

STATE OF MARYLAND

2015 NOV 12 P 2:44

v.

IN THE  
\* CRIMINAL DIVISION \*  
\* CIRCUIT COURT FOR \*  
\* BALTIMORE CITY \*

WILLIAM PORTER

\*  
\* CASE No. 115141037 \*  
\*

\* \* \* \* \*

**STATE'S MOTION *IN LIMINE* TO LIMIT THE NUMBER AND TESTIMONY OF THE  
DEFENDANT'S PROPOSED CHARACTER WITNESSES**

Now comes the State of Maryland, by and through Marilyn J. Mosby, the State's Attorney for Baltimore City; Michael Schatzow, Chief Deputy State's Attorney for Baltimore City; Janice L. Bledsoe, Deputy State's Attorney for Baltimore City; and Matthew Pillion, Assistant State's Attorney for Baltimore City; and pursuant to Rule 4-252(d) respectfully moves this Court *in limine* to issue a pretrial order to limit the number and the testimony of the Defendant's proposed character witnesses. In support of this Motion, the State submits the following:

1. The Defendant has informed the State that he proposes to call as many as twenty-five witnesses to testify to his character for "peace and good order" and for "truthfulness."
2. Rule 5-404(a) generally excludes "[e]vidence of a person's character or trait of character" when offered "for the purpose of proving action in conformity therewith on a particular occasion" but, as exceptions, permits the admission at trial of "[e]vidence of a pertinent trait of character of an accused offered by the accused" or "[e]vidence of the character of a witness with regard to credibility . . . ." As Professor McLain explains this first exception, "[t]he Rule's use of the phrase 'pertinent trait,' from the federal rule, is intended to be synonymous with 'relevant trait,'" and the Rule "does not contemplate admission of evidence of an accused's general moral character." Lynn McLain,

*Maryland Rules of Evidence*, 71 (3d ed. 2007). The Rule, thus, only admits an “accused’s character trait that is relevant to commission or noncommission of the charged crime” when it is “offered in an effort to prove that the accused acted ‘in character’ and did not commit the charged crime.” *Id.* at 70-71. Regarding the second exception, “a character witness may testify (a) that the witness has a good reputation for truthfulness or (b) that, in the character witness’s opinion, the witness is a truthful person,” but may only so testify “[a]fter the character for truthfulness of a witness has been attacked . . . .” Rule 5-608(a)(2). These limitations on character witness testimony’s scope and timing make clear that such testimony remains bound by the general rule that “[e]vidence that is not relevant is not admissible” at trial. Rule 5-402. To be deemed relevant, the evidence must have a “tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” Rule 5-401. Even when evidence is relevant, it “may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury,” or if it would result in “undue delay, waste of time, or needless presentation of cumulative evidence.” Rule 5-403.

3. In this case, witness testimony about the Defendant’s purported character for “peace and good order” would be plainly irrelevant. A character for “peace and good order” would be consequential only if this case involved crimes of violence and questions of self-defense or first-aggressor status. *Hurley v. State*, 60 Md. App. 539, 558 (1984) (“Character evidence is only permissible when relevant. A defendant’s reputation for peace and good order is relevant where a crime of violence is at issue.”); see *Rollins v. State*, 172 Md. App. 56, 60 (2006) (the victim’s character for “peace and good order” was



admitted where the defendant claimed self-defense in a homicide case). Here, however, all of the State's allegations that the Defendant injured or killed Mr. Gray—involuntary manslaughter, reckless battery, and reckless endangerment—are based on acts of criminal negligence, not intentional infliction of injury. Certainly, peacefulness bears zero relationship with the count of misconduct in office charged in this case. Whether or not the Defendant's witnesses believe he has a character for "peace and good order," their testimony would not make it any less probable that he committed the crimes alleged. Likewise, testimony that the Defendant's witnesses believe he has a character or reputation for truthfulness would not be relevant to any of the crimes charged because none of them involve dishonest conduct. Such testimony, of course, would be relevant to the Defendant's credibility, but such witnesses should not be permitted unless and until after the Defendant elects to testify and then only if his credibility has been attacked. *Hurley*, 60 Md. App. at 559 ("evidence of truthfulness and veracity is not relevant where . . . it [does] not involve a character trait indigenous to the crime charged and where [a defendant] elect[s] not to testify.").

4. Lastly, the Defendant's proposal to call twenty-five character witnesses would be cumulative to an absurd degree, even if the witnesses actually could offer relevant testimony. See *Marshall v. State*, 174 Md. App. 572, 581 (2007) (a trial judge may exclude relevant evidence as "needlessly cumulative" once the defendant has been permitted to present a sufficient factual predicate for the point on which the additional evidence would be offered); *Merzbacher v. State*, 346 Md. 391, 414-15 (1997) ("A trial judge always acts within his or her discretion by prohibiting the introduction of relevant but otherwise cumulative evidence."). The Defendant can certainly show a factual

