STATE OF MARYLAND	*	IN THE	
Plaintiff	*	CIRCUIT COURT	
v.	*	FOR	
CAESAR GOODSON	*	BALTIMORE CITY	
Defendant	*	Case No. 115141032	

* * * * * * * * * * * *

MOTION TO DISMISS FOR FAILURE TO CHARGE A CRIME

Defendant Officer Caesar Goodson, through his undersigned counsel, moves pursuant to Maryland Rule 4-252(d) to dismiss Count III (Assault in the Second Degree) for failure to charge a crime. In support thereof, Defendant states the following:

INTRODUCTION

The State has charged Officer Goodson with second-degree assault based on his alleged reckless battery of Mr. Gray. In the charging documents, the State does not allege that Officer Goodson applied any force to Mr. Gray, nor does it allege that he even came into contact with Mr. Gray. *State's Response to Defendant's Demand for Bill of Particulars,* p. 5. The State merely alleges that Officer Goodson failed to seatbelt Mr. Gray and as a result, the *vehicle* came into contact with Mr. Gray. *Id.* Although the crime of assault is broad, the offense is not as broad as the State attempts to stretch it in this case. Undersigned counsel has not found a decision in this State where a defendant was found criminally liable for assault based solely on an alleged failure to use one inanimate object, which later causes another inanimate object to come into contact with a person.

Even if such an attenuated form of assault were acceptable under Maryland law, the second-degree assault charge still fails to charge a crime. The only conduct alleged by the State

as a basis for Count III is Officer Goodson's failure to seatbelt Mr. Gray. Because the failure of a police officer to seatbelt a detainee cannot, as a matter of law, constitute the criminal negligence necessary to sustain a second-degree assault charge of the unintentional battery variety, Count III of the indictment is legally insufficient to charge a crime and requires dismissal.

PROCEDURAL BACKGROUND

A grand jury sitting in the Circuit Court for Baltimore City returned a seven-count indictment against Officer Goodson. Relevant here, Officer Goodson was charged with second-degree assault in Count III of the indictment. Count III reads as follows:

> **THIRD COUNT**
>
> The Jurors of the State of Maryland for the body of the City of Baltimore, do on their oath present that the aforesaid DEFENDANT(S), late of said City, heretofore on or about the date(s) **April 12, 2015**, at **various locations**, in the City of Baltimore, State of Maryland, did assault **Freddie Carlos Gray, Jr.** in the second degree, in violation of Criminal Law Article, Section 3-203 of the Annotated Code of Maryland; against the peace, government and dignity of the State.
>
> [CR 3-201; CR 3-203; CR 3-206] 1 1415

Indictment of Ofc. Caesar Goodson, p. 2.

On June 8, 2015 the State responded to the Defendant's Demand for Bill of Particulars. With respect to the second-degree assault charge in Count III, the State provided the following clarification:

> As to the Defendant's Demand for particulars as to Count 3 of the Indictment (second degree assault), the State particularizes that the conduct charged occurred between 8:00 a.m. and 10:00 a.m. on April 12, 2015. The State further particularizes as to Count 3 that the Defendant caused physical harm to Freddie Carlos Gray, Jr., who was a hand-cuffed and leg-shackled detainee in the Defendant's custody in his capacity as a government agent, **by failing to secure Mr. Gray with a seatbelt while transporting Mr. Gray in a police vehicle; that the vehicle, an instrumentality of the Defendant, made harmful contact with Mr. Gray as a result of a reckless act of the Defendant and was not accidental;** and that the contact was not legally justified. As to further particularization, the State incorporates its argument outlined as to Count 1 above and avers that the State has fully complied with its charging obligations.

Bill of Particulars, p. 5 (emphasis added).

STANDARD OF REVIEW

The Maryland Declaration of Rights affords every criminal defendant the right to be informed of the accusation against him. MD. CONST. DECLARATION OF RIGHTS art. 21. A charging document must comply with this constitutional mandate by containing both a characterization of the crime and the particular act(s) that the State alleges the Defendant committed. *Dzikowski v. State,* 436 Md. 430, 445 (2013) (citation omitted).

