STATE OF MARYLAND	*	**IN THE**
	*	**CIRCUIT COURT**
v.		
	*	**FOR**
GARRETT MILLER	*	**BALTIMORE CITY**
Defendant.	*	**CASE NO. 115141034**

****

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

Comes now, Defendant, Officer Garrett Miller, by and through undersigned counsel, and hereby respectfully files this Motion *in Limine* to exclude video and audio evidence relating to Mr. Gray's arrest, the above-captioned matter, and states the following in support thereof:

INTRODUCTION

The above-captioned matter is scheduled for trial on March 7, 2016. The State has charged the Defendant as follows: (i) second degree assault which the State avers is supported by effectuating an arrest without probable cause; (ii) misconduct in office, by malfeasance, "by corruptly arresting Freddie Gray without probable cause; (iii) misconduct in office, by way of nonfeasance, "in that he corruptly . . . failed to secure Mr. Gray with a seatbelt during the process of Mr. Gray being transported in a police vehicle," and (iv) reckless endangerment which the State avers is supported by the defendant's failure to "secure Mr. Gray with a seatbelt during the process of Mr. Gray being transported in a police vehicle."

Pursuant to a request for discovery, the State provided videos from four civilian cell phones as well as footage from CCTV cameras. The defense now seeks to exclude these videos from being introduced in the State's case. The videos are identified in discovery as follows:

Cell_Phone_Video_mp4

(Presumed to have been taken by potential witness Brandon Ross)

Cell_Video_Daq_Walker_1of2_20971021_162421_mp4 (Presumed to have been taken by potential witness Daquantay Walker)

Cell_Video_Daq_Walker_2of2_21230217_195258_mp4 (Presumed to have been taken by potential witness Daquantay Walker)

Cell_Video_Gray_Stepping_into_Van_084308_mp4
(Presumed to have been taken by potential witness Brandon Ross)

Closed-Circuit Television footage
(Taken by various cameras.)

The Defense seeks to exclude this as it is irrelevant, immaterial, and highly prejudicial to the Defendant, as such inadmissible under Maryland Rule §5-401 and Rule §5-403.

I. The Video Evidence is Irrelevant, Prejudicial and has no Probative Value

Evidence, to be admissible, must be both relevant and material. Lai v. Sagel, 373 Md. 306, 319 (2003). Maryland Rule §5-401 defines relevant evidence as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence." It is easily apparent that the video evidence identified herein is irrelevant to the charges levied against the Defendant as a reasonable fact finder would **not** attach importance to any of the videos in deciding a contested issue. Paige v. Manuzak, 57 Md.App. 620, 632 (1984).

A. The Assault and Misconduct by Malfeasance Counts

The videos do not show Officer Miller either prior to, or during, the detention and subsequent arrest of Mr. Gray. Rather, they show, from various points of view, the period of time after the detention and arrest of Mr. Gray. These videos are irrelevant to the issue of whether Mr. Gray was arrested without probable cause, the basis for which the State has charged the Defendant with second degree assault and misconduct in office (malfeasance).

B. The Reckless Endangerment and Misconduct by Nonfeasance Counts

None of the videos, which have been broadly publicized in the media and on the Internet, show the Defendant inside the transport van, going inside the van, or even coming out of the van, and as such, are of no probative value and are irrelevant to the issue of whether Officer Miller failed to seat belt Mr. Gray, the basis for which the State has charged the Defendant with reckless endangerment and misconduct in office (nonfeasance).

Not only does Officer Miller give a recorded statement in which he admits that he did not secure Mr. Gray with a seatbelt, but if this fact remains in dispute, counsel on behalf of Officer Miller will stipulate that he did not secure Mr. Gray with a seatbelt, thus quashing any need for the State to offer the video evidence in an attempt to support this contention. Through both the Defendant's statement, as well as counsel's offer to stipulate to this fact, the video evidence is of no probative value and thus, the probative value is not outweighed by the danger of unfair prejudice to the Defendant. As such, the Defendant requests that this court preclude the State from offering the video and audio evidence.

II. The Audio Evidence is Irrelevant, Prejudicial and has no Probative Value

The videos the State intends to introduce contain audio which consists of Mr. Gray screaming and hearsay statements from citizens in the community. This audio has no probative value and is unfairly prejudicial. The Defendant requests that the court exclude the accompanying audio evidence.

