial. Even though his testimony cannot be used against him in the retrial, prosecutors can learn information that could be used if corroborated through other sources. Additionally, there are no guarantees that Porter's testimony would not be used in any potential federal prosecution and/or civil litigation. Prosecutors could avoid the issue by dropping the charges against Porter, thereby granting him full immunity. The Maryland Court of Special Appeals has not set a timetable for its ruling, but the Maryland Constitution requires a decision within three months.