STATE OF MARYLAND	*	IN THE
	*	CIRCUIT COURT FOR
v.	*	BALTIMORE CITY
	*	
BRIAN RICE	*	CASE No. 115141035

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STATE'S RESPONSE TO DEFENDANT'S MOTION TO DISMISS FOR FAILURE TO CHARGE A CRIME

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 responds herein to the Defendant's Motion to Dismiss for Failure to Charge a Crime. The State requests that the Court deny the Motion because (1) procedurally, it exceeds the permissible boundaries of this type of pre-trial motion to dismiss; and (2) substantively, it rests on an inaccurate factual portrayal of the conduct charged and relies on both an incorrect assessment of Maryland law and an invalid comparison to distinguishable federal precedents.

I. The Defendant's motion exceeds the boundaries of the procedure on which it seeks relief

The Defendant's twenty-page Motion comes down to one argument: the Fifth Count of the Indictment fails to charge the crime of reckless endangerment because purportedly a police officer's failure to seatbelt a prisoner during custodial transportation does not legally constitute an act that can ever create a substantial risk of death or serious physical injury to the prisoner. Putting aside that the Defendant premises his Motion on an inaccurate assessment of the facts that the State has actually alleged (see Part II.A below), this argument asks the Court to exceed

the inquisitional boundaries that Rule 4-252(d) permits during a pretrial motion to dismiss for failure to charge a crime.

The Court of Appeals has explained that "[a] motion to dismiss the charges in an indictment or criminal information [pursuant to Rule 4-252(d)] is not directed to the sufficiency of the evidence, i.e., the quality or quantity of the evidence that the State may produce at trial, but instead tests the legal sufficiency of the indictment on its face." *State v. Taylor*, 371 Md. 617, 645 (2002). Such a motion "may not be predicated on insufficiency of the State's evidence because such an analysis necessarily requires consideration of the general issue," and "where there are factual issues involved, a motion to dismiss on the grounds that the State's proof would fail is improper." *Id.* Whereas "[i]n a civil case, the trial court is permitted, in its discretion, to treat a motion to dismiss as a motion for summary judgment," "[t]here is simply no such analogue in criminal cases." *Id.* at 645-46. Accordingly, the only relevant question at this stage asks whether the Defendant has been informed of the reckless endangerment accusation against him by an indictment and bill of particulars that alleges "the essential elements of the offense" and the "manner or means of committing the offense." *Dzikowski v. State*, 436 Md. 430, 445-46 (2013).

The Defendant makes no argument that the indictment fails to aver the essential elements of reckless endangerment, nor does he assert that the bill of particulars has not supplied him with the manner or means by which he allegedly committed reckless endangerment—indeed, he filed no exceptions to the bill of particulars. Rather, he insists that the manner or means alleged, even if taken as true, cannot amount to reckless endangerment as a matter of law. The logic he employs to make this claim, however, necessarily requires looking past the allegations, fast-forwarding through the State's case at trial, concluding that the State's proof ultimately will not

meet its burden, and then rewinding to the pretrial phase to use that conclusion to argue that because the State will fail to *prove* the crime then the indictment, ipso facto, fails to *charge* the crime. He quintessentially puts the cart before the horse. Strangely, he does so while simultaneously acknowledging the *Taylor* standard and citing the most recent case which applies that standard.

Indeed, the Defendant notes that on August 28, 2015, the Court of Special Appeals issued its opinion in *State v. Hallihan*, 2015 Md. App. LEXIS 114 (2015), yet he cites the case, not for its *Taylor* application, but only for the unremarkable proposition that in assessing whether an indictment charges a crime the court should look at the indictment, review the bill of particulars, and consider arguments from counsel. What the Defendant fails to discuss is that *Hallihan*'s ultimate holding squarely rejects the very argument the Defendant's Motion now advances. In *Hallihan*, the State's Attorney for Worcester County charged by information that the defendant "did recklessly engage in conduct . . . that created a substantial risk of death or serious physical injury to [the victim]," specifying in the bill of particulars that the risky conduct was "a sleeper hold" which "is an intentional act that by its very nature creates a substantial risk of serious physical injury or death because it cuts off the flow of blood to the head and flow of oxygen to the lungs." *Id.* at 3-6.

In response to this charge, defense counsel filed a motion to dismiss for failure to state an offense, arguing "that the State had failed to set forth a 'legally sufficient factual basis' for showing that the defendant's conduct 'created a substantial risk'" under the reckless endangerment statute because "the sleeper hold did not subject the victim to the risk of death or serious bodily harm, even though the bill of particulars asserted otherwise." *Id.* at 7-8. Although the trial judge accepted this argument and dismissed the case, the Court of Special Appeals