

2016 JUN 27 P 4: 05
CRIMINAL DIVISION

STATE OF MARYLAND

*

IN THE

*

CIRCUIT COURT

v.

*

FOR

LT. BRIAN RICE

*

BALTIMORE CITY

*

Case No.: 115141035

* * * * *

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

Defendant Lt. Brian Rice, by undersigned counsel, hereby files this Response in Contingent Opposition to the State's Motion in *Limine* to Preclude Evidence of, Argument About, or Reference to Certain Information Regarding the Victim. In support thereof, Defendant Lt. Rice states as follows:

1. Relevant evidence is any evidence that possesses a "tendency to make the existence of any fact that is of consequence to the determination of the action more probably or less probably than it would be without the evidence." Rule 5-401.
2. In this case, evidence of Mr. Gray's criminal record, outstanding warrants, prior encounters with law enforcement or correction officials, and prior criminal cases may all be relevant in order to refute a contention by the State that Mr. Gray did not flee, or begin running, after observing law enforcement. The Defendant concedes that that attorney representation in Mr. Gray's criminal cases, prior hospitalizations, prior civil claims or settlement and/or lead exposure as a child are not relevant to this *Wardlow* issue.

However, if the State contends that the Defendant's pursuit of Mr. Gray was not a

legitimate *Wardlow* pursuit because Mr. Gray did not flee unprovoked at the sight of Lt. Rice, then the Defendant must be able to provide evidence of Mr. Gray's motive to run in order to help establish the fact that Mr. Gray did in fact run. This evidence would include Mr. Gray's criminal history, outstanding warrants, prior encounters with law enforcement or correction officials, and prior criminal cases. This information is relevant and would allow the Defendant to demonstrate that it was more probable than not that Mr. Gray would have run in this situation. Therefore, this information would demonstrate a higher probability that the initial pursuit of Mr. Gray was lawful.

3. This information is relevant and its "probative value is not substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury." Rule 5-403. Without this information, the Defendant will have an extreme disadvantage in proving that Mr. Gray did in fact run, and that what followed was a valid *Wardlow* pursuit and detention. The significant value of this information in disproving an essential aspect of the State's theory of misconduct in office exceeds whatever minor prejudice that this information might cause the jury.
4. The Defendant also may call a witness who will testify that on April 12, 2015, Mr. Gray was planning to involve himself in illegal criminal activity, and that Mr. Gray ran when he was made aware of the police presence at the location. This information is also clearly relevant to establishing the fact that Mr. Gray did run and that there was a lawful *Wardlow* pursuit and detention. The witness statement reads in pertinent part:

A: ... Me and [Mr. Gray] were talking about our weed sales for today. He was trying to get on with some weed. Who got some weed because he had run out of weed.

...

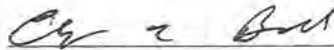
A: And we were trying to network on who we could get cheap weed from. And that's when the guy B Low, Brandon said "time out coming up the street. And he was like get out of there. Here they come.

...

And that's when [Mr. Gray] started running.

5. To preclude the Defendant from referencing his clear motive to flee would undoubtedly prejudice the Defendant's ability to adequately address that State's argument about the legality of the initial pursuit of Mr. Gray.
6. For these reasons, the State's Motion Precluding Evidence of, Argument About, or Reference to Certain Information Regarding Mr. Gray should be denied pertaining to Mr. Gray's criminal record, outstanding warrants, prior encounters with law enforcement or correction officials, and prior criminal cases.

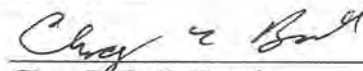
Respectfully Submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27 day of June, 2016, a copy of Defendant Lt. Brian Rice's Response in Contingent Opposition to the State's Motion in *Limine* to Preclude Evidence of, Argument About, or Reference to Certain Information Regarding the Victim, was hand delivered to Janice Bledsoe, Deputy State's Attorney, Office of the State's Attorney for Baltimore City, 120 East Baltimore Street, 9th floor, Baltimore, Maryland 21202.


Chaz R. Ball, Esquire