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Legal Experts Split on Charges Against Officers in Gray Case

by Mike Richman



FILE - Lawyer Alan Dershowitz says he thinks State's Attorney Marilyn Mosby may have overcharged the Baltimore officers in the Freddie Gray case in the hope of ending riots in the city.

Last week, Baltimore State's Attorney Marilyn Mosby indicted six police officers on charges including second-degree murder, involuntary manslaughter, criminal negligence and police misconduct in the case of Freddie Gray, a black man who died while in police custody last month.

The announcement by the 35-year-old prosecutor at least temporarily restored stability to a city torn apart by rioting, looting and clashes between protesters and police, and it opened the door for legal experts to weigh in on the legitimacy of those charges.

Some experts say Mosby faces a stiff challenge in getting convictions against the officers, while others argue she has a strong case with reasonable charges.

Mosby announced the charges May 1, hours after receiving the medical examiner's report on Gray. She said he suffered a severe neck injury

while being transported in a police van on April 12, adding that he was not secured by a seat belt as he should have been, and that officers did not seek or render medical aid, even when he said he needed it.

Mosby also said the police did not have probable cause to arrest Gray because a knife found on him was legal in Maryland. A police investigation has described the knife as illegal under Baltimore city code.

The driver of the police van, Caesar Goodson, is facing the most serious charge of second-degree depraved-heart murder, or willfully doing a dangerous and reckless act with wanton indifference to the consequences and perils involved. Goodson and two of the other officers are charged with involuntary manslaughter and second-degree assault. All six face charges of police misconduct.

Three of the officers are white and three are black.

Rush to judgment

The Baltimore City Fraternal Order of Police has accused Mosby of engaging in "an apparent rush to judgment," and said none of the officers involved is responsible for Gray's death.

According to renowned law professor Alan Dershowitz, Mosby seemingly overcharged the officers in her hope of ending the riots. He voiced concern about her remark that she heard calls of "no justice, no peace" from the demonstrators in Baltimore and across the country. Dershowitz noted that prosecutors should not be influenced by mobs and crowds, only by evidence and the law.

He said any threats of more riots if the officers are not convicted could impact the jury.

"If you have jurors from Baltimore saying to themselves, 'My God, if we acquit, even if the evidence requires that we acquit, are we really risking our businesses, our homes, our safety?'" he said. "Jurors should not have to worry about that. They should have no stake in the outcome of the case other than doing justice based on the evidence."

George Washington University law professor John Banzhaf also thinks Mosby overreached with the charges. He said prosecutors sometimes do that, hoping officers will break what is known as the "blue wall of silence" and testify against each other. But that breach is less likely today, he noted, because officers are not as scared by excessive criminal charges and have excellent attorneys.

Banzhaf said if one or two of the officers testify against the others, the prosecution may gain convictions.

"If that does not happen," he said, "I think it's clear that many of these counts will be thrown out by a judge, because the judge will say to the prosecutor there simply is no way that you can prove that element beyond any reasonable doubt. Those that remain to trial, there will either be a plea bargain or [the prosecution] will lose on many of the charges. They may get one or two of the smaller charges, clearly disobedience of directives and that kind of thing. But I don't think they're going to get any of the homicide charges."

Rough ride

However, Philip Stinson, a criminologist at Bowling Green State University and a former police officer, said Mosby has a solid case. He based that on his belief that the officers deliberately gave Gray a "rough ride" in the van, saying his injuries are consistent with ones that he saw in his days as a police officer in the 1980s.

"It's a common occurrence in many police departments that if somebody gives you a hard time, makes you chase them down, resists arrest, breaks your cruiser window, things like that, that some officers will engage in what I call street justice, and punish that person or teach them a lesson," Stinson said.

"So if he's handcuffed with his hands behind his back and not secured in the back of that van and the driver takes him on a wild ride with a lot of accelerating and slamming on the brakes, going around the corner and things like that, those injuries are consistent with street justice and a rough ride," he said. "So assuming that's what happened — and that's what I felt happened all along — I think it is appropriate based on that theory to bring charges against all six officers."

Stinson's research on police misconduct shows there is a good chance that the officers will be convicted of the more serious charges. He found a 61 percent conviction rate in on-duty police incidents resulting in a murder or manslaughter charge against the officer when the suspect was not shot, compared with a 46 percent rate in cases involving an on-duty shooting.

"Juries and even judges in bench trials are very reluctant to second-guess police officers in those split-second life-or-death decisions when they shoot somebody," Stinson said.

Because Gray's death appears linked to his time in custody and was not a split-second case, Mosby will have greater leeway in proving gross negligence and depraved murder, according to Baltimore-based defense attorney A. Dwight Pettit, who said he believes the charges are reasonable.

"I think some of the charges will stick," Pettit said. "There is evidence to support the second-degree murder charge. The officer was aware of the dangerous situation and continued to ignore it."

The case is expected to take more than a year to go to trial.

<http://www.voanews.com/content/legal-experts-divided-charges-officers-freddie-gray-case/2759365.html>