A defendant may challenge the sufficiency of a charging document by filing a Rule 4-252(d) motion to dismiss for failure to charge a crime. Such a motion is a challenge to the legal sufficiency of the charging document. *State v. Taylor*, 371 Md. 617, 645 (2002). It is not a challenge to the "quality or quantity of evidence that the State my produce at trial." *Id.* (quoting *State v. Bailey*, 289 Md. 143, 149 (1980)).

In deciding whether the State failed to charge a crime, the court is to consider the charging document in conjunction with the bill of particulars. *State v. Hallihan*, 224 Md. App. 590 (2015) (considering charging document, bill of particulars, and counsel's oral argument in determining whether the State had charged a crime). The court must determine whether the charging document, on its face, sets forth an offense that is legally cognizable under Maryland law. *Taylor*, 371 Md. at 645. In making this determination, the court is bound by the four corners of the charging document and is to assume the truth and validity of facts alleged by the State. It is the information stated in the charging document that matters in making the determination of whether an offense is charged and the caption or label of the crime is not dispositive. *Smith v. State*, 62 Md. App. 670, 680 (1985). When, as in this case, a charging document fails to charge a cognizable crime, the Court is divested of its subject matter jurisdiction and must dismiss the

charge. *State v. Canova*, 278 Md. 483, 498 (1976).

ARGUMENT

Even assuming the truth and validity of the facts asserted by the State in the indictment and bill of particulars, the State has failed to charge Officer Goodson with an offense cognizable under the laws of Maryland.

I. The State Charged Officer Goodson with Second-Degree Assault Based on His Alleged Reckless Battery of Mr. Gray.

In Maryland, second-degree assault is a statutory offense embodying the common law crimes of assault and battery. *Nicolas v. State*, 426 Md. 385, 402–03 (2012). Second-degree assault may be consummated by three forms of conduct. The first type of second-degree assault is the intent to frighten variety, under which the State must prove that the defendant committed an act with the *specific intent* to place another in fear of immediate harm or offensive physical contact. *Wieland v. State*, 101 Md. App. 1, 38 (1994). The second type of second-degree assault is attempted battery, where the State must prove that the defendant took a substantial step towards an act *specifically intended* to cause immediate harm to or offensive physical contact with another. *Hickman v. State*, 193 Md. App. 238, 251 (2010). The third type of second-degree assault- - the type with which Officer Goodson is charged- - is common law battery, whereby the State must prove that the defendant caused harm or physical contact with another as the result of an *intentional* or *reckless* act. *United States v. Royal*, 731 F.3d 333, 341 (4th Cir. 2013) (citing *Nicholas*, 426 Md. at 396); *see also Elias v. State*, 339 Md. 169, 184 (1995). Thus, the second-degree assault of the battery variety embodies both intentional and unintentional battery.

The State has charged Officer Goodson with unintentional battery, as no language exists in the indictment or the Bill of Particulars references intentional conduct. The charging documents do not allege that Officer Goodson acted with any intent to frighten or harm Mr.

Gray. Instead, the second-degree assault charge is based upon an unintentional battery resulting from Officer Goodson's alleged "reckless act." The State asserts in the Bill of Particulars that Officer Goodson acted recklessly when he failed to seatbelt Mr. Gray while transporting Mr. Gray in the police vehicle, and as a result of this omission, the van came into harmful contact with Mr. Gray. *Bill of Particulars,* p. 5.

II. The Reckless Conduct Alleged by the State Must Rise to the Same Level of Gross Negligence or Criminal Negligence Required for the Offense of Involuntary Manslaughter.

For the State's Count III charge of second-degree assault based on reckless battery to be legally sufficient, the failure of a police officer to seatbelt a detainee must constitute a reckless omission rising to the level of gross or criminal negligence. *Elias*, 339 Md. at 184 ("The requisite criminal negligence necessary for conviction of an unintentional battery may be equated to the culpability required for a conviction of involuntary manslaughter (without the death)."); *see also Wiredu v. State*, 222 Md. App. 212, 219 (2015) (explaining that the unintentional battery variety of second-degree assault requires the State to prove criminal negligence on the part of the defendant). In evaluating gross negligence for the charge of involuntary manslaughter, the Court of Appeals has held

> In determining whether a defendant's actions constituted gross negligence, we must ask whether the accused's conduct, "under the circumstances, amounted to a disregard for human life." Stated otherwise, the accused must have committed "acts so heedless an incautious as necessarily to be deemed unlawful and wanton," manifesting such a gross departure from what would be the conduct of an ordinarily careful and prudent [police officer] under the same circumstances so as to furnish evidence of an indifference to the consequences.

