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CRIMINAL DIVISION

STATE OF MARYLAND

\*

IN THE CIRCUIT COURT

V.

\*

FOR

GARRETT MILLER

\*

BALTIMORE CITY

Defendant

\*

Case No. 115141034

\* \* \* \* \*

**DEFENDANT'S MOTION TO DISMISS FOR FAILURE TO CHARGE A CRIME**

The Defendant, Garrett Miller, through undersigned counsel, hereby files this Motion to Dismiss, pursuant to Maryland Rule 4-252(d), and in support thereof, states:

**INTRODUCTION**

The Defendant has been charged in the above captioned matter in a four-count indictment with second degree assault, two counts of misconduct in office and reckless endangerment. As neither the Indictment nor the State's Response to the Defendant's Request for a Bill of Particulars allege facts that support the charge of Second Degree Assault, the Defendant moves for dismissal pursuant to Maryland Rule 4-252(d).

**ARGUMENT**

It is first important to note that defense counsel could not locate a single case in Maryland, any other state, or in the federal courts where a police officer has been charged criminally with second degree assault **solely on the basis** that he/she made an arrest allegedly without probable cause. Common sense dictates that officers would simply not make arrests if they were subject to criminal

prosecution if it was later determined that probable cause did not exist. The long term established remedy for a Fourth Amendment Constitutional violation has always been suppression of the evidence. Therefore, the State has not demonstrated that a crime can even be committed under its theory of this case.

As asserted in the State's Response to the Defendant's Motion for Bill of Particulars, the State alleges that the second degree assault was committed when the Defendant caused offensive physical contact to Mr. Gray; the contact was the result of an intentional act; and the contact was not legally justified in that force was used to place Mr. Gray under arrest without probable cause. To be convicted of committing this intentional battery, there must be sufficient proof that the Defendant intended to cause harmful or offensive contact against a person without that person's consent AND without legal justification. Elias v. State, 339 Md. 169, 183 (1995).

Though the legal term "without legal justification" is not specifically defined by Maryland statute, a review of caselaw demonstrates that the State cannot prove that the Defendant acted "without legal justification." In People v. Schuett, 833 P.2d 44 (Colo. 1992), the Colorado Supreme Court defined the term "without legal justification" noting that the term is a term of art which means that "the actions of the defendant were committed in the pursuit or furtherance of *an illegal purpose*." Id. at 45. Blacks Law Dictionary (Rev. 4<sup>th</sup> ed. 1968) uses the term "without legal justification" interchangeably with a "malicious act; an unlawful act done willfully or purposely to injure another." Id. at 1110.

