

STATE OF MARYLAND

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IN THE
CIRCUIT COURT FOR
BALTIMORE CITY
CASE No. 115141035

v.

2016 JUN 27 PM 4:27 *

BRIAN RICE

CIRCUIT COURT *
BALTIMORE CITY *

* * * * *

STATE'S RESPONSE TO DEFENDANT'S MOTION IN LIMINE TO PRECLUDE REFERENCE TO OR ARGUMENT ABOUT MR. FREDDIE GRAY'S INITIAL DETENTION NOT BEING SUPPORTED BY REASONABLE SUSPICION, MR. GRAY'S ARREST NOT BEING SUPPORTED BY PROBABLE CAUSE, OR MR. GRAY'S SEIZURE NOT BEING OTHERWISE LEGALLY JUSTIFIED

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 Preclude reference to or argument about Mr. Gray's initial detention not being supported by reasonable suspicion, Mr. Gray's arrest not being supported by probable cause, or Mr. Gray's seizure not being otherwise legally justified:

1. The Defendant's Motion seeks to preclude argument about central facts in this case, namely the facts that would either support or not support a finding of legal justification for the police detention and arrest of Mr. Gray. The Defendant's suggested basis for precluding those facts rests on his apparent belief that averments in a written motion are sufficient to conclusively resolve disputed facts in the case. Representative of this notion, he writes, "[b]ecause Defendant Lt. Rice was not involved in, nor was he present during, the initial arrest of Mr. Gray, the State should be precluded from arguing or attempting to submit evidence to indicate otherwise" Def. Mot. at 1. Not only is this statement factually inaccurate, as the State will show at trial, but its logic defies the entire point of having a trial. Could the State be relieved of proving facts at trial by simply writing in a motion before trial, "because Defendant Lt. Rice *was* involved in and

was present during the initial arrest of Mr. Gray, the Defendant should be precluded from arguing or attempting to submit evidence to indicate otherwise?" The question answers itself.

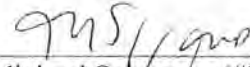
2. Suffice it to say, the State has charged the Defendant in Count 3 of the indictment with misconduct in office stemming from his alleged arrest of Mr. Gray without probable cause. The State has facts it intends to present to substantiate that charge. To the extent the Defendant argues that he did not participate in the arrest, that the arrest was in fact justified by the existence of probable cause, or that the detention was otherwise legally justified by being limited in nature and supported by reasonable suspicion, those arguments are appropriate defenses to raise at trial—not to insist be adjudicated on the strength of unsworn averments in pretrial pleadings.¹

Wherefore, the State requests that this Court deny the Defendant's Motion in Limine to Preclude reference to or argument about Mr. Gray's initial detention not being supported by reasonable suspicion, Mr. Gray's arrest not being supported by probable cause, or Mr. Gray's seizure not being otherwise legally justified.

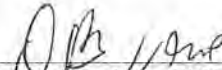
¹As an example, the Defendant devotes much of his Motion to a discussion of *Illinois v. Wardlow*, 528 U.S. 119 (2000), insisting that this case justifies the Defendant's and his subordinates' actions. To reach this conclusion, the Defendant avers that Mr. Gray made eye contact with him and then broke into unprovoked flight in a high crime area. Def. Mot. at 3. If all of those facts are true, *Wardlow* certainly would support the Defendant and his officers making a limited, investigatory stop of Mr. Gray; however, it will be disputed at trial whether Mr. Gray actually made eye contact with the Defendant and whether the stop was appropriately limited, *i.e.* whether it morphed into a *de facto* arrest without probable cause. In the meantime, the Defendant cannot demand that certain facts be taken as given just because he says so.

Respectfully submitted,

Marilyn J. Mosby



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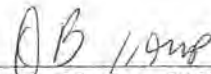
CERTIFICATE OF SERVICE

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 Preclude reference to or argument about Mr. Gray's initial detention not being supported by reasonable suspicion, Mr. Gray's arrest not being supported by probable cause, or Mr. Gray's seizure not being otherwise legally justified was mailed and e-mailed to:

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Respectfully submitted,

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