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STATE OF MARYLAND

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IN THE
CIRCUIT COURT FOR
BALTIMORE CITY
CASE No. 115141035

v.

BRIAN RICE

CIRCUIT COURT
BALTIMORE CITY
CRIMINAL DIVISION

* * * * *

STATE'S RESPONSE TO DEFENDANT'S MOTION IN LIMINE TO EXCLUDE VIDEO EVIDENCE RELATING TO MR. GRAY'S ARREST, OR IN THE ALTERNATIVE, TO EXCLUDE AUDIO EVIDENCE ACCOMPANYING VIDEO EVIDENCE

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; and Janice L. Bledsoe, Deputy State's Attorney for Baltimore City; and responds as follows to the Defendant's Motion in Limine to exclude video evidence relating to Mr. Gray's arrest, or in the alternative, to exclude audio evidence accompanying video evidence:

1. The Defendant seeks to exclude all CCTV and cell phone video of the events of the arrest and transportation of Mr. Gray at what has been referred to as Stop One. In support of this request, the Defendant suggests that the video evidence "depicting the initial detention and arrest at Stop One does not show Lt. Rice either prior to, or during, the involuntary detention and subsequent arrest of Mr. Gray" and so is "irrelevant to the issue of whether Mr. Gray was arrested without probable cause" and irrelevant to "the issue of whether Lt. Rice failed to seat belt Mr. Gray" Def. Mot. at 2. In the alternative, the Defendant seeks to exclude at least the audio portion of the cell phone footage at Stop One on grounds that the cries of Mr. Gray and bystanders give the appearance that Gray was injured at Stop One, thereby unfairly prejudicing the Defendant, he claims. Def. Mot. at 3-4.
2. Notwithstanding the Defendant's claims to the contrary, the CCTV footage of Stop One shows the Defendant on his bike directly approach and come within yards of the arrest scene at

the very moment the Defendant's subordinate officers were making the initial detention at the Defendant's request. That same CCTV footage, as well as the cell phone footage, later shows the Defendant again approach and come within yards of the transportation wagon at the very moment that the Defendant's subordinate officers were placing Mr. Gray in the wagon unrestrained. Because the video helps prove what the Defendant saw and knew in relation to the arrest and transportation of Mr. Gray at Stop One, this footage is highly relevant on the charges related to the Defendant's alleged misconduct at this Stop.

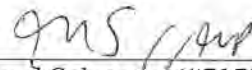
3. Regarding the audio portion of the cell phone recording, while the recording contains Mr. Gray's yelling and contains bystanders complaining about police treatment of Mr. Gray, the audio recording also contains the Defendant's words yelling back at the bystanders. More significantly, the very yelling by the victim and bystanders that the Defendant claims creates unfair prejudice is evidence that the State contends is extremely relevant on the question of whether the Defendant's actions at Stop One were reasonable. For example, one of the actions that the State will argue demonstrates the Defendant's culpability in the illegal arrest of Mr. Gray is the Defendant's failure to promptly investigate the reason Mr. Gray was running or to promptly relay to his subordinate officers information about the reason the Defendant initiated a chase of Mr. Gray. The fact that Mr. Gray and citizens could be heard yelling and complaining about police conduct bears directly on the reasonableness of the alleged delay in investigating or relaying information because, as the State will argue, a reasonable officer would have acted more promptly in the face of such yelling and complaints, not failed to react to them in a timely fashion. Indeed, the Defendant in his recorded statement to police acknowledges hearing Mr. Gray yelling and hearing bystanders complaining. Moreover, it is anticipated that the Defendant will attempt to justify some of his actions at Stop One by claiming that the bystanders were

hostile, thereby necessitating the Second Stop. To allow the Defendant at once to acknowledge the yelling and use it to his advantage without at the same time allowing the fact-finder to hear the yelling for itself would not create unfairness toward the Defendant—it would be patently unfair toward the State’s ability to present its case.

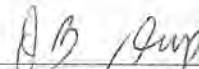
Wherefore, the State requests that this Court deny the Defendant’s Motion in Limine to exclude video evidence relating to Mr. Gray’s arrest, or in the alternative, to exclude audio evidence accompanying video evidence.

Respectfully submitted,

Marilyn J. Mosby



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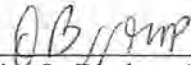
CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of June, 2016, a copy of the State's Response to the Defendant's Motion in Limine to exclude video evidence relating to Mr. Gray's arrest, or in the alternative, to exclude audio evidence accompanying video evidence was mailed and e-mailed to:

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Respectfully submitted,

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