At a minimum, the audio will serve to confuse the issues and mislead the jury into considering whether Mr. Gray was injured during the course of his arrest, thus causing irreparable prejudice to the Defendant. There is no allegation from the State that Mr. Gray was injured during the course of his arrest; however, the audio includes screams from Mr. Gray,

coupled with the hearsay statements of surrounding citizens, all of which are wholly irrelevant. Mr. Gray's screams, if out of frustration or to garner attention, are not probative and if admitted will merely inflame the emotions of the jury thus increasing the prejudicial effect. Consequently, the probative value of the video and its audio are substantially outweighed by its prejudicial effect and thus shall be excluded.

III. The Video and Audio Evidence Unfairly Prejudices the Defendant.

There is no allegation that Officers Nero or Miller injured Mr. Gray. However, the video and audio evidence which the State seeks to introduce, incorrectly makes it appear that way. Indeed, Mr. Gray's screams and passive conduct appeared so pitiful and inflammatory to viewers that they caused the media to speculate that Mr. Gary suffered his fatal injury during the arrest -- a contention with which the State not only disagrees, but moreover, a contention which the State must rebuke in order to support its averment that Mr. Gray could stand on his own prior to being placed in the van. For all such reasons, not only is the probative value of the video evidence substantially outweighed by the danger of unfair prejudice, but even assuming, *arguendo*, that this Honorable Court allows the State to introduce the video evidence, the State need not admit the audio of Mr. Gray's screaming, to prove any fact in dispute. Accordingly, the probative value of the video evidence, as well as the audio accompanying the video, is substantially outweighed by the danger of unfair prejudice and thus, the Defendant requests that this Honorable Court exclude the evidence pursuant to Rule §5-403.

For the foregoing reasons, Defendant respectfully requests that this Honorable Court grant this Motion *in Limine*.

Respectfully Submitted,

Catherine Flynn
Brandon Mead
MEAD, FLYNN & GRAY, P.A.
1 N. Charles Street, Suite 2470
Baltimore, Maryland 21201
(410) 727-6400
Attorneys for Officer Garrett Miller

STATE OF MARYLAND	*	**IN THE**
	*	**CIRCUIT COURT**
v.		
	*	**FOR**
GARRETT MILLER	*	**BALTIMORE CITY**
Defendant.	*	**CASE NO. 115141034**

****

REQUEST FOR HEARING

Defendant respectfully requests a hearing on the Motion *in Limine* to Exclude Video and Photographic Evidence Relating to Mr. Gray's Arrest, or in the Alternative, to Exclude Audio Evidence Accompanying Video Evidence.

Respectfully Submitted,

Catherine Flynn
Brandon Mead
MEAD, FLYNN & GRAY, P.A.
1 N. Charles Street, Suite 2470
Baltimore, Maryland 21201
(410) 727-6400
Attorneys for Officer Garrett Miller

STATE OF MARYLAND	*	**IN THE**
	*	**CIRCUIT COURT**
v.		
	*	**FOR**
GARRETT MILLER	*	**BALTIMORE CITY**
Defendant.	*	**CASE NO. 115141034**

****

ORDER

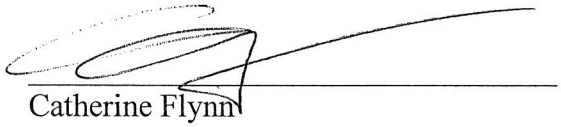
Upon consideration of the Defendant's Motion *in Limine* to Exclude Video and Photographic Evidence Relating to Mr. Gray's Arrest, or in the Alternative, to Exclude Audio Evidence Accompanying Video Evidence, it is this _____ day of _____, 2016 hereby **ORDERED** that the Defendant's Motion is **GRANTED**.

_____

Judge, Circuit Court for Baltimore City

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12th day of February, 2016, a copy of the foregoing Motion was mailed, first class postage prepaid to Janice Bledsoe, Deputy State's Attorney, Office of the State's Attorney for Baltimore City, 120 East Baltimore Street, Baltimore, Maryland 21202.



Catherine Flynn