

2016 JUN -1 A 11:59
CRIMINAL DIVISION

STATE OF MARYLAND

* IN THE

Plaintiff

* CIRCUIT COURT

v.

* FOR

CAESAR GOODSON

* BALTIMORE CITY

Defendant

* Case No. 115141032

* * * * *

**OFFICER GOODSON'S REPLY IN SUPPORT OF
MOTION TO DISMISS FOR FAILURE TO CHARGE A CRIME**

The State's Response to Defendant's Motion To Dismiss for Failure To Charge a Crime ("State's Response") confirms that the Bill of Particulars does not state, within its four corners, a legally cognizable charge of assault. *State v. Taylor*, 371 Md. 617, 645 (2002). Therefore, the charge of second-degree assault against Officer Goodson in Count III must be dismissed.

The State is required to inform Officer Goodson "of the specific conduct with which he is charged." *Dzikowski v. State*, 436 Md. 430, 449 (2013) (emphasis added). The bill of particulars must, "at the very least," put the defendant on notice of "the exact factual situation upon which he was charged." *Id.* at 448. It "functions as a limit on the factual scope of the charge." *Id.* at 447.

The State argues in its Response that it "did not just claim in its Bill of Particulars that the Defendant recklessly caused harm to the victim by 'failing to secure Mr. Gray with a seatbelt.'" State's Resp. at 5. Thus, the State concedes that something beyond the mere non-use of a seat belt is necessary to support the assault charge. Therefore, this case is not at all like the "sleepers hold" in *State v. Hallihan*, where that single act was the basis for the assault charge. 224 Md. App. 590, 596 (2015). Here, the State says that, in addition to the allegation of failure to seat belt, "other conduct has indeed been alleged." State's Resp. at 5. But, there is nothing in its

Opposition, or more importantly the Bill of Particulars, other than the failure to seat belt, to support the purported charge.

The State's oblique reference to "a reckless act" does not tell Officer Goodson what he is alleged to have done to cause the vehicle to make harmful contact with Mr. Gray. The Bill of Particulars, true to its name, is meant to limit the facts on which the charge is based. The catchall phrase "a reckless act," without more, does the opposite. The State does not say anything in Count III about the transport itself being negligent, let alone grossly negligent or reckless. Likewise, nothing about Mr. Gray being handcuffed and leg shackled while being transported articulates what the State says Officer Goodson did or did not do in a reckless manner. Thus, despite the State's contention that "other conduct has been alleged," State's Resp. at 5, the Bill of Particulars only charges Officer Goodson in Count III "based solely on an alleged failure to use one inanimate object, which later cause[d] another inanimate object to come into contact with a person." *See Mot.* at 1.

The State cannot point to any case in Maryland in which an assault conviction was based on such a charge. Instead, the State argues that Officer Goodson denies that the crime of assault by unintentional battery even exists, and also denies that battery may be accomplished by indirect means. State's Resp. at 6-10. These are straw man arguments; Officer Goodson never took those positions. Officer Goodson does argue, however, that the charge is not legally cognizable on the facts alleged because of the indirectness between the act of not using a seat belt, even on an arrestee restrained by handcuffs and leg shackles during transport, and the wagon contacting the arrestee.


The State also mischaracterizes Officer Goodson's Motion as arguing the sufficiency of the evidence, as opposed to the sufficiency of the charge itself. *Id.* at 6. But the State does not,

because it cannot, address the defectiveness of the Bill of Particulars as to Count III. The Indictment and Bill of Particulars, as written, are facially insufficient to charge Officer Goodson with the crime of second-degree assault.

CONCLUSION

For the forgoing reasons, Defendant Officer Goodson respectfully requests this 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 1st day of June 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