

Witness: Garner could breathe

Doctor hired by defense disputes NYPD evidence

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Eric Garner was medically mistaken when he uttered his dying words, “I can’t breathe,” the St. Louis chief medical examiner testified Wednesday at an NYPD cop’s disciplinary hearing for allegedly using a banned chokehold that led to the Staten Island man’s death.

Dr. Michael Graham said he disagrees with his New York City counterpart, whose autopsy concluded that the chokehold and chest compression applied by Officer Daniel Pantaleo set off a “lethal cascade” in 2014 that caused Garner to suffer an asthma attack and die during his arrest for selling loose cigarettes.

“He probably felt that he couldn’t breathe, but the fact of the matter is, he could breathe,” said Graham, who was hired by Pantaleo’s union-paid defense team to review the death and testify on the officer’s behalf.

Pantaleo’s disciplinary hearing, on the fourth floor of NYPD headquarters, entered its sixth day Wednesday. The hearing began last month and is expected to wrap up Thursday with summations. NYPD



Eric Garner’s mother, Gwen Carr, speaks to reporters outside of One Police Plaza in Manhattan. ■ Video: [newsday.com/nyc](https://www.newsday.com/nyc)

hearing officer Rosemarie Maldonado, the department’s deputy commissioner for trials, will issue a recommendation in the case to Police Commissioner James O’Neill, who will ultimately decide how and whether to punish Pantaleo, who could be fired.

Stopping, starting and scruti-

nizing each second of bystander video of the July 17, 2014, encounter, Pantaleo’s defense relied on witness-stand analysis by Graham, and the officer’s now-retired police academy trainer. The trainer, Sgt. Russell Jung, said Pantaleo used an approved “seat-belt hold,” not the banned chokehold ma-

neuver, during the “takedown” of Garner, whose death catalyzed international protests and planted an early seed of the Black Lives Matter movement.

Jung said the officer appeared to be using a technique taught at the NYPD since 2011 or 2012. He conceded on cross examination that Pantaleo, who was in the academy in 2006, never had instruction on the seat-belt hold. The hold consists of maneuvering one hand under the armpit and another over the shoulder.

Jung testified that the approved technique might result in “incidental contact with the neck,” but on cross examination, said none of the training materials mention anything about neck contact.

“There’s no airway restraint,” Jung testified about the 2014 video. “The windpipe is in between the crook of the elbow.”

Jonathan Fogel, who is prosecuting Pantaleo on behalf of the Civilian Complaint Review Board, pointed to training materials that depict hands around a suspect’s chest during the seat-belt hold — not near the neck, as shown on the bystander’s video.

Jung, who like Graham was paid by the defense to testify, countered that what happens on the street “is not a classroom setting.”

“There’s a million maneuvers that we do on the street that we’re not trained to do,” Jung

said, eliciting gasps from Garner’s family and supporters in the gallery.

The prosecution displayed graphic photos of Garner’s autopsy, challenging Graham’s pathology conclusions. Graham conceded on cross-examination that Garner’s dissected neck tissue showed signs of bruising that he said likely corresponds to where Pantaleo placed his arm during the takedown, but the bruises didn’t indicate the maneuver caused the death.

Garner’s dying words, “I can’t breathe,” uttered 11 times, became a literal rallying cry early on for Black Lives Matter.

Also Wednesday, Pantaleo attorney Stuart London announced that his client would not testify. Over the objection of prosecutor Suzanne O’Hare, Maldonado ruled she would allow into evidence Pantaleo’s interview with the NYPD’s internal-affairs bureau conducted five months after the Garner encounter.

Pantaleo was not criminally charged in state court. A years-long criminal investigation by the U.S. Justice Department must wrap up by July 18, the statute of limitations deadline.

Rae Koshetz, Maldonado’s predecessor and a lawyer now in private practice who isn’t involved in the Pantaleo case, said “it’s not unusual but it’s not common” for a paid witness to appear at an NYPD cop’s disciplinary hearing.

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