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STATE OF MARYLAND

v.

WILLIAM PORTER

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IN THE
CIRCUIT COURT FOR
BALTIMORE CITY

CASE No. 115141037

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**STATE'S MOTION IN LIMINE REGARDING THE DEFENDANT'S PROPOSED
EXPERT WITNESS TESTIMONY**

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) and Rule 5-705 respectfully moves this Court *in limine* to issue a pretrial order (1) requiring the disclosure of the facts or data underlying the Defendant's expert witnesses' opinions before those experts are permitted to testify to those opinions and (2) barring the admission of any expert testimony that lacks an adequate factual basis or that would be an inappropriate subject for expert testimony, specifically expert opinions on irrelevant facts or questions of law. In support of this Motion, the State submits the following:

1. The Defendant has recently disclosed that he intends to call a number of expert witnesses to testify as part of his defense. Assuming that the Defendant's disclosures comply with Rule 4-263(e)(1)(A)'s requirement to provide the State with "the substance of the findings and the opinions to which the expert is expected to testify" and "a summary of the grounds for each opinion," the disclosures indicate that all of his law enforcement procedure experts and many of his medical experts lack a sufficient factual basis for at least some portion of their proposed testimony based, in part, upon their opinions' reliance on a faulty interpretation of Maryland law; that all of his proposed

experts have purported to reserve the right to amend or modify their opinions (despite Rule 4-263's requirement for advanced notice), such that the State does not even know what their ultimate opinion will be; and that some of his experts are expected to testify to matters that are either irrelevant or that are questions of law and, thus, that are inappropriate subjects for expert testimony, such as whether criminal negligence may legally constitute homicide in Maryland and whether police general orders are intended to be used as or may legally constitute evidence of criminal negligence.¹

2. Rule 5-705 generally allows expert witnesses to offer their opinions to the jury “without first testifying to the underlying facts or data.” As Professor McClain explains, however, “[i]f the opposing party, having been aided by discovery, believes that an expert’s opinion lacks a sufficient basis, counsel may ask the court to exercise its discretion under Rule 5-705 . . . to require the expert to testify to the basis of the opinion first, before stating the opinion or inference.” Lynn McLain, *Maryland Rules of Evidence*, 173 (3d ed. 2007). “If the court finds that the requirements of Rule 5-702 and 5-703 are not met, it will not permit the opinion testimony.” *Id.*

3. In that regard, Rule 5-702 only permits expert testimony to be admitted to “assist the trier of fact to understand the evidence or to determine a fact in issue,” with the Court being required to consider before allowing such testimony “whether the witness is qualified as an expert by knowledge, skill, experience, training, or education,” “the appropriateness of the expert testimony on the particular subject” and “whether a sufficient factual basis exists to support the expert testimony.” “As a general rule, expert

¹ Because of concerns about pretrial publicity and because of Rule 4-263's requirement that discovery itself not be filed with the clerk, the State will not detail in this pleading precisely what the Defendant has proffered his experts will say and how such testimony either lacks a sufficient factual basis or inappropriately opines on a question of law; however, the State will gladly do so *in camera* or at a hearing closed to the public.

witnesses may not give opinions on questions of law except for those concerning the law of another jurisdiction.” *Franch v. Ankney*, 341 Md. 350, 361 (1996). “Further, if an expert’s opinion testimony is based upon a premise which is shown to be unsound or faulty, the judge should strike the testimony.” *Id.* at 364.

4. In this case, because the Defendant’s proposed expert witnesses appear to lack a sufficient factual basis for their proffered opinions and because all such witnesses have reserved the right to testify to something other than their proffered opinions, thereby preventing pretrial review of the factual basis for those opinions, the Court should not permit any of the Defendant’s proposed expert witnesses to offer the jury an opinion without first requiring those experts to demonstrate that their opinions are actually supported by a proper factual basis. Moreover, because opinions about irrelevant facts or about questions of Maryland law are not a proper subject for expert testimony, the Court should not permit any expert to testify to such opinions, particularly opinions about whether criminal negligence may legally constitute homicide in Maryland and whether police general orders are intended to be used as or may legally constitute evidence of criminal negligence.

Wherefore, the State asks that this Court conduct a closed or *in camera* hearing on this Motion’s precise grounds and thereafter issue a pretrial order (1) to require the disclosure of the facts or data underlying the Defendant’s expert witnesses’ opinions before those experts are permitted to testify to those opinions and (2) barring the admission of any expert testimony that lacks an adequate factual basis or that would be an inappropriate subject for expert testimony, such as expert opinions on irrelevant facts or questions of law.