State v. Albrecht, 336 Md. 475, 500, 501 (1994) (internal citations omitted).

As mentioned previously, the State does not allege that Officer Goodson applied any force to Mr. Gray or that he came into contact with Mr. Gray. *Bill of Particulars,* p. 5. The State

does not even allege that Officer Goodson engaged in reckless driving. *Id.* Rather, the *only* specific conduct alleged by the State is Officer Goodson's failure to seatbelt Mr. Gray. *Id.* Because the omission alleged in the charging documents is the failure to seatbelt Mr. Gray, the sufficiency of the charge in Count III turns on whether a police officer's failure to seatbelt a detainee can ever be legally sufficient so reckless as to constitute a gross departure from the standard of conduct that a reasonable police officer would observe. If such omission cannot constitute the necessary gross negligence, then it cannot serve as the basis for the second-degree assault charge and that charge must be dismissed. *See Elias*, 339 Md. at 184–85 ("[T]he presence of specific intent or criminal negligence is a *necessary component* of the crime of battery[.]") (emphasis added).

III. Count III of the Indictment is Legally Insufficient Because the Failure of a Police Officer to Seatbelt a Detainee Cannot Constitute a Reckless Omission.

The failure of a police officer to seatbelt detainee cannot alone constitute a criminally reckless omission. Undersigned counsel has been unable to find any case in the United States, much less in Maryland, where a police officer has been criminally prosecuted for failing to seatbelt a detainee.[1] The only cases undersigned counsel involving issues related to failure seatbelt have been in the civil context, discussing purported substantive due process violations and a deliberate indifference standard. *See, e.g.*, *Fouch v. District of Columbia*, 10 F. Supp. 3d 45 (D.D.C. 2014); *Spencer v. Knapheide Truck Equip. Co.*, 183 F.3d 902 (8th Cir. 1999).

In determining the "deliberate" aspect of the indifference, the federal courts have determined that unintentional or accidental acts or omission do *not* give rise to deliberate

[1] Officer Goodson adopts and incorporates by reference as if fully set forth herein the arguments made in his Motion *in Limine* to Preclude Testimony and Evidence Concerning Baltimore Police Department General Orders and Policies as they relate to the use of seatbelts in police vehicles filed on December 15, 2015.

indifference. *See Fouch*, 10 F. Supp. 3d at 49. Although not in the context of a failure to seat belt, the Court of Appeals for the Fourth Circuit has held that deliberate indifference "entails something more than mere negligence" *Short v. Smoot,* 436 F.3d 422, 427 (4th Cir. 2006) (quoting *Farmer v. Brennan*, 511 U.S. 825, 835 (1994)).[2] It is characterized as "a very high standard- a showing of mere negligence will not meet it." *Grayson v. Peed,* 195 F.3d 692, 695 (4th Cir. 1999). It seems obvious that the "deliberate indifference" standard employed by the federal courts in a civil context is greater than (or, at best, equal to) reckless battery,

Based upon undersigned counsel's research, every federal court to address the issue of failing to seatbelt a handcuffed detainee has held that such omission *alone* does not constitute deliberate indifference. *See, e.g.*, *Jabbar v. Fischer*, 683 F.3d 54, 58 (2d Cir. 2012) (holding that failure to seatbelt a hand-cuffed *and leg-shackled* detainee is not by itself sufficiently serious to constitute a constitutional violation and any claim that the defendant disregarded a substantial risk of harm to the detainee could not be "plausibly alleged"); *Carrasquillo v. City of New York*, 324 F. Supp. 2d 428, 436–37 (S.D.N.Y. 2004) (dismissing claim because the allegations that the defendant drove too fast on an icy road were "grounded in negligence *not criminal recklessness*" and the failure to seatbelt a detainee is not a constitutional violation) (emphasis added); *Fluker v. County of Kankakee*, 945 F. Supp. 2d 972, 988 (C.D. Ill. 2013) (holding that failure to seatbelt hand-cuffed *and leg-shackled* detainee neither creates an excessive risk to his safety nor demonstrates deliberate indifference and noting that the court could find no case stating otherwise). Instead, courts in this context have held that conduct by law enforcement rises to the level of deliberate indifference when the failure to seatbelt the detainee is *combined with a*

