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STATE OF MARYLAND

IN THE

MAY 11 2016

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CIRCUIT COURT

Criminal Div.
Circuit Court For
Baltimore City

v.

OF MARYLAND

Criminal Div.
Circuit Court For
Baltimore City

OFFICER EDWARD NERO

FOR BALTIMORE CITY

Defendant

CASE NO.: 115141033

* * * * *

**MOTION IN LIMINE TO PRECLUDE THE INTRODUCTION OF OTHER
CRIMES EVIDENCE**

Now comes Defendant, Officer Edward Nero, by and through his undersigned counsel and files this Motion in Limine to Preclude the Introduction of Other Crimes Evidence and for reasons states:

1. Donte Allen was initially identified as a witness to the incident in the instant case on April 12, 2015.
2. Donte Allen was interviewed by law enforcement on April 12, 2015.
3. The videotaped statement made by Donte Allen was provided in discovery in June, 2015. In this statement Mr. Allen was not questioned regarding the circumstances surrounding his arrest.
4. In a letter dated May 6, 2016 the State provided supplemental discovery indicating that Mr. Allen was interviewed by members of the State's Attorney's Office on May 4, 2016.
5. The letter stated in relevant part, "when Mr. Allen left a store on April 12, 2015, he was wearing basketball shorts underneath a pair of pants. After searching the

outer pants and not finding anything, officers pulled Mr. Allen's pants down, and searched his shorts. They found 2 baggies of marijuana and suboxone strips in the inner lining of his basketball shorts."

6. In the State's proposed jury instructions, the State requested MPJI 3:23, Other Crimes or Acts to Prove Motive, Intent, Absence of Mistake, Identity, Common Scheme.

7. The requested instruction states in part, "you have heard evidence that the defendant committed the crime of assaulting Donta Allen and committed the crime of misconduct in office during the course of detaining Donta Allen..."

8. The Defendant has never been charged with either of these alleged crimes and maintains that his actions with regards to Donta Allen were both warranted and legal.

9. In order to introduce "other crimes evidence" the State must disclose "all evidence of other crimes, wrongs, or acts committed by the defendant that the State's Attorney intends to offer at a hearing or at trial pursuant to Rule 5-404 (b)." Maryland Rule 4-263(d)(4).

10. The only alleged evidence provided by the State to support the requested jury instruction was contained in the letter dated May 6, 2016, a mere four days before the start of trial. The Defense should not be put in the position of speculating as to what these alleged other crimes actually are.

11. Maryland Rule 5-404 (b) states:

"(b) Other Crimes, Wrongs, or Acts. Evidence of other crimes, wrongs, or acts including delinquent acts as defined by Code, Courts Article, § 3-8A-01 is not

admissible to prove the character of a person in order to show action in conformity therewith. Such evidence, however, may be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, common scheme or plan, knowledge, identity, or absence of mistake or accident.”

12. The Court in *Cousar v. State* clearly outlines the three prong test the State must meet for this evidence to be presented to the trier of fact. “As Maryland Rule 5–404 explicitly recognizes, however, there are circumstances under which prior criminal or wrongful acts are admissible. Case law sets forth a three-pronged test for admissibility:

When a trial court is faced with the need to decide whether to admit evidence of another crime—that is, evidence that relates to an offense separate from that for which the defendant is presently on trial—it first determines whether the evidence fits within one or more of the [*Cross*] exceptions. That is a legal determination and does not involve any exercise of discretion. *See Cross [v. State]*, 282 Md. [468,] at 474, 386 A.2d [757,] at 761 [(1987)]; *Moore v. State*, 73 Md.App. 36, 44, 533 A.2d 1, 5 (1987), *cert. denied*, 311 Md. 719, 537 A.2d 273 (1988).

If one or more of the exceptions applies, the next step is to decide whether the accused's involvement in the other crimes is established by clear and convincing evidence. *Lodowski v. State*, 302 Md. 691, 728, 490 A.2d 1228, 1247 (1985), *defendant's petition for cert. denied*, 475 U.S. 1086, 106 S.Ct. 1469, 89 L.Ed.2d 725, *vacated*, 475 U.S. 1078, 106 S.Ct. 1452, 89 L.Ed.2d 711, *rev'd on other grounds*, 307 Md. 233, 513 A.2d 299 (1986); *Cross*, 282 Md. at 478, 386 A.2d at 764. We will review this decision to determine whether the evidence was sufficient to support the trial judge's finding.

If this requirement is met, the trial court proceeds to the final step. The necessity for and probative value of the “other crimes” evidence is to be carefully weighed against any undue prejudice likely to result from its admission. *Cross*, 282 Md. at 474, 386 A.2d at 761 [citations omitted]. This segment of the analysis implicates the exercise of the trial court's discretion. *Id.*; *Moore*, 73 Md.App. at 44–45, 533 A.2d at 5.”

Cousar v. State, 198 Md. App 486 (2011).

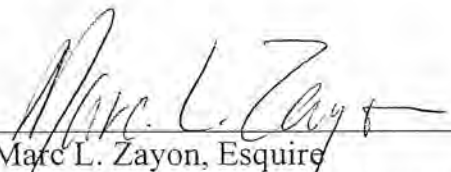
13. These accusations fail on their face to fall under any of the proscribed exceptions presented in Rule 5-404 (b). While not exhaustive, the list of exceptions is certainly a guide for the Court to consider when allowing such prejudicial evidence. The three prong test that follows in *Cousar* must also be adhered to and the State fails at every turn. The allegations do not meet an exception. The allegations do not meet the standard of clear and convincing evidence. Lastly, if these allegations are presented to the trier of fact they have the potential of being wholly prejudicial without any probative value.

14. In addition, Maryland Rule 4-263 requires that this evidence be provided within 30 days of a request from the defendant. The request for discovery was filed by the defendant on May 27, 2015.

WHEREFORE, the Defendant respectfully requests that this Honorable Court:

- A. Order that the State be precluded from introducing any evidence of allegations made by Donta Allen against the Defendant;
- B. For such other and further relief as the nature of his cause may require.


Respectfully submitted,



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Counsel for Officer Edward Nero

CERTIFICATION OF SERVICE

I HEREBY CERTIFY that on the 11th day of May 2016, a copy of the foregoing Motion was hand-delivered to Janice Bledsoe, Deputy State's Attorney for Baltimore City, 120 E. Baltimore Street, 9th Floor, Baltimore, Maryland 21202.



Marc L. Zayon, Esquire