

STATE OF MARYLAND

* IN THE

2016 FEB 12 P 2 41

* CIRCUIT COURT

CRIMINAL DIVISION

v.

* FOR

GARRETT MILLER

* BALTIMORE CITY

Defendant.

* CASE NO. 115141034

DEFENDANT GARRETT MILLER'S MOTION *IN LIMINE* TO PRECLUDE INTRODUCTION OF EVIDENCE, OR ARGUMENT, OF MR. GRAY'S INJURIES

Defendant, Garrett Miller, by undersigned counsel, hereby submits this Motion *in Limine* to Preclude Introduction of Evidence, or Argument, of Mr. Gray's Injuries and states the following in support thereof:

1. On May 21, 2015, Defendant Garrett Miller, was charged by way of indictment with one count of assault in the second degree, one count of reckless endangerment, and two counts of misconduct in office.
2. The State avers that the basis for the charge of assault, as well as the charge of misconduct in office (malfeasance), was the Defendant's *act* of arresting Mr. Gray without having established probable cause. In addition, the State avers that the basis for the charge of reckless endangerment, as well as the charge of misconduct in office (nonfeasance), was the Defendant's *inaction*, of failing to secure Mr. Gray with a seatbelt in a police vehicle. Accordingly, none of the four charges requires *any* showing of injury in order for the State to satisfy the elements of the offenses. Thus, any evidence or argument pertaining to Mr. Gray's injuries is irrelevant and prejudicial with no probative value.

3. That the State is vested with the sole power to choose which crimes to charge. Herein, the State affirmatively did **not** charge the Defendant with any crime for which evidence of injury is required.
4. That the State charged five (5) other Defendants with criminal charges arising out of the incident herein, one of whom was charged with second degree depraved heart murder, and four of whom were charged with involuntary manslaughter. Unlike the crimes for which the Defendant is charged, the crimes of second degree depraved heart murder and manslaughter each require a showing of injury, a distinction emphasized by this Honorable Court in granting the Defendant's Motion to Sever. As to the charge of reckless endangerment in this case, evidence of injury is not relevant. As recognized by the Court of Appeals in Pagotto, unlike involuntary manslaughter which requires the death of a person, "reckless endangerment does not require that any actual harm occur to another." State v. Pagotto, 361 Md. 528, 548 (2000). The court has consistently held that, as it pertains to the charge of reckless endangerment, "it is the reckless conduct and not the harm caused by the conduct, if any, which the statute was intended to criminalize." State v. Pagotto, 361 Md. at 549 (citing Minor v. State, 326 Md. 436, 442 (1992)). Thus, the focus is on the conduct of the accused, not the harm caused by the conduct, if any.
5. In granting the Defendant's Motion to Sever, the court recognized that the legal and factual analysis must remain separate from the evidence of Mr. Gray's injury, thus acknowledging that evidence or argument as to the injuries sustained by Mr. Gray has no probative value. Even assuming, *arguendo*, that evidence of injuries is relevant to the charges, its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury. Md. Rule 5-403.