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[2] The Supreme Court also noted that several courts equate deliberate indifference with recklessness and opined that "[i]t is, indeed, fair to say that acting or failing to act with deliberate indifference to a substantial risk of serious harm to a prisoner is the equivalent of recklessly disregarding that risk". *Farmer*, 511 U.S. at 836.

reckless act (*e.g.* reckless driving). *See, e.g.*, *Rogers v. Boatright*, 709 F.3d 403 (5th Cir. 2013); *Brown v. Fortner*, 518 F.3d 552 (8th Cir. 2008). No such other specific conduct was identified in the Bill of Particulars.

Moreover, the failure of a police officer to seatbelt a detainee cannot constitute criminal recklessness, because under Maryland law, the failure to use seatbelt is not even *evidence* of mere *civil* negligence. Under Section 22-412.3 of the Transportation Article of the Annotated Code of Maryland, the failure to use a seatbelt cannot establish evidence of ordinary *civil* negligence. MD. CODE ANN., TRANSP. § 22-412.3(h)(1) (West 2016) ("Failure of an individual to use a seat belt in violation of this section may not: (i) Be considered evidence of negligence[.]"). The same is true even where an individual is being transported in an emergency vehicle. *Id.* § 22-412.4.

Accordingly, the crime alleged within the indictment and as described in the Bill of Particulars does not set forth a legally sufficient criminal act.

IV. The State's Reference to Separate, Non-Specific "Reckless Act" Does Not Aid its Legally Deficient Indictment.

If the State intends to argue that its nebulous use of the term "reckless act" in the bill of particulars refers to some conduct other than the failure to seatbelt Mr. Gray, Count III still fails to charge a crime. *Bill of Particulars*, p. 5. State is required by Article 21 of the Maryland Declaration of Rights to inform Officer Goodson of the charges against him, which in turn requires that the State inform him "of the *specific conduct* with which he is charged." *Dzikowski,* 436 Md. at 449 (quotation omitted). The Court of Appeals has held that the function of a bill of particulars, "at the very least," is to put the defendant on notice of "the exact factual situation upon which he was charged." *Dzikowski,* 436 Md. at 448 (quotation omitted). It "functions as a limit on the factual scope of the charge." *Id.* at 447 (citations omitted).

Unlike the State's allegation that Officer Goodson committed assault by "failing to secure Mr. Gray with a seatbelt[,]" the vague and elusive reference to "a reckless act of the Defendant" utterly fails to inform Officer Goodson of the specific conduct with which he is charged. *See* Bill of Particulars at 5. Moreover, the State's incorporation of its argument as to Count I into its particularization of Count III does nothing to change this, as Count I likewise fails to allege any specific conduct other than the failure to seatbelt. *Id.* at p. 1-2. Accordingly, the only specific conduct alleged in the indictment and the bill of particulars is the failure to seatbelt and the appropriate analysis is whether the failure to seatbelt can form the basis for a charge of unintentional battery.

CONCLUSION

For the forgoing reasons, the State has failed to allege a crime in Count III of the indictment. The State has failed to allege any act or omission on the part of Defendant Officer Goodson that rises to the level of gross or criminal negligence necessary to charge second-degree assault of the unintentional battery variety. As a result, the charge of second-degree assault must be dismissed pursuant to Maryland Rule 4-252(d).

WHEREFORE Defendant Officer Goodson respectfully requests this Honorable Court to dismiss Count III of the indictment for failure to charge a crime.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of May 2016, a copy of the foregoing paper was sent by electronic mail and first class mail, postage prepaid to:

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Amy E. Askew