

STATE OF MARYLAND

* IN THE

* CIRCUIT COURT

V.

* FOR

EDWARD NERO

* BALTIMORE CITY

Defendant

* Case No. 115141033

* * * * *

DEFENDANT'S RESPONSE TO STATE'S MOTION *IN LIMINE* TO PRECLUDE EVIDENCE OF, OR ARGUMENT ABOUT, OR REFERENCE TO CERTAIN INFORMATION REGARDING THE VICTIM

Defendant Edward Nero, by undersigned counsel, opposes the State's Motion *in Limine* to Preclude Evidence of, or Argument About, or Reference to Certain Information Regarding the Victim (the "Motion"). Evidence regarding Mr. Gray's past conduct and medical history is relevant and should be admissible in the trial of this case.

The State moved *in limine* to broadly preclude any reference to "Mr. Gray's criminal record, prior encounters with law enforcement or corrections officials, prior criminal cases and representation in those cases, prior hospitalizations, prior civil claims or settlements, and/or lead paint exposure as a child." State's Mot. at 1. The State argues that the introduction of such evidence will "confuse, mislead, and prejudice the jury." State's Mot. at 1. The State's Motion should be denied. Information about Mr. Gray's criminal record and prior encounters with law enforcement or corrections officials, is relevant to the charges against Officer Nero.

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Mr. Gray's criminal record is relevant and should be admissible to show that he was familiar with the process based on numerous prior experiences with law enforcement, that he had a habit of engaging in certain conduct when interacting with officers or when in custody, and that he acted in conformity with those habits on the date in question.

Furthermore, the State may seek to introduce hearsay statements made by Mr. Gray. If those statements are allowed into evidence, Defendant moves to allow the introduction of impeaching criminal convictions that would otherwise be allowed had Mr. Gray been able to testify as a witness. Specifically, Defendant moves to introduce evidence of Mr. Gray's April 23, 2009 and May 20, 2013 convictions for Possession with Intent to Distribute Narcotics. "When a hearsay statement has been admitted in evidence, the credibility of the declarant may be attacked . . . by any evidence which would be admissible for those purposes if the declarant had testified as a witness." Md. Rule 5-806. "Evidence of a statement or conduct by the declarant at any time, inconsistent with the declarant's hearsay statement, is not subject to any requirement that the declarant may have been afforded an opportunity to deny or explain." *Id.*

Maryland Rule 5-609 delineates the circumstances under which evidence of prior convictions is admissible for the purposes of impeachment against a witness. Under that Rule, a trial court must determine the admissibility of prior convictions for the purposes of impeachment using a three-part analysis. *King v. State*, 407 Md. 682, 698 (2009). First, the prior conviction "must be within the 'eligible universe' of crimes, which consists

